

Rush To Judgment

By Anthony Lewis

WASHINGTON, June 3—The process of repairing this country's institutions from the damage of Watergate has come to an early and extremely serious point of crisis. It lies in the conflict between Senator Ervin's committee and the special prosecutor, Archibald Cox.

The potential for conflict between the two inquiries has always been there. The first reaction of many who felt deep concern about Watergate was that the Senate hearings must take precedence. The argument, in brief, was that discovering the truth and informing the American public were more important than putting any particular person in prison.

That was my strong feeling at first, too. But reflection has convinced me that the question is not so simple and that the answer must be different.

The choice is not between truth and prosecution. For one thing, it is part of Mr. Cox's extraordinary job to find and report the facts of what happened. That is why the guidelines that he and the Senate Judiciary Committee extracted from Attorney General Richardson say he "may from time to time make public such statements or reports as he deems appropriate."

The Ervin committee's own ability to get at the central mystery, the extent of President Nixon's involvement, could also depend a good part on the effectiveness of the Cox operation. The reason for this is at the heart of the problem.

The crucial witnesses before Senator Ervin are likely to be the men closest to the President, especially Mr. Halde- man, Mr. Ehrlichman and Mr. Mitchell. They are the very men suspected of putting loyalty above the law, and they will surely continue doing so unless faced individually with some very effective new incentive to tell the truth.

The incentive that is by far the most likely to be effective is the traditional one: a credible threat of crim-

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inal punishment. To paraphrase Dr. Johnson, that concentrates a man's mind wonderfully.

But it has to be credible. Prosecution is not much of a threat if the person being questioned knows that his conviction is unlikely. And the unfortunate, unavoidable fact is that continued hearings by the Ervin committee could reduce the chance of any successful prosecutions of major figures in the Watergate crime to near zero.

One reason is that such hearings, held before any criminal trial, are a defense lawyer's dream: They lay out much or most of the prosecution's likely evidence, giving the defendants ample time to work up attacks on the witnesses and explanations of their own. There are also questions of immunity for witnesses that complicate the prosecutor's course.

Then there is the whole difficulty of finding an unbiased jury to try anyone after nationally televised hearings. The Supreme Court has made clear that jurors' exposure to such adverse publicity, whether they think they are affected or not, may make a trial unfair. The problem is present already in the Watergate crimes, but more sensational hearings will make it worse.

Lawyers for the main potential Watergate defendants are hardly unaware of the obstacles that the Senate hearings could raise to successful prosecutions. Nor, one may guess, are the people who would like to prevent a real inquiry into Mr. Nixon's role. Interestingly, it was Republican sources who last week leaked a highly distorted story about Mr. Cox's concern over the Senate hearings—a story designed to injure the Cox inquiry.

As the possibilities of prosecution diminish, the country's hope of cleansing truth would rest on Senate hearings at which the key witnesses could probably stonewall with impunity. One newspaper columnist has even suggested "getting the worst over quickly" by having the Ervin Committee ask these men whether the President was involved; if they said no, "that would be the effective end of the poisonous talk."

It is hard to know whether such a suggestion is naive or deeply cynical. Just think what Senate hearings of that kind would do. The Cox inquiry might be badly wounded. The truth would be left very much in doubt. Half the country would remain intensely suspicious of the President, the other half bored or angry at the accusers.

One more thing must be said. Information is not all that Americans need in the Watergate tragedy. They need reassurance that their institutions still work, especially their system of justice. If all this ends without conviction of a single major figure responsible for the crimes, more Americans will be convinced that the political system is irredeemably corrupt. What a terrible price that would be.

For these reasons, I think the Senate hearings should be postponed long enough to let Archibald Cox get his inquiry into gear. That means some more delay and uncertainty in the country, and there would still be leaks and speculation. But it would avoid irreparable damage to the processes, in both the Senate and the courts, essential to cleanse this country of Watergate.