

## Congress: Black Wednesday

The late Speaker of the House of Representatives, Sam Rayburn, used to marvel at "those rolling waves of sentiment" that would occasionally engulf the House, abruptly establishing a solid consensus. Last week even Mister Sam might have been surprised at the swift surge of revulsion that swept both chambers of Congress. It came suddenly on Wednesday, eight days after the release of the presidential transcripts. The turn seemed to come with the gathering flow of mail running as much as 10-1 against the President, the opportunity for enough of the busy Congressmen finally to read through much of the transcripts, and the chain reaction of exchanges among the members in cloak-rooms and over coffee. Whatever the exact process, a critical mass was reached, and with it the concatenation of judgments devastating to Richard Nixon.

In the outpouring of condemnation on Capitol Hill, Democrats could hardly be distinguished from Republicans, newcomers from oldtimers, liberals from conservatives. As if of one mind, the nation's legislators blurted out their reactions: "damaging," "disgusting," "embarrassing," "disgraceful." Observed a House G.O.P. leader: "It sure was a consensus. You just sat on the floor and felt it." Said Ohio Conservative Republican Charles Whalen: "It happened on Wednesday. It all just fell in."

**Moral Squalor.** What appalled Congress was not so much the evidence of particular crimes as the moral squalor revealed in the transcripts. "This is the most nauseating thing I have ever read," declared a hitherto 100% Nixon loyalist, Louis Wyman of New Hampshire, who is not given to overstatement. Said Republican John Ashbrook, a conservative Representative from Ohio: "I listened to the President on television last Monday night, and for the first time in a year I believed him. Then I read the March 21 [1973] transcript, and it was incredible, unbelievable." Complained Massachusetts Republican Congressman Silvio Conte about the transcripts: "I have a better quality of conversation with my staff than they have. I have a hard time reading them. I can't stand it." Declaring that the transcripts "really raise more questions than they answer," Illinois G.O.P. Senator Charles Percy said that neither the courts nor Congress can be "satisfied that this is the whole story and that no further evidence needs to be produced."

Pennsylvania Republican Senator Richard Schweiker, urging the President to resign, said: "I cannot remain silent in the face of the now obvious moral corrosion destroying the presidency." Senator Marlow Cook, a Kentucky Republican, acknowledged that Nixon must "realistically contemplate" resig-

nation, adding: "The President has irretrievably lost any claim to the confidence of the American people."

Most damaging for the President was the defection of some of his key supporters who influence votes. House Minority Leader John Rhodes warned Nixon that if his position continued to deteriorate, he might have to "consider resignation as a possible option." Rhodes spent a full afternoon on the House floor listening to one Republican after another as they all offered variants of "I've had it." Rhodes gave them no argument. Representative John Anderson of Illinois, the third-ranking Republican in the House, took a similar

MICHAEL O'HALLORAN



SENATOR HUGH SCOTT

PAUL CONKLIN



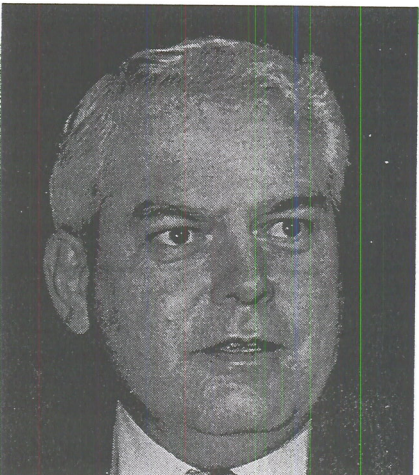
REPRESENTATIVE JOHN RHODES

WALTER BENNETT



SENATOR RICHARD SCHWEIKER

UPI



SENATOR MARLOW COOK

## Acting Roles in A Fellini Script

"This is a grim city," observed Senator Jacob Javits, the New York Republican. Indeed, the reaction to the tape transcripts and the opening of the House Judiciary Committee's impeachment proceedings imposed new standards of crisis measurement in Nixonian Washington. Pressure on the White House built to a new high that seemed intolerable, yet the prospect was for more of the same.

