

Presidents are neither born nor made; they create themselves as they go on. If this be existentialism, Carter (who no doubt read Sartre at age four) will surely make the most of it. Whatever else he may be, he's not shy or unambitious. In six months or so we'll forget we ever saw Carter as mysterious. But what will we know then

that we don't know now? A few things: Carter will have been savaged by the media, betrayed by one-time political allies, tested by the Russians, and challenged by Congress. One morning he will awake and discover he cannot remember how it was, standing there in the winter light, looking out at the multitudes

awaiting his inaugural speech. He will desperately try to recapture that moment. But four major decisions will have to be made by noon. So he will go downstairs to work. And on that day, whenever it comes—and it will come—we will learn all we ever have to know about Jimmy Carter. □

THE NATION'S PULSE

by
Peter J. Rusthoven



Jerry Ford

On January 20 of this year, James Earl Carter, Jr., repeated the oath adopted some 190 years ago by the Constitutional Convention and took office as the Nation's 39th Chief Executive. Mr. Carter's inauguration was, on any fair appraisal, far from the most inspiring ever witnessed on these shores. Indeed, to judge from all the fluttering in the press, the day's most noteworthy feature was the new President's decision to walk, not ride, in his inaugural parade—a situation which led William Safire to comment, in the *New York Times*, that if Carter's major accomplishment of the day was being a pedestrian, his address certainly partook of that quality as well. But be that as it may, the Carter inaugural also displayed another quality which, no matter how often remarked, remains among the most significant aspects of our constitutional republic—namely, the orderly, dignified, and peaceful transfer of executive authority. And it is to Mr. Carter's credit that his first statement as President was a gracious nod of thanks to the man who, less than two and one-half years ago, assumed office at a time when order, dignity, and peacefulness were less associated with the White House than at any time in memory.

It is already difficult to remember how troubled and disturbed the Nation seemed in August of 1974, when Gerald Ford became President. To be sure, no one has forgotten the Watergate affair, or the first resignation of an American President. But

for most of us, I suspect, it requires a conscious effort to recall in full detail these events of so very recent history. The daily, painful trauma of more than a year's duration—with its unending series of fresh accusations and revelations, of acrimonious exchanges between an aggressive and often less-than-fair press and a defensive and often less-than-honest President—all this has faded, in large measure, from the national consciousness.

That it has done so in such a relatively short period of time is no small tribute to the efforts of Gerald Ford. Without seeking the office, and with little time to prepare for its responsibilities, Ford nevertheless approached his duties with courage, integrity, and no little degree of ability. He did not possess the so-called "charisma" of a John Kennedy, a dubious qualification that fawning political commentators had extolled until they sounded like a collection of stringers for movie magazines. Nor was his the backroom maneuvering and horse-trading savvy of a Lyndon Johnson, whose skill in these areas was so admired for a time by media amateurs who fancied themselves experts in *realpolitik*. Instead, Ford, more than any President since Harry Truman, brought to the Oval Office a deep regard for those simple and basic values on which our civilization and our constitutional republic depend—values such as honesty and decency, self-discipline and individual responsibility, respect for others and for one's self, and all those other attributes which collectively constitute character. In the conduct both of affairs of state and of his own life, Ford daily

demonstrated that regard; and it is not too much to say that conduct of that sort was precisely and preeminently what the nation needed.

Mr. Ford, to be sure, warrants his share of credit in more specific areas as well. The pardon of his predecessor was a courageous, compassionate, and far-sighted act—and will, I believe, be so viewed by the conventional wisdom of a future and, one hopes, less strident era. His program for Vietnam draft evaders and resisters likewise displayed compassion; and unlike the plan pronounced by his successor, justly required those who refused to serve to earn their readmission to the privileges of full citizenship. Persistent vetoes of the sillier legislative offerings of the most adolescent Congress in our history have undoubtedly spared us much future hassle and grief. Ford's responses to Angola and to the Mayaguez affair were the responses one hopes will always be forthcoming from an American President—but were particularly gratifying in this time when so many attempt to use Vietnam as an argument for a posture of perpetual impotence. And some of his appointments—such as Daniel Moynihan at the United Nations—stand unsurpassed.

There are, of course, blemishes on the Ford record. Our interests were, from almost any perspective, little advanced by the Helsinki agreement. Given a choice between retaining Henry Kissinger at State and James Schlesinger at Defense, I believe that a different conclusion was called for. One cannot help but be staggered by the federal deficits of recent

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fiscal years, and wonder if more could not have been done to thwart the blank-check artists on Capitol Hill. Nor, from a purely partisan perspective, can one refrain from speculating that a more effective campaign than Mr. Ford's would have retained the White House for his party.

