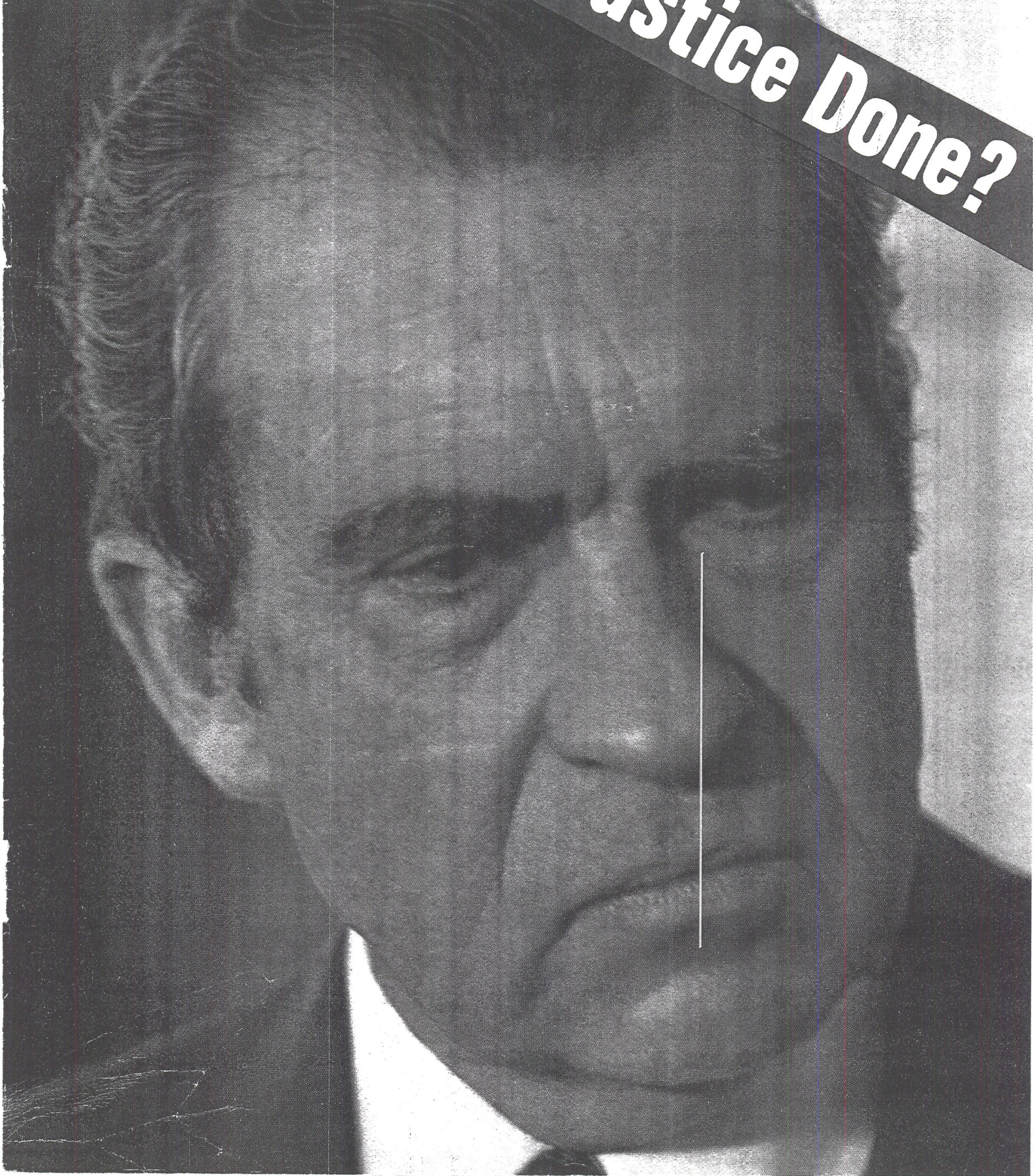


September 16, 1974

File 9 Sep 74
(on newstands
this date)

Newsmagazine

Was Justice Done?





AP photos

An act of 'mercy': President Ford signs a pardon for Richard Nixon



WAS JUSTICE DONE?

"Richard Nixon and his loved ones have suffered enough," said Gerald Ford. Suddenly and shockingly on a quiet Sunday morning, the new President announced a "full, free and absolute pardon" for his predecessor in the Oval Office. The pardon was meant, Ford said, as an act of compassion not only for Nixon but for a nation that has suffered the Watergate nightmare too long.

