

The Manner of Mr. Nixon's Departure

Part 8/8/74

REPORTS OF Mr. Nixon's decision to resign proliferate. And the belated rush toward impeachment, set off by the President's disclosure of new evidence on Monday, has long since turned into a stampede. Nowhere in any of the sudden ferment, however, is there yet an assurance that either process will produce a result that does justice to the ordeal to which the nation has been put these past two years.

We do not know, of course, what terms may be under negotiation for a prospective resignation by Mr. Nixon, and therefore it is impossible to know whether the conditions of his departure will meet what seems to us to be the minimum requirements and to which we have alluded more than once in this space. These are that a sufficient public record of the reasons for Mr. Nixon's departure be compiled, that it present a compelling case for so extraordinary a step, and that the necessity for this step be accepted by him as well as by a broad and representative majority of the American people. What is alarming, however, is that not even the rush to judgment in Congress, as it is now developing, would insure that these qualifications were met by the processes of impeachment. For what appears to be developing among members of Congress is a kind of Tonkin Gulf mind-set from which could come a resounding but hollow and ultimately dangerous verdict founded upon the simple proposition that the President has committed, and virtually confessed to, a single, identifiable, demonstrable indictable crime—and thus must go.

Even if Mr. Nixon resigns, he will have been propelled into doing so by a sudden, massive defection of hard-core supporters, many of them finding political safety in numbers and clinging fast to a short portion of one presidential transcript which they can claim as evidence sufficiently "clear and convincing" to sustain a charge of obstruction of justice against the President. And to accept this as the sole or even principal basis for removing the President from office, in view of the rest of the case against his conduct of the presidency, would be to destroy the single great benefit the public stands to gain from its ordeal.

We do not mean by this to disparage the difficult decisions made this week by many members of Congress who had previously strongly supported the President. What we mean to do is redirect attention, if we can, to the much more difficult judgments made by a relative handful of Republicans and southern Democrats on the House Judiciary Committee—judgments that went to the heart of the matter so far as we are concerned. We have in mind, among others, Democratic Congressman Walter Flowers of Alabama and Republican Congressman Hamilton Fish of New York whose arguments, reprinted elsewhere on this page today, seem to us to sum up the most important elements in the case for the removal of Mr. Nixon from office. We have also in mind Representatives Thornton, Mann, Railsback, Cohen, McClory, Butler, Hogan and Froehlich, whose votes, together with those of Mr. Fish and Mr. Flowers, gave such significant weight to the margin by which the committee adopted Article II in its resolution of

impeachment. It is this article, in turn, which takes the case against the President beyond obstruction of justice (Article I) and defiance of Congress (Article III) to the abuses of presidential powers which do constitute in our view, the heart of the matter.

This is the article which has to do specifically with what Congressman Danielson aptly called "crimes or offenses against the very structure of the state, against the system of government, the system that has brought to the American people the freedoms and liberties which we so cherish." He went on to say: "This is uniquely a presidential offense, Mr. Chairman, and the most important thing that we have in this hearing." We agree with Mr. Danielson's appraisal. For the fact is that the offenses catalogued in Article II—assorted abuses and misuse of the police and tax powers, and of agencies such as the IRS, the CIA and the FBI—go a very long way toward defining the standards of conduct the people demand of the presidency. To be sure, this is a kind of negative definition, a definition of intolerable conduct which in turn sets a standard of expected behavior. But that is precisely why, however Mr. Nixon departs, there must be some direct and specific acknowledgement of these offenses and of their unacceptability. That is why his departure—whether by resignation or impeachment—must not have as either its price or its consequence a dismissal of these grave charges. This purpose could be largely served by the impeachment proceedings in the House and a full trial in the Senate, and this is one argument for letting the impeachment process play out. But we would not preclude the possibility that the same purpose can be served within the framework of whatever transactions may even now be going forward with respect to a presidential resignation.

As we observed the other day, the President has for all practical purposes pleaded guilty to an obstruction of justice in the Watergate cover-up and it is not unreasonable to contemplate some sort of provision of immunity for him from criminal prosecution in matters of this sort after he leaves office. But the President has plainly refused to acknowledge any guilt concerning these larger abuses of specifically presidential powers, and even were he to do so, these are not necessarily crimes in a sense and of a sort which would figure in a negotiated immunity agreement. So their commission must be acknowledged in some other way. And that way, we would submit, requires more than an acknowledgement by the President, as important as that would be. It also requires continuing and thoroughgoing investigation of the damage done. These were offenses to a system of government that does not belong to Mr. Nixon. And we would add that the documentary material concerning his operation of the government does not belong to him either. One condition President Nixon cannot be allowed to impose as part of the terms by which he would resign without a Senate trial is that the three branches of government, and by extension the American public, conspire on his behalf to perpetuate the cover-up.