But whatever the final historical judgment on Gerald Ford may be in these and

other areas, I believe it is enough for the present that we note our gratitude to him for restoring a measure of peace and quiet to our land, a measure of calm to our public affairs, and a full measure of dignity and respect to our highest office. We have witnessed yet again the smooth workings of our constitutional order. For that, Mr. Ford deserves our thanks and our best wishes as

he assumes the venerable and honored role of a respected former President and elder statesman. Considering the events of the last decade, that in itself is an accomplishment: Mr. Carter may consider himself fortunate if, when the time comes, he does as well. □

Herbert W. Stupp

Moving the Mails: The Tortoise Express

*Neither snow nor rain nor gloom of night shall stay these couriers
from their appointed rounds. But consider bureaucratic indolence.*

"Do you know the way to San Jose?"* was Dionne Warwick's dulcet question back in the summer of 1968. But if her question were directed in 1977 to the United States Postal Service—even its *San Jose* office—the answer would have to be no.

Such, in sum, is the plight of California clothing retailer Mel Solomon. Mr. Solomon's shop, Sportique, depends on a mailing list that is regularly serviced to attract about 85% of its business. In handling third-class flyers announcing an annual summer sale, the Postal Service delivered between 8,000 and 10,000 of Mel's mailers too late or not at all. Plotting out prior performances of Sportique's summer sales, Mr. Solomon determined that the bungled postal delivery had lost him well over \$20,000 in profits.

Mr. Solomon's first impulse was to sue the Postal Service for damages, but he was barred from so doing by the provisions for sovereign immunity of the government in the Federal Code. So Mr. Solomon decided on another course of action—bringing suit against the *individuals* he ascertained as responsible for his loss. His attorney, Roger Marzulla, posits that there is no legal impediment to prosecuting individual postal workers for damages arising from their action or inaction. Indeed, there are at least fifteen precedents in American and British law whereby postmasters were held liable for heedless supervision. Most of these cases were brought in the 19th century.

U.S. District Judge Robert Schnocke, upon hearing Marzulla's argument in court, ruled that individuals employed by the federal government did not have unlimited immunity from suit while executing "non-discretionary" duties of their



employment. The case was then transferred to a Judge Harris for trial.

The trial itself was Hollywood stuff. If Messrs. Solomon and Marzulla had staged auditions for the consummate federal bureaucrat to cast as defendant (read: "heavy") for maximum benefit in their crusade, they would have been hard pressed to improve on William Lawrence, the San Jose postmaster and one of nine original defendants in the suit. Mr. Lawrence's arrogance quotient is high, even considering his chosen field. When asked by the Judge why no "delayed mail report" was filed, or why he didn't attempt to isolate the employees responsible for the negligence, Mr. Lawrence replied: "Because, well, employees, your Honor, when it gets down to 'did you,' are not about to admit that they knew that 2,000 pieces were buried under something. So when you ask them, they will deny they were there." The Judge laughed. And asked what his normal procedure would be, were Mr. Solomon to call and complain about tardy delivery of his mailing, Mr. Lawrence countered with: "If Mr. Solomon called me and complained about such a

thing, I would tell him, 'I do not believe you.' Then, I will look into it."

Clever cross-examination by Roger Marzulla enabled the plaintiff to focus his legal attack, after trial evidence pointed toward the negligence being insulated within the San Jose Main Post Office. In his final argument, Marzulla exculpated seven of the defendants of any negligence, leaving the San Jose postmaster and assistant postmaster, William Lawrence and Wilmer Bennett, as the sole respondents to the suit.

After four days, the trial concluded. The Court concurred with virtually *all* of Solomon's legal contentions—that he had lost \$20,000 to \$30,000, that the San Jose post office had failed to deliver promptly some 8,000 pieces (and failed altogether to deliver 2,000)—but nevertheless ruled that postal employees were immune from legal liability. The Judge ruled that individuals who are employed by the Postal Service are part of its organic whole, and are hence not liable to litigation incurred by their work habits, unless negligence can be linked directly to them. When I asked William Lawrence for comment on the decision, he told me smugly, "The Federal judge's ruling is rather complete."

But Solomon and Marzulla remain undaunted. They have filed an appeal in the Ninth District of the Federal Circuit Court of Appeals, and they intend to carry their legal action as far as their resources and jurisprudence will allow them. An organization based in Washington, the Citizens Legal Defense Fund, has begun to aid the appeal,* and has provided \$2,000 thus far. Solomon has spent \$7,000 of his own funds on the suit. A spokesman for the

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*"Do You Know the Way to San Jose?" Written by Hal David and Burt Bacharach. Blue Seas Music, Inc. and Jack Music, publishers. Copyright 1968.

*Donations specified for the Mel Solomon suit are being funneled through the Citizens Legal Defense Fund, 2121 P Street, N.W., Washington, D.C. 20036.