

*Nixon, Ford, Haig,  
and the transfer of power*

# THE PARDON

BY SEYMOUR M. HERSH

**A**T ELEVEN O'CLOCK ON SUNDAY MORNING, SEPTEMBER 8, 1974, one month after taking office, President Gerald R. Ford announced that he had granted Richard M. Nixon a full pardon for any offenses against the United States he might have committed while serving as the thirty-seventh President. With that act, Ford made a political blunder that would haunt his presidency and submerge his campaign two years later. The pardon immediately raised speculation that he and Nixon, working through Alexander M. Haig, Jr., the Army general who served as chief of staff to both, had struck a deal for the presidency.

Many of the aides who worked closely with Haig and Ford still assume that there was a deal of some kind. Whether there was may never be known, because the men involved have yet to give a full account. But defining the actual terms of the deal, if there was one, is no more important to an understanding of the pardon than knowing why Nixon made Ford Vice President and why he thought that he could rely on Ford to pardon him. Nixon and Haig thought of Ford as a proven commodity—a man who placed loyalty to Nixon and the Republican presidency above his personal ambitions and his political well-being. They assumed, according to the aides, that Ford would take care of his former boss as soon as he became President. That he waited so long to act was a disturbing surprise to Nixon.

Gerald Ford was a familiar, if not widely known, fixture in high-level Republican politics in October of 1973, when he was nominated to replace the disgraced Spiro T. Agnew as Richard Nixon's Vice President. He had served in Congress since 1948, representing a heavily Republican district in Grand Rapids, Michigan. His conservatism on foreign-policy issues and his hard-line stance against communism won him an appointment in 1956 to the House Appropriations subcommittee that controlled CIA funding and monitored, to a limited degree, CIA activities abroad. In 1963, President Lyndon B. Johnson named Ford as one of two members of the House to serve on the Warren Commission, which investigated the assassination of John F. Kennedy. Ford was elected minority leader of the House

the next year. During these years, Ford acquired a reputation as an amiable politician who followed his party's dogma with enthusiasm but with no malice; Democrats perceived him as a nice guy.

Ford's voting record, as of his 1973 confirmation hearings as Vice President, provided little basis for bipartisan endorsement. He had been a consistent supporter of aid to Vietnam since the 1950s. He repeatedly expressed concern, as did many other Republicans, about Soviet inroads in the United States: he had praised his fellow congressman Richard Nixon as early as August of 1950 for his fight against the "insidious Communist forces that would destroy our nation." Ford's record on domestic issues was similarly conventional. He voted against many of the important housing and community-development proposals before Congress and to reduce proposed increases in minimum-wage laws. He did, however, favor increased government authority to aid the police in the struggle against crime, including wiretapping and preventive detention. Ford was known inside the Justice Department as a loyal supporter of the FBI and its director, J. Edgar Hoover. According to documents obtained under the Freedom of Information Act, he served in late 1963 as an informant for the Bureau on the inner workings of the Warren Commission. In one internal FBI report, Ford was quoted by Cartha D. DeLoach, a senior aide to Hoover, as being "disturbed about the manner in which Chief Justice Earl Warren was carrying on his Chairmanship." DeLoach wrote, "Ford indicated he would keep me thoroughly advised as to the activities of the Commission. He stated this would have to be done on a confidential basis."

Ford's record on civil rights was, at best, indifferent; he remained mute during the great struggles of the late 1950s and early 1960s, and, after becoming minority leader, invariably sought to weaken civil-rights legislation during floor debate—before, in most cases, voting for the bills.

Nonetheless, alongside Richard Nixon, Gerald Ford looked very good late in 1973, even to some liberal Democrats. Nixon, desperately involved in his fight against the Watergate Special Prosecution Force and the federal court subpoenas for his White House tape recordings, was certain to face impeachment hearings in the House Judiciary Committee: there was a need for someone as Vice President who was well liked and widely considered to be ac-

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ceptable, such as Ford. The attitude of many Democrats and Republicans was summed up by David Broder, the *Washington Post's* political columnist, in November of 1973, just after Ford's testimony before the House and Senate confirmation committees: "Whatever his shortcomings in intellect, oratory, or wit, Jerry Ford is one of the most decent human beings in Washington. He is not a hater, nor is he under a constant compulsion to prove his own worth by dominating and downgrading others. . . . What Ford would bring to . . . government is the simplicity and honesty and openness and benignity that have been missing so long from the White House."

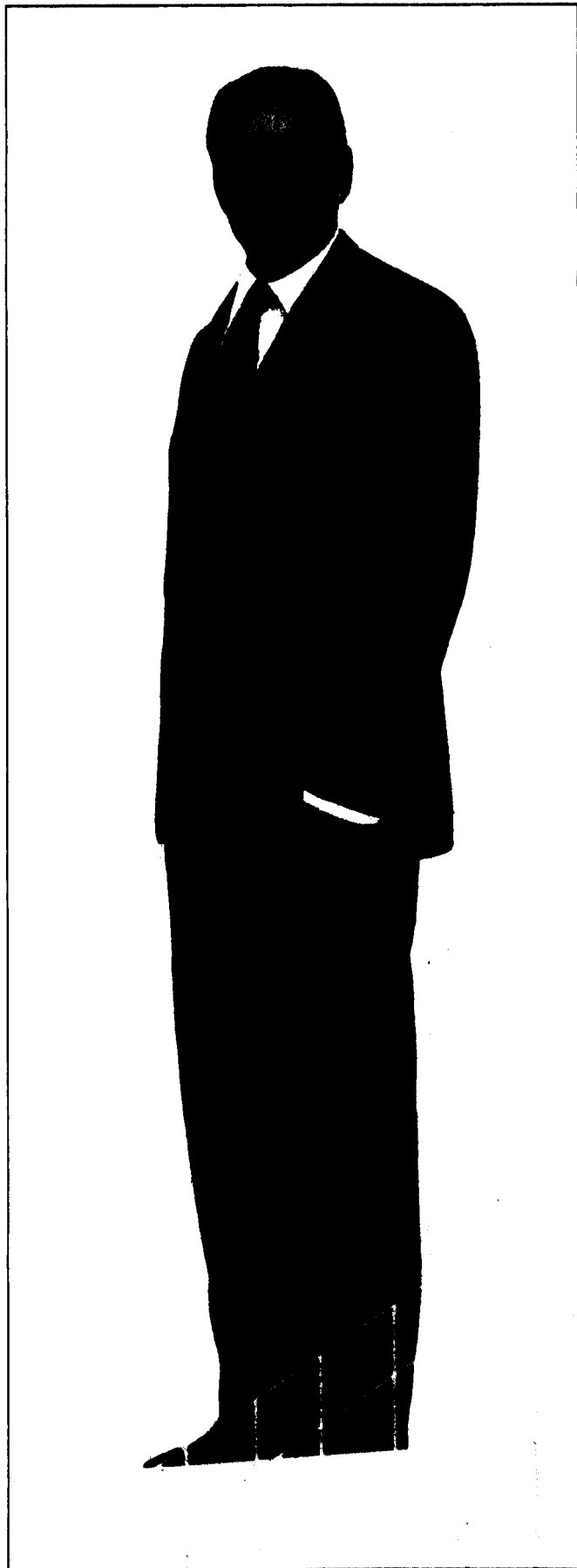
Richard Nixon and his men had evidence that there was another side to Ford. "In my opinion, he was a tough guy who knew how to play the game," Charles W. Colson, one of Nixon's closest advisers on political matters, recalled in a recent interview. "Nixon knew that Ford was a team player and understood how to work with a wink and a nod." Ford had led a much-criticized attempt in 1970 to impeach Justice William O. Douglas of the Supreme Court. It was not a coincidence that Ford's campaign against Douglas began in the weeks following the Senate's rejection of Nixon's second nominee for the Supreme Court. Nixon's choices, Clement F. Haynsworth and G. Harrold Carswell, were the first presidential nominees to be rejected by the Senate since 1959. In the aftermath of the June 17, 1972, Watergate break-in, and before the November presidential elections, Ford was instrumental—at the urging of the White House—in disrupting an inquiry by the House Banking and Currency Committee, whose iconoclastic chairman, Wright Patman, a Democrat from Texas, was outspoken in his insistence that the financing of the break-in had its origins at the top of the Nixon Administration.

At that early stage in the Watergate cover-up, the White House understood that Wright Patman posed more of a threat than *The Washington Post* and other news media. Patman's thesis was simple: an investigation into the source of the brand-new hundred-dollar bills found on the team of men arrested inside the Watergate office complex, where they were re-installing a wiretap on the telephones in the Democratic National Committee headquarters, would lead directly to Nixon's re-election committee. This illicit financing (it had been arranged by Maurice Stans, finance director of the re-election campaign, and G. Gordon Liddy, a campaign counsel) eventually did lead to the unraveling of Watergate. Nixon's concern about the link between the Watergate break-in and the money was so great that one week after the Watergate burglary, he ordered the CIA to stop the FBI's investigation into the source of the money; his order, recorded in a June 23, 1972, tape that the Supreme Court forced him to release in early August of 1974, was the famed "smoking gun" disclosure that effectively ended his presidency. As of the fall of 1972, it was clear that Nixon had no intention of allowing Patman to subpoena witnesses, such as Stans, and perhaps learn the truth. Gerald Ford's role in stopping Patman was pivotal.

That Ford would cooperate was assumed, in the view of the men close to Nixon. Alexander P. Butterfield, the former Air Force colonel who, as a personal aide to Nixon, spent hundreds of hours in the Oval Office, said in a recent interview, "Nixon had Ford totally under his thumb. He was the tool of the Nixon Administration—like a puppy dog. They used him when they had to—wind him up and he'd go 'Arf, Arf.'" Butterfield was fired by Ford in 1975 as administrator of the Federal Aviation Administration, a move that he believes was punishment for his revelation of the existence of the White House tape recordings to the Senate Watergate Committee in July of 1973.

"Ford was the consummate politician," says Colson, and was aware that the White House was always willing to repay its loyal helpers. Ford once approached Colson on behalf of Paul Hall, the president of the Seafarers International Union, who was indicted in 1970 with seven other senior union officials—none of whom was ever prosecuted—for making more than \$750,000 in illegal campaign contributions between 1964 and 1968. The indictment charged that extortion was committed in raising the money from union members. Hall was a contributor to Ford's campaign; more important, he had arranged for others to contribute, according to a Ford associate. He was, as Ford wrote in his 1979 memoir, *A Time To Heal*, a longtime personal friend. (There is no evidence that Hall, who died in 1980, asked Ford to approach the White House.) "The Justice Department is screwing Paul Hall," Colson recalls Ford complaining. "You've got to take care of it." Such requests were considered all in a day's work in the Nixon White House, as the Watergate investigation later revealed. (Hall and the others pleaded innocent in September of 1970, and the case was dismissed in May of 1972 by a federal judge in New York City for lack of prosecution.) Ford gave loyalty in return by remaining fervent in his public defense of Richard Nixon's innocence until a few days before Nixon's resignation. "Nixon would talk with him like one of the boys," Colson says—although he adds that he does not believe that in late 1972, when Ford successfully intervened to stop the Patman Committee, Ford was told the full scope of Watergate.

Watergate was the predominant issue for the staff members of the House Judiciary Committee in the fall of 1973, as they prepared for their exhaustive hearings on Ford's vice presidential nomination. The committee's focus, inevitably, was not on Ford's past record but on the impeachment proceedings against Nixon—which, many in Congress believed, would get under way once Ford was confirmed and sworn into office. "All of the Democrats understood what we were doing," William P. Dixon, one of the senior Democratic committee investigators, said in a recent interview. "We needed to put him in so we could remove Nixon. We couldn't get Nixon out until we got Ford in. We weren't just making Ford President—we were saving the presidency." There were few illusions among the investigators about Ford, whose main asset was that he



was not Richard Nixon. The staff's inquiry into Ford, Dixon says, produced evidence of unexplained cash transactions involving the Ford family's personal finances, some instances of double billing of airline flights, and what were considered to be technical violations of federal campaign-finance laws. Far more troubling to many committee investigators was a closely guarded Internal Revenue Service audit of Ford's finances for 1972, which showed that he and his wife, Betty, managed to live on between \$5 and \$13 per week in pocket money. "Ford couldn't buy his tobacco on \$5 a week," one committee investigator says. "That was just total bull, as anyone who read the report knew." The investigator says that he and others shared many reservations about Ford, but viewed them as insignificant compared with the problems at hand. "We were saving the country. For God's sake, the other man was a lunatic. We had a thorough investigation of the guy and we didn't find any dead women or live boys. He was a known quantity: k-n-o-w-n; and let's get on with it."

