

Watergate as Trial by Television

By Edward S. Boylan

ENGLEWOOD, N. J.—The likelihood is growing that the major participants in both the planning and cover-up of the Watergate bugging incident will escape punishment. This development, if it occurs, will not be the result of some sinister Nixonian plot. Rather, it will be the natural outgrowth of continued public testimony before the Ervin committee.

This does not come from the Republican National Committee, eager to spare the President yet more adverse publicity. Rather, it is the judgment of Archibald Cox, Kennedy Democrat, approved, in essence, by the Senate as the independent prosecutor of those suspected of involvement in the Watergate incident. In requesting Senator Ervin to postpone the hearings, Cox listed several ways in which continued public hearings would adversely affect the cause of justice. First, perhaps most important, prejudicial pretrial publicity may make it impossible to find a fair and impartial jury, preventing any trial from occurring. Second, the heightened possibility for escaping punishment may make some individuals less likely to testify fully of their involvement (in the hope of receiving a reduced prison sentence). Third, such hearings give possible defendants great access to the prosecution's case, allowing the defense to be more effective than it might be. Fourth, grants of immunity, even partial immunity, to individuals, will greatly complicate possible prosecution of such individuals.

While Cox's contentions were disputed to some extent, the committee's response was primarily on a different plane. Judicial procedures, the Senators noted, were time consuming and likely to last months, if not years. The revelations regarding Watergate have brought the Government to a virtual standstill and hence a speedy inquiry is needed to end this state of inaction. Moreover, some actions might be unethical, though not illegal, and therefore not investigated at any trial. Thus "the [whole] truth can only be revealed by carrying out the Senate investigation."

While bemoaning the apparent paralysis the Government finds itself in, the committee overlooks the fact that the hearings are much more the cause than the cure. Moreover, the committee's penchant for haste seems rather muted when one considers the number of relatively minor individuals who were questioned prior to interrogation of major figures involved in this scandal.

The apparent purpose of live tele-

vision coverage is to "educate" the American public; that is, to embarrass the Nixon Administration and the President himself before as wide an audience as possible. There is the question of what role, if any, the President played personally. One suspects that only Richard Nixon can answer that question completely. He has shown less zeal in investigating Watergate than the Hiss affair. And, at a minimum, many of his highest appointees were involved in subverting justice. For this he must shoulder responsibility and blame.

The likelihood, however, of discovering evidence justifying impeachment or resignation is small. At the most, there will be unsubstantiated testimony on the issue of Presidential involvement not clear-cut enough to demand impeachment, yet damaging to Mr. Nixon's ability to govern.

It is fitting to recall how Richard Nixon acted under similar circumstances. Following his narrow defeat by John Kennedy, there were allegations of vote fraud in Illinois and Texas. If proven true, he would have become the victor, not the vanquished. But court battles over this issue could have dragged on well past inauguration day and left the country effectively leaderless for an indeterminate period of time. In the best interests of his country, Richard Nixon sacrificed his own immediate political future and declined to raise the issue in the courts. It is a rather sad commentary that those who hold themselves infinitely superior morally to the President have no qualms about injuring the country in the quest of political advantage.

One can understand, however, that politicians would succumb to such temptation. But where is the editorial outcry against jeopardizing the Federal prosecution's prospects? None of

the leading newspapers, such as The New York Times, has even suggested that television coverage be curtailed. How much credibility can one place in editorial assessments picturing Watergate as a portent of a police state, when the possibility that those guilty of planning, financing and covering up this affair may go unpunished is viewed with such equanimity?

To delay or disband the hearings is not to deny the importance of Watergate. Rather, it would stress the importance of punishing those guilty of crimes relating to Watergate. The judicial process may be slower, but it is more likely a path to "the truth" than trial by television. Those accused of involvement deserve the opportunity of subjecting their accusers to hostile cross-examination by an attorney of their choice, as well as to present evidence indicating their innocence. Only by such a process can an objective assessment of guilt and innocence be made by the American people.

Edward S. Boylan is an associate professor of mathematics at Rutgers University, Newark College of Arts and Sciences, and a consultant to the Hudson Institute.

