Mr. Mitchell and the Court 7/20/71

An attack by Attorney General Mitchell on what he calls "a sea of legalisms" surrounding criminal trials hardly comes as a surprise. Mr. Mitchell and this administration have often made it clear that they are eager to take what we would regard as highly dangerous shortcuts in the way in which persons charged with crime are handled by the police and the courts. But there is something disquieting, nonetheless, about the sweep of the Attorney General's most recent assault on the Supreme Court—the implication, for example, that the court has been so preoccupied "in the exhilarating adventure of making new law and new public policy" that it has forgotten the task of the courts to judge who is guilty and who is innocent.

Mr. Mitchell, of course, chose to say these things in London before an audience that was almost certain to be receptive to them. Most of those members of the American Bar Association who can afford to attend a convention so far from home belong to its older and more conservative cadre which has never been particularly sensitive to problems of individual liberties. No doubt they were pleased to hear his sharp criticism of the Supreme Court, just as they were to hear the Lord Chief Justice of England and Wales denounce, somewhat undiplomatically, decisions of the Supreme Court dealing with the use in evidence of statements made by suspects under police interrogation.

Mr. Mitchell centered his attack on three specific points: ". . . the overabundance of pretrial hearings designed mainly to deprive the jury of material and relevant evidence . . . "meticulous requirements that can only be characterized as ritual for its own sake . . . "the endless post-trial appeals . . ."

Put in those terms, of course, Mr. Mitchell's complaints sound reasonable. But what he is really talking about are hearings designed to determine if evidence meets existing legal standards, requirements designed to see those standards are met, and appeals aimed at ensuring that each defendant's rights have been fully protected. It is the same game of semantics that Mr. Mitchell has played before of setting out his view of the criminal law as the only proper one and describing any other view in words like "deprive," "meticulous," "ritual" and "endless."

It seems strange to us that Mr. Mitchell should have made this attack in the context of discussing court congestion and delay. Much of that delay can be eliminated—his view to the contrary notwithstanding—by the use of additional manpower and administrative techniques. The merits or demerits of those decisions with which he disagrees ought to be considered independently of their impact on the administrative problems of the courts. To do otherwise is to tie the nation's standard of criminal justice to what is convenient instead of what is right.