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"Someone Must Write 'The End' to It:"

President Gerald Ford's Pardon of
Richard M. Nixon

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UHON 499
Director: Dean John S. Jackson

America watched as Richard Nixon turned and waved a last goodbye from the plane that would take him and his family to their home in San Clemente--and, hopefully, to a more peaceful existence than the one he was leaving behind.

On August 8, 1974, Richard Milhous Nixon became the first President of the United States to resign his office, after coming very close to being the second President to be impeached. The Watergate scandal had already sent nine former Nixon campaign official and White House aides to prison, with five more preparing to stand trial in the fall. The House had already passed a resolution recommending an impeachment vote; all that was left was the vote itself. In an effort to preserve the dignity of the office, Nixon felt it would be better if he, instead, removed himself before Congress voted to remove him. His successor: Gerald Ford, House Majority Leader from 1965 until his nomination as vice-president in late 1973.¹

The media echoed the anticipation of the nation. Now that Nixon was no longer President, no longer in a position to use Executive Privilege as a block to the investigation, would he be indicted? And, should he be indicted and convicted, would President Ford pardon him?

Ford's position had seemed clear. During the Confirmation hearings following his nomination as Vice-President, replacing Spiro Agnew, he was asked, in the event that Nixon resigned his position, would Ford pardon him. "I do not think the public would stand for it."²

Then the situation changed, in the twisting-turning way that Watergate had been unfolding for almost two years.³ On August 1, Alexander Haig, former White House Chief-of-Staff, approached the Vice-President with a bit

of disturbing news: the Presidential tape of June 23, 1972, by decision of the Supreme Court, was to be admitted as evidence against some of Nixon's former aides. This tape, Haig informed Ford, established beyond a doubt that Nixon had attempted to stop the investigation into Watergate.

The news "stunned" Ford, as he had been steadfastly proclaiming his boss's innocence. He continued to do so during a tour of the south, feeling a change of heart revealed at that critical time would make him appear to have encouraged Nixon to resign in order to avoid impeachment.⁴

In late August, he redefined his position. Now, he said in a news conference on the 28th of the month, he was leaning toward granting the former President a pardon, but since formal charges had not yet been brought, such a move at that time would have been "unwise and untimely."⁵ Yet, on August 30, he set Presidential counsel Philip Buchen to work: did Article II, Section 2 of the Constitution give the President power to pardon a man for crimes he had not been formally charged with committing. Buchen brought in Benton Becker, a Washington attorney, to do the job. "Working over Labor Day weekend, Becker probed the precedents and concluded that Ford could indeed pardon Nixon before indictment and trial." Buchen and Becker were already trying to hammer out a deal with Nixon's attorney, Herbert J. Miller, Jr., by which Nixon could regain control and possession of the White House tapes and documents. On September 5, they informed Miller of Ford's intent to pardon his client.⁶

Becker, accompanied by Miller, flew to San Clemente to finalize the agreement on the White House tapes and documents, authorized by the White House not to promise a pardon, but, according to sources quoted in a Newsweek report, "to say that in all probability, a pardon would be forthcoming." However, even with encouragement by his attorney, Nixon was

reluctant to accept this offer, by accounts, due to depression, a "slipping away from reality."⁷ More likely, it was due to the fact that the pardon came with a catch; Buchen, Becker, and Ford wanted Nixon to make a public statement of acceptance, in which he conceded that he had, in fact, broken the law.⁸ Nixon finally agreed.

Ford addressed the nation on the sleepy Sunday morning of September 8, one month after Nixon resigned, and woke it up. He announced that he granted "a full, free and absolute pardon to Richard Nixon for all offenses against the United States which he, Richard Nixon, has committed or may have committed or taken part in during the period from January 20, 1969, through August 9, 1974."⁹

Nixon's acceptance followed, though it was not quite the statement of contrition that Buchen, Becker and the President had hoped for: "...one thing I can see clearly now is that I was wrong in not acting more decisively in dealing with Watergate, particularly when it reached the stage of judicial proceedings and grew from a political scandal into a national tragedy... That the way I tried to deal with Watergate was the wrong way is a burden I shall bear for every day of life that is left to me."¹⁰

If Ford's overall judgment was soon to be called into question, he was clearly right on two counts: it was unwise and untimely, and the country didn't stand for it. But soon the Congress, the Courts, the press and the American people came to realize that there was nothing they could do about it.

