

Mr. Nixon's Thanksgiving Day Offering

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DID WE DREAM it up over a heavy holiday weekend? Or did President Nixon's lawyers really go into court late last Wednesday, on the eve of Thanksgiving, and announce that there is an inexplicable, 18-minute missing passage in one of the more crucial Watergate tapes? It does not seem possible that this could happen when you consider everything else that has already happened in the matter of the President's tapes:

The formal subpoenas for nine recorded conversations, on behalf of the President's own Special Prosecutor; the losing court fight on the constitutional principle of separation of powers; the attempted compromise in which, it was said, Sen. John Stennis of Mississippi had agreed to verify "every requested" tape; the subsequent firm commitment by the President to comply completely with the court's order to produce the tapes; the sudden revelation that two of the nine tapes were missing; and finally Mr. Nixon's solemn reassurance earlier last week to the Republican governors that at least the surviving seven tapes were intact and "audible" and that there were no more "bombs waiting in the wings" to shred what is left of public trust in the President.

And yet we didn't dream it—the evidence of the newspaper clippings is there. White House Special Counsel J. Fred Buzhardt did in fact tell Federal District Judge John Sirica on Wednesday that there had been this "phenomenon," as he put it—that part of the tape of a June 20, 1972 conversation between the President and his chief of staff, H. R. Haldeman, consisted of nothing more than an "audible tone." As a Thanksgiving Day offering, this would be quite sufficiently shattering. But in our view, the political reaction to it of the Republican governors who had come away from their Tuesday meeting with Nixon in an almost buoyant mood was more disturbing and demoralizing than the actual fact of this latest misadventure with the tapes. For what it tells us is that the President remains more than ever incapable—at least in the way he is now going about it—of recapturing the public confidence he so desperately needs if he is to conduct his office effectively over the next three years.

"He had probably the most representative and sympathetic audience of any group in the country and he just didn't square with us, level with us," said Gov. Dan Evans of Washington.

"I came out of there assured that we've bottomed out and now I'm not sure that we've bottomed out because this revelation does call for some further explanation," said Gov. Winfield Dunn of Tennessee.

Gov. Tom McCall of Oregon, who had said on Tuesday that he and his colleagues had been left with "a sense of relief that the President was leveling," said afterward that he was "sorely perplexed."

Now, these are not men, as far as we know, who wish for anything other than the President's political recovery. They *want* to believe that what he has been saying all through the long months of Watergate about his own innocence of wrong-doing—and about his ignorance of wrong-doing by others, as well—is true. So when their faith is shaken, right on the heels of the fresh sense of

reassurance which has supposedly been generated as a result of the new "Operation Candor" we have been witnessing, it reinforces a point that we have been trying to make in this space for a good many months. The point is that it is not going to be enough for the President simply to protest his innocence—or to pretend that he can afford to leave the final verdict to the courts or to an impeachment process. And neither is it going to be enough for him to treat his current predicament as a public relations exercise—something that can be handled by a show of self-confidence or by a great flurry of activity to prove that he is capable of "governing." The point is that he must deal with the complex facts of the matter in a way which suggests that he has some respect and concern not only for the technical requirements of a court of law but for the practical requirements of public sensibilities. And that is precisely what he is not doing. Leaving aside his handling of the record of the various cases which come under the heading of Watergate—the cover-up, ITT, the milk deal, his personal fi-

nances, the "plumbers" and all the rest—he is demonstrably not doing this even with so seemingly straightforward a question as his compliance with a lawful order of a court to yield up his famous tapes intact.

Instead, what the President has done is to give us yet another indication that, one way or another, this requested evidence has been grossly mishandled. Whether or not the mishandling amounts to actual tampering, we would not profess to know. But even giving the President the best of it, it amounts to gross negligence, if not monumental incompetence, on a level which invites suspicions of the darkest sort at a time when the removal of suspicion ought to be the President's first imperative. What Mr. Nixon is playing fast and loose with, after all, is potential evidence in a criminal proceeding, evidence which he has been commanded by the courts to produce. This evidence was requested by his Special Prosecutor in July and while it is true that the President decided, quite within his rights, to oppose the subpoenas (and a consequent federal court order upholding their legality) on broad constitutional grounds, this course of action in no way relieved him of an obligation to preserve and produce the requested material in the event that the courts ruled against him—as indeed they did. On the contrary, it seems to us he had an obligation from the outset to ascertain immediately whether he actually possessed what the Special Prosecutor was asking for—and what was being fought over in the courts. In fact, it now appears that he did not even take the trouble to discover until the end of September that two of the requested tapes were missing and he did not reveal this information until the end of October. Thereupon, he offered as a substitute for one of the missing tapes a dictabelt recording of his own account of the meeting in question—only to announce later that this too could not be found. Now he is telling us that a big chunk out of one of the seven remaining

tapes is also missing, and while there is no way of telling exactly how important its loss may be, this is the way Special Prosecutor Archibald Cox, in his request to Judge Sirica, explained the possible relevance of the tape covering Mr. Nixon's conversation with Mr. Haldeman on June 20, 1972:

There is every reason to infer that the meeting included discussion of the Watergate incident. The break-in had occurred on June 17—just three days earlier. . . . Early on the morning of June 20, Haldeman, Ehrlichman, Mitchell, Dean and Attorney General Kleindienst met in the White House. This was their first opportunity for full discussion of how to handle the Watergate incident, and Ehrlichman has testified that Watergate was indeed the primary subject of the meeting. . . . From there, Ehrlichman and then Haldeman went to see the President. The inference that they reported on Watergate and may well have received instructions, is almost irresistible. The inference is confirmed by Ehrlichman's public testimony that the discussion with respondent [the President] included both Watergate and government wiretapping. . . . The contemporary evidence of that meeting should show the extent of the knowledge of the illegal activity by the participants or any effort to conceal the truth from the respondent.

With 18 minutes missing from the recording of this meeting, we will now never know whether it was as potentially significant as Mr. Cox believed it to be—just as we will never know what might have been on the two tapes that are missing in their entirety. What we do know, however, is that it has taken Mr. Nixon the better part of four months to reveal to us that evidentiary material lawfully demanded of him by a court of law either never existed or has somehow disappeared. Given the resources at the command of the President and the care with which other urgent presidential business is carried out, to ask us at this stage to believe that this happened by accident—or even out of nothing more than incompetence or indifference—is to put the faith of an abused American public to an excruciating test.