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The Role of Mr. Cox

As the Senate Watergate hearings drone on, the high importance of special prosecutor Archibald Cox becomes steadily more manifest. For the Senate inquiry is heading toward a series of delicate judgments.

The committee is far too blunt an instrument for such fine discrimination. But Mr. Cox, by contrast, is uniquely equipped to do the job.

The salient role of finely calibrated judgment emerged with special force from the testimony of former Atty. Gen. John Mitchell last week. Prior to Mr. Mitchell's appearance, the big job had been to digest the vastly detailed stories of wrongdoing laid out for the committee by guilty men spilling their guts in order to avoid or mitigate prosecution.

Mr. Mitchell did not contest the basic framework of facts laid out by such witnesses as the president's former counsel, John Dean. But he placed upon the agreed facts a completely different interpretation.

For example, Mitchell acknowledged playing an active role in efforts to keep details of the Watergate break-in from becoming public during the 1972 campaign and thereafter. To some, Mitchell had plainly moved to obstruct justice and arrange for others to commit perjury. But he himself claims that all he did was hold his tongue while raising money for the Watergate defendants to pay bail and legal fees.

In the same vein, Richard Moore, the White House special counsel and a key administration witness who followed Mitchell to the stand, supported the story that Dean went to see the President on March 21 in order to tell Mr. Nixon about the cover-up. But according to Moore, Dean had in mind only a relatively small disclosure. Moore disputes Dean's view that the President knew something about the cover-up before March 21, and everything immediately thereafter.

Further testimony of a similarly confusing kind can be expected in the future. That is particularly true of the President's closest former aides, H.R. Haldeman and John Ehrlichman.

In penetrating the confusion, the Senate committee can play some role. Cross-examination of Mitchell by the Connecticut Republican, Lowell Weicker, showed the dents that could be made in even a very cagy witness by sharp questioning rooted in detailed knowledge. The staff of the committee, in particular its junior members, showed how difficult it was on general principles to believe Mitchell and Moore.

But very few of the senators have the detailed knowledge necessary for effective cross examination. Televised hearings, which make everybody self-conscious, are a poor vehicle for examining the fine points of a complicated narrative. Despite the coming meeting between the President and Chairman Sam Ervin, the committee cannot easily acquire important documents if the White House insists they are privileged because of the constitutional separation of powers.

Mr. Cox is in a totally different position. He rightly enjoys a reputation for the highest integrity, and has no need to cut a figure before anybody. He can work in a careful, deliberate fashion without the pressure of

successive daily appearances before television.

He is building a staff of nearly a hundred lawyers, organized to handle all different aspects of the vast Watergate case. Already, the Cox lawyers have the whole case clearly in mind. One White House official was questioned so sharply about details of meetings he had, that he came away saying he didn't blame the prosecutor for not believing him.

Moreover, the Cox position with regard to getting documents from the White House is particularly strong. Since Mr. Cox is an officer of the executive branch, the claim of separation of powers, which has been used to fence off the Senate committee, does not apply to him. While the flow of White House documents to his office has been less than perfect, the President and his men are clearly sensitive to the possibility that Cox might complain publicly about a lack of cooperation. Indeed, when he called a press conference to announce staff appointments recently, the White House plainly thought he was going to blow the whistle and deliver a big load of documents.

So for the period coming up, Mr. Cox and his men will be playing a critical role. The Senate hearings will of course go on, with the President and his aides building their defenses. But the public perception of who's lying, and with it the direction of events, will probably be determined by the indictments the special prosecutor begins to hand down in the next several weeks.

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