But what Ford considered a gesture of mercy struck many as premature and certain to misfire. It revived the Watergate furies, raised the most profound and disturbing questions about the equal application of justice and abruptly ended Ford's brief honeymoon with Congress and the nation. Gallows humorists around the White House spoke glumly of the "Sunday morning massacre," and one aide said apprehensively: "The fire storm is starting to build."

Ford's men said he knew the pardon was a gamble but had been spurred to act by two intersecting concerns: that special prosecutor Leon Jaworski was about to move for a criminal indictment of the former President, and that Nixon himself—"a broken man," as a top White House

aide described the reports from San Clemente—might not be able to endure the ordeal of public trial. The immediate price of the gamble was high enough. In the first few hours alone, a thousand telegrams and telephone calls poured into the White House message center—running 6 to 1 against the pardon. White House press secretary Jerald F. terHorst resigned in protest rather than face reporters with justifications of Ford's act. And members of the special prosecutor's staff were threatening to resign—just as they had after the Saturday Night Massacre of last Oct. 20.

OFF THE HOOK

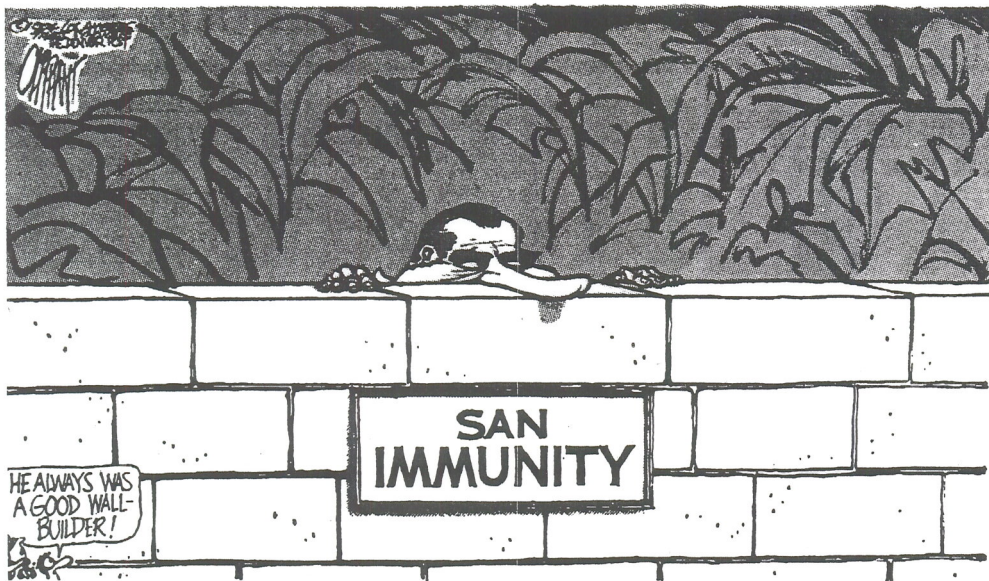
But now Richard Nixon was free—pardoned, even before any formal charges were lodged, for any Federal crimes he might have committed from his inauguration as President until he resigned. And that covered not only Watergate but criminal questions about his Presidential income taxes, say, or his financial dealings with Bebe Rebozo. He could still be called as a witness in the Watergate trial of H.R. Haldeman, John Ehrlichman, John Mitchell and others, and ironically he would lose his privilege

of pleading the Fifth Amendment: a man can't incriminate himself if he has been pardoned in advance.

But Nixon would be spared the indignity of the defendant's dock, the agonizing months and financial burden of preparing for trial—and the possible ultimate shame of criminal conviction. His humiliation was limited to a public expression of "regret and pain" at the damage to the nation caused by his "mistakes over Watergate"—and shortly after it was issued, he slipped off to seclusion in the desert at Palm Springs.

Nixon's longtime supporters were both relieved and grateful for Ford's decision. "It is courageous and beautiful," said son-in-law David Eisenhower, and Barry Goldwater said it was "the only decent and prudent course for him to follow." Elliot Richardson, who resigned as Attorney General after the Saturday Night Massacre, called the result "compassionate and right for the country." Other moderate Republicans, however, were either guarded in their endorsements or downright disapproving—Massachusetts Sen. Edward Brooke bluntly called the pardon premature and a serious mistake—and many Democrats

9-9-74
Newsweek



Oliphant © 1974 Denver Post

were flatly outraged. Minnesota's Sen. Walter F. Mondale called it "the worst possible decision."