**F**ORD WAS MOST VULNERABLE, SOME MEMBERS OF the House Judiciary Committee believed, for his interference with the Patman inquiry. He was quizzed only cursorily about it during his confirmation testimony before the Senate Rules Committee and the House Judiciary Committee, but admitted without hesitation that he had worked diligently to upset the Patman investigation. It was, he claimed, a natural function of his responsibilities as House Republican leader, and not the result of any White House pressure. Ford was known to have repeatedly lobbied Republican members of the Patman Committee in the fall of 1972, and was instrumental in coordinating votes against Patman, whose request for subpoena power was defeated by a vote of 20 to 15 on October 3—effectively aborting the investigation. Ford arranged for two meetings with Republican members of the Patman Committee before the October vote, and circulated a critical letter to them. Patman, after the defeat, issued a prophetic statement: "I predict that the facts will come out, and when they do I am convinced they will reveal why the White House was so anxious to kill the committee's investigation. The public will fully understand why this pressure was mounted."

Ford specifically denied in his Senate testimony, on October 5, 1973, ever discussing the Patman investigation with Nixon or any of his key aides who helped with the Watergate cover-up—John D. Ehrlichman, his White House domestic adviser; H. R. Haldeman, his chief of staff; and John W. Dean III, a White House counsel. He further denied that his activities against Patman were motivated by any factor other than politics as usual. He had urged the Republican members of the committee to deny Patman the authority to issue subpoenas on the merits of the case, Ford said, and not out of fear that the investigation could jeopardize Nixon's re-election. Testifying in the House

three weeks later, Ford also denied discussing the blocking of the Patman inquiry with William Timmons, the senior White House lobbyist, and said that he had no recollection of any such discussions with others in the White House.

One Democratic lawyer then on the House Judiciary Committee staff recalls the widespread belief that Ford had been less than candid in his confirmation hearings about White House involvement in his lobbying against Patman, but argues that there were clear reasons for not dwelling on the issue: "Agnew's left and Ford is coming in. What good is it to the country to go after him and find little nits? This was the first time the Twenty-fifth Amendment [which outlines procedures for the replacement of a dead or incapacitated President or Vice President] was being utilized. Let's not get bogged down in minutiae."

Such minutiae are essential, however, to an understanding of Ford's loyalty to Nixon, and the extent to which he was beholden to Nixon; he had chosen to provide misleading testimony in his confirmation hearings rather than embarrass or endanger the White House.

The loyalty went two ways. On April 30, 1974, the White House released hundreds of pages of transcripts as part of the President's frantic effort to forestall the impeachment process. Included were transcripts of a September 15, 1972, meeting between Nixon, Haldeman, and Dean, in which methods of putting pressure on the Patman Committee were discussed at length. Ford's name was repeatedly mentioned by the President and his aides. A clearer indication that Ford, contrary to his assertions, had discussed the Patman investigation with the White House did not appear until late June of 1974, when the House Judiciary Committee released its version of the same tape recording, in which many of the phrases and sentences previously marked "unintelligible" were restored. The committee's transcripts revealed that Ford was being called upon to play an active role in undermining Patman, and they provided dramatic evidence, not noted at the time, of how Nixon and the men around him consistently altered the dialogue to protect Ford. (The press focused its attention in June on those previously deleted portions of the transcripts that dealt with a series of presidential threats directed at *The Washington Post*, Edward Bennett Williams, the *Post's* prominent attorney, and the newspaper's television station, which was licensed by the federal government.)

The White House distortion of its transcripts was considered potentially a criminal matter by the Watergate Special Prosecution Force, which pursued the issue for at least a year after Nixon's resignation without recommending any indictments. Some of the most severe distortions occurred in discussions about Ford.

Nixon's suggestion that Ford had "to lead on this [action against Patman]" was deleted from the White House's version of the transcript, and a strong comment about the necessity of Ford's involvement was placed in the mouth of John Dean. Also deleted was Nixon's rhetorical question:

"[Can Ford] do anything with Patman?" Missing, too, was Nixon's statement that "the game has to be played awfully rough . . . you'll follow through with . . . who—Timmons, or with Ford, or—How's it going to operate?" It was tentatively agreed that Haldeman would discuss the Patman issue with Timmons and that Ehrlichman would perhaps talk to Ford. Ford should be told, Nixon said in a comment that was deleted, that "I'm getting into this thing."

• John Dean, in his second memoir, *Lost Honor*, published in 1982, printed extensive excerpts from White House memoranda indicating that he was in repeated contact with Timmons and other White House congressional lobbyists on the Patman issue between September 15 and October 3, when Patman was denied the subpoenas. Dean wrote that he was being assured of repeated contact by the Nixon aides with Ford. Charles Colson similarly recalls discussing the President's desire to stop the Patman investigation with Ford and enlisting his aid. "I talked to Ford directly," Colson says. "It was pure politics. We—the White House—wanted to stop the Democrats from having congressional hearings that would be politically embarrassing." Colson recalls attending meetings in the White House with Timmons and others, as did John Dean, at which specific conversations that had taken place with Ford were discussed in the context of killing the Patman inquiry. "There was no question in my mind that this was a routine political operation," he says.

Ford's direct involvement in blocking the Patman inquiry was not surprising; as a loyal Republican Party leader with close ties to the White House, he could hardly have been expected not to do his best to turn the vote against Patman and prevent him from gaining subpoena power. Yet he went far beyond political routine in his confirmation hearings, testifying that he had neither been in direct contact with the White House nor received direct pressure from the President's men on the issue. Ford chose to mislead the committees to preserve his standing with the Republican Party and the White House. He understood that personal and political loyalty would get him further in Washington than complete testimony. Ford's actions in blocking Wright Patman were far from remarkable, but the risk he took in his testimony—at a time of continued White House leaks—in denying the high-level pressures was an extraordinary one. Any hint in the press of Ford's obedience to Nixon's men would have evoked Watergate and jeopardized his confirmation.

**T**HE NIXON WHITE HOUSE WAS RIFE WITH INTRIGUE and distrust on December 6, 1973, when Ford, after his overwhelming confirmation by the House and Senate, was sworn in as Vice President. Ford's ability to step into the power vacuum and exert influence was limited by his awareness that he had not been Nixon's first choice as Vice President. Nixon had insisted initially that

John Connally, the former secretary of the treasury, who was himself under investigation for alleged bribery, be nominated as Vice President. Connally's self-confidence and his success as an attorney in private practice were powerful attractions for Nixon. Charles Colson says that Nixon, in their private talks in the Oval Office, would literally "design" the sort of law practices he thought Colson and Connally should have after they retired from public life. (After Colson left the White House staff, in early 1973, Nixon urged him to bring his potential law clients to the Oval Office, so that they would be impressed by Colson's close relationship with the President. Colson says that in one chat, Nixon complained about his years as Vice President under Dwight D. Eisenhower. "After eight years, Chuck, I left the White House with \$38,000 in my savings account and a four-year-old Oldsmobile. Don't you make that mistake.") Nixon had reluctantly accepted Ford as an alternative to Connally only after extensive pleading from J. Fred Buzhardt, a White House attorney, and Melvin A. Laird, Nixon's former secretary of defense. Nixon had reservations about Ford's abilities, Colson says; after Ford's confirmation, the President once described him to Colson as his "insurance policy" against impeachment.

Haig shared Nixon's ambivalence toward Ford, according to his aides, but he apparently found it easy to suppress his feelings. He understood that Ford had an excellent chance of becoming President: he must have known, as Buzhardt, with whom he spoke often, knew, that Nixon was guilty of most of what his enemies were claiming he had done. Such knowledge was a closely guarded secret in the White House. One of Haig's first moves after being named chief of staff was to recruit Buzhardt to serve as Nixon's primary Watergate attorney. Buzhardt was Haig's closest confidant in the White House, but his loyalties were complex. He served the President well—at one point, he himself was under investigation by the Watergate Special Prosecution Force—but he also had allegiance to Melvin Laird, for whom he had worked in the Pentagon as general counsel. Laird had resigned as Nixon's secretary of defense late in 1972, but was induced to join the White House staff after the April 30, 1973, resignations of Haldeman and Ehrlichman by a promise of full control of social, welfare, and education programs. Another factor in his return to the Administration was solemn assurance from Buzhardt and Haig that Richard Nixon was not guilty. "After I'd been back about three or four weeks," Laird recalled recently, "Fred came to see me. He told me he had misled me. 'I was wrong,' he said. 'The President did have knowledge, and I've just got to level with you.' I was shook up."

If Haig and Buzhardt understood that Nixon was guilty, they also understood that the burden was on the Watergate Special Prosecutor and the legal system to prove it. Haig was careful to protect himself: he began, almost immediately, to curry favor with Gerald Ford.

Ford had turned to an old friend, Benton L. Becker, a

Washington attorney, for help during his vice presidential confirmation hearings. Becker was a former Justice Department prosecutor who, after leaving the government, had worked at Ford's direction on the private impeachment investigation of Justice Douglas in 1970. Becker learned immediately, as he recalled in a recent series of interviews, that Ford was responding to the wishes of Nixon's men in his condemnation of Douglas. John N. Mitchell, the attorney general, who was among Nixon's most trusted advisers, "pumped up" Ford during that inquiry, Becker says. When Ford summoned him again during the confirmation hearings, Becker had his first contact with Alexander Haig. Ford had been approached early in the confirmation process by Peter W. Rodino, Jr., the New Jersey Democrat who was chairman of the House Judiciary Committee. Rodino offered access to the reports of the FBI investigation of Ford's background, according to Becker. It was clear that none of the Democratic leaders in the House wanted anything to stand in the way of Ford's confirmation. They knew, as did Ford, Becker says, that Nixon would be forced to leave and that Ford "was going to be President." Becker rejected Rodino's offer, to protect Ford, and was thus all the more surprised one afternoon, while he and Ford were conferring on income-tax matters, to hear Ford, who had taken a telephone call from Haig, suddenly begin discussing FBI information. "I heard Ford saying, 'One hundred and thirty FBI agents investigating me?'" After a moment's pause, Ford said, "They found him?"—referring to a minor colleague of years past. There was more talk, about a trip Ford took to China in 1972. At that point, Becker says, "I walked around Ford and grabbed the telephone out of his hand. 'General Haig, my name is Benton Becker, and I'm Gerald Ford's personal attorney.'"

"I know who you are," Haig says.

"I explain—and I'm angry—that Ford is going to be asked at some point during the confirmation hearings whether or not the White House provided him with any information from the FBI background investigation. And I want Ford to be able to say no. "Therefore, you and no one else in the White House are to have any contact with Ford during confirmation. Is that understood?"

Haig, also angry, answered, "Yes." Ford was grateful for his intervention, Becker says, but seemed not to understand that Haig was doing more than relaying information from the FBI: "He was also trying to ingratiate himself with Ford." Haig's instincts in doing so were normal for a good bureaucrat, but his method was questionable: John Dean's efforts to provide background FBI information to the White House had already emerged as a focal point for Watergate scandal.

Haig's courting of Gerald Ford intensified with the Watergate crisis. By July 30, 1974, Richard Nixon's position was desperate. The House Judiciary Committee had voted three articles of impeachment in the preceding few days, with debate scheduled to begin in the full House on

August 19. The loss of his Supreme Court case on July 24 forced Nixon to turn over the June 23, 1972, tape, which he knew would make a vote for impeachment certain. His last chance was in the Senate, where he would be tried, but if he lost his case there he would lose his pension and other benefits due an ex-President. A resignation, as Nixon noted in *RN*, his 1978 memoir, would lead to "an onslaught of lawsuits that would cost millions of dollars and take years to fight in the courts." Another issue, surely—not noted in the memoirs—was the possibility of going to prison. Nixon wrote that on July 31, he was told by Haig and Ronald Ziegler, his press secretary, that they found the June 23 tape recording to be devastating. "I just don't see how we can survive this one," Nixon quoted Haig as saying. "I told Haig that I had decided to resign," Nixon wrote. "If the June 23 tape was not explainable, I could not very well expect the staff to try to explain it and defend it." He instructed Haig to meet with Ford and tell him that he was thinking of resigning, without indicating when. "I said Haig should ask him to be prepared to take over sometime within the next few days."

**F**ROM MID-JULY ON, FORD HAD BEEN CONSTANTLY urged by his close aides and friends, including Robert T. Hartmann, a former Washington bureau chief of the *Los Angeles Times*, who was his chief of staff, to avoid discussing Nixon's future with Al Haig. The advisers believed that Nixon was seeking a commitment for a pardon from Ford. Laird recalls telephoning Philip W. Buchen, who later became presidential counselor to Ford, and telling Buchen "to keep those guys [Nixon's men] away from him." Hartmann wrote in his memoirs of receiving an early-evening telephone call from Haig on July 31, requesting a private appointment with Ford the next morning. Haig would come to Ford's office. Before the meeting, Hartmann wrote, he urged Ford to permit him to sit in: "I just think you might want to have a witness to who said what . . . I don't know what's on Haig's mind." There was little love lost between Hartmann and Haig; the two became bitter rivals after Nixon's resignation. Haig, furious over what he viewed as Hartmann's sniping to the press behind his back, once grabbed a Hartmann aide by the lapels, according to that aide, and declared, "If you have any influence over that fat Kraut, you tell him to knock it off or he's going to be the first stretcher case coming out of the West Wing."

