

'A Heartbeat Away'

Spiro Agnew Begins Plea Bargaining

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As the Baltimore prosecutors readied their case against Spiro Agnew for presentation to the grand jury, Elliott Richardson found himself in an old-fashioned political squeeze play. Word came to the Attorney General privately from the White House that the Vice President, in a daring effort to avert criminal indictment, was threatening to "go to the House."

That meant, of course, voluntarily setting in motion the impeachment mechanism, making a conscious decision to put his fortunes in the hands not of twelve ordinary citizens of the Republic—the faceless silent majority of forgotten Americans whom he had championed for so long—but of his political peers. The logic for any politician was obvious: it would be infinitely easier to persuade a majority of 435 men and women, who themselves had lived with the coercive influence of

campaign costs, that the allegations against Agnew amounted to little more than their own accommodations to the financial realities of seeking public office.

Beyond that, as Agnew knew, Capitol Hill was the grazing land of politi-

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cal sloths. If you wanted to have anything at all talked to death, or ignored to death, or just consigned to limbo, Congress customarily was the place to take it. By placing his case before the legislators—particularly the Republicans for whom he had campaigned and

raised money in his four years as Vice President—Agnew could hope to buy time, and possibly even exoneration. In the climate of Watergate especially, the Hill was a place of even more milling and hand-wringing than usual, and of less serious and sustained legislating than normal.

The gambit had arithmetic as well as logic in its favor. The House of Representatives impeaches; that is, it acts as the grand jury in the case, considering the allegations and deciding whether the man should be formally charged. If that step is taken, the trial then takes place in the Senate, where a two-thirds majority is required for conviction and removal from office. Another, more pertinent way to put it is this: 34 of the 100 members of the Senate can acquit. In the fall of 1973, there were 43 Republicans in the Senate and, equally significant, many Democrats who for one reason or another might prefer to keep Spiro Agnew in office. Not the

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Least of these reasons would be to continue the Republican embarrassment and avoid building up a new 1976 Republican presidential prospect—as almost any Agnew replacement would have to be regarded.

Even before any impeachment move in the House had been taken, there was widespread speculation that the President would use a vice presidential vacancy to elevate former Democratic Governor of Texas John B. Connally and thus position him to run for President in 1976. Nixon continued to regard Connally, despite a falling out between them that persuaded Connally to leave his ill-defined post as a presidential adviser, with the awe of a schoolboy toward his favorite teacher. A Connally-for-Agnew switch would not set well with many Democrats, nor for that matter with some Republicans who regarded the recently converted Connally with considerable suspicion.

The White House, for its part, was at the outset dead against Agnew's going to the House. "The impeachment track," as this option for the Vice President came to be called, was fraught with ominous parallels for the President himself. If Agnew could be impeached and convicted, then perhaps it would not be so difficult for the now-reluctant congressmen to place Nixon on the same track and ride him out of office.

Also, an Agnew impeachment trial, would raise in unavoidable terms the basic constitutional questions vexing the Watergate-plagued President: Was

impeachment the mandatory first step for a President or Vice President accused of crime, or could he be indicted first in a court of law? Finally, once committed to the impeachment track, Agnew would be much less likely to agree to the swift, surgical solution that the President wanted: his resignation.

Agnew's threat to go to the House so concerned the White House that on Sept. 8, 1973, it asked Richardson to postpone submitting evidence to the grand jury in the hope that with more time the Vice President could be talked out of it. But Justice wanted to keep the heat on Agnew, letting him know that with each passing day indictment drew closer. "We're dealing with power plays on both sides," Richardson told his aides as they considered whether to accede to the White House request.

Although Agnew was the man in trouble, his capacity for making mischief for the President by rallying his constituency against him was prominent in the minds of presidential aides Alexander Haig and Fred Buzhardt. They urged Richardson, if he did go ahead and present Justice's case against Agnew to the grand jury, to do so as unobtrusively as possible. Richardson conferred at length with his aides about the possibility of merely taking depositions from key witnesses and having them ready to submit to the grand jury.

But any kind of postponement troubled the Baltimoreans, and they remained suspicious of the motives of the White House. They continued to argue that sooner or later Agnew would have to resign. "Sooner or later" was not good enough, Richard-

son insisted. Agnew had to be removed as soon as possible.

Richardson, for once, was in step with the current White House thinking. Whatever the President might be saying for public consumption, it was now apparent that he wanted his Vice President out. The White House, despairing that Agnew would ever take the hint, resorted to direct action.

