

SFChronicle

A Banker Filled the Vacuum

MAY 6 1974

Inside the Mitchell Jury

By Martin Arnold
New York Times

New York

In the end there were three dimensions to the Mitchell-Stans jury, and they all came together in the seclusion of the jury room where, on April 28, John N. Mitchell and Maurice H. Stans were acquitted of criminal conspiracy.

They were nine men and three women who listened to the testimony, considered some of it, admittedly ignored some of it, were admittedly baffled by some of it, and who ultimately relied on their individual backgrounds and experiences to reach a verdict.

But they were also nine men and three women who, unknown to them, had been carefully fitted together into a single unit by the defense, like pieces in a mosaic, through advanced and sophisticated jury selection methods involving the prin-

cipals of marketing research.

And finally, they were nine men and three women in search of a leader, so awed by their responsibility that one of the men daily battled against going into the courtroom and another spent a day during deliberations vomiting.

At 4:55 on the afternoon of April 25, the case went to the jury, ten weeks and more than 10,000 pages of official court transcript after the first juror had been selected.

The foreman was 21-year-old Sybil Kucharski, who had spent many of her spare moments worrying about her wedding gown, who had delayed her wedding once for the trial and was fearful that there might be further delays.

Like ten of the other jurors, Miss Kucharski's education had ended with high school, and this was not a coincidence; it was, in fact,

part of a careful design by Mitchell's lawyers.

They had hired Marty Herbst, the president of a self-styled "communications think tank," to construct a jury profile for this case.

That profile called for blue-collar jurors, primarily Roman Catholic, who earned an average of \$8000 to \$10,000 yearly, and who read the New York Daily News.

The profile had no place for Jews, and there were none, no place for what Herbst called "limousine liberals," and there were none.

"We wanted people who were home-established, to the right, more concerned with inflation than Watergate," jurors who would associate the dour Mitchell with John Wayne, Herbst said.

Inside the jury room, Miss Kucharski sat at one end of a long, wooden table, as she did during many luncheons and coffee breaks over the 48 trial days. At the other

end was Jamie Hernandez, 23, a steel cutter and former juke box mechanic, who had served as a marine in Vietnam and who had said during the jury selection that he had never heard of Mitchell, the former U.S. attorney general, and Stans, the former secretary of commerce.

Seated near Hernandez was the one juror who did not fit Herbst's profile.

He was Andrew Choa, a vice president of the First National City Bank in charge of overseas investments, a man who was on the jury quite by chance, having been sworn in as an alternate juror and then having moved up to the jury when an original member became ill.

It was to be a fortunate accident for the defendants.

The other jurors consisted of a telephone installer, a Western Union messenger, a mail room supervisor, a post office supervisor, a city highway department employee, a shipping clerk foreman, a subway conduc-

tor and two elderly women, one a retired insurance company clerk and the other an active insurance company clerk.

Two of the jurors were black—the city employee and the subway conductor — but the subway conductor was an older man, and both he and the city employee were considered sufficiently "law-and-order" oriented to fit into the defense's jury profile.

Eight of them were Democrats, three were Republicans and one was an independent. A majority of the panel told the judge in his chambers that they had "little or no interest" in the Watergate scandals.

There was, according to all counts, a period of silence — perhaps for as long as 20 minutes — when the jury first reached its room to start deliberations.

"We didn't know how to proceed at first," Miss Kucharski recalled.

"We sat there for about one hour just reading the indictments, just to make sure we understood intelligently," said King Kinson, the subway conductor.

A jury, particularly a sequestered one, as this was, is perhaps the final distillation of communal living. For two months they shared their food, or at least their mealtimes. They had one television room, and their bedrooms in a motel, stripped of telephones and television sets, were side by side so they were seldom more than three feet or so away from one another, or away from the U.S. marshals who took turns guarding them.

A commune such as this needs a leader, someone to guide it to the right restaurants, someone to decide

what motion pictures should be seen.

Andrew Choa was ideally suited for the role.

Choa was a graduate of Harvard Business School. He was an international banker, a world traveler, a man who had been born and reared in Hong Kong, who had served in the British Embassy there. He was also a man of strong political beliefs, who had objected, he said, to the New York Times anti-Vietnam War editorial page policies, who thought

that the U.S. had seriously weakened its posture in the Far East.

Unlike every other juror, Choa, during the jury selection, had not only known who Mitchell and Stans were, but also had known that they had been important figures in the President's re-election campaign.

The indictment against Mitchell and Stans charged in the stark language of indictments that the two had attempted to impede an investigation by the Securities and Exchange Commission of Robert L. Vesco, then a financier, now a fugitive, in return for a secret \$200,000 cash contribution to President Nixon's re-election campaign.

It was this indictment that the jury first read, and this worried Choa because, he said, "It's not the fairest document 'around all those allegations, and some jurors thought this is what the document says, and the government brought it, so it must be so."

The defense against the indictment had been, in part, that Mitchell and Stans had done nothing more than

make several telephone calls on behalf of Vesco, had done for Vesco what a member of Congress might do for a constituent.