The power to grant pardons is summed up in its Constitutional entirety in Article II, Section 2, which states that the President "shall have the Power to Grant Reprieves and Pardons for Offenses against the United

States, except in cases Impeachment." The Congress has established guidelines by which pardons are to be applied, recommended by the Attorney General, and sent to the President for his approval. But these are merely suggestions; the pardoning power is broad enough to allow disregard of those suggestions when the President feels it is expedient.

The pardon was seen as atypical, as pardons are normally reserved until after criminal proceedings are complete. It was not, however without precedent. In 1867, President Andrew Jackson granted a full pardon to A. H. Garland, a former Congressman in the Confederacy, who, after the war, was barred from public service. The pardon, extending to acts against the United States for which Garland was never officially charge but that he *might* have committed, was challenge by the basis that the pardoning power was limited to offenses recognized by law. The court upheld the pardon however, stating in part that the power to pardon "extends to every offense known to the law and may be exercised at any time after its commission, either before legal proceedings are taken, or during their pendency, or after conviction and judgment."¹¹

Another case, *Biddle v. Perovich*, supports Ford's act. Until this 1927 case, a pardon was viewed as a "private act of grace," from which only the recipient served to benefit. *Biddle* redefined the purpose of a pardon, that new purpose being service of a benefit to the public at large.¹²

"...Theirs [Richard Nixon and his family] is an American tragedy in which we have all played a part. It can go on and on and on, or someone must write 'The End' to it. I have concluded that only I can do that. And if I can, I must. As President, my primary concern must always be the greatest good of all the people of the United States, whose servant I am."¹³ Richard Nixon's health, both mental and physical, was on the

decline. It could take months, even years, for the publicity to die down enough for Nixon to receive a fair trial. The delay and the inevitable trial would divide the country's sentiments, and disrupt the peace Nixon tried to give to both himself and the nation by his August 8 resignation. Finally, Ford said "I feel that Richard Nixon and his loved ones have suffered enough and will continue to suffer..."¹⁴

For many people, these simply were not reasons strong enough to shield Nixon and to place him above the law once again. Those in prison for their complicity, their families, and those connected with the prosecution were particularly fired up. "Mr. Nixon and his family are not the only ones who suffered enough," said Maureen Dean, wife of former counsel to the President, John Dean, who was in prison. There were other parties involved with Watergate that were "suffering because they told the truth, which is something we have yet to hear from Mr. Nixon."¹⁵

Federal Judge John Sirica, looking back on Watergate in 1979, resented the pardon not only because it could have been better for the country had the issue been decided by the courts, but because Nixon managed to escape a scandal largely of his own making, leaving others to suffer the consequences. "His associates served time in jail. He received a large government pension, and retired to his lovely home in San Clemente. I still wonder whether the concept of equal justice under the law really applies if one climbs high enough in terms of wealth, power, and influence....it still bothers me that Richard Nixon escaped that equal treatment. I feel that if he had been convicted in my court, I would have sent him to jail."¹⁶

Those yet to stand trial, and those already serving time were wondering when they would get their breaks. Requests for pardons soon began to

arrive from the 39 already convicted in connection with Watergate. Those nine yet to stand trial expected dismissal of their cases, or, at the very least, pardons after conviction. Attorneys for H. R. Haldeman, John Ehrlichman, and others asked for a delay of the start of the trials slated to begin October 1. They felt that the publicity caused by the pardon and Nixon's acceptance would prejudice jurors into presuming their guilt before they were even tried. Judge Sirica had been dealing with Watergate for many months, and he was beginning to tire of it all; he postponed the trial for one day to assemble a new pool of jurors.¹⁷

The next question was whether the others involved were to receive pardons as well. On September 10, Ford authorized press secretary John Hushen to report that a blanket pardon was under study. The uproar surrounding the singular pardon of Nixon intensified. The Senate passed a resolution urging that the President issue no further pardons until after the defendants stood trial. Members of both parties were frothing at the mouth. Hurriedly, the White House amended their statement to say that pardons for all other Watergate offenders would have to proceed through the regular channels, and would be considered on a case by case basis.¹⁸

The concept of equality under the law was being met with greater and greater cynicism. The former President received a full and free pardon through little effort of his own, only a month after he resigned. The "regular channels" through which all the rest would have to pass did not even become available to them until after conviction and a three year "grace period" during which they have to serve their sentences in prison.¹⁹ Said a Washington D.C, lawyer and clemency scholar, "The American public will read this as just one more chapter in the old story of the Establishment taking care of its own."²⁰

Those yet to face the music were concerned for their own welfare. The Nixon pardon, they assumed, would make it even more difficult for them to receive fair trials. In Judge Sirica's court, however, the bias of the jurors was in favor of those the Nixon pardon left out in the cold.