For the second time since the beginning of the investigation, the President's men approached Agnew on September 10 and in no uncertain terms suggested that he vacate the office. As usual, Haig carried the message. He and Buzhardt called on Agnew and his attorney, Judah Best, in the Executive Office Building. Buzhardt, in a scholarly and dispassionate fashion, reviewed the case against Agnew. It was as bleak a prognostication as the Vice President had yet heard.

When Buzhardt concluded, Haig moved in. Abandoning the White House's predilection for circumlocution and subtlety, the keeper of the President's gate let Agnew have it. The Vice President had to resign. It was a simple, straightforward demand, and Haig kept hammering away at it. Finally, Best protested. His client did not have to listen to such a harangue. He suggested that he and the presidential aides leave the room and continue the discussion out of Agnew's hearing. No, Agnew said, *he* would go. He did, leaving Haig and Buzhardt to deal with Best, and giving no indication that he had any intention of following Haig's advice.

The next day, however, Richardson received a call from the White House. Agnew's lawyers wanted to talk, to discuss the "procedural options" open to the Vice President. Although no one suggested that this was plea-bargaining, the Justice team regarded the overture as a possible signal that, for all his proclamations of innocence and his affirmations that he would stand and fight, Agnew might be exploring the chances of a deal. One of Agnew's lawyers, Jay Topkis, also called the attorney general directly.

Richardson gathered his personal aides together, along with Beall and Petersen, to consider what options they would lay out. Richardson listed four considerations that would have to be satisfied in any negotiated settlement. First, he insisted, there must be prompt resolution of the matter—resignation—in the national interest. Second, justice must be done. Third, any agreed solution had to be publicly understandable and perceived by the public as just. Fourth, full disclosure of the facts against Agnew had to be made, preferably as part of the court record, so that the public would have a basis on which to conclude that justice had indeed been done and that the solution was equitable. These four points made it clear that Justice would not

buy the kind of deal the Baltimore team feared Agnew would seek and the White House would support—resignation in return for no prosecution at all. Richardson, too, wanted Agnew out in a hurry, but not at that price.

On Wednesday morning, September 12, after still another planning session, the attorney general, Petersen, and Beall met with three Agnew lawyers for an hour in Richardson's office. "It

was just like preparing for the SALT talks," one of Richardson's men observed later. But in this first meeting it turned out that the cautious Justice team had overprepared. Agnew's lawyers were not pressing hard for anything, merely trying once again to find out where Justice was going and how fast.

Topkis did most of the talking, from

a prepared statement. On the basis of much research, he said, he and his legal colleagues were prepared to advise the Vice President that he was immune to indictment under the Constitution. Richardson said his own legal research was approaching the opposite conclusion. Topkis suggested that they might share research on the point, but Richardson said he didn't have much interest in pooling his knowledge with his adversary on such an important legal question. Agnew's lawyers then asked at least to be heard on the issues, and Richardson said he would be happy to look at any memorandum they cared to prepare. (The memo was never furnished.)

Richardson, after listening to all this, decided it was time to end the fencing. He told Agnew lawyers that the Justice Department under the circumstances was prepared to press for indictment.

That Richardson preferred to make a deal was sensed at once by Agnew's lawyers. Best went back to Agnew and reported that although the Justice Department was prepared to press for an indictment, the time may have come to negotiate. The Vice President, personally torn apart by the investigation, finally agree to have Best explore the possibility. Buzhardt and Haig were notified, and both called Richardson later that day and arranged another meeting for Best with the attorney general.

For all the later protestations, it was clear that Agnew's side, working through the willing White House, was initiating the plea-bargaining. No one was more surprised than the men at the Justice Department who had accepted with chagrin the prospect that Agnew did indeed intend to carry his fight to Congress and the people.

Best wanted to deal directly and only with Richardson. Late on the same day, September 12, the White House conveyed this message to the Attorney General, and Richardson agree to see Best alone, the two men first exchanged pleasantries and banter, then got down to business. Richardson called the lawyer, "Judah," which Best asked him to shorten to "Jud," and Best called the Attorney General "Elliot." Best noticed a framed Latin inscription over the desk of one of Richardson's secretaries that said, "Orchides Forum Trahite Cordes Et Mentis Veniant." "Do you know that that means?" Richardson asked. "Grab them by the balls; the hearts and minds will follow," Best replied. "I see you're a Latinist," Richardson said.

Then Best came out with it. They had, he said, a mutual problem that had to be resolved consistent with the best interests of the Republic. He wanted to make a deal.

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