In emergencies, a standard Washington reflex is rumor. One rumor had the President suffering a stroke (disproved by his physical presence). Another had Attorney James St. Clair quitting the White House in disgust (denied by St. Clair, though he did acknowledge "wondering sometimes why I left Boston"). A third depicted Gerald Ford in full defection from the man who made him Vice President (an overstatement, but Ford was zigzagging). Among the more preposterous was the rumor that President and Mrs. Nixon were planning to divorce (a bit of gossip she passed on to her daughter Julie, who later reported amusedly: "She wanted me to help her think up an exciting third person"). Above all, there was the inevitable rumor that President Nixon would soon resign. The White House shouted no at every skeptical ear—Press Secretary Ron Ziegler even phoned the New York Times and fired off a denial—but the reports persisted, echoed and grew louder.

An air of unreality hung over the capital. A Senate staff man said: "You feel as if you are in a Fellini movie. It's in slow motion and it's disjointed." The bureaucracy slackened its pace. The notion that business goes on as usual was an illusion.



position. Claiming that the President had "damaged himself irreparably" by releasing the transcripts, he thought that the "welfare of the nation would be best served if Nixon considered voluntary resignation."

Perhaps the most fateful blow of all was delivered by Senate Minority Leader Hugh Scott of Pennsylvania, who had earlier insisted that the tapes would exonerate Nixon. Last December he had been given only part of the March 21 transcript by White House Chief of Staff Alexander Haig. According to his aides, Scott was "relieved" to be able finally to give his version of the story. Though he still called for "suspension of judgment" on the President's guilt or innocence in impeachment proceedings, he labeled the transcripts "deplorable, disgusting, shabby, immoral"—a description with which Rhodes said he agreed.

Did Scott include the President's performance in that description? He excluded no one, he said pointedly.

Arizona Senator Barry Goldwater is chairman of everybody's imaginary delegation of Republican elders who might some day call on Nixon and tell him to go. Goldwater has steadfastly declined the role, permitting himself some tart comment on Watergate but insisting that Nixon should not quit. Last week he was ominously quiet. In private, his aides said, he is despondent. "He thinks the situation is very, very grave," reported Tony Smith, his press secretary. "For a while he thought that profanity would be the major issue in the transcripts, but now he realizes it's more than that. The issue is: why the hell did Nixon never say, 'My God, you mean to say this was being done in the name of the White House?' We've been hearing for months

with each new revelation that it was the straw that would break the camel's back. But this really is the straw." Added Smith: "People are reading the transcripts. We are now hearing from the bedrock conservatives in Arizona, and they do not like what they are reading. They are telling us: 'We can no longer defend this man.' The only thing that is keeping Nixon alive is the slowness of the U.S. mails."

"Nobody's Perfect." Some of the President's hard-core supporters continued to defend him. Senator Strom Thurmond, Republican of South Carolina, said that he saw nothing in the transcripts that justified impeachment. Virginia G.O.P. Senator William Scott laconically commented on the President's role in the transcripts: "Nobody's perfect." Senator Wallace Bennett, Republican of Utah, criticized presidential crit-

Republican Congresswoman Margaret Heckler of Massachusetts found herself wounded by one phrase in the White House transcripts. "Heckler was great," John Dean had said, referring to an effort to block an investigation of laundered campaign money. Fearing damage in her campaign for re-election, Heckler denied the implication that she had been a White House captive. She hastened to collect television clips of previous statements so that she could prove her independence to her constituents.

Another bit-player in the drama, White House Assistant Leonard Garment, appeared almost happy. In the transcripts, he was shown to be a man who had the right ideas at the right time. In April 1973, as the Watergate cover-up continued to crumble, Garment suggested that Nixon first dismiss H.R. Haldeman and John Ehrlichman, then give a full public explanation of the scandal. But the architects of Nixon's disaster belittled Garment and his proposals. Now, compared with the more influential presidential advisers, Garment seems sensible and prescient. Former Newsman Patrick Buchanan, a White House special consultant who has often ravaged the press, suddenly had some modest praise for journalists. Hearing him, a Washington correspondent insisted, "Pat, it sounds like you are looking for work."

The Council of Women's Republican Clubs was in session during the week. And most members were unhesitating supporters of the beleaguered President. Pat Nixon was given a warm welcome; questions from reporters about the transcripts elicited cold stares. A newsman making a random check found few members who would admit to having read even excerpts of the transcripts. But one woman denounced the impeachment investigation as a "plot to destroy the two-party system." Mrs. Nixon

was reported to have read little if any of the conversations—but Julie and David Eisenhower ordered a full set on the day the papers were released.