Still, Choa was a worldly man, known among friends and associates to be politically conservative.

Choa had, in fact, hinted at this during the jury selection, telling the judge and the lawyers for both sides that "bankers are conservative."

Later the prosecutor said they had not realized how really conservative Choa was but that had they challenged him, the next five prospective jurors might have been more conservative.

By the time the prosecutors realized that Choa might be a problem for them, it was late in the trial.

But they made one effort to get him off the panel, before he moved up from an alternate to a voting juror.

During the impaneling, Choa, like all the jurors, was asked whether he personally knew any federal prosecutors, and he replied, "No." This was not quite true, as it turned out.

A woman in his office had married an assistant U.S. attorney, and Choa had met the groom more than once, he later recalled.

"I am concerned about other things he may not have answered candidly, and I move that he be excused," John R. Wing, the chief prosecutor told Judge Lee P. Gagliardi.

A hearing in the judge's chambers determined that Choa's relationship with the assistant U.S. attorney had merely been "a casual acquaintanceship," so he remained on the jury.

The first sense of the jury, according to Miss Kucharski, was 8 to 4 for conviction.

Several jurors, who asked not to be identified, said that Choa at that time had been among those in favor of acquittal. So, too, were the telephone installer, the mail room supervisor, and the 45-year-old Western Union messenger, the jurors recalled. This was not an official vote, but merely a sense of where everybody stood.

No decision could be reached on the conspiracy count, all the jurors agreed later.

"We were going back and forth, yelling, talking in little groups," Miss Kucharski said.

"At the beginning, conspiracy hung us up; no one could come to a conclusion," said Leonard Eppler, the mail supervisor, a former Navy chief petty officer.

This jury, in the words of more than one juror, got it-

self together by asking for a rereading of the judge's charge on certain points, by asking at the beginning for his conspiracy charge to be reread.

"I don't remember, it could have been myself who asked again for the definition of conspiracy," Choa said.

Said Theresa Cavanna, 61, the active insurance clerk: "If we still didn't understand something, Mr. Choa would say, 'Let's go see the judge and have him explain the law.'"

By late Friday the jury was unable to agree on the conspiracy and the obstruction of justice counts—a voice vote on the conspiracy count had been five for conviction, five for acquittal and two undecided — and the decision was made to move on to the perjury counts.

On Friday the jury also asked for a rereading of testimony involving two perjury counts against Mitchell, and this reading was completed on Saturday. Such a request is made in writing, and this one, like the others, was drafted by Choa and signed by Miss Kucharski.

The jury then, by all accounts, started to become very selective in its thinking. For instance, there was the question of the credibility of John W. Dean III, the former counsel to the President, who testified for the government.

In his testimony, Dean said that at the behest of Mitchell he had called the chairman of the SEC about the Vesco case. The jurors did not quite believe this, they said, because they felt that Mitchell did not need a go-between to reach the SEC.

However, the government contended that if Mitchell had not called Dean about the SEC and Vesco, how would Dean have even known about the SEC and Vesco? According to Miss Kucharski, this point never carried weight with the jury.

Another piece of evidence that the jury finally ignored was a memo written by Vesco, or an associate, that was addressed to F. Donald Nixon, the President's brother,

in which Vesco threatened to disclose publicly his secret \$200,000 cash contribution unless the President had the SEC drop its case.

The jury asked for a copy of the memo, but Choa said he considered it "trash." The jury rejected it.

Yet after the verdict, every juror said that what the government's case had lacked was Vesco, though the single document in the case containing Vesco's own words was rejected out-of-hand.

"Vesco emerged as the super evil genius," Kinson said.

On Friday night and Saturday morning there were still holdouts for conviction, and some jurors thought that they were nowhere near the end of their deliberations.

The logjam broke when the jurors jumped over the conspiracy and obstruction counts, having failed to reach an agreement on them, and took up the perjury counts.

Once the case was reduced to perjury, it became a simple matter for the jurors: Whom did they believe? Eppler said that the jurors even simplified that question by not considering whether Mitchell and Stans had lied.

"We didn't consider whether they lied," he said. "They didn't have to prove themselves. The prosecution had the burden of proof."

Kinson said: "I never changed my mind that they were guilty, but it was just with a reasonable doubt. The law said I couldn't say that. I was bound by the law."

On Saturday night the defendants were acquitted of nine charges. On Sunday morning the remaining six fell like dominoes, in three hours. Three of those charges—the conspiracy and the obstruction counts—were the most complicated.

"We were so deep until would you believe there were even a few tears," one juror said. "We didn't want to be wrong."

In the government automobiles on their way back to their motel for the last time, the jurors did not speak to one another.



These are the jurors: (from left, bottom row) Sybil Kucharski, Anthony Bianco, Andrew Choa, Leonard Eppler, Floyd Cook, Clarence Brown. Second row: Jaime Hernandez, Rolando Detouche, Raymond Crowe, King Kinson, Elizabeth Dahlmann, Teresa Cavanna. Third row: Alternate jurors Joseph Keicinski, L. Patricia Kevins, Norman Hollis, Edward Doherty, Frank Elliott.