Haig was unhappy on the morning of August 1 to find Hartmann at Ford's office, and after it became clear that Hartmann would not leave, he chose not to relay Nixon's message. Nixon's "mood was constantly changing," Hartmann wrote that Haig told them. "One minute he was all for fighting it out . . . Then he would appear strangely indifferent. . . ." There was no talk of imminent resignation. A few moments after the meeting, Haig placed another call to Ford, who had left the White House with

Hartmann to drive to the Vice President's office in the Senate. The conversation was one-sided: Hartmann listened as Ford uttered a series of *uh-huhs*. Ford told him that he had agreed to meet Haig privately at 3:30 that afternoon.

The only detailed version of what took place in the afternoon meeting, which lasted fifty minutes, is Gerald Ford's, as provided to a House Judiciary subcommittee during his testimony on October 17, 1974—more than one month after his pardon of Nixon. He was only the second President to make such an appearance. Haig has never been questioned under oath on his role in the pardon, although he did say in a prepared statement on January 9, 1981, as he was beginning Senate Foreign Relations Committee hearings on his nomination to be secretary of state in the Reagan Administration: "At no time did I ever suggest in any way an agreement or 'deal' that Mr. Nixon would resign in exchange for a pardon from Mr. Ford. When I met alone with Vice President Ford on August 1, 1974, I went to that meeting to tell him of President Nixon's inclination to resign, and to emphasize to him that he had to be prepared to assume the presidency within a very short time . . . perhaps within a day." Haig's statement buttressed that of President Ford before the Judiciary subcommittee. Ford testified that he first learned of the damaging June 23 tape recording during the afternoon meeting with Haig, who asked whether he was prepared to assume the presidency in a short time. Haig discussed six possible options, Ford testified, including the option of Nixon pardoning himself before resigning; the option of first pardoning all of the Watergate defendants, then himself, and then resigning; and, finally, the option of an eventual pardon of Nixon, if he should resign, by the new President. "General Haig wanted my views on the various courses of action," Ford testified, "as well as my attitude on the options of resignation. However, he indicated he was not advocating any of the options." Haig also informed him, Ford said in response to a question, that "it was his understanding from a White House lawyer that a President did have the authority to grant a pardon even before any criminal action had been taken against an individual. . . ." Ford said he requested time "to think": "As I saw it, at this point, the question clearly before me was, under the circumstances, what course of action should I recommend that would be in the best interest of the country?"

Ford, in an April interview for this article at his offices near Palm Springs, California, emphatically denied, as he had in his public statements and testimony over the past nine years, that he and Alexander Haig made a deal for the presidency on the afternoon of August 1.

Nonetheless, Ford's and Haig's accounts of their encounter, as provided to Congress, were far from complete. Ford's August 1 schedule called for him to drive with his wife to the Admiral's House, atop Observatory Hill, on Massachusetts Avenue in Washington. The Victorian building, which once served as quarters for the chief of

naval operations, had been authorized by Congress to serve as the official home of the Vice President; Ford and his wife were meeting with a team of interior decorators and civil engineers. In a recent interview, one of Ford's aides recalled the sequence of events that afternoon:

"Ford was running late, as usual, and Mrs. Ford called me and asked whether he was going to make it. I went up to see what was the problem, and the receptionist was there. She said, 'Don't ask me and don't ask any questions.' I said, 'Let me see the appointment book.' She did, and there was the name Rogers Morton [Nixon's secretary of the interior]. I said, 'What's he doing here? It wasn't scheduled.' 'It's not Rogers Morton,' she said. 'It's General Haig, and he made me write Morton in the appointment book.' "

The aide went into Ford's outer room to wait. Thirty or so minutes later, Haig burst out. "What are you doing here?" he demanded. He said little else, but the aide knew that Haig was alarmed to find him there. "The real message was in his eyes." The aide went into the Vice President's office and found Ford "sitting in his chair, turned completely around and looking out the window directly at the West Wing of the White House." It took a few prodings before Ford responded to his hello, the aide recalls. "It was clear to me that whatever had transpired between him and Haig was of considerable moment. He was lost in his thoughts."

Ford's receptionist, Kathy E. McCarthy, kept careful records, and so the Haig appointment on August 1 remains on the official vice presidential log, made available for this article by the Gerald R. Ford Presidential Library, as being with Rogers Morton. Ford, in the interview, noted that his office had made public the August 1 meeting, and that he had discussed it in congressional testimony. He dismissed as "irrelevant" Haig's attempt to hide it. "What transpired in an outer office with a secretary," he said, "is not substantive."

The men who investigated Richard Nixon and prosecuted his aides present a very different analysis. In their Watergate experiences, they can cite no instances in which presidential or vice presidential logs were deliberately made inaccurate. Haig's actions on the afternoon of August 1, the lawyers agree, could not be considered routine or unimportant. It would be reasonable to infer, the lawyers say, that whatever was to take place in the meeting with Ford—in Haig's mind, at least—would not stand up to public scrutiny.

Haig was frequently able to meet off the record with others in the White House; on August 7, for example, he spent one hour with Vice President Ford in Ford's office with no record of the visit on Ford's official logs. Keeping incomplete logs and slipping in visitors for private meetings is an accepted way of life at the top of government, and is often essential to the conduct of foreign affairs. Deliberately ordering the falsification of records is another matter, however, and raises a basic question about Haig's

intent on the afternoon of August 1: what guarantees were being made to Nixon in return for his immediate resignation—an abdication that would spare the nation, and the Republican Party, the prospect of a lengthy impeachment trial in the U.S. Senate? Nixon's main bargaining power at this point was a threat not to resign, with its dire implications for Republican re-election chances—that is to say, Gerald Ford's election chances—in 1976. Haig, asked recently to explain why he ordered the logs falsified, failed to respond.

Buzhardt discussed the meeting only once, in an interview published February 1, 1976, in *The Washington Post*. Asked about Ford's 1974 account of the August 1 meeting, in which Haig listed the various "options," including a pardon, Buzhardt told Walter Pincus, the reporter, "I don't know if Al was rattling off every idea, every possibility. I would assume that he would have discussed with President Nixon this matter before going to the Vice President, because it was my observation that he just didn't make decisions on his own without taking them up with the President, at this time or any other time." Buzhardt also said that he and others on the White House staff had initiated discussions with Nixon of a presidential pardon well before the July 24 Supreme Court decision that led to the disclosure of the smoking-gun tape. The decision prompted more discussion. On July 24, Buzhardt said, he proposed to Nixon, with Haig and James St. Clair, Nixon's Watergate attorney, listening on the telephone, that the entire Watergate issue could be "mooted" if Nixon pardoned all of the Watergate defendants and then himself. Buzhardt told Pincus that on the afternoon of August 1, moments before Haig's second visit with Ford, he and Haig once again discussed Buzhardt's opinion that a President could be pardoned for crimes not yet the subject of criminal indictment. (The story, which raised *prima facie* questions about whom Haig was representing at the August 1 meeting, attracted little interest, even from the editors of the *Post*, who decided not to publish it on the front page. "We were deep into a period of 'Let's forget it—Ford's a nice guy,' " Pincus says.)

In his memoirs, Robert Hartmann described his anxiety as he waited in his nearby office for Ford to finish his meeting with Haig. "Haig stayed for what seemed like an eternity," Hartmann wrote. After Hartmann was finally called in, Ford announced, "What I am going to tell you must not go any farther than this room." He explained quickly that Haig had discussed the seriousness of the June 23 transcript and the limited number of options available to Nixon. Ford said that "Haig had talked about the possibility of Nixon pardoning himself before resigning, which the lawyers thought he had the power to do, or of resigning and then being pardoned." Hartmann's account continued:

"Jesus!" I said aloud. To myself: So that's the pitch Haig wouldn't make with me present. Aloud again: "What did you tell him?"

"I didn't tell him anything. I told him I needed time to think about it."

"You what?" I fairly shouted.

It was almost the worst answer Haig could have taken back to the White House. Far from telling nothing, Ford had told Haig that he was at least willing to entertain the idea—probably all that Haig and Nixon wanted to know.

Hartmann quoted himself as telling Ford, "I think you should have taken Haig by the scruff of the neck and the seat of his pants and thrown him the hell out of your office . . . And then you should have called an immediate press conference and told the world why."

Hartmann was still troubled at the close of the conversation: "It was as if he hadn't heard a word of my outburst. I could see that he had not yet grasped the monstrous impropriety of Haig's even mentioning the word 'pardon' in his presence."

The aide who saw Haig leave Ford's office then accompanied Ford to Observatory Hill, where the Vice President managed to sit calmly through a series of briefings from the engineers and decorators. At one point, the aide overheard Ford quietly tell his wife, "Betty, we are never going to live in this house."

The next morning, Ford told the House Judiciary subcommittee, he met with James St. Clair to consider Nixon's chances of being impeached, in view of the June 23 tape. "When I pointed out to him the various options mentioned to me by General Haig," Ford testified, "he told me he had not been the source of any opinion about presidential pardon power."

"After thought on the matter," Ford added, "I was determined not to make any recommendations to the President on his resignation. . . . For that reason . . . I decided I should call General Haig the afternoon of August 2. I did make the call late that afternoon, and told him I wanted him to understand that I had no intention of recommending what the President should do about resigning or not resigning, and that nothing we had talked about the previous afternoon should be given any consideration in whatever decision the President might make. General Haig told me he was in full agreement with this position."

St. Clair, in an interview last March, was unable to confirm Ford's version of their meeting. "I have no recollection of talking about the new [June 23] tape with Ford, and I don't remember discussing a presidential pardon," he said. What he did recall was Ford's strange query as to whether there was any evidence indicating that the Nixon White House had been involved in the May, 1972, shooting of Alabama Governor George Wallace during the presidential primary campaign. "Is there anything to it? Is there a problem? Was the White House behind the Wallace shooting? I said no." (A year after the shooting, *The Washington Post* reported that Nixon had been worried at the time that the attempt on Wallace's life was linked to members of his re-election campaign. Nixon was said to have expressed the fear that if such a tie existed, "it could cost him

the election.") St. Clair also recalled a brief conversation about the likelihood of an economic recession.

Nothing in the meeting changed his basic view of Ford, St. Clair added. "What I saw of him confirmed everything I'd ever heard about the [vice presidency]. It'd be very hard to justify the office. I felt he had been completely bypassed. I couldn't figure out what he was doing."

Ford did not describe, in his House testimony, a conversation with Hartmann that took place immediately after St. Clair's visit on the morning of August 2. In his memoirs, Hartmann wrote that he asked John O. Marsh, Jr., a former Republican congressman from Virginia, who was a senior aide to the Vice President, to come to Ford's office to listen to Ford's recapitulation of his meeting with Haig. It was then that Ford told of yet another contact with Haig. " 'Betty and I talked it over last night,' he began," wrote Hartmann. " 'We felt we were ready. This just has to stop; it's tearing the country to pieces. I decided to go ahead and get it over with, so I called Al Haig and told him they should do whatever they decided to do; it was all right with me.' "

"I couldn't believe my ears," Hartmann wrote. It was only after much argument from Hartmann and Marsh—and from Bryce Harlow, the former Nixon aide they called in to support them—that Ford made the telephone call to Haig in which he sought to disavow what had taken place the afternoon and night before. After that call, Hartmann wrote, he had a drink with Harlow and Marsh to toast "a good day's work." "We thought that was the end of it."

Ford, in his memoirs, wrote that it was Haig who initiated the telephone call the night before, which came shortly before 1:30 in the morning. "Nothing has changed," Ford quoted Haig as explaining. "The situation is as fluid as ever." He told Haig, Ford wrote, that he and his wife had decided that "we can't get involved in the White House decision-making process." Robert Hartmann recalls the conversation differently: "I know what most upset me was the fact that Ford had called Haig," he wrote. "Why would Haig telephone the Vice President at 1:30 A.M. to say nothing had changed? And why, if Ford informed Haig that night that 'we can't get involved,' did he have to go through it all over again the next day for Harlow, Marsh and me?" In the interview for this article, Ford acknowledged Hartmann's differing recollection, but insisted, "Haig called me."

The aide who monitored Haig's telephones and handled many of his sensitive papers says that Nixon left the White House convinced that he had been promised a pardon by Ford—and more: the President felt assured that he would be permitted to take all of his papers and tapes with him. Others in the White House were also sure that an understanding had been reached—one that helped Nixon override the heated objections of his wife, Patricia, and his daughters, Julie and Tricia, and give up the presidency. Patricia Nixon fought his decision to the end. One aide re-



calls sitting outside the President's office in the last days and overhearing Mrs. Nixon complain to her husband, "You've ruined my life." Another White House insider, a witness to many conversations in the offices of Henry A. Kissinger, the national security adviser, heard Haig tell Kissinger, with whom he consulted almost daily on Watergate matters, that, in the witness's words, "the President couldn't go when he was going to face a jail sentence—and so a deal would have to be struck." Haig and Kissinger were "laughing as they talked," the witness recalls. "They laughed a lot about very serious things." Kissinger, concerned about foreign affairs, was anxious that Nixon be forced out as soon as possible, the aide to Haig says: "I remember Henry telling Haig that it was time to 'bring down the curtain on this charade.'"

