

Getting At the Truth of Watergate

Whatever the justification for the presidential pardon of Richard Nixon, President Ford erred grievously in sanctioning an agreement that gives Nixon control over access to his tapes and papers. Under its terms, only Nixon has the right to authorize the special prosecutor or anyone else to examine the vast, as yet largely untapped documentation of the Nixon years in the White House. Government permission is not required, though the Government is allowed to object on national security or other grounds to giving someone access to any of the materials.

The deal does nothing to prevent Nixon from contesting in the courts further efforts to get to the bottom of the scandals known collectively as Watergate. Given the ex-President's refusal to admit any guilt, he may indeed do everything to prevent access. For the sake of history and for the nation's peace of mind, justice should be seen to have been done in Nixon's case; the full and final record should be laid bare, as it was in Spiro Agnew's removal from office.

Ford's agreement with Nixon on the tapes, coupled with the pardon's elimination of any future disclosures in a trial of Nixon, makes it less likely that the record will ever be revealed. Special Prosecutor Leon Jaworski's final report will probably include some new details about Watergate but not all of the untold story. What can be done?

The pardon is irreversible, but Ford could revoke the tapes agreement. That would be the simplest solution. Ford seemed unlikely to negate the deal willingly, but many lawyers doubt its legality and expect it to be challenged in the courts. Jaworski would be in the best position to mount such a challenge. Indeed, at his request, the White House decided to halt the transfer of the tapes and doc-

uments to Nixon at least temporarily. But if the agreement stands, other means must be found to pry loose what still needs to be known.

In the first shocked reaction to Ford's deal with Nixon, there were some too-hasty proposals. One was that the Watergate grand jury be asked to go ahead and investigate and indict Nixon despite the pardon. Jaworski promptly and properly rejected that. Another was that Congress revive the impeachment proceedings and complete the formal record of Nixon's wrongdoing as President. House Judiciary Committee Chairman Peter Rodino just as promptly and properly dismissed that notion. Both ideas are flawed because they would involve employing constitutional processes for purposes other than the ones for which they were intended. The approaches would thus abuse those processes and, if Nixon resisted, might well be found invalid by the courts.

But at least three promising avenues do remain for getting at the truth of Watergate:

CRIMINAL TRIALS AND CIVIL SUITS.

The courts offer many opportunities for uncovering new details. More subpoenas could be issued to Nixon for tapes and documents needed as evidence in the criminal trials of his associates in the scandals, and the courts will certainly be sympathetic to such requests. Much further detail—though no bombshell revelations—is expected from the 55 tapes that the Supreme Court forced Nixon to produce for the cover-up trial of six former aides,

PROSECUTOR JAWORSKI

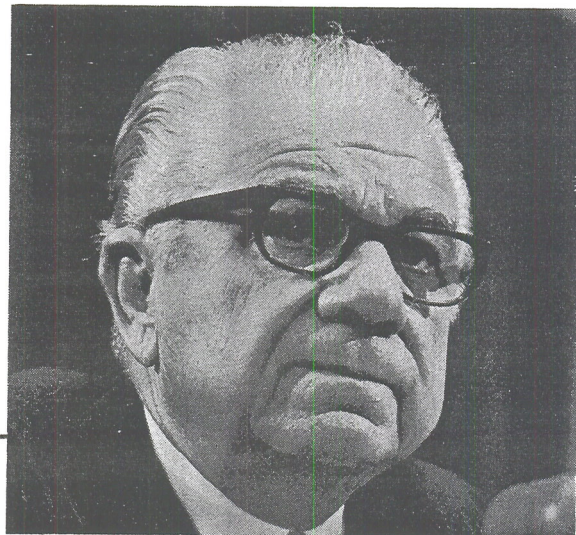
which begins Oct. 1 in Washington.

