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2. Another key will also be needed to get into the area. It will be held by the Archivist of the United States, or his designee, but the agreement gives them no clear right to enter the space, not even to watch what Mr. Nixon may do there. Any request for access made to the Archivist, even by officials, "shall be referred" to Mr. Nixon.

3. Mr. Nixon agrees to produce items in response to court subpoenas, subject to any claims of privilege he may make. This is of course no concession, since he would have to respond to subpoenas no matter what any agreement said. The limitation of assured official access to what can be gained by subpoena is in fact a severe restriction on the rights of the Watergate Special Prosecutor. He was originally assured cooperation in access to relevant White House documents without the need for court action.

4. If a subpoena is issued for certain documents or tapes, Mr. Nixon would presumably look for them in the files. If he then reports that he cannot find them, there is no provision for an independent search or supervision by any third party.

5. A special provision for the White House tapes says that all of them shall be destroyed at the time of Mr. Nixon's death or on Sept. 1, 1984, "whichever event shall first occur."

That means that if Mr. Nixon were to die next week, the tapes would be destroyed even though some were essential to pending criminal cases. After Sept. 1, 1979, he may order any specific tapes destroyed.

By such provisions Mr. Nixon could achieve in disgrace what he could not in office—the frustration of the special prosecution force. For it needs access to the Nixon White House file not only for the forthcoming cover-up prosecution and other cases but for the final report that it must make to Congress.

Some information on the crimes and abuses of power that most deeply concern the public may be found only in those Nixon files. There are, for example, the attempts to misuse the Internal Revenue Service, the secret wiretapping and the activities of the Plumbers. The prosecutors had requests for specific materials pending with the Ford White House when the agreement to give Mr. Nixon custody was suddenly sprung on them.

In sum, that agreement on the Nixon files is about as even-handed as one negotiated between victor and vanquished—with the United States in the posture of vanquished. And the way it was arranged is just as scandalous as the terms.

No Justice Department lawyer played any part in the business or even saw the document before it was approved. The negotiator for the United States was a private lawyer of no great reputation, Benton L. Becker, whom Mr. Ford happens to know. The Special Prosecutor's office has made clear that it wanted to be consulted on the terms. It was not.

The agreement took the form of a letter of proposal for Mr. Nixon dated Sept. 6. It was signed and accepted the very next day by the Administrator of the General Services Administration, Arthur F. Sampson. That is the same Mr. Sampson who was appointed by Mr. Nixon, who approved the spending of $17 million in Government funds at Mr. Nixon's houses and who last week told Congress that Mr. Nixon should now be given large sums so he "can maintain a creative presence as an adviser in national and international life."

The whole affair raises deep questions about what kind of legal advice President Ford has had. But the immediate problem is the agreement. It is one so contemptuous of the national interest, and perhaps even in violation of the law dealing with Presidential libraries, that Mr. Ford should now declare it void. If the President does not act, Congress has the plain power and duty to vindicate the public interest in these public materials.

By Mr. BENTSEN:

S. 4017. A bill to authorize an exchange of lands for an entrance road at Guadalupe Mountains National Park, Tex., and for other purposes. Referred to the Committee on Interior and Insular Affairs.

Mr. BENTSEN. Mr. President, Guadalupe Mountains National Park, located in west Texas, was authorized in 1966 and formally established September 30, 1972. This new national park preserves, protects, and provides for public enjoyment the most extensive exposed fossil reef complex on record. It also presents a unique ecological association of plant and animal life. It stands like an island in the desert.

The park idea was initiated with a generous donation of land from Mr. Wallace Pratt in 1958, which included the outstanding McKittrick Canyon. This canyon is exquisite in that the bisected reef formation contains a lush assemblage of plant and animal life, supported by a cold water mountain stream, contrasting sharply with the surrounding dry desert. It presents the park visitor with a breathtaking wilderness hike between colorful steep-walled cliffs. It provides a spectacular setting for an outstanding interpretive story, telling of ancient reef geology, and remnant biotic communities which are a holdover from earlier geologic time.

A right-of-way for public access to the mouth of the canyon was included in the donation. However, subsequent surveys revealed that construction of a road along this route would be very costly and difficult because of adverse terrain.

At the present time visitor traffic is utilizing a private 5-mile road to gain access to the mouth of the canyon. Additionally, access to the Government residence near the canyon is now over private land. Visitor travel, although light at the present time, is expected to increase significantly when master plan development proposals for the park are initiated.