At a party, a senior Nixon appointee caught himself in midsentence as he argued Nixon's case. "Why am I defending him?" he asked himself aloud. "I don't care if he is impeached." No such doubts afflicted Father John McLaughlin, a Jesuit who is a Nixon speechwriter. He is also an adroit Nixon apologist. McLaughlin explained Nixon's use of profanity as "a form of emotional drainage. The President is onstage so much that it becomes a form of release, almost therapy." McLaughlin went on television to predict that historians would judge Nixon "the greatest political leader of the last third of this century. He's going to be regarded as the greatest moral leader of the last third of this century." Which prompted AFL-CIO President George Meany, a devout Roman Catholic, to inquire with pointed skepticism about the broad-minded cleric: "I'd like to know where and when he holds confessions."

But Meany, like the rest of Washington, was not really in a joking mood. Decked out in a tuxedo to say goodbye to George Shultz, who was retiring as Secretary of the Treasury, the union chief summed up matters: "The American people have decided that Richard Nixon is not fit to be President."

A few Nixon men attempted to deflate that kind of talk. "Some of this suffocating moral outrage will diminish," said a White House adviser. "Our adversaries can hold that decibel level only for so long."

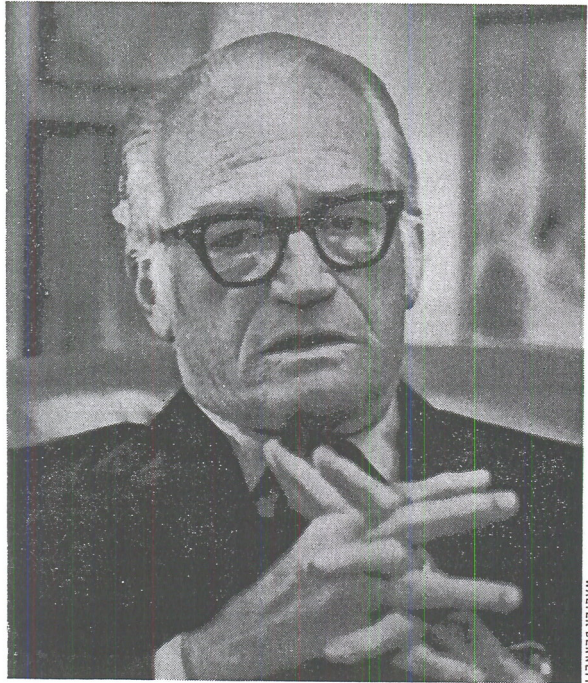
More typical of the Washington mood was the exchange about the President between a veteran newsman and an experienced capital lawyer. "He's Humpty Dumpty," said the reporter, remarking that the Nixon forces will not be able to muster a coherent defense. "No," the lawyer replied in a different metaphor. "He is a bull, maddened and racing ferociously around the arena, unable to shake the *banderillas* that pierce him everywhere. He still snorts and charges, but he is finished."

PAT NIXON GREETING MEMBERS OF THE COUNCIL OF WOMEN'S REPUBLICAN CLUBS



DAVID KENNEDY





ARIZONA SENATOR BARRY GOLDWATER

## THE NATION

ics who called for resignation as being willing to "destroy the system."

But the ranks of even last-ditch Southern supporters were far from solid. Republican Senator John Tower of Texas, a Nixon loyalist, was described by an aide as being in a "state of anguish." While still maintaining that there was insufficient evidence to impeach, the aide admitted: "This thing is closing in on the President pretty hard right now." Said a Southern Senator: "You have to realize that these Southern members of Congress are not going to let their conservative leanings sway them if there is a clear moral issue involved. They are talking about the gutter language indicated in the transcript. They are deeply anguished that such a locker room climate prevailed in the White House, led by the President himself."

Even from a political standpoint, it might not make good sense for Southerners to continue to support Nixon. "Assume, for example," said a Repub-

lican Senate aide, "that the Senate is about to vote on guilt or innocence, and it appears that more than half but less than the required two-thirds are prepared to vote guilty. That would mean he would go back to the White House for another two years, with more than half the Senate convinced he is guilty. He would be a captive of Congress. The Southern conservatives wouldn't like that at all. If they saw it was about to happen, many of them would vote him guilty just to prevent it."

