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Senators Bore In: Why Didn't You Act?

By Jules Witcover
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It was about 4:50 p.m. yesterday, and the former Attorney General of the United States, John N. Mitchell, was just completing nearly 10 hours of testimony before the Senate Watergate Committee.

It had started out as an effort to extract from him all he knew about the Watergate break-in and related "White House horrors," as Mitchell himself had dubbed the assorted other illegalities.

But, finally, it had become an inquiry into another question:

What manner of man is it who can serve as the chief law-enforcement officer of the nation and remain silent when he knows crimes are being proposed, and in fact have been carried out, under White House auspices?

On Tuesday, Sen. Herman E. Talmadge (D-Ga.) had begun the line of questioning in asking why Mitchell had never told the President that he knew during the 1972 campaign that, for example, a White House burglary team had broken into the office of Daniel Ellsberg's psychiatrist.

And earlier yesterday, Sens. Daniel K. Inouye (D-Hawaii), Howard H. Baker Jr. (R-Tenn.) and Sam J. Ervin Jr. (D-N.C.) had pressed him on the point. But all three succeeded only in eliciting the same response from Mitchell—that he kept his mouth shut so as not to jeopardize President Nixon's re-election.

Now, in late afternoon, the final questioner of the day was Mitchell's fellow Republican, Sen. Lowell P. Weicker of Connecticut. Weicker had methodically gone over the circumstances under which Mitchell said he was told of "the White House horrors" and then started bearing down on the same old question: Why hadn't he done something to see that justice was done?

He had been, after all, not just any American citizen, Weicker reminded Mitchell, increasingly gloomy as he sat in the witness chair. He had been Attorney General, and he still was a lawyer and as such "an officer of the court" pledged to uphold the law.

Did he bring the Ellsberg break-in to the attention of any law-enforcement officials, to any Justice Department of-

ficials, or to the judge in the Ellsberg trial? "I notified nobody about the break-in," Mitchell replied each time.

Weicker: "In other words, as an officer of the court, and as a former Attorney General of the United States, you were content to remain silent even though you knew that silence might possibly convict an American citizen (Ellsberg) via . . . illegal conduct?"

Mitchell: "Senator, I am sure that you are aware of the fact that break-in produced nothing whatsoever, and under no circumstances could there have possibly been any fruits

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of the break-in that could affect the trial one way or the other."

Weicker: "It is not really a question of what they found, is it, Mr. Mitchell?"

And moments later:

Weicker: "Is there anything in this country, aside from the President of the United States, that puts you in awe, Mr. Mitchell?"

Mitchell: "There are very, very many things."

Weicker: "Do the courts put you in awe?"

Mitchell: "Very much so."

Weicker: "Does your oath as an attorney, does that put you in awe?"

Mitchell: "Very much so."

Weicker: "Do you feel as an officer of the court you did the right thing?"

Mitchell: "In connection with the Ellsberg matter?"

Weicker: "When you did not notify . . . Judge Byrne (in the Ellsberg trial) of the information that you had in your possession?"

Mitchell: "I think in retrospect, it probably would have been the right thing to do."

Mitchell, for one of the few times during his long ordeal in the Senate Caucus Room, appeared to have been unnerved by the inquiry that touched so directly and unavoidably on his personal and professional ethics. He glared at Weicker, tightlipped.

Then, the voice of Chairman Ervin broke in, cutting the high drama by declaring a recess for the day. Mitchell, hunched over the twin microphones before him, blurted out clearly, sardonically:)

"Great trial they're conducting up here, isn't it?"

There, in that single bitter comment, John Mitchell said what he thought of the Watergate committee. It was casting him as a defendant, even though he had spent 10

hours telling the senators he had never authorized the Watergate break-in and knew nothing about it.

The questions of Weicker, however, and those of the other senators before him, indicated that it was not guilt they were looking for in Mitchell, but comprehension of his silence. Again and again, with repeated incredulity, they probed this hitherto stolid, unshakable man to glean a clue to his thinking, his ethical priorities, his sensitivity to the democratic process.

Inouye, noting Mitchell's testimony Tuesday that he kept silent to protect the President's re-election, asked him: "To what length are you now willing to go to deceive in an effort to avoid further implication of the President . . .?"

" . . . I do not have to make that choice," Mitchell replied, because the President didn't know about Watergate or the subsequent cover-up.

Later, Weicker tried again. "Would you lie at the present time to protect the President?" Mitchell replied: " . . . If you are putting a hypothetical question to me, the answer would be no, that that I would not here under oath.

Well, Inouye inquired, what about after the election? Why didn't Mitchell tell the President all afterward? Because, Mitchell explained patiently, "there was no reason in my mind to cast a pall over the second term of the presidency." A staff housecleaning already was planned, he noted. Inouye reminded him that Jeb Magruder and John Dean, two who have acknowledged being key figures in the Watergate cover-up, were still aboard months after the election, but Mitchell was unimpressed.

Baker tried another approach to get inside the head of John Mitchell. He pressed him on how he perceived the presidency; on whether it is "so shrouded in mystique" that its occupant must be spared from making difficult decisions by keeping facts from him?

This President should and was denied facts of "the White House horrors," Mitchell replied, "in the interest of his re-election."

It was Baker's turn to be incredulous. By denying the President information on which to act, he asked, "do you not in fact, by that, ar-

rogate unto yourself a presidential decision?"

Mitchell readily agreed. What, Baker wanted to know, "is the constitutional basis" for it? "I have not found one in the Constitution," Mitchell said. " . . . There is a matter of judgment you make in connection with these areas."

And in that judgment, Mitchell said a moment later, "I was not about to countenance anything that would stand in the way of (Mr. Nixon's) re-election."

Baker: "Anything at all?"

Mitchell: "I am sure if it had to involve treason and other high crimes and misdemeanors that were directly related to the office, that there would be a very definite breaking point."

Baker finally asked: "Wouldn't it have been infinitely better . . . to line up everybody on the south lawn of the White House and have the President find out on June 17, 1972 [the date of the Watergate break-in] what in the world happened?"

Mitchell replied that he would "wholeheartedly" agree "if I could have been assured at that time that the President would have been re-elected." On reflection, he said finally, "It would have been simpler to have shot them all and that would have been less of a problem than has developed in the meantime."

In the ongoing discussion about the arrogation of constitutional powers of the president by aides bent on protecting him, this response spread the incredulity around the room. But Mitchell, stolid as ever, just **droned on—until Weicker, a few hours later, took over as prosecuting attorney.**

The Trial of John Mitchell, as John Mitchell would put it, resumes today, in the same courtroom, before the same jury.

Watergate TV

The Senate Watergate hearings will resume at 10 a.m. today with further testimony from former Attorney General John N. Mitchell.

Richard A. Moore, special counsel to the President, is scheduled to testify after Mitchell.

The hearings will be televised live by Channel 9 (CBS-WTOP) and rebroadcast, beginning at 8 p.m., by Channel 26 (WETA).



By Douglas Chevalier—The Washington Post

Sen. Ervin makes notes during his questioning of John Mitchell about his conversations with the President.