"This is the final chapter of the Watergate cover-up," said Sen. Floyd Haskell of Colorado; he added that it could "only confirm what too many Americans already believe: that there is one set of laws for the rich and powerful, another for everyone else." South Dakota's Sen. James Abourezk, all too aware of the impact on the Wounded Knee Indian trial in his home state, demanded: "How in hell can you issue a pardon before all the charges against Nixon are laid out?" And the foreman of the Watergate grand jury that had named Nixon an indicted co-conspirator broke the jury's secrecy to register a public protest. The reaction of his fellow jurors to the pardon, Vladimir Pregelj told NEWSWEEK, "ranged from dissatisfaction to outrage."

A QUESTION OF EQUITY

Rumbles of dismay—and worse—were heard from important figures in the law as well. For the President's decision created disturbing and difficult questions of equity in the already traumatic Watergate affair. Just last week, John Dean, the Nixon man who more than anyone else exposed the cover-up, went to jail to begin serving a one-to-four-year term for obstruction of justice. Eighteen Nixon men have already been convicted of Watergate-related offenses; fourteen have served jail terms or are still inside. Many now are expected to seek pardons of their own to clear their records. And there was optimism among the defense lawyers representing Haldeman, Ehrlichman and the others due to go on trial later this month.

Gerald Ford himself had anticipated the outcry last November. During his Vice Presidential confirmation hearings, a prescient Sen. Howard Cannon of Nevada asked Ford whether he would have the power to pardon Nixon in case Nixon resigned. Ford responded: "I do not think the public would stand for it."

But in his statement announcing the pardon, Ford said he may have spoken too fast. The public had, in fact, in a series of polls, indicated its opposition to giving Nixon immunity from prosecution; the latest such expression came just last week, when a special Gallup poll for NEWSWEEK found a solid majority of 58 per cent against amnesty for Nixon (page 31). But now Ford maintained that "I cannot rely upon public opinion polls to tell me what is right," and that a pardon was simply "the right thing to do." The President declared: "I do believe that right makes might," and borrowing from Lincoln, he added: "If I am wrong, ten angels swearing I was right would make no difference."

Nixon and his family "will continue to suffer no matter what I do," the President said. "There is an American tragedy in which we all have played a part . . . Someone must write 'The End' to it. I have concluded that only I can do that." It would be months or years before passions cooled enough to insure Nixon a fair trial, he predicted, and thus a pursuit of the trial would not be equal justice for the former President but cruel and excessive punishment.

In a significant departure from his text, Ford added that the accusations hanging over Nixon's head were "threatening his health"; the implication, later underscored privately by White House aides, was that Nixon's mental condition had become shaky. In the end, Ford said, the courts might hold that Nixon had been denied due process, and the verdict of history would still be inconclusive—but the country would suffer unnecessarily: "Ugly passions would again be aroused, our people would again be polarized in their opinions, and the credibility of our free institutions of government would again be challenged."

The White House maintained that there were no strings to the pardon, and that it hadn't been given in any bargain with the former President. But shortly after the announcement, White House

counsel Philip Buchen told a press briefing that Nixon had signed an agreement specifying that his controversial tapes and papers would remain available for court subpoenas for three to five years, kept for security under double locks with the government keeping one key and Nixon the other. After five years, Nixon may order the destruction of any tapes, and in any case they will all be destroyed at his death or by Sept. 1, 1984. That might be a loss to history, Buchen admitted, but the tapes "shouldn't have been made in the first place."

'I WAS WRONG'

Buchen did acknowledge that, while Ford had not solicited the statement of contrition from Nixon, "I'm sure [the statement] pleased him and made him feel it was easier to act as he was doing." In the statement, Nixon acknowledged that his perspective on Watergate had changed, that "I was wrong in not acting more decisively and more forthrightly in dealing with Watergate," and that he could understand how his own mistakes could lead fair-minded people to believe that he had acted illegally. "This burden is the heaviest one of all to bear," he said—"a burden I shall bear for every day of the life that is left to me." In all, it was a good deal less than a confession—a fact that Nixon's defender-in-chief, Rabbi Baruch Korff, triumphantly pointed out. "He certainly does not indicate culpability, which is what we maintained all along," Korff said—and barring further definitive revelations, an opening was clearly left for Korff and his followers to argue that Nixon had been unfairly hounded out of office.

The first clue that Ford might be moving toward a pardon came at his first

news conference on Aug. 28, when he did not flatly rule out such an action. Two days later, the President assigned counsel Buchen to look into the precedents for Presidential pardons. Buchen worked through the Labor Day weekend and then gave Jaworski his first signal that something was afoot: he asked Jaworski how long a potential Nixon prosecution might take.