**H**AIG'S GOAL OVER THE NEXT FEW DAYS WAS COMPLEX: to end the "charade," and to do so in a way that protected not only Richard Nixon but his own standing with Gerald Ford. A new urgency was added early in August: scare talk about the need to bring out the Army's 82nd Airborne Division to protect the White House. There is evidence that Haig was behind much of this talk, which worked its way quickly to the Pentagon and—more important—to the Special Prosecutor's office.

In his memoirs, Nixon wrote of the crowds that had gathered in early August outside the White House gates on Pennsylvania Avenue. He was briefly exposed to their view on August 7, when crossing the private street between the White House and his hideaway office in the Executive Office Building. "The crowds waiting outside . . . surged forward when I came into view," Nixon wrote. "I could sense the tension of the Secret Service agents, and I moved as quickly as possible up the broad stone stairs and into the office."

In the second volume of his memoirs, *Years of Upheaval*, Henry Kissinger wrote of a meeting with Haig on August 2: "He told me that Nixon was digging in his heels [in terms of immediate resignation]; it might be necessary to put the 82nd Airborne Division around the White House to protect the President. This I said was nonsense; a Presidency could not be conducted from a White House ringed with bayonets. Haig said he agreed completely; as a military man it made him heartsick to think of the Army in that role; he simply wanted me to have a feel for the kinds of ideas being canvassed."

One of Haig's close aides describes the atmosphere: "There was a vehemence against us. We had people circling the White House. Only Abe Lincoln had faced such ugliness, such absolute vehemence, while in the presidency. The White House is not a fort. It's a tough place to get into, but not a tough place to take [by force]." There was real "concern" on the part of Nixon and Haig about the crowds outside the White House. "Haig was saying, 'Hey, maybe we need the 82nd Airborne.'" The aide insists that

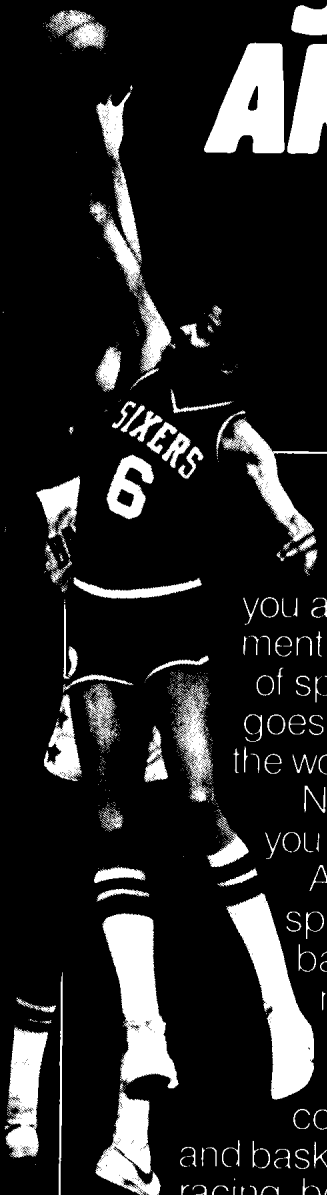
neither Nixon nor Haig was entertaining any thought of what he called "extra-legal stuff." Not everyone at the top of the government was so sure.

On December 22, 1973, a few weeks after Gerald Ford's swearing-in as Vice President, Richard Nixon held his annual ceremonial meeting with the Joint Chiefs of Staff. One member of the Joint Chiefs, a four-star officer, recalled in a recent interview that the President's performance was bizarre and alarming. "He kept on referring to the fact that he may be the last hope, the eastern elite was out to get him. He kept saying, 'This is our last and best hope. The last chance to resist the fascists [of the left].' His words brought me straight up out of my chair. I felt the President, without the words having been said, was trying to sound us out to see if we would support him in some extra-constitutional action. He was trying to find out whether in a crunch there was support to keep him in power. . . ." The senior officer decided after the meeting, he recalled, that the other members of the Joint Chiefs did not seem to share his fears. He made it a point to discuss the meeting with James Schlesinger, the Rand Corporation economist and defense analyst, who had been named secretary of defense by Nixon in May of 1973, in the first Watergate-inspired Cabinet shake-up. Schlesinger had also been upset by Nixon's language, but he was noncommittal.

In April of 1974, Joseph Laitin, a public-affairs official who had served in the Johnson White House, telephoned Schlesinger. Although Laitin was a liberal Democrat, the two had become friends early in the Nixon Administration, after Laitin was reassigned as a press officer in the Bureau of the Budget, where Schlesinger was in charge of analyzing defense and intelligence programs. They had remained close as Schlesinger moved up in the government—to chairman of the Atomic Energy Commission in 1971, director of the Central Intelligence Agency in February of 1973, and to the Pentagon in May. Laitin broached some of his fears: Was it possible for the President of the United States to authorize the use of nuclear weapons without his secretary of defense knowing it? What if Nixon, ordered by the Supreme Court to leave office, refused to leave and called for the military to surround the Washington area? Who was in charge then? Whose orders would be obeyed in a crisis? "If I were in your job," Laitin recalls telling Schlesinger, "I would want to know the location of the combat troops nearest to downtown Washington and the chain of command." Schlesinger said only, "Nice talking to you," and hung up.

Schlesinger did not need Laitin to provoke his suspicions of the President and the men immediately around him. He had watched, while serving in the Bureau of the Budget, as Nixon and Kissinger, invariably using Haig as their executive agent, repeatedly bypassed Melvin Laird, then secretary of defense. Laird would simply be eliminated from the chain of command, as combat orders for the war in Vietnam would go directly from the White House to the Joint Chiefs of Staff. At one point early in the Administra-

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tion, Schlesinger had expressed his concern about such practices to Haig, who shrugged it off. Schlesinger's doubts about the White House's integrity deepened soon after he was named to replace Richard Helms as CIA director. Within weeks, the Agency was embroiled in Watergate, as it became known that the White House, working in 1971 through General Robert D. Cushman, Jr., deputy CIA director, had authorized Agency support for a series of illegal escapades involving E. Howard Hunt, Jr., and G. Gordon Liddy, members of the White House "Plumbers" team. Cushman, who had grown close to Nixon while serving as his military aide during the Eisenhower years, had been promoted by Nixon to commandant of the Marine Corps after leaving the CIA—he was thus one of the five members of the Joint Chiefs of Staff, and the one feared by Schlesinger in 1974.

Since moving to the Pentagon, Schlesinger had had occasion to learn firsthand of the desperation in the White House, he told an acquaintance recently. Late in 1973, a few weeks after the White House had been criticized for what seemed to be an eighteen-and-a-half minute erasure in a crucial tape recording, Haig had telephoned Schlesinger with a disturbing order. Acting on behalf of the President, he told Schlesinger to arrange for the National Security Agency, the nation's communications intelligence agency, which is under Pentagon control, to produce a duplicate set of White House recordings. Schlesinger worried that any attempt by Nixon and Haig to involve the nation's most sensitive intelligence service in Watergate could only hurt national security. The NSA, of all agencies, had to be above suspicion. After consulting his closest associates in the Pentagon, among them Martin R. Hoffman, the secretary of the Army, Schlesinger telephoned Haig with a counter-offer: it was, of course, perfectly proper for the NSA to duplicate tapes at Nixon's request, he said; but the Defense Department felt that it would have to inform the Watergate Special Prosecution Force of the request and allow it, if it so chose, to have a representative witness the procedure. Haig was, as Schlesinger anticipated, enraged at the suggestion, and became only more so when Schlesinger persisted by telling him that if the White House's purpose was solely to reproduce the recordings so that more persons could listen to them, there could be no objections to permitting the Special Prosecutor's office to participate. Haig abruptly hung up; there would be no more Watergate-related calls to Schlesinger from Haig's office.

Laitin's warning, Schlesinger's experiences in the Bureau of the Budget, the dispute with Haig, and Schlesinger's suspicion of General Cushman were the driving forces behind Schlesinger's next move. As he told the acquaintance, "I had seen enough so that I was not going to run risks with the future of the United States. There are a lot of parliamentary governments that have been overthrown with much less at stake." Sometime in late July of 1974, Schlesinger called in Air Force General George S. Brown, the newly appointed chairman of the Joint Chiefs of Staff.

Brown was known as an officer who was far more comfortable behind the stick of an airplane than in an office; he never seemed to master high-level politics, with its subtle language and indirection. Bearing that in mind, and aware that Brown had taken an oath of office that made him responsible to Nixon as Commander-in-Chief, Schlesinger trod delicately during their talk. His goal was to express his concerns about the White House and somehow to get Brown to reach the same conclusion that he himself had already reached. In essence, Schlesinger asked Brown for a commitment that neither he nor any of the other chiefs would respond to an order from the White House calling for the use of military force without immediately informing Schlesinger. Brown dutifully relayed Schlesinger's message to the other members of the Joint Chiefs of Staff at a meeting a few hours later. He began the session, one of the joint chiefs recalls, by announcing, "I've just had the strangest conversation with the Secretary of Defense." Schlesinger had urged him not to "do anything to disturb the equilibrium of the Republic, and to make sure we're in accord." He had said, "Don't take any emergency-type action without consulting me." Brown was troubled by Schlesinger's remarks, and so was everyone else at the meeting. "We were confused, and George had to be confused," the chief says. "We sat around looking at our fingernails; we didn't want to look at each other. It was a complete shock to us. I don't think any of us ever considered taking any action. We didn't know whether to be affronted or flattered at the thought." The chief recalls that one of his colleagues commented that Schlesinger must have been "thinking of something out of *Seven Days in May*." If there was any consensus, the chief says, it was that "Schlesinger was coming unglued."

Schlesinger was clear, however, about his concerns. He continued to believe that Cushman, with his personal loyalty to Nixon, was a weak link in the new chain of command. He carried his own deliberations further and quietly investigated just which forces would be available to Nixon. He found out how quickly the 82nd Airborne Division could be brought to Washington from its home base at Fort Bragg, North Carolina. The Marines, he learned—Cushman's troops—were by far the strongest presence in the Washington area, with an honor-guard barracks in southeast Washington and a large officer-training facility at Quantico, Virginia, some thirty miles to the south. Schlesinger began to investigate what forces could be assembled at his order as a counterweight to the Marines, if Nixon—in a crisis—chose to subvert the Constitution. Schlesinger's overriding concern, in case a crisis did arise, was the possibility that the armed forces would follow their inherent loyalty to the Commander-in-Chief. One comfort was his firm belief, based on what he had seen in the previous five and a half years, that any such order, if given, would come not directly from Nixon but from Haig. The Joint Chiefs would respond to an order from the secretary of defense, Schlesinger believed, before they would

respond to one from Haig. As he explained to the acquaintance, "If an order came from below the Commander-in-Chief level, I could handle it."

Schlesinger knew that many might view his precautionary steps as the actions of an alarmist, but years later he remained proud of his decision: "First protect the country and then the Department of Defense."

The notion that Nixon could at any time resort to extraordinary steps to preserve his presidency was far more widespread in the government than the public perceived in the early days of Watergate or perceives today. One of the original Watergate prosecutors recalled in a recent interview the immediate fear, once the full implication of John Dean's allegations in the spring of 1973 became known, that "the government could topple." When the case against Richard Nixon was initially outlined that April to Henry E. Petersen, head of the Justice Department's Criminal Division, the prosecutor says, Petersen responded by exclaiming, "The government's going to fall. And then what's going to happen?" The concern was that Nixon would not comply with the judicial process: instead of accepting subpoenas for his internal records, he would defy the courts and any contempt summons. "Who ever heard of a President subjecting himself to a court?" the prosecutor recalls asking himself. "What if Nixon goes on TV—and openly defies the court? Who is the public going to support? Thousands of telegrams come in his support, and Nixon calls in the Joint Chiefs of Staff. Then what is Congress going to do?"

"I'll tell you what," the prosecutor says. "They'll run for cover. One third of the country still supports him, and we're on the verge of civil insurrection. If he told the Joint Chiefs, 'I want the troops out and I want to dissolve Congress,' they would have done it."

It was to Nixon's credit, the prosecutor insists, that Nixon chose to accept service of a judicial subpoena and not to jail the marshal delivering it. "You've got to say this for him—he had respect for the government, because he stepped out. If he were a Hitler or a Stalin, he'd have gone all the way, brought the house down. And that's what Jaworski was afraid of and that's what we were afraid of."

