WXPost

The 'Leak' Issue (Cont.)

JUN 2 6 1974

TODAY WE RETURN to the subject of the pressures on the House Judiciary Committee—and specifically to the issues that are raised by what are called "leaks" to the media. To some extent, of course, the problem has subsided owing to the simple fact that the committee is for the time being operating in open public sessions, and concerning itself with procedural matters. Nevertheless, the questions that have been raised go beyond the events that occurred in the past few weeks, and it is also likely that should the House committee go back into executive session the situation that was causing so much anguish last week will recur.

So even though things are temporarily quiet, it is worth coming back to this problem, which can be stated in a number of ways. The way that comes most readily to mind is the White House allegation, echoed by the President's supporters in Congress, that what we are witnessing is a malicious and calculated campaign on the part of the President's "enemies" among the Democrats and the "media" to destroy his reputation by means of anonymous, unsubstantiated charges to which he is powerless to respond. Sometimes the people who see the problem this way use the term "McCarthyite." While we would reject the implication that anything even vaguely reminiscent of the late senator's rampage has been going on, we would certainly acknowledge that the particular process of releasing and printing certain incomplete, "blind" and one-sided material has its danger and its potential for unfairly damaging its subjects. Complicated questions of law come into the matter when the material involved is considered by the government to be "classified" (which is to say, not for general dissemination to the public), although here again we would argue that quite different and more stringent restraints and responsibilities apply to those who release such information than to those who receive and publish it. The principal obligation to keep government secrets, in our view, rests with those who create them. The principal obligation to ensure that "leaked" information is not used unfairly or irresponsibly rests with the press. We would not be foolish enough to deny that from time to time the press has failed to meet this obligation, just as it cannot be denied that from time to time both the President's supporters and his detractors have misled and misused the press.

To view all this as the main issue, however, is either inadvertently or deliberately to divert attention from the central problem. That problem is how the difficult and unfamiliar process of impeachment can be relieved of some of the pressures now working against it and advanced in a way that is both expeditious and judicious and that does not leave a vitally concerned public wholly in the dark. Here one encounters some genuine complications and confusions. The complications have principally to do with the innocent bystander aspect and also with the claims of concurrent criminal trials. That these matters can be resolved with a little patience and good will seems to us demonstrable: yesterday the committee decided to make public its own transcripts of the White House tapes it has received, together with some staff studies and other material, but only after the chairman and ranking Republican member have removed references to third parties which they think might be harmful; the committee also, apparently, will withhold publication of this material until after the empanelling and sequestering of a jury in the pending "plumbers" trial.

This leaves a number of difficult procedural questions to be resolved such as the manner in which witnesses may be called, the role of Mr. St. Clair in cross-examination, and whether subsequent sessions will be open to the public. It cannot, therefore, be guaranteed, no matter how the committee decides to proceed, that there will be no more damaging "leaks" or other abuses of the process. If this is the case, there will doubtless be further outcries from the White House that the President is being denied due process and all the other rights and privileges owing a defendant in a criminal case. And here we reach the principal confusion that is being rather carefully cultivated by the White House—namely, that an impeachment proceeding is on all fours with a criminal trial. If this were true, after all, Mr. Nixon would not be withholding evidence sought by the "prosecution," or simply announcing that he did not mean to honor the Judiciary Committee's subpoenas. He would not, in short, be making abundant use of all of the powers and prerogatives of his office to thwart the will of the investigators and to place before the committee and the public his own highly selective version of the evidence. He would not be arguing his case on free television time, coast to coast, and neither would he be entertaining the members of the "jury"—which is to say members of Congress—on evening cruises aboard the presidential yacht.

The point is the President cannot have it both ways: either this is a criminal trial, or it is a very special, even unique public inquiry into alleged abuses of the public trust. And since that is obviously what it is—a broad inquiry into his conduct of his office, whose sole purpose at this stage is to determine whether there is sufficient evidence to warrant formal charges that would be tried by the Senate—it is entirely misleading to demand, or even to expect, that irrelevant and inappropriate rules of court procedure will obtain. This principal figures on the committee in both parties have performed prudently and responsibly—more so, we would submit, than the President's White House spokesmen. And it seems to us pointless and self-defeating to impose upon them — or for them to impose upon themselves — a set of procedures and restraints that have nothing to do with the particular proceeding for which they are responsible. To the extent that the committee members themselves perceive their role for what it genuinely and legitimately is they will begin to alleviate some of the worst pressures that are afflicting them.