

The Papers and the Public

By Anthony Lewis

BOSTON, Oct. 20—A notable element in President Ford's House testimony was the colder view he took of Richard Nixon. He played down the element of sympathy in the pardon decision. He said Mr. Nixon had left office in "shame and disgrace," and had as good as admitted his guilt in taking the pardon.

Public acceptance of that view would help Mr. Ford get the Nixon problem behind him and turn the country to other pressing issues. But the trouble is that Mr. Nixon will not play. He insists on acting the part of an honorably retired President entitled to every dollar and privilege afforded others—a man more sinned against than sinning.

Within hours of Mr. Ford's visit to Capitol Hill, Mr. Nixon sent the White House a delightful reminder that he will not be so easy to forget. He sued to get custody of all his papers and tapes, arguing that his constitutional rights as a former President were being violated and that he alone could make the necessary delicate judgments on keeping some of the contents confidential.

Coming from anyone else, the galvanized gall of that argument would be breathtaking. It is a claim that a man disgraced when evidence of criminality was found in official records should thereafter be given charge of those records.

But the argument is not so easy to laugh off in this case, because President Ford gave so much away in his haste to get rid of the Nixon papers. Secretly, without consulting the Special Prosecutors office as promised, he let his personal lawyers negotiate an agreement giving Mr. Nixon custody of the materials.

In the light of day that agreement was so indefensible that President Ford in effect had to denounce it, saying, "Those tapes will not be delivered to anybody" until the Special Prosecutor agreed. But as a result of the earlier legal and political blundering, there is now an extremely complicated problem to unravel.

The first necessity is to assure the availability of the tapes for the Special Prosecutor. That means not only keeping them in Washington, under official control, but giving the prosecutors access. They have had such difficulty in recent weeks in getting even the tapes needed for pending cases that they are prepared to subpoena the Ford White House for them—an embarrassment that Mr. Ford surely wants to avoid.

Second, there is the broader public interest in disclosure of the facts of Watergate: the record of wrongdoing that alone can really close that episode and make another like it less

possible. That means, above all, making public all portions of the Nixon White House tapes that bear directly on the Watergate crimes.

The Special Prosecutor's immediate concerns—the physical preservation of evidence, for one—may be answered in the courts. But it is doubtful that the lawyers and judges can deal with the longer-term needs satisfactorily. That is so, in part, because the parties represented in court have particular interests to advance.

Consider the Nixon lawsuit. A main defendant is Philip Buchen, President Ford's counsel. He approved the unfortunate agreement to turn those papers over to Mr. Nixon. Can he be expected to denounce it vigorously now? The Justice Department, under pressure from the Ford White House to justify delivery of the papers to Mr. Nixon,

ABROAD AT HOME

produced a thin and hasty opinion that they were his property. Can the department be expected now to argue convincingly for the public interest in those materials?

The complexities of the situation, made the more difficult by the Nixon lawsuit, call urgently for Congressional action. The Senate has already passed a bill, introduced by Senator Gaylord Nelson of Wisconsin, to keep the Nixon tapes permanently under official control. They would be made available to meet the needs of the Special Prosecutor—and to give the public "the full truth" of Watergate's "abuses of governmental power."

The Nelson bill cuts through the legal tangle by exercising Congress's undoubted power to regulate the use of materials prepared by Federal officials at public expense. The bill fully recognizes any property rights that Mr. Nixon may have by saying that the courts shall pay him for any loss. Ordinarily, Congress has full power to take property for public use, subject only to payment of compensation.

Leon Jaworski, the retiring Special Prosecutor, has unqualifiably endorsed the Nelson bill as the most forthright way to deal with the problems of his office and to satisfy the legitimate public interest in information on Watergate. The mystery is why the House of Representatives did not act on the legislation before the recess. If the courts preserve the status quo for a few weeks more, there will still be time to act afterward.

The problem of the Nixon papers and tapes is a significant test for Mr. Ford, for Congress and for the country. How it is handled will indicate how well we have recovered from the illusion that Richard Nixon so long worked to create—that his personal interest was the same as that of the Presidency.