

MASTER

"HOW FREE IS THE PRESS OF THE UNITED STATES?"

ADDRESS OF

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CHAIRMAN OF THE BOARD

THE WASHINGTON POST COMPANY

TO

THE CANADIAN CLUB OF TORONTO

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IT IS A GENUINE HONOR TO APPEAR BEFORE THIS DISTINGUISHED AUDIENCE, AND IT IS ALSO A PLEASURE FOR ME TO VISIT THIS BEAUTIFUL CITY. WHILE CANADIANS KNOW A GREAT DEAL ABOUT THE UNITED STATES -- NOT ALL OF IT FAVORABLE -- I'M AFRAID MOST AMERICANS KNOW FAR TOO LITTLE ABOUT CANADA.

TO OTHERS, CANADA IS THE PLACE WHICH LETS AN AMERICAN HOCKEY TEAM BORROW THE STANLEY CUP ONCE EVERY FIVE YEARS OR SO AND IS NOW EVEN PIRATING OUR CHERISHED PROFESSIONAL FOOTBALL PLAYERS WITH ENTICEMENTS BEYOND THE DREAMS OF AVARICE.

OF COURSE SOME AMERICANS MAY KNOW THAT THE BORDER BETWEEN OUR TWO COUNTRIES IS THE WORLD'S LONGEST UNDEFENDED BORDER. BUT SURELY FEW ARE AWARE THAT TRADE BETWEEN THE UNITED STATES AND CANADA -- NOW RUNNING AT THE RATE OF MORE THAN \$40 BILLION A YEAR -- IS SUBSTANTIALLY MORE THAN BETWEEN ANY TWO NATIONS ON EARTH.

MY CANADIAN FRIENDS TELL ME THAT CANADIANS, BY CONTRAST, ARE COMPULSIVE U.S. WATCHERS . . . THAT U.S. WATCHING IS AN ALMOST UNIVERSAL PASTIME HERE . . . AND THAT EVERYONE HAS HIS OWN PRIVATE BUT VERY FIRM VIEW OF WHAT'S WRONG WITH THE UNITED STATES AND WHAT WE OUGHT TO DO ABOUT IT.

SUCH INTEREST IS NOT SURPRISING, I SUPPOSE, WHEN ONE REALIZES THAT 75 PER CENT OF THE PEOPLE OF CANADA LIVE WITHIN 100 MILES OF THE AMERICAN BORDER. PRIME MINISTER TRUDEAU IS QUOTED AS SAYING RECENTLY, "WE ARE FRIENDS, AND FRIENDS CARE ABOUT EACH OTHER'S PROBLEMS." IF THAT IS TRUE AND IF YOU ARE REALLY SO CONCERNED ABOUT OUR PROBLEMS, YOU'LL HAVE TO ADMIT THAT WE'RE GIVING YOU PLENTY TO BE CONCERNED ABOUT. BUT I SHUDDER A BIT TO THINK WHAT SORT OF IMPRESSION U.S. WATCHERS MUST HAVE OF OUR COUNTRY IN THIS TIME OF NATIONAL CRISIS. IT IS AN IRONY THAT TORONTO, WHICH IS, I UNDERSTAND, ONE OF THE FEW SUCCESSFULLY-RUN CITIES, LIES A STONE'S THROW AWAY FROM ONE OF OUR MOST PROBLEM-RIDDEN CITIES, DETROIT.

THE GOVERNMENTAL CRISIS WE ARE GOING THROUGH IS ONE THAT'S PECULIAR TO THE AMERICAN SYSTEM -- A CRISIS THAT SIMPLY COULDN'T HAVE CONTINUED TO DRAG ON IN CANADA, OR FOR THAT MATTER IN BRITAIN. OUR TWO COUNTRIES OPERATE UNDER TWO VERY DIFFERENT FORMS OF DEMOCRATIC GOVERNMENT. YOUR PARLIAMENTARY SYSTEM, LIKE THE BRITISH SYSTEM, HAS SEVERAL MECHANISMS WHICH WE LACK THROUGH WHICH THE GOVERNMENT CAN BE CALLED TO ACCOUNT.

THERE IS THE QUESTION TIME IN THE COMMONS. THERE IS THE LONG TRADITION OF OFFICIAL INQUIRIES WHICH HAVE AT LEAST A REASONABLE CHANCE OF PRODUCING A SERIOUS RESULT. AND ABOVE ALL ELSE, YOUR GOVERNMENT CAN BE DISSOLVED OR FORCED TO RESIGN AT ANY TIME. THE RESULT IS THAT ISSUES OF COMPELLING FORCE CAN BE TAKEN TO THE PEOPLE AT ONCE, AFTER A CAMPAIGN WHICH SEEMS TO AMERICANS ADMIRABLY INEXPENSIVE AND SHORT.

