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The Watergate Hearings: No Time for a Circus

As the curtain rises today in Congress on the Senate Select Committee's Watergate hearings, it is a time to pause, ponder and hope that some important lessons of the past will not be forgotten or overlooked.

Some of the notorious congressional investigations in recent history—those into subversion and racketeering are prime examples—turned out to be more show biz than useful government business. Often these hearings were in questionable taste and innocent and guilty persons unnecessarily suffered deprivations of their civil liberties due to the excesses of some committee investigators (exacerbated by some members of the media). At exciting times, like the present, it becomes easy to

The writer, a Washington attorney and former Justice Department prosecutor, is the author of several books, including "The Contempt Power" and "Crime and Publicity."

forget that there is a time and place for prosecutions and that the place is rarely in Congress. There is, of course, no time or reason for persecutions.

Congress' power to hold hearings and conduct investigations is in the nature of a judicial power; it is derived from the English Parliament's ancient dual role as court (the House of Lords) as well as legislature (the House of Commons). The Congress' investigatory and contempt powers should be used only when they are clearly related to a valid legislative purpose. From the first congressional investigation in 1792 inquiring into the slaughter by Indians of a military expedition into the Northwest Territory until three decades ago (the time of the last count), 600 congressional investigations were held. Most of them were quiet, deliberative, non-combative; they were the necessary means for Congress to do its essential business of passing laws and overseeing the administration of legislation it has passed.

In the last three decades however, Congress has used its investigatory powers more frequently, more sensationally, through small committees rather than as a body, and on the more questionable rationale that it has still another legislative duty—to educate the public. The House Un-American Activities Committee (HUAC) alone held 230 public hearings from 1945 through 1957, called 3,000 people to testify and cited 135 of them for contempt (the barest few ending in trial and conviction), all with little legislative gain. It is the propriety of Con-

gress' exercise of this role—of the idea of exposure for exposure's sake—which has caused considerable debate in the past and which is relevant today as we watch and begin to assess the Ervin committee's proceedings.

Congress has claimed the right to conduct celebrated and controversial hearings with the purpose of keeping "the pitiless light of public glare" on important public persons and issues. Senator Ervin has admitted that this is one purpose of his committee's investigation. In stating that getting the whole sordid story of the Watergate episode on the record is more important than putting some particular culprit in prison, he has hinted that some prejudicing of the judicial and prosecutive process is a distinctly possible feature to expect.

That would be wrong and sad. When the committee was first formed, it appeared that the story of Watergate was not going to get told. But the press's constant pressures and eventual disclosures; Judge Sirica's persistence at getting past first impressions; the creation of the Ervin committee; the imminence of a special prosecutor; and fortuitous events combined so that we no longer have a need to "blow

the varmints out from the rocks." The wrongdoers now are on the run and the full story is going to be told. There is no need to contaminate the forthcoming trials. There is a need not to. Lawmakers especially should be prepared to set an example of restraint and to work within the legal system.

In other words, during the last months, the Ervin committee's role has shifted. To write good, new, necessary informative legislation regarding political campaigns it can operate without TV spectaculars and reluctant witnesses. To call witnesses, suspects or defendants before the committee leaves them three choices: to lie and commit perjury, to refuse to cooperate and commit contempt or to incriminate themselves. This is the kind of whipsawing procedure which drew proper criticism from some justices of the Warren Court, and no doubt from many present observers who, while they may be delighted to see unpopular administration officials take the heat now, undoubtedly were critical of the same scene in the past when the cast was different.

The Ervin committee can provide the public with a useful show only if it can resist running an extravaganza. Senator Ervin in the driver's seat and Professor Samuel Dash, the committee's chief counsel who will be at his side, both are quiet, constitutional scholars with reputations for thoughtfulness and decency. It can be presumed that they will be more interested in running a fair and useful investigation than in pandering to the inevitable ballyhoo that also can be predicted to accompany these hearings



By Oscar Berger

Committee Chairman Sam Ervin

or in prejudicing people's rights and any forthcoming criminal trials. Their Republican counterparts so far have displayed a restraint and integrity that has been admirable and helpful.

In addition, all of them will have to be strong men to resist temptations and pressures to veer beyond a careful, judicious and fair hearing. It is not an exaggeration or an empty moralism to suggest that the way these hearings are conducted will inform us as much about ourselves as the facts and findings will disclose about the notorious and still unraveling Watergate story. It is a time to display our better selves. Democrats who simply seek vengeance or political gain, Republicans who want to evade the truth or some of it, will short-change the public. We all must be judged by how our government does its judging.

We still need to learn and do a lot about the Watergate affair and all the profound ramifications of the conduct of the last presidential campaign. People need to be prosecuted, laws need to be passed and the public must be informed. But in the process, it is important to remember that what we do not need and cannot afford is a pillory or a circus.