Jaworski replied that he felt it would be nine months to a year before the courts would feel that Nixon could get a fair trial. In fact, Jaworski's men had already decided to recommend a separate indictment for Nixon, perhaps keeping it under court seal to avoid prejudicial publicity; the special prosecutor had figured that it would take at least six or seven months in any case to wind up trial preparations and dispose of pre-trial motions. But Nixon's new attorney, Herbert J. Miller, had been consulting with Jaworski and his top aides and reached an alarming conclusion from their talks: that while Jaworski was assuming that Nixon would not spend any actual time behind bars, he was not prepared to make any Agnew-style deal of his own. That decision, Miller inferred, would be up to a sentencing judge or a pardoning President.

'HE'S NOT WITH IT'

At that point, the White House sent its first olive branch to San Clemente. Benton Becker, a Washington lawyer who has known the President for years and was previously used to check out charges that Nelson Rockefeller had financed campaign dirty tricks, was sent to the former President with a double mission: to negotiate the agreement safeguarding Nixon's tapes and papers and to offer the pardon.



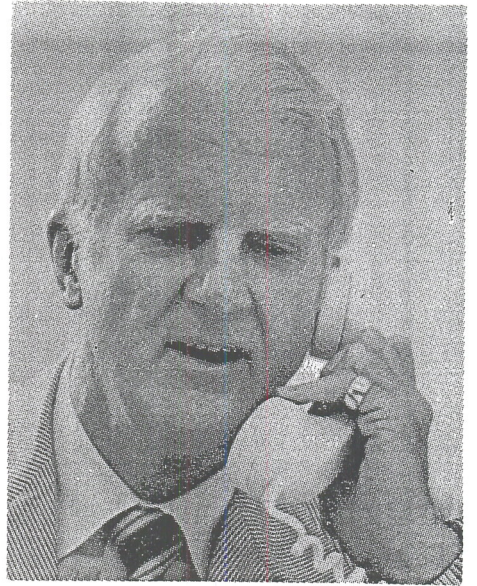
terHorst: A resignation in protest

It wasn't final, a White House aide told reporters later, but "he was authorized to say that in all probability, a pardon would be forthcoming." Miller, who accompanied Becker on the mission to San Clemente, urged Nixon to accept the deal as the best available. Any plea bargain, he stressed, would inevitably mean accepting a jail sentence unless Nixon could contrive to make his plea before a sympathetic judge.

Astonishingly, Nixon was reluctant to accept the offer. Accounts of his health by recent visitors to San Clemente vary widely; some admirers portray him as cheerful and relaxed, others as worn and thoughtful to the brink of depression. But White House aides say their information is that Nixon has been slipping away from reality—"just the way he was in that farewell speech to his staff, only multiplied," one Ford man told *Newsweek's* Thomas M. DeFrank. "He's a broken man. He's aged, he's lost weight, and he's not with it all the time." Even more bluntly, another source said: "He's flipping out." Nixon was concerned that the pardon would deprive him of his Fifth Amendment privilege as a witness in the Watergate cover-up trial scheduled to begin this month. By late Friday, however, he had been persuaded to go along with the pardon; on Saturday, Becker and Miller flew back to Washington; and on Saturday afternoon, in a meeting with most of his top aides, Ford made the final decision to pardon Nixon.

'WHY DANGLE THE MAN AROUND?'

Just how large a role Alexander Haig, the erstwhile Nixon chief of staff still serving Ford, may have played in the pardon was unclear. Haig has been in frequent telephone touch with Nixon since the resignation and presumably passed on word of Nixon's state of mind to Ford. It is known that Haig met for two hours Saturday afternoon with Ford, and he may have been the liaison man in the drafting of Nixon's statement.



Buchen: An agreement on the tapes



Newsweek photos by Wally McNamee

Jaworski: A decision to indict?

Jaworski, who had not been consulted on the decision beyond Buchen's first question, wasn't told about it until two hours before the Sunday-morning announcement. Through a spokesman, he said only that he "accepts" Ford's decision. He had been known to want at least a delay in the announcement. "All he asked," said one source, "was that a pardon be withheld until a jury in the Watergate cover-up trial could be sequestered. How could he go to trial with a jury aware that a possible principal in the conspiracy had already been pardoned?" But as Ford's men saw it, to delay risked having Nixon change his mind. Besides, advised longtime counselor Bryce Harlow, "it should be done sooner if you're going to do it at all. Why dangle the man around? If you have to do something that draws down on your reservoir of adulation, the time to do it is while you've still got lots of it."