[REDACTED]

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AS WE IN WASHINGTON WATCH THE WATERGATE SCANDALS DRAG ON, UNRESOLVED, IT IS TEMPTING TO IMAGINE THE EFFECT THAT WOULD HAVE BEEN PRODUCED BY SIMILAR OFFICIALS' CRIMES AND ABUSES HERE.

WE IMAGINE HOW QUICKLY A GOVERNMENT WOULD HAVE BEEN TURNED OUT IF IT HAD ENGAGED IN "OTTAWA HORRORS" A FRACTION AS BAD AS THE SO-CALLED "WHITE HOUSE HORRORS" WHICH THE NIXON ADMINISTRATION TRIED TO SUPPRESS.

WE WONDER HOW LONG A CANADIAN GOVERNMENT WOULD HAVE SURVIVED THE REVELATION THAT THE PRIME MINISTER'S OFFICE HAD BEEN SECRETLY EQUIPPED WITH "VOICE ACTIVATED RECORDING DEVICES" -- SECRET MICROPHONES WHICH START RECORDING AS SOON AS SOMEONE BEGINS SPEAKING.

WE WONDER WHAT WOULD HAVE HAPPENED HERE IF THE PRIME MINISTER HAD APPROVED A SECRET SURVEILLANCE PLAN, CALLING FOR ILLEGAL BURGLARY AND WIRETAPPING OF INDIVIDUAL CITIZENS. AND IF, WHEN THAT PLAN WAS FRUSTRATED BY THE ROYAL CANADIAN POLICE'S REFUSAL TO COOPERATE, HE HAD SET UP A PRIVATE POLICE FORCE TO CONDUCT SUCH OPERATIONS ANYWAY.

WHAT WOULD HAVE HAPPENED IF THE CANADIAN GOVERNMENT HAD CONCEDED THAT ILLEGAL AND UNETHICAL ACTIVITIES HAD TAKEN PLACE DURING ITS LAST POLITICAL CAMPAIGN. WHAT IF SOME CAMPAIGN AIDES AND PARTY OFFICIALS HAD IN FACT PLEADED GUILTY TO ILLEGAL ACTS, AND OTHER FORMER MINISTERS AND TOP ADVISERS HAD BEEN INDICTED FOR SUCH CRIMES AS BRIBERY, PERJURY, AND OBSTRUCTION OF JUSTICE -- AND STILL OTHERS HAD BEEN FORCED TO RESIGN UNDER A CLOUD?

WHAT WOULD HAVE HAPPENED IF SUBPOENAED EVIDENCE IN A CRIMINAL CASE -- EVIDENCE THAT WAS IN THE CUSTODY OF THE PRIME MINISTER -- TURNED OUT TO HAVE BEEN TAMPERED WITH?

OR IF THE PRIME MINISTER HAD REFUSED TO TAKE ANY QUESTIONS ON THE SCANDALS IN THE COMMONS FOR TEN MONTHS, WHILE HIS OFFICIAL SPOKESMEN SYSTEMATICALLY DECEIVED THE PUBLIC -- AND THEN CONCEDED ALL HIS PREVIOUS STATEMENTS TO HAVE BEEN -- "INOPERATIVE"?

SUCH ABUSES MIGHT BE UNTHINKABLE HERE, BUT THAT IS NOT THE POINT. MY POINT IS THAT, UNDER YOUR SYSTEM, SUCH AN AFFAIR WOULD NOT HAVE BEEN ALLOWED TO FESTER SO LONG WITH SUCH SEVERE EFFECTS ON NATIONAL MORALE AND THE CONDUCT OF GOVERNMENT. HOWEVER QUALIFIED YOUR FAITH IN PARLIAMENT MIGHT BE, I THINK YOU WILL ACKNOWLEDGE THAT AT SOME POINT A GOVERNMENT WHICH ENGAGED IN SUCH PRACTICES WOULD HAVE BEEN CALLED TO ACCOUNT AND PROBABLY TURNED OUT. CERTAINLY A CANADIAN GOVERNMENT WOULD NOT BE PERMITTED TO CONTINUE TO RELY ON A YEAR-OLD ELECTORAL MANDATE INDEFINITELY ^{raw} WHEN SUCH A TRAIN OF ABUSES HAD BEEN REVEALED, AND PUBLIC CONFIDENCE HAD PLUNGED TO 27 PERCENT.

YOU HAVE QUICK AND CONCLUSIVE WAYS TO EXPOSE AND DEAL WITH THE SINS AND ERRORS OF MINISTERS. THE BURDEN OF INQUIRY DOES NOT FALL SO HEAVILY ON THE PRESS, AND AN APPEAL TO THE ELECTORATE CAN ALWAYS BE MADE AT ONCE IF THE OUTRAGE OR LOSS OF CONFIDENCE IS GREAT ENOUGH.