**Head Count.** In contrast to the G.O.P. indignation, the Democrats were taking the latest revelations almost in stride. The wisest of them have recognized all along that in the end, it would have to be Republicans who brought Nixon down. Observed Pennsylvania Congressman William Green: "They said at the White House that the transcripts would prove the President is innocent. They don't. Instead, they incriminate him." Said Georgia Represen-

## "Citizen" Nixon's Legal Problems

As he contemplated the ruination of his presidency last week, the Richard Nixon displayed on the transcripts was surely musing on the legal liabilities he might face whenever he again becomes a private citizen. The range of possible difficulties is formidable. While Special Prosecutor Leon Jaworski was able to persuade a grand jury that it could not indict a sitting President, his arguments do not apply to a former President. And if the President is impeached and convicted, the Constitution explicitly notes that criminal charges can still be brought.

Based on the evidence in the transcripts, many legal experts, including former prosecutors, already see potential charges against Citizen Nixon of obstruction of justice, subornation of perjury, conspiracy, and perhaps misprision of a felony and bribery. Beyond crimes relating to the Watergate cover-up, the President must also consider that criminal allegations could result from some or all of the ongoing investigations into his tax declarations, the ITT affair, the milk fund, the purported sale of ambassadorships, and the Ellsberg psychiatrist break-in. Moreover, there are the lesser specters of disbarment proceedings, endless appearances as a witness in the trials of others, and civil suits by various individuals who were bugged on presidential orders, or even by taxpayers challenging expenditures at San Clemente and Key Biscayne.

By 1977 at the latest, Nixon will have to face those problems, since little will have changed by then, at least in technical legal terms. The statute of limitations will not have expired in any of the major situations confronting him. There are, of course, shifting and un-

knowable factors, including public pressures for or against prosecution. But allowing for the play of those uncertainties, the President must weigh the timing and tactics of resigning now against the alternative of waiting until his term is ended either naturally or by conviction on impeachment charges.

"If I were his lawyer," says Law Professor John Flynn of the University of Utah, "I don't think I would tell him to resign until he had a clear-cut deal to avoid criminal prosecution." Massachusetts Trial Lawyer Richard K. Donahue, a former aide in the Kennedy White House, counsels that "at this point the President would be in a stronger position to bargain than in a month or two from now. You don't make a deal when the jury is out." But making such a deal may present insuperable problems.

One route, Wilbur Mills' proposed congressional act granting Nixon immunity from prosecution in exchange for resignation, seems impossible. Such a law could probably stop both federal and state criminal prosecution, much as federal immunity statutes in general can. But it is scarcely likely that the public would put up with the spectacle of legislators voting to pass a special law that would then have to be signed by its intended beneficiary.

An Agnew-style effort at plea bargaining is also problematic. For one thing, as University of Chicago Law Professor Gerhard Casper wonders, "who would negotiate it? In a sense Nixon would be negotiating with himself. Jaworski is an appointee to the Attorney General, who is in the chain of command to the President." Stanford Criminal Law Professor John Kaplan adds: "As a practical matter, it might very well be that the attempt would ensure an im-

peachment conviction." Some Washington observers believe that the only possibility is an informal assurance by various officials that Nixon would not be pursued. Jaworski is reportedly of a mind not to prosecute in the event of resignation, apparently reflecting what he believes would be the general public relief at having been spared the impeachment trauma. Attorney General William Saxbe would probably not move on his own. And Gerald Ford could, of course, agree to grant a pardon or block prosecution once he is President.

But such an understanding among officials could not be guaranteed to withstand pressure from post-Watergate public opinion, especially with trials of former presidential aides still pending. Beyond that, there is the simple maxim of never confronting today what can be put off until tomorrow. In law, delay is generally thought to favor a defendant. From a pocketbook point of view, that is particularly true for Nixon, since as President he has access to the kind of legal advice that would cost in six figures if he had to seek it privately.

Thus, in the narrowest view, the President has little legal incentive to resign now. But Nixon's perspective must necessarily be broader as he thinks about his problem, since his situation is unique. Going the full route of impeachment and trial in the Senate could well generate further evidence against him, even if he were not convicted. It could also sharpen the public perception of criminal culpability, and thus increase the pressure to pursue him in the courts after he left office. The impeachment ordeal is not one that the public or Congress welcomes, and an early resignation could well produce a kind of amnesty for Nixon, a grateful willingness to put Watergate at last behind the nation and leave history to judge the 37th President.



## WATERGATE/COVER STORIES

## Further Tales from the Transcripts

tative Jack Flynt: "I can understand, after having read them, why he didn't want to release the transcripts." Added Representative John Brademas of Indiana: "There was an extraordinary moral obtuseness on the part of these people. It seems to me—subject to the work of the Judiciary Committee—that there is a clear possibility of criminality by the President. The hush money is the symbol of it."