Mrs. Fletcher Pratt, present owner of the private land between McKittrick Canyon and U.S. Highway 62-180, has graciously consented to an exchange of land which would permit the public and administrative access road to be located essentially along the present private primitive road route to the canyon. This would provide a feasible route for a public access road to be constructed and be preferable from an environmental standpoint to routing it over undisturbed terrain.

Mr. President, the legislation I introduce today authorizes the National Park Service to negotiate the proposed land exchange with the private landowner. I urge the Senate's expeditious and favorable consideration of this bill.

By Mr. MONDALE:

S.J. Res. 241. Joint resolution proposing an amendment to the Constitution of the United States with respect to congressional disapproval of Presidential pardons. Referred to the Committee on the Judiciary.

Mr. MONDALE. Mr. President, the events of the past several days have dramatically called the attention of the American public to a little-known, little-used, but very potent Presidential power. Article II, section 2 of the Constitution gives the President the power to "grant reprieves and pardons for offenses against the United States."

As we have seen, the pardon power may be the "Catch 22" of our Constitution. The Congress can investigate, the courts can pursue the guilty, the American people can speak—but it can all be overturned by a Presidential pardon.

I believe, Mr. President, that the time has come for serious consideration of the pardon power and its role within our system of checks and balances. Because I believe that the pardon power must be restrained—to prevent its abuse and its questionable use—by the checks which control almost all the powers granted to the three branches of Government by our Constitution, I am today introducing a constitutional amendment to provide that a two-thirds vote of both Houses of Congress may overrule the grant of a Presidential pardon.

When the framers of the Constitution assembled in Philadelphia in 1787, they were no strangers to the pardon. They were familiar with the English practice, had witnessed the power cross the Atlantic embodied in colonial charters, and had enshrined the power in numerous State constitutions.

Surprisingly, however, neither of the principal plans presented to the Convention charged with drafting the Constitution contained a provision granting the pardon power.

This omission was soon rectified, when the Committee on Detail responded to a suggestion scribbled on the margin of the Virginia plan by John Rutledge and added a pardon provision. Although much debate ensued over the form of the power and where it should reside, the framers eventually adopted the language we know today.

During their debates, the framers articulated several reasons for inclusion of the pardon power. James Wilson, for instance, noted that a pardon—particularly a pardon before trial—might be necessary in order to obtain the testimony of accomplices.

The framers were also apparently concerned that there be a way to save a spy serving the Executive in time of war, when only the Executive knew of his services.

Hamilton, in the Federalist Papers, expresses the concern that there be a method, "in seasons of insurrection or rebellion," for putting a prompt end to domestic instability through a prompt offer of a pardon.

Above all else, Mr. President, the pardon power is an indispensable element of even the most perfect system of laws. The pardon is the instrument of mercy and the way to correct those grave injustices—either on their facts or by unanticipated operation of the criminal laws—which simply must be remedied.

In Hamilton's words—

(T)he criminal code of every country partakes so much of necessary severity that without an easy access to exceptions in favor of unfortunate guilt, justice would wear a contenance too sanguinary and cruel.

In modern times, the pardon power has evolved into a seldom-used means for overcoming technical impediments to review of convictions and for removing civil disabilities resulting from convictions.

But, the pardon power was really intended to be another "check" in our balanced system of checks. It checks the abuses of the judiciary and the oversights of the legislature, while, hopefully, acting according to the best instincts of the American people.

It is with that history in mind, Mr. President, that we must view the events of the past several days. Many, including myself, have objected to President Ford's pardon of former President Nixon. For me, this action—coming as it does before trial—represented the ultimate coverup of Watergate, largely eliminating the possibility that we will ever know the truth behind that sordid scandal. It also represented the ultimate injustice—telling the American people that some are more equal than others under equal justice under law.

The suggestion that all Watergate defendants might receive similar pardons merely serves to compound an already serious mistake. The possibility of uncovering the truth would totally disappear, and our system of justice would be dealt another blow.

This is not, however, the time to debate those issues. Suffice it to say that we have been awakened to the possibilities of abuse inherent in the pardon power.

Interestingly, the framers of our Constitution were not without foresight about the context in which we find ourselves discussing the pardon power in 1974.

Returning to the constitutional language, we find that the pardon power is qualified by one exception—"except in cases of impeachment." The President cannot pardon an impeachment. Why? Mr. Justice Story tells us in his commentaries on the Constitution.

> There is an exception to the power of pardon, that it shall not extend to cases of impeachment, which takes from the President every temptation to abuse it in cases of political and offences by persons in the public service. . . . I)t is of great consequence, that the President should not have the power of preventing a thorough investigation of (high government officials's) conduct, or of securing them against the disgrace of a public conviction by impeachment, if they should deserve it. . . . (H)e cannot, by any corrupt coalition with favorites, or dependents in high offices, screen them from punishment.