UNDER OUR SYSTEM THAT IS NOT THE CASE. THE FRAMERS OF OUR CONSTITUTION WERE, IN THE TERMS OF THEIR TIME, REPUBLICANS, NOT DEMOCRATS. FOR ALL THEIR FAITH IN POPULAR ENLIGHTENMENT AND THE ULTIMATE RIGHTNESS OF PUBLIC OPINION, THEY ALSO SOUGHT TO TEMPER THE QUIRKS AND PASSIONS OF THE MOB. EXPRESSION MUST BE FREE AND THE PRESS MUST BE UNRESTRAINED --

BUT POWER IS ENTRUSTED TO OFFICIALS FOR FIXED TERMS, SO THAT THEIR CONDUCT WILL BE GOVERNED, AS ^{ALEXANDER}HAMILTON WROTE, BY "THE DELIBERATE SENSE OF THE COMMUNITY" WITHOUT "UNQUALIFIED COMPLAISANCE TO EVERY SUDDEN BREEZE OF PASSION, OR TO EVERY TRANSIENT IMPULSE."

IN THE CASE OF THE PRESIDENT, A FOUR-YEAR TERM WAS SETTLED ON QUITE CAREFULLY FOR REASONS WHICH NOW SOUND A LITTLE QUIET. THAT LONG A LICENSE, HAMILTON ARGUED, "WILL CONTRIBUTE TO THE FIRMLINESS OF THE EXECUTIVE IN A SUFFICIENT DEGREE . . . (BUT) IT IS NOT ENOUGH TO JUSTIFY ANY ALARM FOR THE PUBLIC LIBERTY."

OF COURSE THE FOUNDING FATHERS DID PROVIDE FOR THE REMOVAL OF THE PRESIDENT, OTHER MINISTERS AND JUDGES, BY IMPEACHMENT AND CONVICTION, A DEVICE BORROWED FROM ENGLISH PRECEDENTS. BUT THAT WAS CLEARLY MEANT AS A DRASTIC COURSE, TO BE PURSUED ONLY WHEN THE OFFENSE -- OR THE INTRACTABILITY -- WAS SO GREAT THAT THE NORMAL DISCIPLINE OF SUSTAINED PUBLIC DISAFFECTION DID NOT WORK.

WHEN YOU REFLECT ON THIS, AS MANY AMERICANS HAVE BEEN DOING RECENTLY, IT IS REALLY AN EXTRAORDINARY WAY TO OPERATE. THE PREMIUM PLACED ON PUBLIC ENLIGHTENMENT IS VAST, BECAUSE THE GUIDING AND CONTROLLING FORCE -- THE CONSENT OF THE GOVERNED -- IS NOT SIMPLY A VERDICT

TO BE RENDERED EVERY FOUR YEARS IN THE VOTING BOOTH, NOR IS IT THE
CONSENSUS OF A POWERFUL AND PRIVILEGED FEW. IT IS A FORCE AND SENTIMENT
CONTINUALLY AT PLAY, EMERGING SOMEHOW FROM THE NOISE AND COMPETITION
OF FREE DISCOURSE AND DEBATE, PROTECTED BY THE FIRST AMENDMENT —
AND FOSTERED BY A FREE AND INDEPENDENT PRESS.

LORD BRYCE, THAT SAGE OBSERVER OF THE AMERICAN SCENE,
REMARKED ON THIS PHENOMENON IN THE AMERICAN COMMONWEALTH.

"THAT WHICH . . . WE MAY CALL THE GENIUS OF UNIVERSAL PUBLICITY,"
HE WROTE, "HAS SOME DISAGREEABLE RESULTS, BUT THE WHOLESOME ONES
ARE GREATER AND MORE NUMEROUS NO SERIOUS EVILS, NO RANKLING SORES
ON THE BODY POLITIC, CAN REMAIN LONG CONCEALED, AND WHEN DISCLOSED,
IS HALF DESTROYED."

LORD BRYCE DID NOTE THAT THIS IS AN INEFFICIENT SCHEME.
PUBLIC OPINION IN AMERICA, HE SAID, "IS SLOW AND CLUMSY IN DEALING
WITH LARGE PROBLEMS VITAL DECISIONS HAVE USUALLY HUNG FIRE
LONGER THAN THEY WOULD HAVE BEEN LIKELY TO DO IN EUROPEAN COUNTRIES."

THIS IS DOUBLY TRUE TODAY. LORD BRYCE DID NOT ANTICIPATE,
ANY MORE THAN THE FOUNDING FATHERS COULD, HOW THE AMERICAN EXECUTIVE
BRANCH WOULD ACQUIRE SUCH ABILITY TO DOMINATE ALL THE CHANNELS OF EXPRESS:

THEY DID NOT FORESEE THE EMERGENCE OF THE NATIONAL SECURITY STATE, CLOAKED IN SUCH SECRECY THAT GRAVE ABUSES OF POWER COULD BE CONCEALED FOR YEARS.