While most Democrats regarded impeachment or resignation as an inevitability that they were bound to support, Republicans were still anguishing about how to ride the wave that was swamping them. Scarcely a Republican could be found to disagree with a remark last week by Connecticut Senator Lowell Weicker: "I think the party has no obligation whatever to defend the President." But they had not yet agreed on any concerted plan of action, such as going to the President and telling him to step down. Less patient outsiders have wondered why the Republicans have not summoned their courage and marched on the White House to demand the President's resignation. But the Republicans are too sensitive to both the winds of politics and the constitutional separation of powers to take any action that might drastically tip the scales of Government. The most they would do is take a head count on impeachment in both houses and submit their findings to the President. "I don't know what to do," said a top congressional leader. "I pray a lot." He meant it.

"Razor's Edge." But Republicans are generally agreed on what they would like the President to do on his own: resign. As they gathered in anxious huddles last week, as their mail piled up from angry constituents, they recognized that the President's troubles were also their own. The longer he clings to office, the harder it will be for them to win re-election in the fall. "We're on the razor's edge," said a Mid-Atlantic G.O.P. Congressman. "These are the facts of life." In the meantime, many Republicans feared that the President's delaying tactics were only making life more difficult for him. By attempting to drive a wedge between Democrats and Republicans on the Hill, the President's attorney James St. Clair may actually be thrusting them closer together. "I feel he's losing us," said a top-ranking Republican on the Judiciary Committee. "I think he's only trying to save his client. I don't think he gives a damn about the Republican Party."

Republican officeholders, of course, do care about their party—and last week more desperately than ever. For that reason, perhaps above any other practical one, the President's days in office seemed numbered. "Over the weekend, there are going to be some decisions made," said a top Republican congressional leader. "People are going to be thinking about things. I don't know what the decisions will be. I have the monkey on my shoulder, no doubt about it."

**THE PRESIDENT:** The announcement—what I had in mind would be [inaudible] announcement—still to the [inaudible] going to name several other people who were involved . . . [inaudible] because of the people named [inaudible] language used. [Inaudible] some people [inaudible] judgment [inaudible] matter for the President [inaudible] special, I'm going to call him special counsel [inaudible] this case [inaudible] possibility before he walks into that open court [inaudible] can't get to that today [inaudible] meeting with [inaudible]?

**HENRY PETERSEN:** [Inaudible] question. [Inaudible] I told him . . . I would be willing to go [inaudible] . . .

**THE PRESIDENT:** [Inaudible]

That kind of dialogue might be a hit in the theater of the absurd, but it hardly seems the stuff of popular success. Yet even though the White House transcripts of taped presidential conversations are shot through with such passages as that one between the President and the Assistant Attorney General on April 16, 1973, they have become the nation's newest bestseller and biggest conversation piece. With good reason.

To be sure, these 33 hours or so of recorded talks are a minuscule fraction of Richard Nixon's presidential conversations—and, one can only hope, the grubbiest fraction. The transcripts might not necessarily be representative of the way he always conducts business; the lan-

guage and tone may be loftier and more dignified when he confers with, say, Henry Kissinger or other officials. Despite the indecipherable passages and inelegant language, however, the transcripts yield an absorbing insight into the inner workings of Nixon's White House and of the President's mind. Some noteworthy examples follow.

**I: THE MAIN THING IS [INAUDIBLE] AND [UNINTELLIGIBLE]**

The version issued by the Government Printing Office runs to 1,308 pages and contains some 1,700 notations of "unintelligible" or "inaudible." They are not, however, randomly distributed. An extraordinary number occur at crucial points in conversations; a remarkable total, perhaps two-thirds, are gaps in the President's conversation. In a meeting with then White House Counsel John Dean III in the Oval Office on Feb. 28, 1973, for example, the President (P) is discussing how to handle the newly established Senate Select Committee on Presidential Campaign Activities—the Watergate committee.

**P:** Make a deal—that is the point. Baker [Senator Howard Baker], as I said, is going to keep at arm's length and you've got to be very firm with these guys or you may not end up with many things. Now as I said the only back-up position I can possibly see is one of a [inaudible] if Kleindienst [Richard Klein-

NIXON &amp; MITCHELL WITH ROSE GARDEN IN BACKGROUND IN 1971

