

NYTimes Harsh Questions

By Peter Grose

Consider two prospects:

●No. 1. The former President of the United States retires into a status of revered obscurity, absorbed in memories inevitably more comfortable than was the reality; he emerges occasionally to do some dignified public service, he writes his memoirs. The bitter enemies he made in public life keep the specter of him alive for their own partisan purposes, but personally they leave him alone. This would roughly correspond to the experience of the late Herbert Hoover, born 100 years ago last Saturday, the day that his latest successor to the ex-Presidency first woke up a private citizen.

●No. 2. The former President of the United States is indicted by a Federal grand jury as a criminal conspirator, charged with obstruction of justice and who-knows-what-else. With the strains of "Hail to the Chief" still echoing in his, and the public's, ears, he is summoned into court. He is made to give witness under oath about some of his deeds in office, asked to explain incriminating remarks heard in his own voice on tape recordings that he himself had made. He is cross-examined by shrewd attorneys who know how to move juries. Maybe the former President takes the Fifth Amendment, maybe he is convicted and sentenced. Might he even go to jail?

At the moment, of course, both these prospects are mythical. But, given the choice, which would be better for the broadest interests of the American Republic? This is not an easy question to answer.

On the face of it, obviously, the benign-neglect scenario would leave everyone involved—especially the former President himself—restfully secure from renewal of the bitterness, the struggles, perhaps for some the boredom, that led to his nemesis. The self-esteem of all those millions who supported him in the first place would be preserved, and not crushed without mercy. His lifelong enemies would not receive perverse satisfaction of vengeance, an unworthy sentiment in any circumstances. The Republic would forge ahead into new problems—none of them easy to solve, none of them as easy to put aside as the nightmare of the former President.

But it really is not so simple a question. What about the seven other conspirators already indicted and about to go to trial? Could they be fairly prosecuted when their kingpin goes untouched, just because he once had a better job than they had? What about the errand boys on the fringe of the conspiracy who have already

gone to jail, because they didn't have the lawyers, or the public following, or the gall, to make a fight?

Maybe the new President, the man elevated to the power and majesty, should just say, "Former Presidents shouldn't be prosecuted." (Indeed they shouldn't; they shouldn't have to be.) But the new President is a man who once observed that Presidents and everybody else should obey the law. And, to the question of whether he thought that he, as President, could terminate prosecution of a former President, he replied, "I do not think the public would stand for it." Would the new President want to take upon himself responsibility for doing an old friend and mentor a kindness of dubious propriety, knowing that a large segment of the public would view his decision with suspicion and dismay?

Maybe, for some reason, the grand jury decided not to indict a man they had previously named as a co-conspirator (they didn't indict because at the time he was President of the United States). And maybe the prosecutor and everybody else decided that the former President really shouldn't be hounded because it would upset people. What is to stop the other indicted conspirators from calling him as a witness at their trial, pressing his cross-examination, trying to make him accept responsibility so that they could get off more lightly? What does the shuttle to the witness stand do for the repose and dignity of the former President, however immune he might be himself?

There might be a temptation, faced with awkward questions like these, to just annul the whole thing; the conspiracy, the evidence, the tapes, the confessions, the indictments, the sentences already imposed, the jail terms already served, the crimes against the political system—just pretend they never happened. So would be enshrined in American jurisprudence the principle that the rule of law applies to every citizen, except those involved with the former President of the United States whom no one wanted to hound. Put in those terms, it just won't do.

In fact, put in these terms, the choice between the two prospects is painfully clear. The interests of the Republic dictate that the law applies to every man. Looking back on his own problems, so pale compared with those facing his latest successor, Herbert Hoover said, "Democracy is a harsh employer." Democracy and the rule of law pose harsh questions; they demand accountability from every man, "be he President or be he pauper."

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