EVEN HAMILTON, WITH HIS FAITH IN A FIRM EXECUTIVE, COULD NOT HAVE APPREHENDED HOW THE PRESIDENCY WOULD BE TRANSFORMED INTO AN OFFICE OF IMPERIAL BULK AND PERQUISITES, ABLE TO USE THE POWERS OF THE GOVERNMENT TO REWARD PARTISANS, ADVANCE SPECIAL INTERESTS, SQUEEZE POLITICAL CONTRIBUTIONS FROM BUSINESSES, AND PUNISH AND HARASS DISSENTERS, NOR DID MOST OF US FORESEE, AS RECENTLY AS TWO YEARS AGO, HOW THOSE IN COMMAND OF THE MACHINERY OF GOVERNMENT COULD WARD OFF INQUIRIES, WITHHOLD EVIDENCE BEARING ON CRIMES, AND THROW UP ONE ROADBLOCK AFTER ANOTHER TO FRUSTRATE AND DELAY INVESTIGATIONS INTO ABUSES OF THE PUBLIC TRUST.

NOTHING ILLUSTRATES BETTER, I THINK, THE MANNER IN WHICH THE WHOLE SYSTEM HAS BEEN CHEAPENED AND MISUSED THAN THE STORY OF HOWARD HUNT AND THE CONTENTS OF HIS SECRET WHITE HOUSE SAFE. AT SOME TIME PRIOR TO HIS INVOLVEMENT IN THE BURGLARY OF THE DEMOCRATIC NATIONAL HEADQUARTERS, MR. HUNT HAD MADE AVAILABLE TO HIM

HIGHLY CLASSIFIED CABLE TRAFFIC DEALING WITH THE EARLY DAYS OF THE AMERICAN INVOLVEMENT IN VIETNAM. ONE OF HIS PURPOSES IN THIS WHITE HOUSE AUTHORIZED STUDY WAS EVIDENTLY TO FIND POLITICALLY INCRIMINATING EVIDENCE AGAINST PRESIDENT KENNEDY. HE HAS TESTIFIED THAT, HAVING FAILED TO FIND THE KINDS OF CABLES HE EXPECTED TO, HE FORGED SOME.

THOSE SECRETLY FORGED DOCUMENTS, YOU WILL RECALL, WERE AMONG THE MATERIALS SECRETLY REMOVED FROM MR. HUNT'S WHITE HOUSE SAFE IN THE WAKE OF THE WATERGATE ARRESTS. WHEREUPON THEY WERE SECRETLY GIVEN TO A HIGH OFFICIAL OF GOVERNMENT, MR. PATRICK GRAY, THEN ACTING HEAD OF THE F.B.I. ^{GRAY} ~~HE~~ SPIRITED THEM FROM THE PROSECUTORS REACH IN WASHINGTON TO HIS HOME IN CONNECTICUT AND SECRETLY BURNED THEM WITH HIS CHRISTMAS WRAPPINGS SEVERAL MONTHS LATER.

ALL OF THIS MAKES PUBLICITY -- THE SUNLIGHT OF EXPOSURE -- DOUBLY IMPERATIVE. UNLESS CORRUPTION IS REVEALED, THE OTHER CHECKS AND BALANCES CANNOT BE EXERCISED. INVESTIGATIONS WON'T PROCEED. THE CONGRESS WON'T BE ROUSED. THE COURTS WILL HAVE NO OPPORTUNITY TO PLAY THEIR ROLE. THAT "DELIBERATE SENSE OF THE COMMUNITY" CANNOT BE REACHED UNLESS THE PEOPLE HAVE THE FACTS.

SO I COME BACK TO THE ESSENTIAL FUNCTION OF THE AMERICAN PRESS:
 TO PROBE, TO ASK THE INCONVENIENT QUESTIONS, TO REPORT FULLY AND FAIRLY
 WHAT IS GOING ON, AND THUS TO KEEP THE GOVERNMENT ACCOUNTABLE.
 IT IS AN ADVERSARY SYSTEM, OFTEN MORE HEATED AND CONTENTIOUS THAN
 WE MIGHT LIKE. AND IT IS LESS EFFICIENT THAN IT OUGHT TO BE.
 BUT IT'S A NECESSARY JOB, AND ONE WHICH COULD NOT BE PERFORMED
 IF THE PRESS IN AMERICA WERE SUBJECT TO CONSTRAINTS.

FOR ALL OF THAT, THE PROBLEM OF JUSTICE REMAINS. →

IS THERE A POINT, AFTER THE FACTS HAVE BEEN EXPOSED, AT WHICH
 THE PROCESSES OF PUBLICITY SHOULD BE ARRESTED WHILE THE AGENCIES
 OF JUSTICE GO ABOUT THEIR WORK IN PEACE? IS THERE A POINT AT WHICH,
 AS THE LONDON SUNDAY TIMES ARGUED LAST SUMMER, THE PUBLICATION OF ^(what they called) "UNSWORN, UNTESTED,
 UNCORROBORATED EVIDENCE" BECOMES SO PREJUDICIAL THAT DUE PROCESS
 IS DENIED AND A FAIR TRIAL BECOMES IMPOSSIBLE?

