

Out Of the Wreckage

By Anthony Lewis

BOSTON, Sept. 11—The Nixon pardon has been even more devastating in its impact than the first numbed reaction foresaw. It has aroused among ordinary people a dangerous cynicism about our institutions of law. It has shattered the hope for a period of political repose in this country. It has undermined confidence in the judgment of Gerald Ford.

Much of that damage is beyond repair for the moment. That fact explains the tone of frustration, of helpless outrage, in much of the Congressional and public comment. But there are things that can be done to minimize the extent of the disaster. We should begin thinking about them in focused terms.

The first essential is to establish the facts of the pardon and how it was arranged. I am averse to conspiracy theories, and on hearing the news I

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felt and wrote that President Ford must have acted out of misguided charity and emotion. But the public is highly suspicious. There is widespread talk of some secret deal when Mr. Nixon made Mr. Ford Vice President, of appeals from the Nixon family and pressure from the holdover White House staff chief, Gen. Alexander Haig.

It is in President Ford's urgent interest to dispel the dark suspicions if he can. Only he can do so. It is not enough to have partly-informed members of his staff give out snippets of information, or to have those who negotiated with Mr. Nixon provide not altogether consistent accounts of what was asked and given.

Nor will it be enough for Mr. Ford to answer questions in the inevitably disorganized setting of a press conference. He should be prepared to give the facts to a more formal body, and under oath.

A Congressional committee would be an appropriate forum, perhaps in the framework of an inquiry into the exercise of pardon power and proposed constitutional amendments governing it. The House Judiciary Committee would be an obvious choice.

The hearings should go into all relevant conversations between Mr. Ford and Mr. Nixon, and into the negotiations carried on by their representatives. The President should be asked

to respond to questions in person or in writing. It would be unusual, but that is where we are. And such a proceeding would restore credibility to Mr. Ford's promise of candor in his Government.

The second necessity is to proceed with bringing out the truth of Mr. Nixon's role in Watergate and other wrongs.

Some may come out at the trial of his subordinates for obstruction of justice, if it goes ahead as planned; indeed, that is one of several strong reasons for proceeding despite the felt sense of inequity. But there will be limited scope for exploration of the Nixon question there at best, and there will remain a powerful public interest in full disclosure. How can that interest be met?

One possibility is for the special prosecutor, Leon Jaworski, to make a public report on the former President's part, not only in the cover-up of Watergate but in any tax fraud, misuse of campaign funds and other matters. But that path is not so easy as some speculation might suggest.

The special prosecutor's charter from the Attorney General says that he "shall, upon completion of his assignment, submit a final report to the appropriate persons or entities of the Congress" but it is questionable whether that language would allow him to make specific accusations against named persons, outside the criminal process. To do so would raise ethical questions for a prosecutor, and might subject him to legal objections from those named. Moreover, Mr. Jaworski has obtained such information through grand juries that might involve problems of secrecy.

To undertake the duties of informing the country in a serious way, Mr. Jaworski would, therefore, need fresh authority and direction from Congress. There is a possible pattern in a Federal statute allowing special grand juries to issue reports on corruption. That law entitles those named to notice of what is to be said, an opportunity to reply and judicial scrutiny of disputed issues.

Mr. Jaworski would also need, from Congress, subpoena power to get information for purposes of a report—as opposed to subpoenas for grand jury or trial proceedings. Specifically, he would have to be able to subpoena any of the Nixon White House tapes apart from those portions of the 64 conversations made available to him as a result of the Supreme Court decision last month.

A curious agreement made by the Ford Administration gives Mr. Nixon not only ownership of his tapes but control of who may hear them. But no such agreement can impair Congress's authority to give any official body power to subpoena material for a legitimate public purpose. The body could be a Congressional committee, or it could be the special prosecutor.

At this stage, our hope must lie in truth. It is not an empty hope. Mr. Justice Brandeis said: "Sunlight is the most powerful of disinfectants."