**H** AIG HAS BEEN DESCRIBED REPEATEDLY IN THE Watergate literature as the architect of Nixon's resignation, as the man who helped maneuver the President out of office. Haig did play that role, but his essential loyalty to Nixon remained constant throughout the difficult last days, and his mission in easing out Nixon was to strike the best deal possible for him. His greatest successes in the summer of 1974 were with Gerald Ford and with Leon Jaworski, who arrived in November of 1973 as Watergate Prosecutor with the firm belief that there was no constitutional basis for indicting a sitting President. Haig had initially offered the job to Jaworski, on Nixon's

behalf, in late October of 1973, two weeks after Nixon fired Archibald Cox, the original Special Prosecutor—an act that triggered the resignations and protests that became known as the Saturday Night Massacre. The high price to the nation of Cox's dismissal was a bargain to the men in the White House: one aide recalls Haig's description of Cox, a Harvard law professor, as "a silver bullet that missed."

Jaworski, sixty-eight, a past president of the American Bar Association, was known as a conservative Democrat with strong ties to Lyndon Johnson and as a man with a strong ego. He was a firm believer in national security and the sanctity of the presidency. In their first meeting, Jaworski later wrote in his memoirs, Haig praised his qualifications and added, "You're highly regarded and it's no secret that you're high on the list for an appointment to the Supreme Court." Jaworski described the remark as perhaps "part flattery" and perhaps "part fact." Their relationship flourished over the next few months; he and Haig would often talk by telephone and confer in the White House Map Room. The Prosecution Force attorneys were increasingly troubled by Jaworski's willingness to meet privately with Haig, particularly since the attorneys all understood—as did Jaworski—that they had accumulated extensive evidence by the end of 1973 showing that Nixon was guilty of participation in the Watergate cover-up. The Prosecution Force attorneys did not question Jaworski's basic integrity, for he clearly was a man of principle; it was his sophistication that was at issue. One senior Watergate prosecutor recalls that he and his colleagues would discuss Jaworski's belief that "he was a better poker player" than Haig. "Leon thought he had become a good friend of Haig and could trust him," the prosecutor says, "and that Haig had the country's needs at heart." The prosecutors feared that Jaworski was relaying inside information to Haig. They speculated that Jaworski, perhaps because of his service as a colonel in World War II and later as an Army prosecutor at Nuremberg, and because of his inherent respect for the uniform, had convinced himself that Haig was a career professional and not a politician.

An aide close to Haig characterizes Haig's selection of Jaworski as one of his shrewdest moves. "Jaworski was thoughtful and patriotic, but he didn't know all of the many parts," the aide, who was the notetaker at some of their meetings, says. Jaworski viewed Haig as a peer, equally thoughtful and patriotic.

"Haig was the opposing general," the aide says. "It was Rommel versus Montgomery in the North African desert. They were the heads of armies, and it wasn't personal between them. Underneath them were all the emotions and the tumult, and both men knew that the guys below would sell them out." Jaworski had consistent conflicts with the younger members of the Watergate Prosecution Force, and Haig, the aide says, was distressed by what he viewed as disloyalty among the junior White House aides to the President—and ultimately to himself.

"So they would meet in the Map Room, and Haig would move close to Leon, stare at him intensely with his blue eyes, and warn Leon about the dangers to the nation that Watergate posed." The aide says, with obvious admiration, "Haig understood the play."

The Watergate Prosecution Force had drawn up a 128-page "Prosecution Report" by early February of 1974, outlining what it described as conclusive evidence of Nixon's involvement in criminal activity. There was no need in that office for a "smoking gun." During the next months, Jaworski was in a constant struggle with the Watergate grand jury, composed of twenty-three Washington residents, over the question of indicting Nixon. Jaworski, not content merely to discourage the grand jurors from indicting the President, warned them that as long as Nixon was in office he, as Special Prosecutor, would not sign an indictment. His was the ultimate authority, because no indictments could be issued without his personal approval. Jaworski held back none of his fears in his attempts to maintain control over the grand jurors. In a June, 1982, segment of the ABC television show *20/20*, Harold Evans, deputy foreman of the grand jury, described some of Jaworski's arguments against indictment: "He gave us some very strange arguments. . . . He gave us the trauma of the country, and he's the Commander-in-Chief of the armed forces, and what happens if he surrounded the White House with his armed forces? Would the courts be able to act?" Did Alexander Haig, who is known to have spread similar concerns inside the White House, discuss this possible use of force with Jaworski?

In retrospect, Jaworski seems almost to have been a confidant of Haig in the last days. Internal Watergate Prosecution Force records, made available under the Freedom of Information Act, show that Haig matter-of-factly told Jaworski at a private lunch on August 8 that Nixon had finally decided to resign, effective at noon the next day, and would announce that decision in a televised address to the nation that evening. Haig said that Nixon would be taking all of his documents to California with him, and that—according to a Prosecution Force memorandum summarizing a report Jaworski gave his three top aides that afternoon—"there will be no hanky-panky." Haig also told Jaworski that there was "no question" that someone in the White House had tampered with the presidential tapes, but added that he had no further knowledge. The records show that Haig told Jaworski that Nixon "will not be doing anything for defendants—there will be no pardons." Haig further assured Jaworski that he, acting for Nixon, was not asking for anything in relaying all of this information; Nixon's resignation was not part of any understanding or bargaining, "tacitly or otherwise." On August 9, Jaworski met with about a dozen members of the senior prosecution staff and, according to notes of that meeting, once again relayed Haig's report that Nixon was taking "some things" with him. Jaworski added that Haig had assured him that "there will be lawyers at San Cle-

mente who will know about these things" (the status of pending Prosecution Force requests for White House documents).

That Jaworski would take Haig's assurance at face value, after more than a year of repeated White House lies, deletions, and erasures in a broad array of subpoenaed documents, says much about his relief at not having to face the indictment and trial of Nixon. From the day of Nixon's resignation, Jaworski became, in effect, one of the White House's strongest allies in the struggle to avoid an immediate indictment. Jaworski saw Nixon's resignation as enough punishment, as did Haig. Jaworski argued as early as August 9, according to the Prosecution Force memorandum, that Nixon would never be able to receive a fair trial in the United States, because of the heavy pre-trial publicity, and that his indictment would delay the impending trial of the other Watergate defendants. "There are conflicting factors for us that [the] general public does not have to grapple with," Jaworski told his staff. He was alone in that view among all of the attorneys at work in the Prosecution Force, but he prevailed.

One senior Prosecution Force attorney recalls a conversation in which Jaworski disclosed that he had a compelling financial reason to end his involvement in Watergate by November 5, 1974, when he would have been away from his law practice one full year. If he were gone for a longer period, Jaworski said, he would be required to receive a cash payout, on which there would be hundreds of thousands of dollars due in taxes. The Watergate attorney recalls his understanding at the time that Jaworski was referring to an arrangement he had made with his firm, Fulbright & Jaworski, one of the largest in Houston, with which Jaworski had been associated since 1931. "It was a legitimate tax-planning concern," the attorney says. Jaworski's deputy, Henry S. Ruth, Jr., recalls a similar conversation with Jaworski over an "equity problem" in connection with his law firm. However, Gibson Gayle, chairman of the executive committee at Fulbright & Jaworski, insisted in an interview last May that Jaworski had severed all financial links to the firm upon becoming Special Prosecutor in 1973 and that, to Gayle's knowledge, there were no assets remaining that could have posed a tax problem.

Jaworski died in 1982, and the exact nature of his tax liability may never be known, but it is a fact that his senior associates in the Prosecution Force remain convinced that he was worrying excessively about his financial status at a time when the most critical decision of Watergate was yet to be made. It was their understanding that Jaworski stood to lose a great deal of money by staying too long in Washington, and it was obvious that if he indicted Richard Nixon, he would have to stay on as Watergate Prosecutor for as long as it took to try the case. His subsequent resignation as Watergate Prosecutor took effect October 25, six weeks after the pardon; he served slightly more than fifty weeks on the job.

**H**AIG, IN TELLING JAWORSKI ON AUGUST 8 THAT there would be no pardons for the other Watergate defendants, was leaving out an important part of the story. It began in early August with Nixon's determination to pardon his former aides, and was played out largely on the telephone. Haldeman and Ehrlichman were scheduled to go on trial September 9, 1974, for their role in the Watergate cover-up. Their efforts to receive presidential pardons were reported in the press at the time, and Nixon was said in one account to have "deeply resented the tone and character of the pleas by his two former deputies." Haig, too, was reported to have been angry.

Charles Colson, then serving a federal prison term for his activities against Daniel Ellsberg, recalls being telephoned in jail by his attorney the night before Nixon's resignation and told "to pack my bags." Colson was told, he says, that "Haig was seeing the Vice President and getting pardons for everyone." Haig did, in fact, meet with Ford in his offices early in the morning of August 7—a meeting, as noted earlier, that was not recorded in the vice presidential logs. Colson was not surprised by the news of such intense activity, he says: "It was not in the President's personal self-interest to walk out of the White House with his own pardon buttoned up but not that of his aides. It wasn't just because the boss wouldn't want to leave the wounded on the battlefield, but also because he was worried about being torn up. They'd walk all over him."

John Ehrlichman, in an interview last March, agreed to discuss a series of telephone calls he had received from Haldeman on August 7. He had been out of touch with Haldeman for many months, and he took careful notes. "Things are moving fast," Haldeman said at 11 A.M. Nixon had decided to resign, after a week of indecision prompted largely by pressure from his family. Haldeman told Ehrlichman, according to the notes, that Nixon had resolved the issue of his personal papers and was contemplating a "blanket pardon" of all those caught up in Watergate. Nixon had discussed with Haldeman his belief that the aides had acted not for personal gain but "for the President." Now they were facing prison terms, stiff fines, and personal and family abuse—"and for what?" Nixon had asked. "Serving the President not wisely but well." Therefore, Nixon had said, he was going to "put the Special Prosecutor out of business by leaving nothing unpardoned." Six hours later, Haldeman telephoned again, in distress. He had talked to Haig, and things had fallen apart: Haig announced that his request for a pardon had been "extensively considered and rejected as impossible." Nixon was no longer taking his calls, Haldeman told Ehrlichman. Could he try? Ehrlichman, whose loyalty to Nixon was suspect by mid-1974, did manage to reach Nixon's daughter Julie, but the moment clearly had passed.

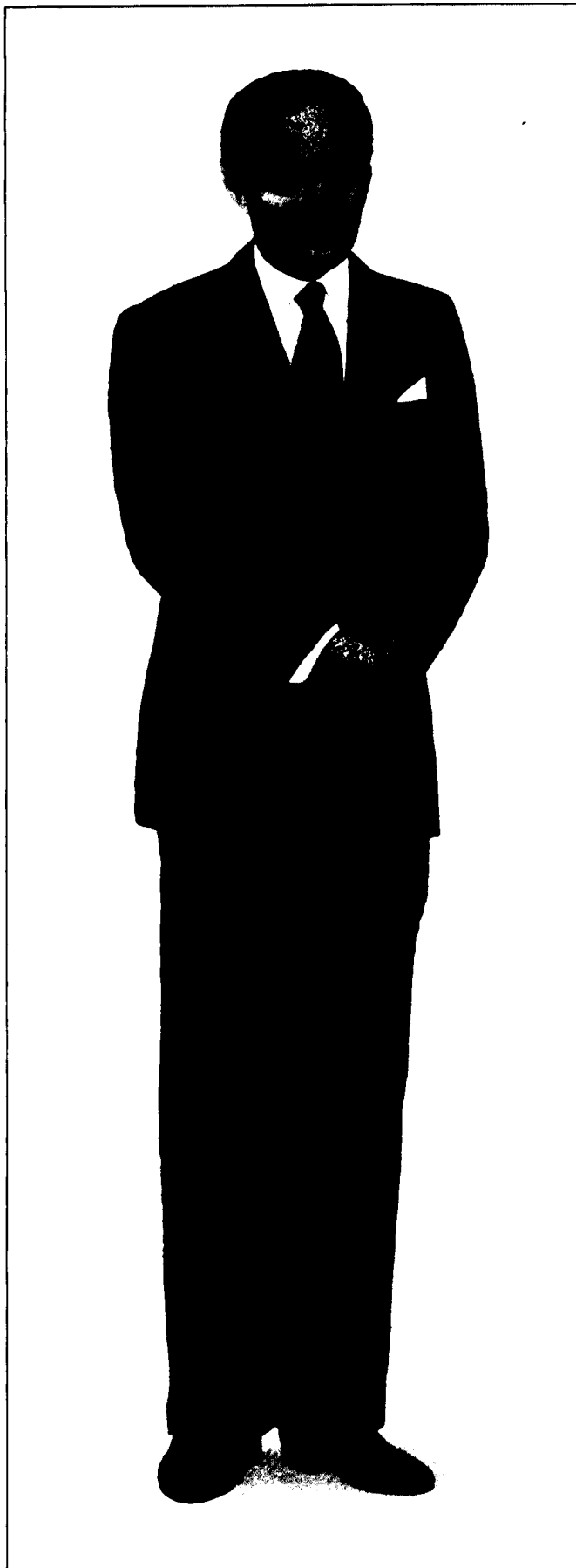
In fact, according to an aide of Haig's, Nixon had made a flat commitment to Haldeman for a pardon. The aide eavesdropped on an August 7 telephone call between Haldeman and Nixon, he says, as Nixon tried to "crap out" on

the agreement. Nixon couldn't face telling Haldeman that no pardon would be forthcoming, the aide says, and turned the call over to Haig. "Nixon and Ford had the same deal that Haldeman thought he had with Nixon," the aide surmises. "Ford delivered; Nixon didn't."