THIS ISSUE HAS BEEN RAISED RECENTLY NOT ONLY BY MR. NIXON,
 BUT ALSO BY FORMER VICE PRESIDENT AGNEW AND SOME OF THE DEFENDANTS
 IN THE WATERGATE CRIMINAL PROSECUTIONS NOW UNDER WAY. ~~THE~~ INDEED,

THE PROBLEM OF FREE PRESS VERSUS FAIR TRIAL DOES HAVE ALL THE RING OF A GENUINE CONSTITUTIONAL DILEMMA, A HEAD-ON COLLISION BETWEEN TWO FUNDAMENTAL TENETS OF OUR FREE SOCIETY.

IN FACT THERE IS MORE SOUND THAN SUBSTANCE TO IT, I BELIEVE. ~~AND~~ WHILE I DON'T PROPOSE TO EXPLORE THE ENTIRE PROBLEM HERE TODAY, I WOULD LIKE TO EXAMINE IT AS IT BEARS ON THESE PARTICULAR CASES.

FIRST OF ALL, CONSIDER WHAT WE ARE NOT TALKING ABOUT.

WE ARE OBVIOUSLY NOT DISCUSSING THE ORDINARY CRIMINAL CASE, THE EVERYDAY ASSAULTS AND ROBBERIES WHICH CLOG THE CALENDARS OF AMERICAN COURTS BUT RECEIVE LITTLE PUBLICITY EXCEPT PERHAPS A BARE RECITAL OF THE FACTS.

WE ARE NOT TALKING ABOUT THE AVERAGE EXCEPTIONAL CASE, THE KIND WHICH BECOMES MORE OR LESS SENSATIONAL BECAUSE PROMINENT PEOPLE ARE INVOLVED, OR BECAUSE THE OFFENSE IS SHOCKING OR STIRS THE CONSCIENCE OF A COMMUNITY.

SUCH CASES DO SUGGEST, I THINK, THAT PRE-TRIAL PUBLICITY DOES NOT AUTOMATICALLY MAKE A FAIR TRIAL IMPOSSIBLE. LOOK BACK ACROSS SOME OF THE RECENT AMERICAN TRIALS IN WHICH THERE WAS PASSIVE PUBLICITY---

NOT JUST EXTENDED COVERAGE, BUT COVERAGE OF THE SORT WHICH MIGHT BE EXPECTED TO HAVE A PREJUDICIAL EFFECT. ROBERT KENNEDY'S ASSASSIN, SIRHAN SIRHAN, GEORGE WALLACE'S ASSAILANT, ARTHUR BREMER. ANGELA DAVIS, THE CONSPIRACY TRIALS OF THE BERRIGANS AND THE CHICAGO SEVEN. IN EACH CASE, DESPITE ALL THE PUBLIC ATTENTION, A JURY OF 12 CITIZENS WAS ABLE TO REACH A VERDICT ON THE BASIS OF THE EVIDENCE HEARD IN COURT. THE RECENT ACQUITTAL OF FORMER ATTORNEY GENERAL JOHN MITCHELL AND FORMER SECRETARY OF COMMERCE STANS IN THE VESCO CASE REINFORCES THE POINT.

THERE HAVE BEEN SOME CASES, BUT VERY FEW, IN WHICH PUBLIC OPINION HAS BEEN POISONED OR THE ATMOSPHERE INFLAMED BY RASH OR SENSATIONAL PUBLICITY. BUT THERE ARE TIME-TESTED REMEDIES AND SAFEGUARDS WHICH GO TO THE INNER WORKINGS OF THE JUDICIAL SYSTEMS -- TO THE CAUSE OF THE DISEASE, SO TO SPEAK, RATHER THAN TO THE SYMPTOMS AS THEY REVEAL THEMSELVES IN PRESS REPORTS.

FOR ONE THING, ATTORNEYS AND PUBLIC OFFICIALS ARE ENTIRELY FREE TO DISCIPLINE THEMSELVES -- SO THAT PREJUDICIAL MATERIAL DOES NOT LEAK TO THE PRESS AT ALL. FOR INSTANCE, JUDGE SIRICA HAS ORDERED ALL THE PROSECUTORS, DEFENDANTS AND GRAND JURORS INVOLVED IN THE WATERGATE COVER-UP CASE TO REFRAIN FROM DISCUSSING ANY ASPECT OF THE CASE IN PUBLIC.

SECOND, JUDICIAL PROCEDURES CAN BE BROUGHT TO BEAR.

JURY SELECTION HAS BECOME A CRAFT; THERE ARE ELABORATE PROCEDURES SAFEGUARDING THE RIGHT OF DEFENDANT AND PROSECUTOR TO CHALLENGE BIASED JURORS. A CHANGE OF VENUE IS A COMMON STEP, DELAYS CAN BE GRANTED UNTIL TENSIONS SUBSIDE. JURIES CAN BE SEQUESTERED, AS WAS DONE IN THE VESCO CASE, AND WHERE PUBLICITY IS FOUND TO HAVE INFECTED THE RESULT, A COURT CAN ORDER A NEW TRIAL -- A REMEDY WHICH BY THE WAY, IS FAR MORE RELEVANT TO THE DEFENDANT'S RIGHT OF DUE PROCESS THAN FINDING A NEWSPAPER IN CONTEMPT.