The framers saw the possibility that the truth about corruption in high office might escape via the pardon power. Unfortunately, they did not foresee the sequence of preimpeachment events of 1974.

They knew that the pardon power could be used in such a way that the truth behind political scandal could be suppressed and the guilty escape punishment. So, they precluded a pardon of an impeachment—presumably Presidential or otherwise. However, because former President Nixon was not impeached, but resigned instead, the pardon power was able to be used to accomplish precisely the result the framers sought to avoid.

To prevent the possibility and other possible abuses of the pardon power in the future, I am introducing today a constitutional amendment which will, I believe, provide a much-needed check on the exercise of that power.

My amendment provides that a two-thirds vote of both Houses of Congress may, within 180 days of its issuance, overrule the grant of a Presidential pardon. Our system is carefully designed with numerous checks and balances to keep power controlled. In my opinion, the pardon power needs a check.

Much as the Executive is allowed to veto legislation passed by Congress, Congress would be allowed to veto a Presidential pardon. This is a limitation on power, but it also provides a means for more careful consideration. Hamilton, speaking of the veto power, clearly articulated the reasons for a second review.

> (It would) increase the chances in favor of the community, against the passing of bad laws, through haste, inadvertence, or design. The oftener a measure is brought under examination, the greater the diversity in the situations of those who are to examine it, the less must be the danger of those errors which flow from want of due deliberation, or of those missteps which proceed from the contagion of some common passion or interest.

The framers considered giving the legislative branch a role in the pardon power. It is true that they rejected the idea, but it is impotrant to remember that they rejected the notion of giving the legislative branch the power to grant the pardon, not the power to review such a grant.

Moreover, an examination of their reasons reveals that they have not survived the passing time. They feared delays in the pardon consideration; modern travel and lengthy sessions remove that fear. They feared that the Congress would not be in session when a prompt pardon was necessary. As we know, the Congress could easily be called back into session due to modern conveniences. Finally, the close public scrutiny of our every action surely would prevent the safety-in-numbers or corruption which the framers hinted at.

Mr. President, in proposing this amendment, I do not believe I am ignoring the late Chief Justice Warren's warning that we not, in the frenzy of Watergate and its aftermath, tamper with the system which has served us so well for nearly 200 years. Rather, I believe the amendment will fulfill the vision of the framers, provide a much-needed check to an unchecked power, and insure that the actions of the past several days not occur again.

I ask unanimous consent that the text of the joint resolution proposing a constitutional amendment be printed in the RECORD at this point.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 241

Joint resolution proposing an amendment to the Constitution of the United States with respect to Congressional disapproval of Presidential pardons

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within 7 years after its submission to the States for ratification:

"ARTICLE ——

"SECTION 1. No pardon granted to an individual by the President under section 2 of Article II shall be effective if the Congress by resolution, two-thirds of the members of each House concurring therein, disapproves the granting of the pardon within 180 days of its issuance.

"SEC. 2. The form of the resolution referred to in section 1 of this Article shall be a concurrent resolution, the matter after the resolving clause of which is as follows: "That the Congress disapproves the pardon granted by the President on ———— to ———— for offenses against the United States.", the first blank space therein being filled with the date on which the pardon was granted and the second blank space therein being filled with the name of the individual to whom the pardon was granted.".

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 277

At the request of Mr. CRANSTON, the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 277, a bill to amend the Immigration and Nationality Act with respect to a waiver by the Attorney General, of certain grounds for exclusion and deportation, for an offense in connection with possession only of marihuana.

S. 2854

At the request of Mr. CRANSTON, the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 2854, a bill to amend the Public Health Service Act to expand the authority of the National Institute of Arthritis, Metabolic and Digestive Diseases in order to advance a national attack on arthritis.

S. 3221

At his own request, the Senator from Louisiana (Mr. JOHNSTON) was added as a cosponsor of S. 3221, the Energy Supply Act of 1974.

S. 3418

At the request of Mr. ERVIN, the Senator from Washington (Mr. JACKSON) was added as a cosponsor of S. 3418, a bill to establish a Federal Privacy Board to oversee the gathering and disclosure of information concerning individuals, to provide management systems in Federal agencies, State and local governments, and other organizations regarding such information, and for other purposes.

S. 3952

At the request of Mr. PELL, the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 3952, the Social Security Recipients Fairness Act of 1974.