Haig's role throughout this sequence of events is difficult to fathom. Was he in favor of blanket pardons at one point, as Colson was led to believe? Or was he, as was widely reported at the time, and as he said to Jaworski during their lunch the next day, firmly opposed to them? Or did he simply change his mind when others in the White House—among them Leonard Garment, a White House counsel to Nixon, who had not been tainted by Watergate—raised an immediate objection to blanket pardons? One firsthand source describes Garment's role on August 7 as crucial: "He stopped Nixon from pardoning Colson, Haldeman, and Ehrlichman by telling him [through Haig] that if he did he'd go to the slammer, for sure." The source, an attorney who was involved in the pardon process, says that Garment's protest "turned Haig around—there's no question that Garment killed it." Garment refused recently to discuss his dealings with Haig, but he did acknowledge that he favored a pardon for Nixon "on principle," and thought that pardoning the others would have been a "bizarre and unacceptable act."

With all of the frantic telephoning that day, Ehrlichman did learn new information. Haldeman told him during their morning conversation, "I'm calling to tell you something specific and I'm not sure whether I'm supposed to or not." Ehrlichman's notes to himself continue, "The specific thing has to do with the rest of the tapes . . . while some are embarrassing to Nixon, they create no major problems. Except in one conversation, the President tells Haldeman that there is a big fund of cash held by Bebe and Abplanalp"—Charles G. (Bebe) Rebozo and Robert H. Abplanalp, Nixon's closest friends, who were under investigation, along with Haig, for their role in the handling of a \$100,000 presidential campaign contribution. Investigators for the Senate Watergate Committee suspected that the contribution, which they believed came from Howard Hughes, was part of a larger fund and was put to Nixon's personal use. Haldeman told Ehrlichman that the President had said, "That's Higby's \$400,000." Lawrence M. Higby was Haldeman's closest aide and considered by many on the White House staff to be his alter ego.

Higby testified about the cash fund before the Watergate Committee, but its existence has never been confirmed. Haig's aides were convinced, as of the fall of 1974, after Nixon's resignation, that the cash was still inside the White House. "I knew the money was floating around," one aide recalls. He and others believed that the money was stashed in what was considered to be a secret safe in Haig's office (the same office that had been occupied by Haldeman). The aide says that the existence of the safe in the office was known only to a few, and even fewer knew its location. Haig refused to touch the safe, the aide says.



Nobody wanted to know what was in it. When Donald Rumsfeld returned from serving as ambassador to NATO and became Ford's chief of staff, in late 1974, he ordered the safe drilled open by the Secret Service, a procedure that drew a small group of fascinated members of the White House staff. "It was empty," the aide recalls. "Someone, somehow, snapped up the cash."

Ford, in his memoirs, wrote nothing of the pardon issue or of any talk of money during the last hours of the Nixon presidency. He described his meeting with Haig on the morning of August 7 in a few sentences: "Haig was there shortly before eight o'clock. The two of us sat on the davenport, looking at each other. 'Mr. Vice President,' he said, 'I think it's time for you to prepare to assume the office of President.'"

**T**O THE AMERICAN PUBLIC AND THE WORLD, THE change of power on August 9 was an emotional moment, as an outgoing, defeated President bade farewell in a televised speech delivered to his staff. Nixon had expressed regret in his resignation speech, but refused to acknowledge that he had done more than merely make mistakes: "I would say only that if some of my judgments were wrong—and some were wrong—they were made in what I believed at the time to be in the best interests of the nation." One closely involved aide recalls that Nixon had initially sought in his formal letter of resignation, which, under the Constitution, was to be handed to the secretary of state, to make a vigorous defense of his actions, but was persuaded not to during last-minute rewriting. His first draft, the aide says, defiantly laid the blame for Watergate on others. "But it finally came down to, 'I resign.'"

There was a last, bizarre interlude on the eve of his departure from Washington, when Haig ordered the Secret Service to keep all of the White House staff in their offices while the President took a farewell stroll through the buildings and grounds.

Inside the White House, the bunker mentality continued after Nixon was gone. Nixon's staff had been burning papers until the last minute. Robert Hartmann recalls that the offices adjacent to the President's were "heavy with the acrid smell of paper recently burned in the fireplace." A few hours after taking possession of the Oval Office, Ford called in Benton Becker. Becker, who had taken leave from his law firm at Ford's request (he is now the senior trial attorney in the Dade County, Florida, State Attorney's Office), recently recalled the meeting, which was his first visit to the presidential office. Ford asked him about the disposition of Nixon's papers. "What are Nixon's rights?" Ford wanted to know.

The Secret Service had reported that tons of papers were piled up on the fourth and fifth floors of the Executive Office Building; there was concern, Becker had been told, "that the floors would cave in." In the first few days

in the White House, Becker says, "The Nixon people were burning crap like crazy." Dozens of bags of documents were piled outside the basement burn room, awaiting incineration. Becker learned from a White House aide that the chemical paper shredder, known as a machination machine, had been operating at five times its normal capacity for weeks. There was constant pressure on Ford's men to stand aside, Becker says, and to permit the continued destruction of White House documents and the shipment of Nixon's papers to California. Becker, in these first days, seized authority as Ford's representative. He ordered the burn room to cease operations, except for the destruction of highly classified materials, and cut staff access to the chemical shredder.

On Saturday, August 10, the day after Nixon left, Becker was at work late at night in his office when he was told that three Air Force trucks were outside the White House, loading Nixon's file cabinets and other personal goods. Becker recalls walking outside to the parking lot, where an Air Force colonel was directing the loading operation. "This truck does not move," Becker said. The colonel did not back off an inch: "I take my instruction from General Haig," he said.

"I said," Becker recalls, "'Let's go right now'—and we went into Al's office." Haig professed ignorance, telling Becker, "I wasn't aware of it," and ordered the colonel to unload the trucks, which were to deliver their cargo to a waiting transport plane at Andrews Air Force Base, in suburban Maryland. "I had no illusions about Haig," Becker says, "and so I went outside and watched that son of a bitch unload."

Becker's assumption of authority did not prevent Jerry F. terHorst, Ford's press secretary, from announcing to the press on August 14 that Richard Nixon's attorneys and officials of the Special Prosecution Force had agreed that the White House tape recordings and presidential files, still in protective custody of the Secret Service, were Nixon's personal property. The statement was big news; newspapers suggested that the Ford Administration was, as Robert Hartmann noted in his memoirs, "trying to pull a fast one." Jerry terHorst recanted the next day, and it was announced that Fred Buzhardt, whose office had supplied terHorst with the information, had resigned as a White House counsel. Haig's role in all of this is not known, but he had discussed the matter with Leon Jaworski on August 8, as the Prosecution Force memorandum shows, and Jaworski had done nothing to discourage Haig from believing that an understanding had been reached on the papers. But Jaworski had left Washington for a brief vacation immediately after Nixon's resignation, and James Vorenberg, the Harvard law professor who was Acting Watergate Prosecutor, had called the Ford White House that weekend, after hearing from a reporter that the Nixon papers were being prepared for shipment, to demand that they not be removed. Vorenberg recalls being reassured by Philip Buchen, Ford's official White House

counsel, that nothing would happen. "I threatened to take every legal step I could take," he says. "They were very taken aback."

The aide to Haig who monitored his telephone calls recalls that Haig was under intense pressure from Nixon after the failure of the Saturday-night shipment. There were repeated calls, and they were abusive: Nixon was convinced that Ford was doublecrossing him, reneging on a commitment to ship him his papers. "Nixon was obsessed by those boxes [his files]," the aide says, "and he was furious at Haig. He was screaming bloody murder." Becker recalls attending a meeting with Ford and Haig and listening to Haig argue once again that Nixon be given his papers. Ford explained to him, Becker says, that the pressure was originating with Nixon and coming through Haig. Becker recalls insisting to Ford at one point, in front of Haig, that if he permitted the papers and tape recordings to be shipped, "history will record this as the final act of cover-up—there will be one hell of a bonfire in San Clemente." Haig said little, Becker says: "He was still reluctant to argue with me in front of Ford."

Haig must have understood that Ford, even if he had made a prior commitment, would be in dire political jeopardy if he permitted Nixon's papers to be returned to him—especially since there had been heated opposition from the Prosecution Force and his own staff. And yet Haig did battle for his former boss. In the first months of the Ford presidency, he continued to operate as chief of staff, spending, according to Robert Hartmann, as much as three hours a day alone with Ford. Hartmann and other longtime members of Ford's staff, such as Philip Buchen and John Marsh, were initially forced to schedule their meetings with Ford through Haig's office.

In the interview last April, Ford insisted that he did not discuss a pardon for Nixon with Haig or with anyone else between his swearing-in and August 28, the day of his first presidential news conference. He went further, and insisted that the "matter" of a pardon for Nixon "never entered my mind" in this period. He was preoccupied, he said, with the arguments over the handling of Nixon's papers and tape recordings. Asked whether Haig advised him on that issue, Ford answered, "I don't recall."

Haig's goal in those first weeks, along with establishing control of Ford's staff, was to provide for his own future. Within a few weeks of Nixon's resignation, Ford informed James Schlesinger, at the Pentagon, of his wish to nominate Haig as Army chief of staff, the highest post in the Army. Schlesinger was offended. For one thing, General Creighton W. Abrams, a much-decorated combat officer, who had the job, was hospitalized at Walter Reed Army Hospital in the final throes of a long battle against cancer. It was unseemly to appoint a successor before his death. Another factor was the outcry Haig's appointment was sure to create inside the Army, where, as Schlesinger quickly learned, Haig was viewed with disdain by his peers. The Army senior officer corps was strongly in oppo-



sition—an opposition that somehow never reached the press.

Schlesinger finally decided to go out of channels. He defied the wishes of his Commander-in-Chief, by lobbying quietly against Haig's nomination with two key members of the Senate, John C. Stennis, chairman of the Armed Services Committee, and Henry M. Jackson, of Washington, the ranking Democrat who was most influential on military issues. Both men acknowledged that Haig's nomination would pose great difficulty, and not only because of the protests from the Army; there was the possibility that Haig would be unable to stand up to thorough questioning on Watergate during confirmation hearings. Schlesinger's lobbying killed the nomination. Ford was unhappy and Haig was furious. Schlesinger got the silent treatment from the President for ten days, but he had no regrets. "The Army could not abide Haig," he explained recently. "I didn't want Haig to screw up the Army, which had its own problems in the post-Vietnam period. His appointment would have thrown the service into another internecine struggle."

One of Haig's aides in the White House recalls making a series of inquiries on Capitol Hill, just as James Schlesinger was doing in the Pentagon, and telling Haig what he had learned: "You can't get confirmed to anything." The adverse readings from Congress wiped out the jobs on Haig's list, and, the aide says, "He fell back to NATO." Haig was appointed NATO commander in Brussels, the most senior American military post that did not require confirmation. He did not leave the Ford White House until the issue of Nixon's files was resolved.

**T**HERE WERE OMINOUS SIGNS FROM JAWORSKI THAT he was losing control of his Watergate Prosecution Force and the grand jury. At the beginning of August, Jaworski requested members of his staff to forward their recommendations on Nixon. The advice showered in, and it was unanimous: Jaworski no longer had the right to stand in the way of the grand jury. Even James F. Neal, the Prosecution Force lawyer who was closest to Jaworski in age and outlook, broke ranks. Neal, who was scheduled to try the Watergate cover-up case in September, had agreed with Jaworski that a sitting President could not be indicted. It was one of many areas of agreement between them. The two men, both conservative Democrats from the South, had spent dozens of hours in the past year in conversation about Watergate, but Jaworski suddenly cut off those talks. Neal, his feelings hurt, never did learn why Jaworski chose to operate in secret in August and September. In an August 27 memorandum on Nixon, made available under the Freedom of Information Act, Neal urged Jaworski to "advise the grand jury that you will abide by its decision and that you will assist in preparation of a report in lieu of an indictment, if the decision is not to prosecute, or will aid in preparation

of an indictment if the grand jury decides on prosecution. . . . In any event, the issue is so close, history, in my opinion, will not argue with the decision if the manner in which it was made reflects fairness and maturity of judgment."

In mid-August, Jaworski was in touch with Philip Buchen; the two men were staying in the same downtown Washington hotel, and often met privately. There was also Jaworski's continuing relationship with Haig. It seems probable, based on the constant meetings between Jaworski and members of the White House staff, that Jaworski warned Haig that Richard Nixon was facing imminent indictment.