I PUT SUCH STRESS ON THESE ALTERNATIVES BECAUSE I SHUDDER AT THE NOTION THAT THE AMERICAN PRESS SHOULD BE RESTRAINED. THAT WOULD NOT PURIFY THE AMERICAN SYSTEM OF JUSTICE, ON THE CONTRARY, IT WOULD TEND TO ALLOW THAT SYSTEM TO BE FAR MORE ARBITRARY AND CAPRICIOUS THAN IT IS NOW. OUR COURTS ARE NOT THE CANADIAN OR BRITISH COURTS.

THE ADMINISTRATION OF JUSTICE IN THE UNITED STATES MAY BE LESS SWIFT AND SURE, MORE OVERBURDED, FAR MORE OPEN TO THE INFLUENCES OF POLITICS AND PREJUDICE. BUT THE SUREST SAFEST WAY TO PROMOTE DUE PROCESS AND EQUAL TREATMENT

UNDER THE LAWS IS TO REPORT THE WAYS THE SYSTEM DOES AND DOESN'T WORK. WITHOUT THE PRESS, INJUSTICES WOULD MULTIPLY AND REFORMS COULD NOT BE WON.

I DON'T PRETEND THE PRESS IS PERFECT. ERRORS DO CREEP IN, AND SOME PAPER MAY OCCASIONALLY EMBARK ON A CRUSADE IN BLATANT DISREGARD OF SOME PERSON'S RIGHTS. THOSE ARE NOT LIGHT OFFENSES. BUT, TO PUT IT BLUNTLY, THOSE ARE THE RISKS -- THE RISKS WHICH FREEDOM ALWAYS BEARS. THE COSTS OF LIMITING THAT FREEDOM WOULD BE HIGHER.

ALL THIS APPLIES WITH SPECIAL FORCE TO WHAT SOME PEOPLE CONSIDER THE LARGEST OR THE HARDEST CASE: THE MATTER OF CHARGES AGAINST THE PRESIDENT OR VICE PRESIDENT.

LET'S LOOK AT MR. AGNEW'S SITUATION FIRST. THE INVESTIGATION BY THE UNITED STATES ATTORNEY IN BALTIMORE WAS WELL UNDER WAY AT LEAST TWO MONTHS BEFORE THE PRESS GOT WIND OF IT. PUBLICATION OF THE NEWS ALERTED THE COUNTRY TO A POSSIBILITY WITHOUT PRECEDENT -- THE POSSIBILITY THAT AN ~~AGNEW~~ ^{INCUMBENT} VICE PRESIDENT MIGHT FACE A FEDERAL INDICTMENT. PUBLICATION ALSO SERVED ANOTHER PURPOSE: IT INSURED THAT THE INVESTIGATION, BEING CONDUCTED BY MEMBERS OF THE SAME ADMINISTRATION, COULD NOT BE SHELVED IN SECRECY. IT INSURED THAT THE CHARGES WOULD HAVE TO BE DEALT WITH

AND SOME KIND OF RESOLUTION -- SOME KIND OF JUSTICE -- WOULD HAVE TO BE REACHED, THAT THERE WOULD BE NO COVER-UP.

THEN CAME ONE OF THOSE COMPLICATED SCENES WHICH ARE A FEATURE OF OUR WAY OF DOING THINGS. THERE WERE SEVERAL WEEKS FILLED WITH RUMORS, LEAKS, DENIALS, NEW^S REPORTS, ALL FREIGHTED WITH PRIVATE AS WELL AS PUBLIC SIGNALS AND APPEALS. PUBLICITY BECAME COMPETITIVE. THE INVESTIGATION AND THE LEGAL NEGOTIATIONS WERE GOING ON, AND AT THE SAME TIME ALL THE PARTIES -- MR. AGNEW AND HIS ATTORNEYS, OTHER FIGURES IN THE CASE, THE PROSECUTORS, THE ATTORNEY GENERAL, THE WHITE HOUSE -- WERE ENGAGED IN A STRUGGLE FOR PUBLIC SENTIMENT. FROM THE JUSTICE DEPARTMENT CAME LEAKED REPORTS THAT THE EVIDENCE WAS SOLID; FROM MR. AGNEW CAME LOUD COMPLAINTS ABOUT SMEARS AND PREJUDICIAL NEWS REPORTS; FROM HIS ATTORNEYS CAME INFORMATION FAVORABLE TO THEIR CASE.

