

The Pardon Backlash

From the moment President Ford announced his pardon of Richard Nixon, it was clear that a major legal controversy would ensue—and almost within hours, judges, lawyers, government officials and defendants were locked in sharp debate. The angry response of some judges was to play their own tricks with the law: a county judge in Grand Forks, N.D., freed two men whom he had earlier sentenced to jail for drunken driving; a municipal judge in Los Angeles ordered the release without bail of a man accused of taking three hostages at gun-

ington, D.C., lawyer and co-author of a treatise on post-conviction remedies. "It's a further turn of the screw of cynicism—and it's sad." Ford's action, says Atlanta lawyer David Trippe, "implies that every rich man suffers more because he has more to lose." The effect on the future of the legal profession itself troubles Sanford Kadish, professor of law at the University of California, Berkeley. "What do I say," observes Kadish rhetorically, "to a fair-minded student who asks me to explain this double standard? It's a major wound and we're bleeding."

It is not that legal authorities challenge either President Ford's constitu-

have averaged 189 pardons a year.

The Federal government has established strict guidelines to govern the award of pardons—and the unique Nixon case violated almost every one. Most important, pardons are almost never granted before conviction, and a convicted felon might have to wait up to five years even to apply. "The government really makes those guys crawl," says Goldfarb. "They have to put in a repentant application, then undergo an FBI investigation." No such investigation was carried out in the Nixon case; the U.S. pardon attorney, Lawrence M. Traylor, says that he was not even informed. "But I doubt seriously," adds Traylor wryly, "if we could have provided any information on whether Mr. Nixon has been rehabilitated or not."

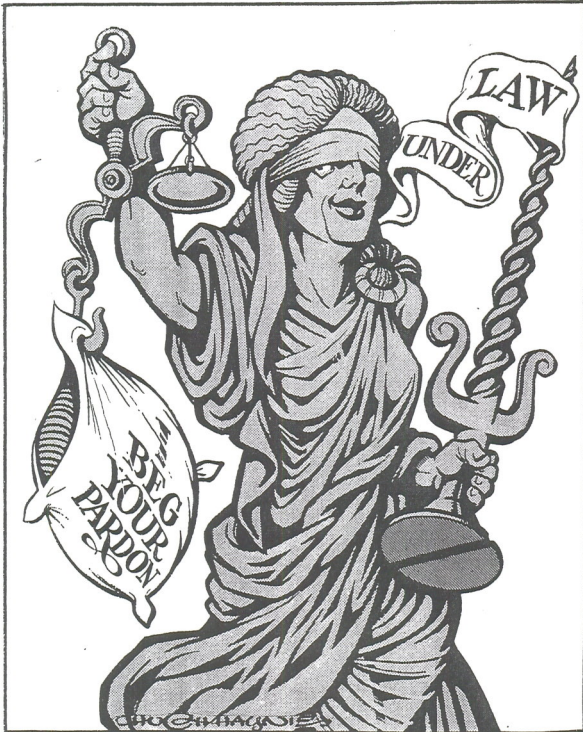
One widely anticipated fallout from the Nixon pardon is a flurry of new pardon applications around the country. "I've handled a couple of pardon cases in my whole career," says one Washington attorney, "and I've had two more requests since the Ford announcement." But pardon officials, both state and Federal, say they do not intend to bend their rules. And although any new quirk in the law stirs responses from prison inmates, the number of their applications is likely to diminish after a brief burst.

Fraud: Even so, Nixon's pardon is making its impact felt in the courts. In Chicago, for instance, alderman Thomas E. Keane, Cook County's second most powerful Democrat, is facing trial for mail fraud; last week, after the Ford decision, his lawyers offered to the jurors a list of ten questions, all of them comparing the leniency given Nixon with the Keane case.

Judges are now girding themselves for other Nixon-related defense gambits. "I'll guarantee that in the next 90 days, every defense lawyer who comes before me on a case not involving violence is going to cite Richard Nixon," says one U.S. district judge. "Frankly, I don't give a damn what they say. In any judicial process, somebody else's egregious mistake doesn't mean that I'm going to throw up my hands and say I don't care. I do care, I care enormously."

But what worries the legal community most is the damage done by the Nixon pardon to the public's trust in the law. Last week, the state bar of California, from which Nixon has offered to resign to avoid an investigation of his fitness as a lawyer, passed a resolution of outrage. Ford's action, they said, "violates the principle that all persons stand equal before the law and presents a substantial threat that the confidence of our citizens in the American system of justice will be undermined." Without that confidence, contends Joel Gora of the American Civil Liberties Union, the system simply cannot function. "My sense of jurisprudence tells me," says Gora, "that no system of justice that metes out harsher punishment to those with less culpability can endure very long."

Newsweek, September 23, 1974



Haynie—Louisville Courier-Journal
White House Justice, 1974



New York Times

Defendant Braun: Saved from a prison sentence

point (a ruling overturned three hours later by a higher court). And in New York, a U.S. district judge canceled a prison sentence for 35-year-old Craig A. Braun, who had pleaded guilty to one count of tax evasion. "Making the comparisons thrust upon us by recent events," explained Judge Marvin E. Frankel, "it is difficult to tip the balance against [Braun]."

Taint: But these reactions were as nothing compared to the longer-range import of the Nixon pardon. For Watergate had already brought the nation's chief law-enforcement officers and a covey of prominent lawyers into disrepute; it had also tainted plea-bargaining and sentencing processes—notably in the case of former Vice President Spiro Agnew.

"The American public will read this as just one more chapter in the old story of the Establishment taking care of its own," says Ronald L. Goldfarb, a Wash-

ington, D.C., lawyer and co-author of a treatise on post-conviction remedies. "It's a further turn of the screw of cynicism—and it's sad." Ford's action, says Atlanta lawyer David Trippe, "implies that every rich man suffers more because he has more to lose." The effect on the future of the legal profession itself troubles Sanford Kadish, professor of law at the University of California, Berkeley. "What do I say," observes Kadish rhetorically, "to a fair-minded student who asks me to explain this double standard? It's a major wound and we're bleeding."

Pardons, which are granted by chief executives, are by no means rare—Ronald Reagan, for example, handed out 513 during his first seven years as governor of California, including one to country singer Merle Haggard. Oregon Gov. Tom McCall last year pardoned Marc P. Winters, who had been convicted three times for violent crimes but had undergone a religious conversion in prison. Later he hired Winters as the official state ombudsman. In the 42 years that records have been kept, U.S. Presidents