This possibility must have triggered alarm in San Clemente, with Nixon's feeling that Ford had doublecrossed him on the shipping of his papers suddenly becoming the fear that Ford would allow him to be indicted. The public and the press had responded to Ford's presidency in its first few weeks with overwhelming support—perhaps far more than anyone had anticipated. Such growing popularity was a liability to Nixon, for with each passing day Ford stood to lose more politically by pardoning Nixon.

The pressure on Ford began to mount. A steady stream of reports to Ford, many coming through Haig's office, described Nixon's rapidly deteriorating condition. His health was said to be alarming; there were stories in the White House that he was acutely depressed and morbid.

In his 1976 memoirs, *The Right and the Power*, Leon Jaworski wrote of a visit late in August with Senate Judiciary Chairman James Eastland, of Mississippi, a Democratic supporter of Nixon's. "He said he had just talked with Nixon, that Nixon had called from San Clemente. 'He was crying,' Eastland said. 'He said, 'Jim, don't let Jaworski put me in that trial with Haldeman and Ehrlichman. I can't take any more.'" Eastland shook his head. 'He's in bad shape, Leon.' There was a touch of the pity he felt for Nixon in his voice, but not the slightest intimation that he was trying to twist my arm." Similar calls and reports from congressmen were being directed to the White House, in what seemed to be a carefully devised campaign. Even the Nixon daughters and their husbands were telling friends and reporters of the poor shape of the ex-President.

On August 28, Leonard Garment made an impassioned plea for an immediate pardon from Ford in a memorandum to Haig and Buchen, made available for this article. Garment cited Nixon's mental and physical condition and hinted that Nixon's life could be at stake. He wrote:

A Special Prosecutor must prosecute; and Jaworski's staff [and] the media . . . will not let him forget that. My belief is that unless the President himself takes action by announcing a pardon today, he will very likely lose control of the situation. . . . The country is struggling to get on its feet. Public feeling toward Richard Nixon is extremely confused. There is a drift toward prosecution stimulated

by a variety of sources, but it has not yet crystallized. At this point most of the country does not want Richard Nixon hounded, perhaps literally, to death. Once the institutional machinery starts rolling, however, and the press fastens on Nixon as a criminal defendant, Presidential action will be immensely more difficult to justify and therefore, perhaps, impossible to take.

The country trusts President Ford and will follow him on this matter at this time.

Garment's memorandum was accompanied by a draft presidential statement announcing a pardon, written by Raymond K. Price, Jr., one of Nixon's former speechwriters, who was still at the White House, which raised the pre-trial publicity issue, as Jaworski had done in his staff meeting in early August. "Because he [Nixon] has paid this high penalty," Price wrote, "and because, realistically speaking, there is no way that he could be given a fair trial by an unbiased jury. . . I believe his case can be separated from those of the other Watergate defendants." The issue of Nixon's future was "more than strictly legal," the statement said. "It turns on considerations that are essentially political. . . considerations of the broader public interest, not merely of the mechanical application of laws written for other purposes and other circumstances." Ford was being told that Nixon was above the law.

Haig had nothing to do with his memorandum, Garment insists. He says it was inspired by the fact that Ford was scheduled to hold his first press conference, and the issue of pardoning Nixon would obviously arise. "I didn't need anybody to tell me that," Garment says. "The thought on my part was that I had some credibility with the new bunch, and that this was the time to clear it up." He stayed up much of the night before, he says, writing eight or nine drafts of his memorandum. If Haig or anyone else had wanted to use the memorandum "to push and press" Ford to pardon Nixon, Garment says, "that would have made sense."

There were doubts among some of Ford's senior staff members, however, about the speed with which it circulated. "The Garment memo landed on my desk on the morning of the press conference," Philip Buchen says. "It was well done. I remember telling the President that I had the memo and that it was premature." Buchen says that by the time of their conversation, Haig may have already given the Garment memorandum to Ford. "For all I know, Ford saw the memo. Haig was in cahoots with Garment." A few hours after its submission, Haig told Garment that a pardon was "all set—he's going to do it this afternoon."

Ford's insistence in the April interview that the "matter" of a pardon for Nixon did not enter his mind from the time he became President until August 28 is challenged by his response to the first question at his press conference. Nelson A. Rockefeller, the governor of New York, who was Ford's nominee for Vice President, had told a television interviewer on August 25 that he believed Nixon had been punished enough by being forced to leave the White

House. The first question at the news conference referred to Rockefeller's comment, as the White House staff had anticipated, and asked Ford whether he would use "his pardon authority, if necessary." Ford declared that Rockefeller's statement "coincides with the general view and the point of view of the American people. I subscribe to that point of view, but let me add. . . in the last ten days or two weeks I have asked for prayers and guidance on this very important point."

Ford told the reporters at his press conference that he would not make a final decision on the Nixon question until it reached his office. His point, repeated throughout, seemed clear to most of the journalists: he would not intervene with the functions of the Watergate Special Prosecution Force. Most newspapers interpreted Ford's comments as indicating that he would permit Jaworski to proceed with an indictment of Nixon.

Benton Becker knew better. In late August, he was asked by Ford to research Ford's constitutional authority to pardon. "Was it absolute? Could he pardon before indictment?" After a few days of work in Washington law libraries, Becker concluded that Ford's power was absolute and was not subject to review; nor could he be impeached for his use or misuse of the pardon power. At this point, Becker became a supporter of the pardon, a position that matched Ford's; he was convinced that their conversations on the matter were a first for Ford. It was with some shock that he later learned that Ford had talked over presidential authority to pardon with Haig on August 1. Throughout this period of intense discussion about the Nixon documents, Haig was a constant participant in Oval Office meetings, Becker recalls.

Some members of the Special Prosecution Force, who shared the overwhelming staff sentiment in favor of an immediate indictment of the President, also were not fooled. On the day after Ford's news conference, Philip A. Lacovara, chief counsel to Jaworski, shrewdly summarized the situation in a memorandum to Jaworski, made public under the Freedom of Information Act:

In his news conference yesterday President Ford clearly suggested that he did not believe that former President Nixon should be prosecuted. Although it is difficult to discern whether he was intending to "signal" you at all and whether such a "signal" was designed to discourage you from putting him in the position of having to pardon Mr. Nixon or to encourage you to let the law take its course while allowing him to exercise Presidential clemency, one thing is clear: President Ford seems inclined to exercise his pardon power on behalf of the former President.

Lacovara went on to urge Jaworski to defer a decision on the President's future. "I believe President Ford has placed you in an intolerable position by making his public announcement," Lacovara wrote. "I see no reason why the matter should not be put squarely to him now whether he wishes to have a criminal prosecution of the former President instituted or not."

The vast majority of attorneys in the Prosecution Force office disagreed with Lacovara's advice. They believed that Jaworski was obligated to make his own decisions. In a series of memoranda submitted to Jaworski in late August and early September, the Prosecution Force attorneys were adamant that Nixon not be judged by a separate standard. "Richard Nixon should be treated no differently than anyone else," Nick Akerman wrote on August 29. "All criminal allegations involving Mr. Nixon should be fully investigated and, if the evidence points to criminal conduct, he should be indicted." Richard Weinberg advised Jaworski on September 4: "I . . . believe that Richard Nixon should be treated like any other citizen this office has investigated. . . . the country would accept a decision by the lawful processes of law, the grand jury, and the Special Prosecutor, to indict Richard Nixon." Jaworski was repeatedly urged to base his decision solely on legal grounds. On September 3, Phil Bakes wrote: "Your decision, whatever it may be, should be made with a clear view of your role. You are a prosecutor—not a pollster, a congressman or President. Accordingly, your decision should be made on prosecutorial criteria alone. . . . Your function is to investigate and, if the evidence warrants, prosecute. Your role is not to discern public opinion and public mood and base your prosecutorial decisions on your view of the public mood." The Prosecution Force memoranda, obtained under the Freedom of Information Act, strongly suggest that the junior attorneys in the Prosecution Force understood as of early September what the press and the public did not: that there were strong political forces urging a pardon—and that Leon Jaworski would go along with them.

Jaworski was looking for a way out. He needed a justification for not indicting Nixon. The issue he used was his oft-stated belief that Richard Nixon could not get a fair trial in the United States. In late August, he shared his doubts with Philip Buchen as well as with Herbert J. Miller, Jr., a former senior Justice Department official, who had been retained on August 27 by Nixon as his criminal attorney. After a series of meetings between Miller and Jaworski, Miller, at Jaworski's request, provided the Special Prosecution Force with a memorandum on September 4 in which he argued that the impeachment proceedings of the House Judiciary Committee and the intense media concern with Watergate had made it "inconceivable that the government could produce a jury free from *actual* bias." Jaworski reproduced the Miller analysis at length in his memoirs, and added that if he had been asked by a court whether Nixon could get a fair trial, "I would have to answer, as an officer of the court, in the negative."

Jaworski may have been sincere in his belief, but he was not necessarily right. His legal staff, on which he had relied over the past year on so many issues, had been waging a battle with him over the question. In a memorandum dated September 5, Lacovara concluded that "it is my best professional judgment that a decision not to prosecute Richard Nixon because of the occurrence of . . . publicity

about his criminal complicity cannot be justified on ground of constitutional law. There may be other factors justifying non-prosecution but 'pre-trial publicity' is not one of them." Another point repeatedly cited by the attorneys dealt with procedure: regardless of Jaworski's views on a fair trial, they argued, a decision on that issue was not his to make as a prosecutor. It was a judicial determination.

Jaworski had turned Miller's memorandum into his own, informing the White House in a letter on September 4—in response to a request from Buchen—that a trial of Richard Nixon, in the event of his indictment, would have to be delayed at least nine months to one year before an unbiased jury could be selected. In other words, he was telling Gerald Ford that he could expect to begin the 1976 campaign with Richard Nixon on the docket somewhere in the United States. Jaworski's goal was obvious: to shift the burden of responsibility from his office to the White House. His letter gave the Ford Administration the evidence of objectivity it would need to help cope with the inevitable protests over the pardoning of Nixon.

FORD WAS NOW WILLING TO RUN THE RISK OF granting a pardon before indictment, but in return he would need some concessions from Nixon on the relocation of his papers and tape recordings. Benton Becker had been struggling with that issue, on and off, since Nixon's resignation. Becker's immediate problem, he recalls, was historical precedent: Presidents had always been able to remove their personal files. He realized that Ford's instinct was to get the papers out of the White House and out of his Administration. Becker's initial goal, nonetheless, was somehow to find a legal basis for maintaining possession of the documents, which included 950 reels of tape and 46 million pieces of paper. "Plan One was a subpoena," he says, "but there were no subpoenas outstanding at the time. I wanted a goddamn subpoena, and I passed the word through Buchen to Jaworski. We were in the middle of August and I'm begging for a subpoena and none is issued. All Jaworski had to do was give me a subpoena." None came; there was "no probable cause," according to Jaworski. Days went by, Becker says, and still no subpoena. "I ask Ford for permission to have a private meeting with Sirica." Federal Judge John J. Sirica had handled the original Watergate cases. "He says no." Becker's second plan was to establish a trust, with Sirica placed in control of the papers while the various claimants, including Nixon and the Prosecution Force, litigated. Ford initially liked that approach, Becker says, but quickly cooled to it—after consulting other parties, he thinks.

On September 5, at the suggestion of Herbert Miller, Ford authorized Becker to fly to San Clemente to negotiate on his behalf an agreement on the pardon and the papers. Haig was present when Ford made the decision, Becker says, at a meeting of senior White House aides, but quickly excused himself, seemingly in an effort to have it appear

that he was not involved in such negotiations. "It struck me as opportunistic," Becker says, since Haig had been kept advised "of everything" by Buchen and presumably by Ford. A few hours later, in fact, Becker says, Haig sat in on the meeting at which Becker received his last-minute instructions from Ford before taking off for California. One requirement was a clear statement of contrition from Nixon. Becker recalls Haig predicting, "You'll never get it."

Eight hours later, Becker arrived at the Nixon compound in San Clemente, accompanied by Miller. "At the very first meeting with Ron Zeigler," Becker says, "he began by saying, 'Mr. Becker, let me tell you this right now, President Nixon is not issuing any statement whatsoever regarding Watergate, whether Jerry Ford pardons him or not.' How did Ziegler know what I wanted? It's always been my suspicion that Haig telephoned him."

