

Trial by Leak and Hearsay

By James Reston

WASHINGTON, April 3—The White House is complaining bitterly these days that members of its staff are being smeared by leaks and gossip in the Watergate case, and there is obviously something to the complaint.

It would, of course, be easier to sympathize if the White House had been as concerned with the civil rights of the people who were bugged and burglarized at the Watergate as it is about the civil rights of its own people, but even so, their people are entitled to fair treatment regardless of whether they are fair to their suspicious accusers.

The leaks have been coming either from unidentified members of the Senate Watergate investigating committee, or their aides, or from lawyers appearing before the committee, who are passing on unsubstantiated testimony from James W. McCord Jr., one of the conspirators, who claims his information came from G. Gordon Liddy and E. Howard Hunt, two other men convicted in the Watergate conspiracy.

This is hearsay "evidence" at least three times removed. And yet, by constant repetition, it harms the reputations of some of President Nixon's closest associates because it amounts to the charge that they were in on the Watergate conspiracy and thus broke their oath of office.

WASHINGTON

Twenty years ago around here, this trial by leak and gossip used to be called "McCarthyism" and the word has now gone into most standard dictionaries as meaning, "1. The practice of making public and sensational accusations of disloyalty or corruption, usually with little or no proof or with doubtful evidence...."

The Watergate and the McCarthy episodes were quite different — even McCarthy at his worst never bugged Democratic headquarters — but the headline-hunting still continues in the Senate, and lately the Watergate has been producing its own "public and sensational accusations... usually with little or no proof...."

Senator Sam Ervin of North Carolina, the chairman of the Senate investigating committee, is undoubtedly within his rights to reject Mr. Nixon's definition of "executive privilege" as "executive poppycock" and to insist that members of the White House testify, not on their relations with the President, but on their relations, if any, with the Watergate conspirators.

But if the integrity of the Senate is involved in trying to get the President's aides to talk, it is also involved in trying to get the members of his committee to keep quiet about the gossip they hear in secret testimony until the whole committee has determined that it has enough corroborated evidence to investigate the charges in public. Senator Ervin agrees with the doctrine of Senatorial discretion and restraint, though it is seldom practiced.

In *Greene v. McElroy*, which came out of the McCarthy era, Chief Justice Earl Warren, speaking for a majority of the Supreme Court, insisted that, when action by the Government seriously injures an individual, "the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue.

"While this is important in the case of documentary evidence," the Chief Justice continued, "it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty, or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, jealousy...."

Watergate is not, of course, precisely the same case, for the Ervin committee is trying to get the White House staffers to the Hill to hear the evidence and comment on it; but the principle is the same: that the accused should not be damaged by unsubstantiated evidence, and this is happening now before the facts are in.

This raises hard questions, too, for the American press, which was criticized for years after the McCarthy period for turning over its front pages to his unsubstantiated charges. Once

Senators talk about McCord's testimony, and it is broadcast all over the country, about all the reporters can do is emphasize that the charges are "hearsay," and this has been done.

Nevertheless, as the Watergate case is just beginning on Capitol Hill, there is a problem of fairness and due process, which requires more respect from the White House and the Senate committee than it has been getting.

A crime has been committed and seven men have been convicted of it. The larger question of who instigated and financed the crime has not been established, and this concerns nothing less than the integrity of the American political process.

After all, both the White House and the Ervin committee say they want to get at the facts and restore confidence in the political process, but so far we've not been getting witnesses from the White House to ascertain the facts and we're not getting substantiated evidence but hearsay from the committee.