WXPost JUN 1 1973

LETTERS TO THE EDITOR:

Supports the President

Against a background of relentless and frenzied newspaper stories flagellating and castigating President Nixon and his administration, your account of the recent White House party for the returned POWs puts this whole incredible Watergate business into proper focus. Unswayed by the orgy of reports, leaks, rumors, innuendoes, and smears our brave POWs and their families honored our President that night—as much as he honored them—by their overwhelming display of affection and support for him. These magnificent Americans who understand honor, duty, sacrifice, and love of country as few of the rest of us do know they can trust our President because his words and deeds have been proven by the passage of time and events. I for one join with these great patriots in backing Mr. Nixon and his policies. The President says national security is involved in Watergate, and we will believe him until proven otherwise. If President Nixon is good enough for the POWs and their families he sure as hell is good enough for me.

THEODORE R. BLEDSOE, M.D.
Bethesda.

Another Interpretation

President Nixon's recent statement explaining his role in the Watergate and Ellsberg affairs, that national security considerations mandated surveillance and access to private papers as well as the placing of limits on subsequent investigations of possibly overzealous behavior, will be brushed aside by many as only a self-serving justification of purely political espionage. If this is what it is, it is horrifying enough, but there is another interpretation of the President's explanation. It may be that Mr. Nixon honestly and sincerely believes what he says. Would not this, if so, be still more horrifying?

Let us assume that the President speaks with sincerity. Suppose he really believes that the nation's security against adversaries abroad was severely threatened by the anti-Vietnam demonstrations of recent years; by McGovern's and Muskie's calls for getting out of Indo-China in exchange alone for the return of U.S. prisoners; by those, like Ellsberg, who demanded that the American people be told the full story of the Vietnam intervention; and by the news media which spread the dissent.

If the President believed this, would it not follow that nothing, nothing, not even constitutional rights, should stand in the way of the defeat of a Democratic nominee espousing these dissenting—yes, these treasonous—views?

The steps are very few which would transform Nixon's current application of concern for national security to more widespread policing of dissent in order to protect the country from its "enemies" at home. Will the peace demonstrations of recent years and the publication of the Pentagon Papers be cited by historians as the U.S. equivalents of the Reichstag fire?

Even if the case is simply that paranoia on the one side breeds paranoia on the other would this be any less portentous a national disaster?

PAUL G. DARLING.
Cape Elizabeth, Maine.

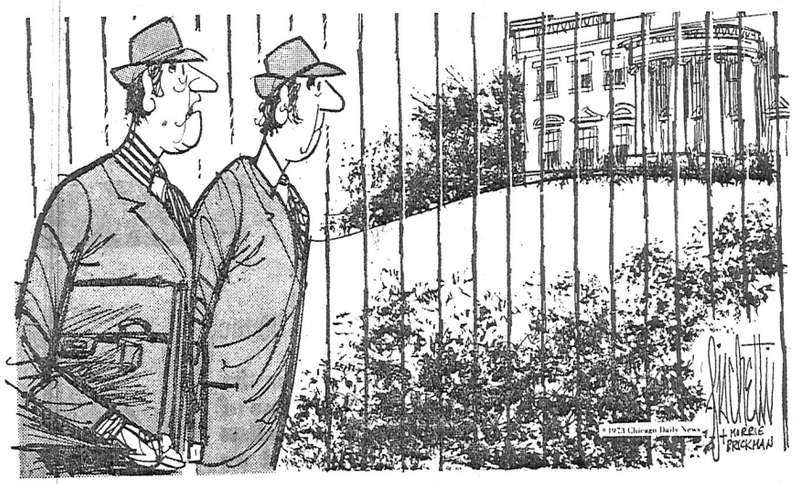
Testimony Tested

In his testimony before the Ervin Committee, Mr. Alch stated, "I surmised in my mind."

Would his testimony have differed had he surmised in some other manner?

JUNE APPLEWHITE.
Washington.