Becker negotiated, during the next two days, primarily with Ziegler. There was one brief meeting, on September 6, with Nixon, who seemed unwilling or unable to discuss any specific aspect of the papers agreement. Becker had evolved a third plan, which called for a deed of trust, with Nixon as the grantor, the government as the receiver, and the General Services Administration as the trustee. Under the agreement, third parties such as journalists and scholars would be able to subpoena the administrator of the GSA, representing the government, and the GSA would have the right to object to the subpoena on various grounds, such as national security. Becker's proposed deed of trust would reserve to Nixon, as the owner of the documents and tapes, the further right to object. Thus, those seeking access to Nixon's papers would have to overcome two legal barriers—the GSA and Nixon. Becker's proposal, however, did deny Nixon the right to object to a subpoena on the grounds of executive privilege; he was left instead with objections based primarily on privacy. As it was conceived, Nixon could order the destruction of any records or tape recordings after ten years, but that period was reduced to five years during the negotiations at San Clemente. It was the only significant concession. Becker remains proud of one aspect of the agreement, which specifically barred Nixon and his attorneys from obtaining access to any original documents or tape recordings; they would be able to receive only copies, made by the GSA. Nixon finally agreed to this plan, but it was eventually thrown out by a federal court, which ordered the documents and tapes placed under control of the National Archives.

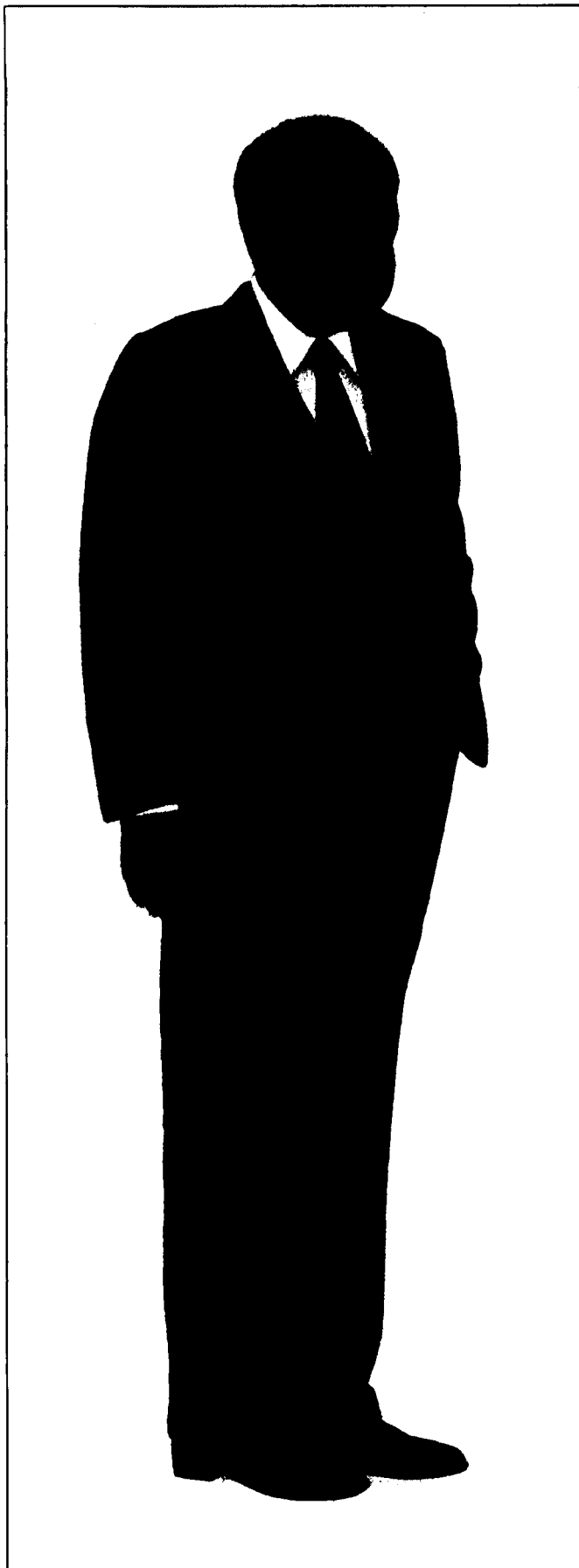
Becker also won very little on the statement of contrition. Ziegler's first draft of Nixon's statement, according to Becker, said only, "In accordance with the law, I accept this pardon." In his final statement, Nixon still refused to admit guilt, saying: "One thing I can see clearly now is that I was wrong in not acting more decisively and more forthrightly in dealing with Watergate. . . . No words can describe the depths of my regret and pain at the anguish my mistakes over Watergate have caused the nation."

Becker returned to Washington early on September 7, and learned that Ford was prepared to make the pardon public immediately. There was a hitch: some White House aides continued to insist that Nixon, in accepting the pardon, be compelled to demonstrate some sense of contrition or of wrongdoing. Nixon refused. He would not give his enemies the satisfaction they wanted.

It was this issue, apparently, that prompted the former President angrily to telephone his successor sometime in the early evening of September 7, twenty-nine days after he had resigned the presidency. Nixon's message was blunt, according to those few White House aides who knew of the private call: if Ford did not grant him a full pardon, he, Nixon, was going to go public and claim that Ford had promised the pardon in exchange for the presidency, because Ford was so eager to get it. Ford was enraged by the call. "He'd made his decision already," one aide with first-hand knowledge recalls, "and here comes the guy stirring it up. He was very, very irritated; he really resented it." Another aide, who also worked in a sensitive position in the White House, says it was immediately clear that Nixon had no "leverage" on Ford; "going public wouldn't have done him [Nixon] any good."

Ford's decision to announce the pardon the next day, on Sunday morning, September 8, distressed many of his associates and aides, among them Melvin Laird. Laird recalls telling the President that his rush to pardon Nixon was a disastrous political mistake. If he had been given advance notice, Laird told Ford, he could have lobbied for bipartisan support in the Congress: "I would have had them begging him to do it." All Ford could say, Laird says, was "Mel, I had to get it out of the way. I had to get it out of the way."

**T**HE PARDON WAS A POLITICAL NIGHTMARE FOR THE new President. His press secretary, Jerry terHorst, resigned in embarrassment and anger. So did Philip Lacovara, in a letter to Leon Jaworski made public at the time. Seventeen thousand telegrams were sent to the White House within two days, running at "about six to one," by a White House spokesman's count, against the pardon. The Senate passed a resolution, by a vote of 55 to 24, expressing its "disapproval" of any further Watergate pardons "until the judiciary process has run its full course." There were no fewer than nineteen bills and resolutions introduced in the House requiring further inquiry, with sixty-three members, Democrats and Republicans, signed on as co-sponsors. Three liberal Democratic members of the House—John Conyers, of Michigan, and Bella Abzug and Elizabeth Holtzman, of New York—filed separate resolutions of inquiry posing questions to the President. Under House rules, the resolutions had to be considered by the House Judiciary Subcommittee on Criminal Justice, chaired by Representative William L. Hungate, within seven legislative days of their filing. Ford sought to brush off the resolutions, writing Hungate on September



25 that he was "satisfied" that the pardon was "the right course. . . . I hope the Subcommittee will agree that we should now all try, without undue recrimination about the past, to heal the wounds that divided America." Enclosed were copies of the transcripts of Ford's most recent news conference and transcripts of two press briefings on the pardon by Buchen.

Hungate, prodded by, among others, Holtzman, who had been one of Ford's most persistent critics during his vice presidential confirmation hearings, rejected Ford's initial approach and urged him to send his counsel, Philip Buchen, to testify. Ford astonished Hungate on September 30 by agreeing to appear in person.

He did so only after a bitter fight among his staff. In a report of events prepared on October 7 for a senior government official outside the White House, and made available for this article, the aide who had seen Haig leave Ford's office on the afternoon of August 1 gave his view of the debate:

Haig spent the day in the White House trying to convince the President that he should not go up before the congressional committee to discuss the pardon. Haig is concerned that the revelation that he, Haig, offered Mr. Ford a resignation from Mr. Nixon in exchange for a commitment that Nixon would be pardoned would cause Haig problems with regard to his return to uniform. Apparently, there are a number of points in which Haig will not look very good. Further, the whole problem of how Mr. Ford himself is willing to come across is a worrisome one to his staff. Apparently, he will have to report that it was twenty-four hours after Haig made the offer before he, Ford, called back to reject the offer and, although everyone believes that Mr. Ford is truthful, they are concerned how the picture will look.

When [Ford's staff] tried to answer the written questions from the Committee, there were so many unanswered facts that would lead to additional questions that the staff and the President decided that the least worst alternative was for him to volunteer to go up and talk, which would have the advantage of giving him the opportunity to come across with the integrity that he has and also would tend to foreclose the "studied" additional questions.

Ford had much more going for him than even the aide who wrote the memorandum realized: the Hungate subcommittee did not conduct an investigation into the pardon before Ford's testimony. One senior subcommittee staff aide recalls: "Once the President indicated his willingness to come up there, there were some members who felt honored."

Ford's timing was nothing short of miraculous, the aide says—the product of some inside information, he thinks. "I remember trying to figure out who should be contacted and interviewed," he says, "and we were probably no more than a day or so from seeking meetings with Haig. Just at that point the President extended his offer." There was widespread feeling among the subcommittee members, in-

cluding such liberals as Robert W. Kastenmeier, of Wisconsin, and Don Edwards, of California, the aide says, that "it would be an embarrassment to the President to try to contact Haig prior to the time Ford came up there." There was no inclination or intent to "cross-examine" the President.

The precise ground rules for Ford's appearance were worked out at a meeting between John Marsh, representing the President, William Hungate, and Peter Rodino, who was chairman of the full committee. Marsh, now secretary of the Army, recalls that he and the legislators agreed that the resolutions of inquiry called for responses from Ford to specific questions, and nothing more. "The only thing we said Ford would do was respond to the inquiry resolutions—and not an investigation," Marsh says. The White House imposed no other guidelines or demands, he adds.

They weren't needed. One Democratic member recalls having doubts about the President's testimony during the hearing but choosing not to express them: "The President wasn't coming over here to be browbeaten," he explains. Another liberal Democrat, questioned about the soft treatment given to Ford, defended the subcommittee by saying: "We had a discussion as to whether we would stand up [rise when Ford entered], and we decided not to. We were a co-equal branch of the United States and treated him as a co-equal."

The only member to speak up at the October 17 hearing was Elizabeth Holtzman, and she did so to the chagrin of her colleagues. "I wish to express my dismay," she told the President, "that the format of this hearing will not be able to provide to the American public the full truth and all the facts respecting your issuance of a pardon to Richard Nixon. Unfortunately, each member of this committee will have only five minutes in which to ask questions about this most serious matter. And unfortunately, despite my urging, the committee declined . . . to prepare fully for your coming by calling other witnesses, such as Alexander Haig, Mr. Buchen, Mr. Becker, and failed to insist on full production of documents by you . . . I must confess my own lack of easiness at participating in a proceeding that has raised such high expectations and unfortunately will not be able to respond to them."

Ford was permitted to make an extensive opening statement; each of the nine subcommittee members was allowed only five minutes for questioning. Ford's appearance lasted less than two hours and won him plaudits for his willingness to face his questioners in person.

Discussing the hearing recently, Holtzman was still angry. "Once you failed to do the proper groundwork, there was no way the questioning could effectively be carried

out." She recalls being sharply criticized by many newspapers for her tart remarks to the President, but says that upon returning to her home district in Brooklyn, "people were hugging me on the street."

In late November, after no further staff inquiry, the Hungate subcommittee voted formally to end its investigation into the pardon. Only three members, Holtzman, Kastenmeier, and Edwards, voted in favor of further hearings. Holtzman, now district attorney of Kings County (Brooklyn), New York, says, "Ford's never answered the questions about the pardon to this day."

Ford, asked about the Nixon telephone call in the interview for this article, cited his testimony before the subcommittee, in which he stated that he had no conversations with Nixon about the pardon. "That testimony was made on my recollection right after the pardon," he said. "It was fresh on my mind." He went on: "Secondly, in order to find out any additional information, I got my telephone logs from the Ford library." Those logs showed only one conversation with Nixon, on August 20, which dealt with Ford's choice of Nelson Rockefeller as his vice presidential candidate. "If you go by my memory and if you go by the White House telephone logs," he said, "the call did not take place."

Many of Ford's former close aides, including Benton Becker, say that it was extremely easy for senior White House officials to receive personal calls on outside lines that were not monitored by the switchboard and thus not logged. "I know there are private lines," Becker says. One of Ford's associates points out that Ford was not categorical in denying that such a telephone call took place; he was only stating that he had no recollection of it, and was convinced that he would have remembered such an event.

The Hungate subcommittee, by not fully investigating the pardon, failed to fulfill its constitutional obligations. Theirs was not the only failure. Leon Jaworski found himself unable to meet the immense responsibilities of his position, and undercut his authority by maintaining close contact with the closest aide to the man he was investigating. Those former White House staff aides who know enough to have serious doubts about the process—doubts they waited nine years to discuss with an outsider—did not have the courage at the time to talk, or act. Richard Nixon, with his continued efforts to influence the White House through the good offices of Alexander Haig, demonstrated that his fall from power had taught him little. And Gerald Ford, by putting self-interest and political loyalty to a benefactor above his duty, did not give the American legal system a chance to work. The transfer of power in August of 1974 was not a triumph for democracy. □