

## Watergate: Due Process and the President

*"Getting the truth out into the open [Senator Ervin] says, is more important than just jailing people. I could not agree more. Jailing the convicted criminal is only one part of what justice is all about. Justice in its deepest meaning involves: the assurance that we live in a society where the individual is truly free; the confidence that we are ruled by a government of laws, not of men; and the demonstrated proof that innocence and guilt alike are rewarded or punished as they deserve.*

*"There can be no justice without public trust, and there can be no trust without a systematic and thorough airing of the whole truth about affairs that concern us all."*

—Vice President Agnew, June 11, 1973

Had the Vice President stopped right there, with these six sentences excerpted (only moderately out of context) from his speech on Monday, we would have been pleased to see them written in stone. But Mr. Agnew, of course, proceeded to brush aside these and other sensible things he had to say in his address to the Attorneys General in St. Louis, and to join those who would close down the Watergate hearings, silence the news media, and leave it to the courts to determine the "whole truth" about the monumental scandal and corruption that have come to be called "Watergate." "There is no escaping the fact that the hearings have a Perry Masonish impact," Mr. Agnew went on to say. "The indefatigable camera will paint both heroes and villains in lurid and indelible colors before the public's very eyes . . ." Reciting those elements of a judicial proceeding which he finds lacking in the Senate hearings, he argued that what a court can do, "with far greater precision and fairness than any legislative committee, is to establish the central facts of individual culpability—the task that now stands first on the nation's Watergate agenda."

The Vice President is far from alone in the view that the Ervin committee proceedings and the on-going investigative reporting of the multiple facets of Watergate threaten to prejudice the prosecution of those who may be guilty of crimes, while unfairly damaging the innocent. The White House has cried out against a plot to "prosecute a case against the President in the press . . . an unprecedented assault on judicial and administrative due process . . . an [effort] to destroy the President." Secretary of the Interior Morton has opposed the Ervin committee "because there's too big a tendency to try people in a forum that is not designed for that." Sen. William Proxmire, a Democrat with no record of softness for Mr. Nixon, has argued that the President is "being tried, sentenced and executed by rumor and allegation."

Now that is pretty strong stuff and we would not dismiss it out of hand; the smearing of the guiltless is always a danger when scandal almost literally envelops a government; pre-trial publicity is often something of a hinderance to the effective prosecution of criminals. But before concluding that both things are now happening to an intolerable degree it might be wise to consider how much of this hand-wringing over due process of law is pertinent, and how much of it proceeds from an excessive effort to shield the President from the due processes of a political system which also explicitly provides for a free press, for free expression and for the vigorous discharge by Congress of its constitutional responsibilities.

And it might also be wise to consider the quite extraordinary implication of this argument when it is applied on behalf of the President. For what this argument does, in effect, is to relieve the President of the United States of the responsibilities and the risks inherent in his great office. It reduces him to the ranks of an ordinary criminal suspect, for whose protection against a repressive monarch the right of due process was expressly written into the Constitution. That he has such a right as a citizen is not the point. That he should be so endangered by the charges raised against him that he should feel obliged to rely on this right represents, in our view, a retreat on his part and on the part of his defenders which is more genuinely damaging in its way than anything that has been said against him by those who, for one reason or another, wish him ill.

And yet that is the plain implication of an eloquent defense of the President in an editorial from the Times of London, which appears elsewhere on this page today. We are reprinting it, not because we agree with it but because it represents a presumably disinterested view from afar, and because it forcefully expresses the thinking of Mr. Nixon's supporters in this country—so much so that White House propagandists are circulating it approvingly.

"What the President is now receiving is a Washington variant of lynch law," the Times declares, and it rests its case very largely on the publication in this newspaper and in The New York Times of a report that Mr. John Dean had told government prosecutors and Senate investigators that he had discussed aspects of "the Watergate coverup with President Nixon or in the President's presence on at least 35 occasions this year." The Times of London calls this "hanging evidence" of complicity in the obstruction of justice, which, if believed, could "destroy a President." But on the basis of its own reading of Mr. Dean's reliability the Times editorial goes on to argue that it is also "wholly suspect" evidence and the editorial asks: "How can the newspapers defend themselves from the very charge that they are levelling against the President, the charge of making a fair trial impossible, if they now publish evidence so damning and so doubtful with all the weight of authority that their publication gives?"



Well, there are several things to be said in response to that. One is that the American public will now apparently have a chance to see for itself how damning or doubtful Mr. Dean's testimony is, when he gives it publicly before Senator Ervin's committee; his sworn testimony will be subject to challenge by Senators and staff members and subsequent witnesses; perjury would not exactly fit the purpose of a man who is said to be desperately trying to avoid going to jail. As for the weight of newspaper reports, it is as nothing compared with the weight of an American President, capable of commanding all three television networks simultaneously in his own defense. The Times contends that British newspapers would not be allowed to publish material as prejudicial as that now appearing in the American press. But the fact is that what is now being published is no different in essence from the early investigative reporting of Watergate to which the Times graciously and glowingly gives "full credit."

Moreover, as Britain's Guardian has pointed out, while such a press campaign might be more difficult to mount in Britain, it would also be "less necessary." In this regard, we would put this question to the Times: For how long would a British Government remain in office, if it had lied systematically to the press, and by extension to Congress and the public, for 10 months; if it had grossly mislead the public on a critical issue—the nature and extent of its own investigation of alleged corruption in its midst; if two of its principal figures and assorted lesser lights had been forced to resign; if two of its former Cabinet members had been indicted for crimes; if "illegal as well as unethical" conduct had been conceded to have occurred in the campaign that brought it to office; if it had plainly engaged in a massive effort to obstruct justice; if it had approved a broad campaign of admittedly illegal security measures in clear violation of individual rights?

Would the Times of London in such circumstances be talking earnestly about due process for the Prime Minister?

This is the heart of what is wrong about the Times' argument; we are not Britain; we have a different set of checks and balances, which grant a President a fixed, firm term of office while holding him answerable, every day, to the judgment of the people he serves. It is only in this sense that the President is "on trial" before the Ervin committee or in the press. And it is for this reason that the Watergate crisis, which is in a very real sense a crisis of confidence in government, cannot await the determination, on narrow legal grounds, of criminal guilt or innocence. As the Vice President himself acknowledged, "a judicial trial sometimes falls well short of airing all the circumstances and ramifications surrounding a crime of controversy."

It is an authentic tragedy that we should have arrived at a point where it is not easy for the Congress or the press to exercise their rights and responsibilities without the risk of prejudicial, pre-trial publicity potentially injurious to the President. But it was not the press nor Congress which brought us to this sorry state. And we will not rise from it by suspending the due processes of the American political system for the sake of affording due process of law to the President. We are dealing here, not with specific isolated crimes, but with a whole style and manner and method of governing. We are dealing, in the end, with the President's capacity to govern, which derives, in turn, from public trust. And the Vice President is right: *There can be no trust without a systematic and thorough airing of the whole truth about affairs that concern us all.*