More Comment on Watergate and



"I Hear He Has A Secret Plan To End The Scandals"

Related Issues

"Misleading" Headline

In my opinion your headline, "Nixon, Clemency Tied," in the Thursday, May 24th edition of the 'Post' is highly misleading and irresponsible journalism. You cannot be unaware of the influence of the press and particularly the Washington Post in regard to the Watergate Case. Your headline implies a newly substantiated fact and will leave that impression with thousands who are exposed to this issue of your paper.

This particular headline clearly establishes your bias in this whole proceeding. Where are equal headlines concerning Mr. Nixon's May 22d statement in which he categorically denies any knowledge of an offer of executive clemency to any of the Watergate defendants? Mr. Nixon's statement is based on his firsthand knowledge on the issue of executive clemency. Mr. Caulfield's statements are in his own words, based on assumption and personal opinion. Your headline infers just the opposite.

Based on the testimony made public to date it appears that Messrs. Mitchell, Haldeman, Ehrlichman, Dean and Magruder are at the least, guilty of abusing their position of great power in an effort to manipulate people and events in their interest. In my opinion the Washington Post, with its great power as supported by freedom of the press, is coming dangerously close to committing the same offense.

GERALD R. BENNETT.
Bethesda.

"President Nixon Can Be Made to Appear Before the Grand Jury"

The May 29th edition of The Post carried a story saying that the Watergate prosecutors believe President Nixon should be called before the grand jury, but that they and their superiors feel that the Constitution precludes this. The latter feeling is in accord with a long standing Justice Department policy of objecting whenever a party in a civil suit has sought to make the President a defendant. The Justice Department has continuously taken the position that separation of powers precludes the President from being subject to the jurisdiction of courts. Separation of powers was also cited by the White House when, in response to The Post's story, it said the President would not appear before the grand jury.

As one who has litigated the question of whether the President is subject to the jurisdiction of courts in proper cases, I believe that it is incorrect to think that the President cannot be subpoenaed to appear before the grand jury. They are wrong both as a matter of legal policy and as a matter of legal precedent.

As a matter of legal policy, to say that the President is not subject to the jurisdiction of arms of the judiciary in proper cases is to say that he is above the law. This is particularly the case when the question is whether he can be brought before a grand jury which is investigating illegal activities which he conceivably could have encouraged or even ordered. But separation of powers, upon which the Justice Department has always relied, does not dictate that the President or anyone else is above the law, nor does it dictate that any one branch cannot in any respect be subject to the properly exercised jurisdiction of another branch. On the contrary, each branch is subject to other branches in various ways. For example, the courts are subject to Congress' power to make exceptions to their jurisdiction, the Congress and Executive are subject to having their actions ruled illegal by the courts, the President and judges are subject to impeachment and conviction in Congress, and the President is constitutionally required to obey the duly enacted and signed laws of Congress.

As a matter of legal precedent, it has become more and more clear that the President is subject to the jurisdiction of the judiciary. First, in two recent cases, lower court judges clearly indicated that it might be permissible to make the President a defendant if he were a so-called "necessary party" in a civil case. In a third recent case, Judge June Green of the U.S. District Court in Washington ruled on April 25, 1973 that the President was in fact a necessary party and could be made a defendant in the case.

Second, in the case of Aaron Burr, John Marshall held that a subpoena *duces tecum* can be issued to the President. Marshall pointed out that, unlike the King of England, the President is not a monarch, but, like any citizen, is subject to being called to testify.

Third, a five man majority of the Supreme Court, including the four Justices appointed by Nixon, recently gave a clear indication that the President is subject to being called before a grand jury. In the Caldwell case, where the Court struck down the newsman's privilege, the majority said "the long standing principle that 'the public has a right to every man's evidence', except for those persons protected by a constitutional, common law, or statutory privilege ... (citations omitted), is particularly applicable to grand jury proceedings." The court, in a footnote, then continued this theme, citing Jeremy Bentham for the proposition that even "men of the first rank and consideration" can be brought into courts to testify: men like the Prince of Wales, the Archbishop of Canterbury and the Lord High Chancellor. The Court concluded the footnote by pointing out that in the Burr case, Justice Marshall "opined that in proper circumstances a subpoena could be issued to the President of the United States."