THERE WERE, IN OTHER WORDS, THREE COURTS INVOLVED:

THE FEDERAL COURT IN BALTIMORE; THE WHITE HOUSE; AND THE COURT OF PUBLIC OPINION. AND THE RESOLUTION OF THE MATTER HAD TO BE ACCEPTABLE IN ALL THREE. THUS, FINALLY, THERE WAS MR. AGNEW'S RESIGNATION, HIS NO-CONTEST PLEA TO A SINGLE COUNT OF TAX EVASION, AND THE RELEASE OF A 40-PAGE BILL OF PARTICULARS, WHICH SHOWED THE PUBLIC WHAT THE JUSTICE DEPARTMENT HAD BEEN PREPARED TO CHARGE.

IN OTHER WORDS, ALL THE PUBLICITY PREJUDICED THE PROCEEDINGS
IN ONLY ONE RESPECT: BY INSURING THAT THE CHARGES WOULD BE DEALT WITH.
IT'S WORTH NOTING THAT, DESPITE ALL THE LEAKS, THE ALLEGATIONS
WHICH WERE MADE PUBLIC DURING THE PROBE WERE BUT A FRACTION OF THOSE
ALLEGED IN THE ~~LEGAL~~ JUSTICE DEPARTMENT'S ^(FINAL) LIST OF CHARGES. THAT DOCUMENT
ALLEGED A PATTERN OF ILLEGAL CASH PAYMENTS TO MR. AGNEW FROM COUNTY,
STATE AND FEDERAL CONTRACTORS IN RETURN FOR FAVORS; A PATTERN STRETCHING
BACK OVER MANY YEARS. MUCH OF THE MOST DAMNING DETAIL WAS SECRET TILL
THE END. AND IT IS SIGNIFICANT, TOO, THAT FOR ALL OF MR. AGNEW'S
OUTRAGED PROTESTS ABOUT PREJUDICIAL NEWS REPORTS, LARGE SEGMENTS
OF THE POPULATION AND THE PRESS APPARENTLY PUT MORE CREDENCE IN HIS PLEAS
OF INNOCENCE; UNTIL THE CASE WAS DISPOSED OF AND HE RESIGNED.

IN MR. NIXON'S CASE, SOME FACTS CRUCIAL TO A JUDGMENT
ARE STILL CONCEALED, AND NO FINAL RESOLUTION IS YET IN SIGHT.
BUT THE FUROR IS SIMILAR, THOUGH MUCH MORE CONVOLUTED AND PROLONGED.
HERE, TOO, THERE ARE THREE COURTS INVOLVED: THE COURTS OF LAW,
THE CONGRESS, AND PUBLIC OPINION. THERE ARE MORE ACTORS ON THE SCENE,
SINCE NOT ONLY MR. NIXON BUT ALSO MANY OF HIS PRESENT AND FORMER ASSOCIATES

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ARE BUSILY ENGAGED IN SELF-DEFENSE AND, THEREFORE, JOUSTING PUBLICLY AND PRIVATELY OVER EVERY ASPECT OF WATERGATE--FROM THE SECRET CAMPAIGN FUNDS AND THE COVER-UP OF THE BURGLARY TO THE COVERT SPYING AND TO THE MATTER OF THE PRESIDENT'S TAX RETURNS.

THERE ARE THREE REASONS WHY THE CHARGE OF PREJUDICIAL PUBLICITY RINGS ESPECIALLY HOLLOW IN THIS CASE. THE FIRST IS THAT IT IS SUCH A SELECTIVE CHARGE. AS MADE BY MR. NIXON AND HIS PARTISANS, IT IS AIMED ONLY AT REPORTS WHICH HURT HIS CAUSE. THEY SEE NOTHING EQUALLY "PREJUDICIAL" IN THEIR OWN EXPLANATIONS; REPEATED PLEAS OF IGNORANCE, INVOCATIONS OF NATIONAL NECESSITY; ATTACKS ON THE CREDIBILITY OF MR. NIXON'S ACCUSERS AND ALL THE OTHER ARGUMENTS EMPLOYED -- BACKED BY THE FORCE AND PRESTIGE OF THE WHITE HOUSE-- IN ATTEMPTS TO WIN THE COUNTRY TO MR. NIXON'S SIDE.

THE SECOND PROBLEM IS THE BREATHTAKING IMPLICATIONS OF THE CHARGE OF TRIAL BY PUBLICITY, WHEN INVOKED ON BEHALF OF THE PRESIDENT OF THE UNITED STATES. WHAT THIS DOES, IN EFFECT, IS TO RELIEVE HIM OF THE RESPONSIBILITIES AND RISKS INHERENT IN THE OFFICE WHICH HE HOLDS. IT SUGGESTS THAT HE SHOULD BE REGARDED AS AN ORDINARY CRIMINAL SUSPECT, FOR WHOSE PROTECTION THE RIGHTS OF DUE PROCESS

AND A FAIR AND SPEEDY TRIAL WERE WRITTEN INTO THE CONSTITUTION,
AGAINST ABUSES BY A SOVEREIGN; NOT FOR HIS PROTECTION!