"...Many of the prospective jurors had indicated that they felt the Nixon pardon made it unfair to try the former President's aides. They reasoned that if the top man went free, so should those around him."²¹

There were doubts by the prosecution that further trials would even take place. After the September 10 discussion of a potential blanket pardon for those remaining, according to a source quoted by Newsweek, Special Prosecutor Leon Jaworski called a top White House official and demanded to know if any more pardons were going to be issued.²² There was speculation, according to further sources, concerning the usefulness of proceeding with the trials. "The only thing that can save it is for Leon to convince us all that it is still worthwhile to continue--that, somehow, justice still will be done. I don't see now how he can do it."²⁴

A larger concern, both to those involved with the trials yet to come and the American public at large, was if Nixon could still be called to testify. The pardoning power is relatively obscure, and not fully understood by the public. U.S. News and World Report, accompanying an article describing the pardon itself, gave a synopsis of the questions being asked by "recognized authorities" that not only satisfactorily answered the concerns of those conducting the trial but those on trial as well. In short:

First: the pardon only shielded Nixon from offenses committed against the United States from January 20, 1969, to August 9, 1974, as stated in the pardon.

Second: Nixon could still be tried for offenses against the States, and was still subject to civil litigation.

Third: Nixon could still be called upon to offer testimony. The Fifth Amendment right against self-incrimination was not really a protective shield for him anymore, as the pardon protects him from indictment for his complicity in the Watergate affair. He can still be cited for contempt of court, and can still go to jail should he perjure himself.²⁵

What about the tapes? Part of the agreement leading to the pardon dealt with Nixon regaining control of the White House tapes and documents connected with the Watergate affair. Under the agreement, both the tapes and the documents would become the personal possessions of Nixon, the traditional practice followed with previous presidents. They would still be subject to subpoena by the federal courts for a period of three years in regard to the documents and five years for the tapes. After such time Nixon would be allowed to do with of them as he saw fit--most likely, destruction. If, after five years Nixon decided not to destroy the tapes, they were to be destroyed after ten years or at the time of Nixon's death, whichever came first.²⁶ The agreement was suspended by the White House when Jaworski requested to use some of the tapes, and Nixon went to court to try to have the original agreement enforced. The White House, however, decided to stand firm in their resolution, at least until such time as an agreement was made that satisfied the needs of the special prosecutor.²⁷

Americans, the press, and those involved in the investigation and prosecution of the case were disappointed that they would never have the opportunity to truly know the facts about Nixon's involvement in the break-in at the Watergate apartments and office complex or in the cover-up that followed. Even President Ford had to be a bit dismayed at Nixon's lack of

contrition expressed in his acceptance of the pardon. Ford faced the questions to which the nation had been wanting answers at a news conference September 16, and his answers were vague, round-about, and disappointing to a country that needed desperately to find a reason to believe in him again:

"Throughout your Vice-Presidency, you said that you didn't believe that former President Nixon had ever committed an impeachable offense. Is that still your belief?"

"The fact that 38 members of the House Committee on the Judiciary-- Democrat and Republican--have unanimously agreed in the report that was filed that the former President was guilty of an impeachable offense I think is very persuasive evidence."

"Do you believe his acceptance of a pardon implied his guilt, or is an admission of guilt?"

"The acceptance of a pardon, I think can be construed by many, if not all, as an admission of guilt."²⁹

The President seemed embittered by the results of his action, whether due to the negativity of public opinion, much greater than he had expected,²⁹ or by the thanklessness of his subject. Nixon was causing problems over the agreement reached concerning the tapes. In addition, Nixon, in a phone conversation with a former associate, had the nerve to criticize Ford's performance on the job; ironically, his main gripe was with Ford's plan to offer amnesty to Vietnam draft resisters.³⁰

The question inevitably becomes, which was the lesser of two evils (for, ultimately, that was the decision facing President Ford); the continuation of unrest and divisive opinion in a nation that had for too long been at odds with itself, or the disregard for the truth, so that future generations might well be doomed to repeat the failures of the ones

before? Watergate is a term heard often enough by the younger generations that will soon be in power, but with little or no factual knowledge about what happened, or why. Stereotypes in television, comedy, the media at large, even education tell those who were not there to see for themselves that Richard Nixon was a "crook," but none can say for sure, because those who were there never had the opportunity to find out for themselves.

