

WXP
Post
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'He Should Plead the Fifth'

It's hard not to appear silly or dishonest when circumstances conspire to make you speak about the same subject from several opposing points of view.

So with the President and Watergate. It is reasonable for a man who is trying to run a government to insist that a year of Watergate is enough. It is reasonable for a man suspected of jailable offenses to do what he can to keep the prosecution from being able to prove what it suspects. But when administrator and suspect are one, it is hard to say anything at all without the appearance of self-serving dishonesty.

It is reasonable for the titular head of a major political party to try to analyze election results, as Richard Nixon has done in the wake of Democrat Richard F. VanderVeen's startling victory in the race for Vice President Gerald Ford's old seat. It is also reasonable for the Republican whose problems led to that Democratic upset victory to contend that it wasn't his fault.

But when party leader and culprit are one, you are likely to get statements that seem neither candid nor coherent, as reportedly happened when President Nixon talked to GOP congressional leaders on Wednesday.

There's nothing he can do about his party's shakiness: Republican candidates will simply have to run on their own and pretend they never heard the name Nixon.

But as to his own predicament, there is a way out. He should plead the Fifth Amendment.

The reason he keeps looking so silly on the Watergate question is that he is juggling too many roles: ordinary citizen, crippled leader, criminal suspect and the D.A.'s boss.

The ordinary citizen and crippled leader can say how much Watergate is enough. The prosecutor's boss has to

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stick up for his man's access to whatever evidence successful prosecution requires, no matter whose toes get stepped on. But the criminal suspect's self-interest dictates making that evidence as difficult as possible to obtain.

As a result, Mr. Nixon is forever saying contradictory things—for instance that he is cooperating fully with special prosecutor Jaworski, even while he is denying documents and tapes that Jaworski is seeking.

Instead of that sort of double-talk, which inevitably makes him look ridiculous, he should simply refuse to answer, or otherwise cooperate, on the solid ground that to do so would tend to incriminate him.

How does it happen that two crucial tapes, and crucial parts of other tapes, turn out not to exist? *I respectfully refuse to answer on the ground that my answer might tend to incriminate me.*

We'd like to see your records and hear the tapes of your conversations with your top aides on the subject of Watergate and milk supports. *I respectfully refuse to submit them on the ground that to do so might tend to incriminate me.*

What's the real truth about the Howard Hughes-Bebe Rebozo \$100,000? The San Clemente land deal? The backdating of the deed on your vice presidential papers? *I respectfully refuse to answer on the ground...*

What did the President know, and when did he know it? *I respectfully refuse to answer...*

Such a tactic would have been unthinkable six or eight months ago. But six or eight months ago, the President was still finding it useful to play the part of the innocent whose innocence would shortly be made manifest.

Time has changed all that, and now his principal response seems to be: Suspect what you will, but I'll be damned if you can count on me to help you prove it.

That may not be a particularly presidential attitude, but it is a legitimate one. Add to it the dictum that a person is to be presumed innocent until proven guilty, and you've got about the best defense Richard Nixon could have under the circumstances. It wouldn't keep anybody from believing him guilty; hardly anything could accomplish that. But it would shift the burden of proof.

Playing the part of Leader Above the Storm forces on him a lot of other contradictory roles as well. He has to convince the people that he is giving his prosecutors a free hand. He has to prove not just innocence but ignorance as well. He has to convince us that he never bothered to ask his subordinates questions that struck the rest of us as obvious. He has to explain away any evidence that points, however inconclusively, in his direction.

That's asking too much.

But let him concede what everybody already knows: that he is a suspect in a criminal investigation; and let him plead the Fifth Amendment, and he no longer has to prove anything to anyone. All he has to do is say: *You prove it.*

Which, with his noncooperation, would be very difficult to do.

A lot of Americans would nevertheless think that their President was a crook. But from his point of view, thinking it would be a damn sight better than knowing for sure.