

Leaks: A Fact of Life

Few Expect Release of Watergate Data to End Long-Accepted Device

By CLIFTON DANIEL

Special to The New York Times

WASHINGTON, June 28—Two of the biggest leaks in Washington are about to dry up.

The Senate's special Watergate committee, which for more than a year has been a fountainhead of information—public and private—about the nation's No. 1 political scandal, is going out of business this weekend.

The House Judiciary Committee, which, as a consequence of the Watergate disclosures, has been considering the impeachment of President Nixon, plans to make public nearly all of the 7,800 pages of evidence it has received.

Once the evidence is published, there will be little left for the committees to leak. But almost nobody around here expects leaking from other sources to stop, and there are more than a few who think that is a good thing.

Those who are in favor of leaking do not include, for the time being, President Nixon's White House staff. They call it "character assassination" and "trial by innuendo," because most of it is damaging to the President. They say, as Vice President Ford did recently, that the leaking is done by pro-impeachment forces.

Those on the other side hold, with James Reston, of The New York Times, that "the leak is the safety valve of democracy," and without it the country would get only Government-controlled news.

Newsmen in Washington are surprised to learn from their mail that some readers and listeners apparently do not object to controlled news. They are suspicious of leaked information and want the leaks to stop.

Problem for the Press

In that sense, leaks have become a problem for the press as well as the Government, as a number of editorial writers and columnists have recognized.

It is Watergate that has made news leaks a current public issue. There have always been leaks in Washington, but their character seems to have changed lately.

It used to be that the Administration did a lot of leaking, and the leaks usually concerned policies rather than people. Veteran correspondents can recall leaks by the dozen, and can often identify the leakers as high Government officials.

The Nixon Administration leaks like everybody else—to promote its policies, to put across ideas without taking responsibility for them, to discredit its enemies.

Secretary of State Kissinger, who recently complained of a campaign of leaks and innuendoes against him, "has selectively leaked confidential documents to trusted journalists," according to Eric Sevareid in a commentary on C.B.S. Television.

Proposals for Leaks

Testimony before the Watergate committee, memorandums from Presidential aides and transcripts of White House conversations are replete with proposals for leaking news and planting stories in newspapers and on the networks.

Charles W. Colson, former special counsel to President Nixon, after pleading guilty to a charge of obstructing justice, stated, "The President on numerous occasions urged me to disseminate damaging information about Daniel Ellsberg."

Disseminating damaging information about Mr. Nixon, however, is characterized by Patrick J. Buchanan, special consultant to the President, as "nameless, faceless character assassination."

Mr. Buchanan and other White House aids have lately been waging a concerted campaign to stop what they call the President from the Judiciary "selective" leaks about the Committee and to discredit them.

They seem to have had some success. Carl Bernstein and Bob Woodward of The Washington Post, who have been touring the country to promote their Watergate book, "All the President's Men," reported from San Francisco recently that they had felt "a backlash."

White House Response Cited

"The one constant response of the White House to Watergate," Mr. Bernstein said, "has been to make the conduct of the press the issue, rather than the conduct of the President and his men."

What are these leaks the White House complains about?

By Washington's definition, a leak is an unauthorized disclosure of confidential official information, usually by an unidentified "source."

Seymour M. Hersh of The New York Times, who won a Pulitzer Prize for exposing the My Lai massacre, considers the word "leak" a pejorative term. "A better word," he said the other day, "would be 'tip'."

A leak alone, Mr. Hersh explained, is usually not enough to make a story. It has to be investigated, confirmed and supported by other evidence that may take weeks to get. Or a reporter may work for months on a story and be unable to confirm it until he gets that one, final, all important tip.

"It's more a process of extraction," said Bob Woodward, whose work on Watergate with Carl Bernstein won a Pulitzer Prize for The Washington Post.

'No David Ellsberg'

"In Watergate," Mr. Woodward remarked, "there was no Daniel Ellsberg who just wheeled in a shopping cart full of documents"—an allusion to Dr. Ellsberg's statement that he supplied the Pentagon papers to the press.

Who leaks?