There is one further point to be considered in regard to whether the President could be called before a grand jury. The Constitution provides that "Judgment in Cases of Impeachment shall not extend further than to removal from office ... but the party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law." In other words, the Constitution explicitly indicates that a party can be indicted by a grand jury and tried on criminal charges *after* he is impeached and convicted in Congress. But it does not say whether he can be indicted by a grand jury, or made to testify to one, *before* he is impeached and convicted in Congress. In my judgment, the Constitution does not preclude indictment by a grand jury before there are any impeachment proceedings in Congress and still less does it preclude merely making an impeachable party testify to a grand jury before there are impeachment proceedings.

The phraseology of the above constitutional clauses appears to have been dictated by the framers' desire to ensure that officials could be criminally punished as well as removed from office, but to also ensure that it would not be one and the same tribunal, but different tribunals, which passed on the separate matters of removal from office on the one hand and criminal punishment on the other. Though the framers appear to have been assuming that impeachment and conviction in Congress would antedate criminal proceedings in the normal course of events, they do not appear to have excluded the contrary order of events. In the past, moreover, parties have been indicted and convicted in criminal courts before there were any impeachment proceedings. Judge Kerner's case is the latest example of this, and I have as yet heard no persuasive reason for treating the President differently than judges in this regard. Certainly no such distinction appears in the Constitution itself.

Moreover, even if a President cannot himself be indicted and criminally tried before there are impeachment proceedings, I know of no good reason why he could not at least be made to testify to the grand jury about crimes for which *other* people can be indicted. As I have indicated earlier, separation of powers would not preclude such an appearance before the grand jury, and the principle invoked by the four Nixon justices and Justice White in the Caldwell case would support it: unless there is some applicable privilege (and there is none here), in grand jury proceedings the public has a right to every man's evidence, including the evidence of exalted personages like the President.

Thus, on the basis of legal policy, legal precedent, and constitutional history, President Nixon can be made to appear before the grand jury. The only question is whether the circumstances known to the prosecutors warrant issuing a subpoena to him. If they do, as was indicated in The Post's story, then he should be subpoenaed lest the public believe, as many have in the past, and possibly correctly, that the Department of Justice is simply acting as a political tool whose purpose is not to further justice, but to protect the President.

LAWRENCE R. VELVEL,
Professor of Law
Catholic University Law School
Washington.

No Canned Laughter

Never have I enjoyed watching television more than in the last two weeks, with the spectacle of high human drama interwoven with the finest possible example of the democratic process at work unfolding before my eyes for hours on end, with no rehearsal, no canned laughter, very little commentary (none needed!), and, best of all, almost no commercial interruption! I applaud the networks for their Watergate coverage, and I think it makes good sense for them to rotate that coverage.

To the thousands of irate followers of "Hollywood Squares," "The Guiding Light," and other cultural classics, I would just make this observation (which can be read to them by a literate friend or relative): Your protest is, ultimately, counterproductive, for it is your scale of values that assures the occurence of future Watergates. Thus, you may find "The Dating Game" preempted again in 1984.

GILBERT COUTS.
Washington.

Medical Breakthrough

In his statement of Thursday, May 24th the U. S. Attorney, Mr. Titus, was heard to make a somewhat unusual medical announcement, namely, that of "immunization to prosecution." This will certainly come as a surprise to the medical profession and if true will indeed be known as "the shot that was felt around the world"!

We shall await all further research announcements with great anticipation!

MICHAEL MADELOFF, M.D.
Silver Spring.

Secrecy

President Nixon says that if there were no secrecy, American prisoners of war would still be in Hanoi. Fact is that if there were no secrecy, there would be no war in the first place.

WILLIAM GOLDBERG.
New York.