The pardon left Nixon himself in an



UPI

Dean jail bound: What of the others?

almost unprecedented position. Barring a doctor's certificate that he is physically or mentally unable to appear—a possibility that knowledgeable lawyers don't rule out—he will have to testify at the forthcoming Watergate cover-up trial, and will not have Fifth Amendment privileges. And he is not totally out of danger; under the terms of his pardon, he could still be prosecuted for any perjuries in his testimony. In addition, he is almost sure to be named a defendant in civil suits rising from the Watergate scandals, a civil tax-fraud case is possible and he could even be charged with criminal tax fraud in his pre-Presidential returns.

But the cover-up trial* itself has been turned into a formidable muddle. Nixon's pardon is not necessarily fatal to the prosecution, says one close observer, but the chance of convictions has faded—not least because of the near revolt the pardon touched off in Jaworski's shop. "There may be no trial at all," says one top hand. "The only thing that can save it is for Leon to convince all of us that it is worthwhile to continue—that, somehow, justice still will be done. I don't see now how he can do it."

The defendants themselves now cherish new hopes of similar Presidential leniency; failing that, their attorneys will inevitably move to quash or delay the trial because of the pardon and its attendant publicity. The defense lawyers may no longer be eager to subpoena a Nixon unable to plead the Fifth Amendment. But

*Besides Haldeman, Ehrlichman and Mitchell, the defendants are Gordon Strachan, a former Haldeman aide; Robert Mardian, a former Justice Department official, and Kenneth Parkinson, the attorney for CRP. Charles Colson pleaded guilty in another case and is in prison.

if he does testify, the cross-examination is expected to be fierce—"They'll kill him," one defense lawyer told *Newsweek's* Diane Camper—and in the end, the defendants will count on the jury to perceive the basic inequity of the case. "The jury can look at him sitting there free as a bird," another lawyer said, "and here are these guys, who acted on his behalf, facing trial. That's just gotta rattle somebody on the jury."

'AN AFFRONT' TO THE SYSTEM

Was justice done in pardoning Richard Nixon? Oddly enough, nobody claims that it was. Buchen, pressed on the point, replied only that there was a difference between justice and mercy; Ford himself, in his statement, said emotionally: "I do believe with all my heart and mind and spirit that I, not as President but as a humble servant of God, will receive justice without mercy if I fail to show mercy." But even that concept of the case raised a basic question of fairness; as terHorst put it in explaining his resignation, "Mercy, like justice, must also be evenhanded . . . I do not doubt his motives at all. I still have my own conscience to live with."

And across the nation, the reaction to Ford's short-cutting of justice ranged from uneasiness to outrage. In nearly identical words, *The New York Times* and *The Baltimore Sun* called the pardon "an affront" to the criminal justice system. Constitutional law Prof. Philip Kurland of the University of Chicago said he was "shocked" at the news. Harvard's Raoul Berger predicted that the pardon "will breed disrespect for the law" and encourage future Presidents "to feel that Presidents are untouchable." Nixon himself, he said, might take ad-

vantage of the lack of a conclusive record of his guilt to rehabilitate himself and run for office again. "He rose from the ashes after '62," Berger said. "Well, what's to stop him now?"

Even old friends of Nixon's, who were happy at his escape, had misgivings about the manner of it. "It's not something that lawyers can easily accept," said Rita Hauser, a prominent New York attorney and GOP leader. "How can you proceed with trials of others when you've let the big honcho go free? On what basis can you say the law is being fairly administered?"

American justice has survived worse affronts, and can probably weather this one. But the process of political healing that Ford so earnestly sought in his Presidency may be another matter. At a stroke, he not only ended his political honeymoon but called his own good faith into question; inevitably, he provoked suspicions that the pardon was just the last step in a shabby bargain made with Nixon on Ford's promotion to the Vice Presidency eleven months ago. Even the surprise proposal for limited amnesty for Vietnam war resisters (page 26) now could be interpreted as a cynical show of leniency to pave the way for Nixon's pardon. Any Ford proposals seemed sure to come under suspicious scrutiny now, especially his request to Congress for \$850,000 to pay Nixon's pension and expenses.

The nation's belief that its institutions had finally worked to purge the Watergate poison was cut sadly short. With the pardon, the full story might never be told, and the scandal was irretrievably passed to another Administration. By his own act, Gerald Ford had embraced the demon of Watergate.

Nixon on the beach at San Clemente: The end to 'an American tragedy'?

UPI