"Almost everybody," says James M. Naughton, who covers the impeachment inquiry for The New York Times—Senators and Representatives, Congressional staff members, lawyers, Government officials, military men, law enforcement officers, secretaries, bookkeepers, press spokesmen.

Why do they leak?

For a variety of motives, often obscure. They leak because they see crimes being committed, and want to see justice done. They leak to promote policies and people they favor, and defeat those they oppose. They leak to pay off grudges.

They leak to help a friend who is a newsmen, or to curry favor with the press. They leak to show off how much they know. But the basic reason, according to Bob Woodward, is that "people like to think of themselves as truth-tellers."

Why Anonymity

Why are leakers usually anonymous?

Generally, because they might be subject to punishment or censure if their identities were known. Some are Government employes who might be dismissed for leaking. Some are lawyers who could be cited for contempt of court.

Why do newsmen accept leaks from anonymous sources?

Because that is often the only way they can get information they think the public is entitled to have. Besides, they are in a competitive business; if they do not act on leaks, their competitors will, and once it is on the evening news the world knows it.

Investigative reporters and their editors emphasize, however, that a leak is almost never accepted from a single source, and the subject of the leak is routinely given an opportunity to refute it before publication. Many a good story has been ruined by a convincing denial.

Isn't it illegal to leak official information or accept it?

Broadly speaking, it is not. The Federal Atomic Energy Act specifies that some kinds of information must not be disclosed. Employees of intelligence agencies are sworn to secrecy when hired. Otherwise, national security information is classified as to secrecy on the basis of Executive Order 11652 issued by President Nixon in 1972.

No Legal Force

This order does not have the force of law. However, six proposals for a classification law are now pending in Congress. Some leakers, meanwhile, can be dealt with by administrative or judicial action. For example, grand jurors and lawyers can be punished for disclosing grand jury proceedings.

The House Judiciary Committee has a secrecy role for its impeachment proceedings, but no penalties provided and anyone who felt like leaking did so.

Supplying national security information to a foreign power is punishable under the Espionage Act, and Daniel Ellsberg was tried under that act in the Pentagon paper case. The case never got to the jury because a mistrial was declared.

The Federal Government tried to prevent The New York Times and the Washington Post from publishing the Pentagon papers, a secret Government study of the Vietnam war. However, the Supreme Court in 1971 ruled 6 to 3 in favor of the newspapers.

After the Pentagon papers case, a special investigative unit—later called “the plumbers”—was set up in the White House to prevent leaks. It was thoroughly discredited by its subsequent activities, which led eventually to the break in at the headquarters of the Democratic National Committee at the Watergate, on June 17, 1972.

‘The National Interest’

Recently, Senator Barry Goldwater declared that it would be “in the national interest” to prosecute The Washington Post for publishing confidential memorandums of the Federal Bureau of Investigation. But he did not suggest under what law action could be taken.

In general, the courts have held that newspapers cannot be prevented from publishing leaked information, but newsmen have been imprisoned for later refusing to disclose their sources when called before grand juries.

Isn't leaking immoral, if not illegal?

The Rev. John McLaughlin, a Jesuit priest who is an assistant to President Nixon, has condemned it. Another Jesuit, Representative Robert F. Drinan, a Massachusetts Democrat who is a critic of the President has said, “There is nothing immoral or illegal on the part of anyone who leaks.” Nevertheless, leaking trou-

bles the conscience of some newsmen, as it troubles lawyers and judges who are concerned about the principles of judicial fairness.

Just this week, lawyers for H. R. Haldeman, President Nixon's former chief of staff, were arguing in Federal Court that he could not get a fair trial in the Watergate cover-up case because of “massive prejudicial pretrial publicity.”

Question of Fairness

“The basic question posed by the leaks is one of fairness,” The New York Times said in an editorial on June 20.

On June 21, The Washington Post said “that this business of leaking to the press is, as we

have noted, an ancient custom; that no one and no political party has a monopoly on it; that it often unfairly wrongs innocent people; and that in this last respect it raises some serious questions well worth serious discussion.”

“The principal obligation to keep government secrets,” The Post added the next day, “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.”

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