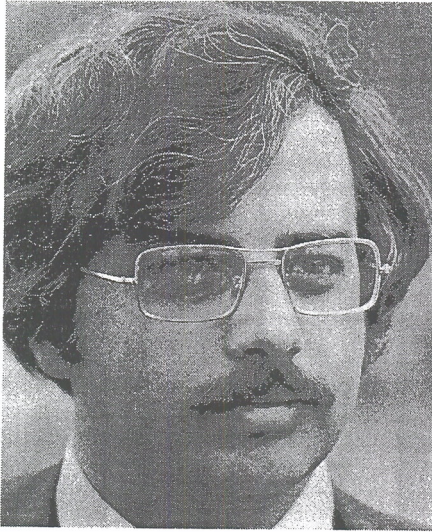
Nixon has been subpoenaed as a witness at the trial and perhaps may be called to testify in others. Legal experts believe that, for the most part, the pardon ended his right to refuse to testify on the grounds of self-incrimination. He can now plead that Fifth Amendment right only if his answers could be used

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against him in some future state prosecution, which seems to be a rather remote possibility. Thus, scholars like Harvard Law Professor Alan Dershowitz expect "a gushing forth" of new evidence about Watergate from the trials.

In addition, private citizens claiming injury because of Watergate activities may well sue Nixon for damages. Dershowitz anticipates a number of lawsuits against the former President from "people who were surveilled, audited, wiretapped and so on." The plaintiffs will doubtless seek to subpoena evidence and force testimony from Nixon.

But court cases will probably provide only fragments of the secret parts of Watergate. The reason: Nixon can be required to provide only evidence and testimony that is relevant to each case. In the end, much of Watergate would probably still be hidden.

A COMMISSION. Ford could appoint a commission to lay bare the full Watergate story, much as the Warren Commission (of which Ford was a member) studied the assassination of President Kennedy. From Congress, the commission could obtain subpoena power to compel Nixon and his former associates to testify and surrender all of the evidence in their possession. Congress could also give the commission authority to grant witnesses immunity from prosecution so that Nixon's former aides, like himself, could not refuse to testify on the basis of constitutional rights against self-incrimination.

Nixon could still refuse to comply with the commission's subpoenas on grounds of Executive privilege. But he used that argument twice as President in his court fights over evidence—and lost both times. Ford,

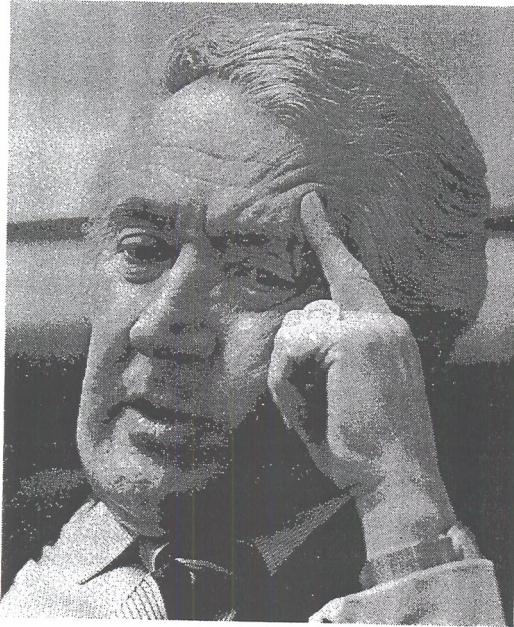
however, has shown no sign of being in the mood to create such a commission.

A CONGRESSIONAL COMMITTEE.

Congress could appoint a special committee, reactivate the Senate Watergate Committee or give an existing committee the authority to go after the remaining evidence to write a definitive history of Watergate. Such a congressional inquiry has already been discussed by several Democratic Senators, among them Edward Kennedy of Massachusetts, Walter Mondale of Minnesota and Adlai Stevenson III of Illinois.

The committee could be given the power to issue subpoenas and grant immunity from prosecution. There is precedent for Nixon to refuse to cooperate with a committee on grounds of Executive privilege. In 1953, President Truman cited the privilege in turning back a subpoena from the House Un-American Activities Committee. But the committee was investigating one of his appointments as President, and not his involvement in a well-documented criminal conspiracy, as is the case with Nixon.

New York Attorney and Princeton Professor Sidney Davis, an expert on congressional investigations, believes that "in terms of effective fact-finding, Congress has no peer." Further, a congressional committee would be wholly independent of Ford, which the President might welcome. Adds Constitutional Scholar Philip Kurland of the University of Chicago: "Depending on the committee's makeup and its financing, it could be very effective. Sam Ervin [who is retiring as a Senator] could be hired as counsel." There is a satisfying Shakespearean symmetry to the whimsical thought that the man responsible for many of the early Watergate chapters might get a chance to write the last one as well. In any event, someone must do it before, as Ford said, the book can be truly and well closed on Watergate.



BLACK STAR

JUDICIARY COMMITTEE CHAIRMAN RODINO