THAT MR. NIXON, AS A CITIZEN, ENJOYS THOSE RIGHTS IS NOT
THE POINT. THAT HE, AS PRESIDENT, SHOULD FEEL SO THREATENED
AS TO FALL BACK ON THOSE RIGHTS APPEARS TO BE AN ADMISSION AND A RETREAT
MORE DAMAGING THAN ANYTHING SAID AGAINST HIM BY ANYONE ELSE.

THIS IS ESPECIALLY INCONGRUOUS BECAUSE, AT THE SAME TIME,
MR. NIXON HAS BEEN INVOKING IN HIS OWN DEFENSE ALL OF THE POWERS AND
OPTIONS WHICH A PRESIDENT MAY COMMAND BUT WHICH THE COMMON CITIZEN
CANNOT EMPLOY. HE HAS, FOR INSTANCE, WITHHELD EVIDENCE FROM THE CONGRESS
AND THE COURT, ON THE GROUNDS OF PRESIDENTIAL PRIVILEGE; HE HAS REFUSED
SUBPOENAS; MADE HIMSELF UNAVAILABLE FOR QUESTIONING; APPEALED TO
VARIOUS FORUMS FOR REDRESS; MET PRIVATELY WITH MEMBERS OF CONGRESS
WHO WILL BE CONSIDERING ASPECTS OF THE CASE; AND USED ALL OF THE PUBLIC
RELATIONS WEAPONS OF THE WHITE HOUSE TO PRESS HIS CAUSE.

THIS LEADS ME TO THE FINAL POINT: WHAT IS AT STAKE IN THE
WATERGATE CRISIS IS NOT DUE PROCESS IN THE ORDINARY, NARROW SENSE, Free

TO ASSERT THAT IS AS MISLEADING AND DISINGENUOUS AS TO ARGUE THAT THE ONLY OFFENSE IS A SINGLE ISOLATED BURGLARY. IN FACT, THE OFFENSES INVOLVED COMPRISE A MASSIVE PATTERN OF CORRUPTION AND ABUSE -- OFFENSES SO SERIOUS, NUMEROUS AND HEADSTRONG THAT THEY HAVE SHAKEN THE FOUNDATIONS OF PUBLIC TRUST AND CONFIDENCE. THE ISSUE IS WHETHER AND HOW THE PEOPLE AND THEIR AGENCIES OF INQUIRY, THE CONGRESS AND THE COURTS, CAN GET AT THE ENTIRE TRUTH, ASSESS THE DAMAGE AND WORK OUT THE REMEDIES. IN SHORT, THE ISSUE -- INsofar AS IT AFFECTS THE NATION'S MOST PUBLIC POLITICAL FIGURE -- IS DUE PROCESS IN THE BROADEST, MOST FUNDAMENTAL SENSE.

IN THIS CONTEXT, THE MOST PREJUDICIAL THING THE PRESS COULD DO WOULD BE TO CEASE PUBLISHING AND STOP BROADCASTING SOME ARBITRARILY CHOSEN PART OF WHAT IT LEARNS. WITHOUT A FREE AND PROBING PRESS, THE EVENTS AND IMPORT OF WATERGATE WOULD, IN ALL PROBABILITY, NEVER HAVE BEEN REVEALED. WITHOUT THAT SAME THOROUGH, PERSISTENT, INDEPENDENT PRESS, PUBLIC DEBATE COULD NOT PROCEED. ~~AS~~ THE CLAMOR AND CLASH OF OPINIONS MIGHT NEVER BE DISTILLED INTO THAT "DELIBERATE SENSE OF THE COMMUNITY" WHICH DECIDES THE MATTER IN THE END. WHEN THE AMERICAN PRESS EASES UP ON ITS VITAL ADVERSARY ROLE, WHO IS TO DETERMINE HOW MUCH IT SHOULD EASE UP,

WHERE IT SHOULD STOP SHORT, WHAT IT SHOULD KEEP TO ITSELF --
AND FOR WHAT PURPOSES? SURELY NOT THE GOVERNMENT. SURELY, IN THIS CASE,
NOT THE PRESIDENT.

I BRING YOU NO PREDICTIONS ON THE OUTCOME. THE MOST THAT
I CAN REPORT WITH ANY CERTAINTY IS THAT WE ARE AT A PERILOUS,
INCONCLUSIVE POINT. IF ANY LESSON HAS EMERGED FROM THE TURMOIL
AND TRAGEDY SO FAR, IT IS THAT THE PRESS IN AMERICA SHOULD BE MORE
FREE, NOT LESS. MORE VIGOROUS AND PROBING. MORE ALERT TO ITS
LARGE RESPONSIBILITIES -- AND LESS EASILY SATISFIED WITH ITS OWN
PERFORMANCE. WITHOUT A VIGOROUS PRESS OUR ADVENTURE IN SELF-GOVERNMENT,
WITH ALL ITS STRENGTHS AND ALL ITS IDIOSYNCRACIES, WHICH IS IN SO MANY
WAYS A UNIQUELY AMERICAN EXPERIMENT, MIGHT HAVE ENDED YEARS AGO.

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