

The Nightmare Fades

By Anthony Lewis

After a time, we shall ask ourselves in wonder how it all could have happened. How did the indecency, the lies, the contempt for human values go uncorrected as long as they did? When the truth was blazoned, why did so many persist in closing their eyes to it? How did Richard Nixon survive for so long in the unreality of his closed world?

Right now, there will be a general desire to put the nightmare of the Nixon Presidency behind us. Real problems desperately need new American leadership: The world's food shortage and threatening financial disaster among others. Americans yearn for an end to divisiveness, for a reassertion of common values.

For all these reasons the spirit of recrimination must be eschewed. It is a time to seek understanding, of ourselves and others. But it would be a mistake to believe that we can forget Richard Nixon in our pursuit of a new spirit. For his fate is inextricably involved in our hard-learned lessons about the supremacy of law.

What is to happen to Mr. Nixon? Should he face criminal charges, for example, obstruction of justice in the Watergate cover-up? Should Congress legislate or Mr. Ford promise immunity from prosecution? Should the special prosecutor, Leon Jaworski, agree to bargain some minimal pleas that would thereafter immunize him?

Most Americans probably will not wish to pursue Mr. Nixon into prison.

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His punishment is great as it is. But as has been true in the whole process of impeachment, there are considerations larger than his personal destiny.

By his publication of the new transcripts, and the almost universal reaction to them, Mr. Nixon has been openly identified as a principal in a conspiracy to cover up the Watergate break-in. H. R. Haldeman, John Ehrlichman, John Mitchell and others are scheduled to go to trial next month on charges of joining in that conspiracy. Should they be prosecuted if he is not?

The question makes it plain that a decision to give Mr. Nixon immunity could deeply affect public concepts of fairness and justice in the law. The example of Spiro Agnew is too recent to be overlooked. When Elliot Richardson, as Attorney General, negotiated his plea without pressing for a jail sentence, the decision had a persuasive political basis. But it has left something of a bad taste—a sense of inequity in the fact that others have served time for lesser offenses while Mr. Agnew escaped because of his political status.

Some have suggested that Mr. Nixon be protected not only from prosecution but from any obligation to testify or provide evidence. Advocates of that view recognize that it might in fairness require the dismissal of other prosecutions, since defendants are entitled to all the relevant evidence.

But then what about the men who have gone to prison already on pleas of guilty or convictions: Charles Colson, John Dean, Egil Krogh, Howard Hunt, Gordon Liddy, the Cubans? If others escape justice, should they be pardoned and reimbursed? There is no simple way to let Mr. Nixon slip away and still to keep faith with our Constitutional promise of equal justice under law.

Another problem is the pendency, before the special prosecutor, of still incomplete investigations. For instance, there is a genuine public interest in pursuing the truth about the \$100,000 given by Howard Hughes to Bebe Rebozo—and prosecuting any perjury discovered. The law certainly has an interest, too, in pursuing those responsible for destruction of evidence in the erasure of subpoenaed tapes.

On this score Mr. Nixon's tax behavior raises particular difficulties. When investigators sought to discover whether he had committed fraud, he simply ignored their questions. The special prosecutor has begun presenting evidence on possible fraud to a grand jury. There is an obvious public interest in seeing that Mr. Nixon is treated like other citizens in regard to his taxes.

Over all, the important thing as the country begins a new chapter is for those in authority to act openly and with respect for law. Thus, if Mr. Nixon is given any degree of immunity now, the decision must take into account the impact on others—on the whole system of criminal justice. And the reasoning behind the decision must be fully explained.

That is the major principle to be followed in a situation that allows of no easy or perfect solution. On more particular points, there must be no inhibitions on pursuit of pending inquiries. And there must be no immunity for Mr. Nixon from any further tax liabilities imposed by law.

The country will have a deep desire now for repose—a desire to forget Richard Nixon's Presidency. But in the hope of repose we must not undermine the most important teaching of Watergate: In the American system, still, no man is above the law.