History repeats itself, and the mistakes of the past should be remembered and place us on guard. Raoul Berger, Harvard law professor, aptly sums it up: "[Nixon] rose from the ashes in '62. Well, what's to stop him now?"³¹

NOTES

1. Clark R. Mollenhoff, The Man Who Pardoned Nixon. (New York: St. Martin's Press, 1976), p. 13-16.
2. "Was Justice Done?" Newsweek. (September 16, 1974, p. 19-23), p. 20.
3. The arrests of five men at the Democratic National Headquarters, located in the Watergate Apartment and Office Complex, were made on June 17, 1972. Indictments of the men followed on September 15, 1972. Mollenhoff, p. 15-17.
4. "The Pardon: Questions Persist." Time. (October 28, 1974, p. 16-18), p. 17.
5. "Effects of Nixon Pardon." U.S. News and World Report. (September 23, 1974, p. 19-22), p. 20.
6. "Nixon's Crisis--and Ford's." Newsweek. (September 23, 1974, p. 30-35), p. 33.
7. "Effects of Nixon Pardon," p. 21.
8. *op cit.*, p. 33-34.
9. Joseph Nathan Kane, Facts About the Presidents: A Compilation of Biographical and Historical Information, Fifth Edition. (New York: H. W. Wilson Company, 1989), p. 255-56.
10. "Was Justice Done?" p. 20-21.
11. *Ex Parte Garland* 4 Wall 333 (1866), quoted in John H. Finley and John F. Sanderson, The American Executive and Executive Methods. (New York: The Century Company, 1908), p. 87.
12. *United States v. Wilson*, 32 US (7 Pet.) 160 (1933), and *Biddle v. Perovich*, 274 US 486 (1927), quoted in Christopher C. Joyner, "Rethinking the President's Power of Executive Pardon." Federal Probation. (March 1979, vol. 43, p. 16-21), p. 17-18.
13. "Was Justice Done?" p. 22, and "Effects of Nixon Pardon," p. 20.
14. "Effects of Nixon Pardon," p. 20.
15. "Nixon's Crisis--and Ford's", p. 33.
16. John J. Sirica, To Set the Record Straight. (New York: W. W. Norton & Company, 1979), p. 234-35.
17. *op. cit.*, p. 34.
18. *ibid.*, p. 31.

19. John R. Stanish, "Effects of a Presidential Pardon." Federal Probation. (September 1978, vol. 42, p. 3-7), p. 4.
20. Ronald L. Goldfarb, quoted in "The Pardon Backlash." Newsweek. (September 23, 1974, p. 86), p. 86.
21. Sirica, p. 264.
22. "Nixon's Crisis--and Ford's," p. 34.
23. "Was Justice Done?" p. 23.
24. "Where the Pardon Leaves Nixon." U.S. News and World Report. (September 23, 1974, p. 19), p. 19.
25. "Effects of Nixon Pardon," p. 21.
26. "The Pardon--Questions Persist," p. 18.
27. "President Tells More About Nixon Pardon." U.S. News and World Report. (September 16, 1974, p. 19), p. 19; in *Burdick v. United States*, President Wilson conferred upon Burdick a full pardon for any offense he may have committed in an attempt to compel him to testify. Burdick rejected the pardon, as he felt acceptance of a pardon would imply that he was guilty of crimes which he had not committed. Joyner, p. 17-18, and Kathleen Moore, Pardons: Justice, Mercy and the Public Interest. (New York: Oxford University Press, 1989), p. 194.
28. "Question: In view of public reaction, do you think the Nixon pardon really served to bind up the nation's wound's?
"Answer: Well, I must say that the decision has created more antagonism than I anticipated. But as I look over the long haul... I am still convinced, despite the public opinion so far, that the decision I made was the right one." "President Tells More About Nixon Pardon," p. 19.
29. "Nixon's Crisis--and Ford's," p. 35.
30. "Was Justice Done?" p. 23.

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