

Ervin Committee: Trial by Publicity?

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"It's a great trial they're conducting up here, isn't it?" an exasperated John N. Mitchell blurted out last Wednesday at the close of the day's interrogation by the Senate Watergate committee.

The remark came as Sen. Lowell P. Weicker (R-Conn.) concluded a tough cross-examination in which the for-

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mer Attorney General admitted he had failed in his responsibilities as a lawyer and "officer of the court" by not reporting illegal White House acts.

Earlier the same day, the committee vice chairman, Sen. Howard H. Baker Jr. (R-Tenn.), had pointedly denied, however, that the Watergate hearings constituted a trial of Mitchell or any other man.

"The responsibility of this committee," he said, "is not to fix blame. . . . We have no defendants. We are not trying to establish the guilt or innocence of anyone. We are trying to prevent this in the future by legislative relief."

Sen. Sam J. Ervin Jr. (D-N.C.), the chairman, in opening the hearings on May 17, noted that "it is clear that we have the full responsibility to recommend any remedial legislation necessary." And the resolution creating the Select Committee on Presidential Campaign Activities said it should determine "the necessity or desirability of the enactment of new congressional legislation to safeguard the electoral process by which the President of the United States is chosen."

Yet the contention that the Watergate hearings are, in fact, a trial of all those alleged to have been involved in the break-in or subsequent cover-up, up to and including President Nixon—a trial before the court of national public opinion—cannot be dismissed out of hand.

Although the committee has no direct punitive power—it can neither indict nor convict any individual—the

public airing of its hearings, particularly on nationwide television, puts the reputation of each witness on the line. And perjury in testimony, of course, can bring judicial action.

In his May 17 statement, Ervin also observed that while the purpose of the hearings "is not prosecutorial or judicial, but rather investigative and informative," the committee was "determined to uncover all the relevant facts surrounding these matters, and to spare no one, whatever his station in life may be."

So far, Ervin appears to be as good as his word, and

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Mitchell is not the only one who's complaining. On Friday, Sen. Carl T. Curtis (R-Neb.) charged that the committee, with a \$500,000 budget, was not "serving any lawful purpose," but rather its purpose "is to attack the President" and the hearings should be ended.

The accusation, from a long-time conservative, is reminiscent of charges that filled the air during the McCarthy investigatory hearings of 20 years ago, changes mostly sounded by liberals, that the only purpose was exposure, with no legislative intent.

McCarthy was berated repeatedly for using Senate hearings to expose, intimidate and destroy the careers of those who crossed swords with him or incurred his dislike. Men like Owen Lattimore, a State Department adviser, an Army dentist Maj. Irving Peress, and Army Gen. Ralph Zwicker were among his best-publicized victims.

McCarthy charged Lattimore first with being "a bad security risk" and wound up calling him "the top Russian espionage agent," all without proof. When Peress exercised his constitutional protection against self-incrimination and refused to testify, McCarthy called him—and others who did the same—"a Fifth Amendment Com-

munist." And when Zwicker refused to cooperate, McCarthy, in humiliating televised hearings in the same Senate Caucus Room now housing the Watergate hearings, said Zwicker was "not fit to wear" his uniform.

These and other McCarthy excesses put congressional investigations generally under fire, with constant demands from civil libertarians that legislative intent be demonstrated, as proof that such investigations and hearings were not merely reputation-destroying witch hunts.

In the militant anti-communist climate that existed in the country in the 1950s, being accused of leftist leanings, or even viewpoints, often was enough to end an individual's government, and even outside professional, career. Certain Hollywood writers and actors were blacklisted so long they were driven into other fields.

Though this climate has waned appreciably in the intervening years, public exposure on television still can be devastating, and that is the gist of the Mitchell and Curtis complaints.

There are, of course, significant differences between the Watergate hearings and those earlier investigations. Real, not imagined, crimes have been committed, and there is a demonstrable need for tougher federal legislation governing presidential campaigns.

Once the hearings get past the first phase, investigation of the Watergate break-in and subsequent cover-up, they are to focus, in Ervin's words, on "allegations of campaign espionage and subversion and allegations of extensive violations of campaign financing laws."

Also, parallel judicial procedures are going forward through special Watergate prosecutor Archibald Cox. Mitchell, for one, already is assured of a real trial, having been indicted in New York on charges of perjury and obstruction of justice in connection with a Securities and Exchange Commission investigation of Robert L. Vesco, an international financier and Republican contributor.

And the manner of interrogation, to date at least, has been mostly courteous and responsible—a far cry from the reckless brutality of McCarthy and other earlier congressional inves-

tigator-interrogators. Nor has there been much showboating by the senators or committee counsel before the tempting television cameras.

Perhaps one of the more aggressive, embarrassing bits of cross examination occurred Thursday when Assistant Majority Counsel Terry Lenzner, referring to White House logs, reduced Richard A. Moore, a White House special counsel, to stammering confusion.

Moore, a white-haired, red-faced man who looks considerably older than his 59 years, could not remember details about specific White House meetings that the 33-year-old Lenzner pressed him on. Lenzner, a former Justice Department civil rights investigator and a defense attorney for Father Philip Berrigan in his conspiracy trial, at one point charged Moore with telling the committee staff one thing in private and another in public. To this, the hapless Moore replied: "I'll let my answer stand—whatever it was."

Moore's name surfaced in the Watergate matter only recently. Former White House counsel John W. Dean III testified that Moore had attended meetings with Dean and President Nixon that led to Dean's telling Mr. Nixon all he knew about Watergate last March 21. Moore has not himself been implicated in any way in the break-in or cover-up, but in a sense it could be said his competence was put "on trial" before the TV cameras by Lenzner's interrogation.

In a letter printed in The Washington Post Saturday, a reader criticized Lenzner for "unintended but callous prolongation of agony" to Moore, and observed sympathetically to Moore that "what you have forgotten is probably more than this bright young man knows as yet."

Lenzner said Saturday he had received no other criticism. He read a telegram from a viewer in Columbus, Ohio, that said: "Thank you for your kind questioning toward an obviously incompetent old man. Please keep showing citizens the decay which must be cleaned out."

Two other flashes of aggressive questioning also stand out in recent days. The first was Weicker's biting reminders to Mitchell of his professional and ethical responsibilities as Attorney General and lawyer, which

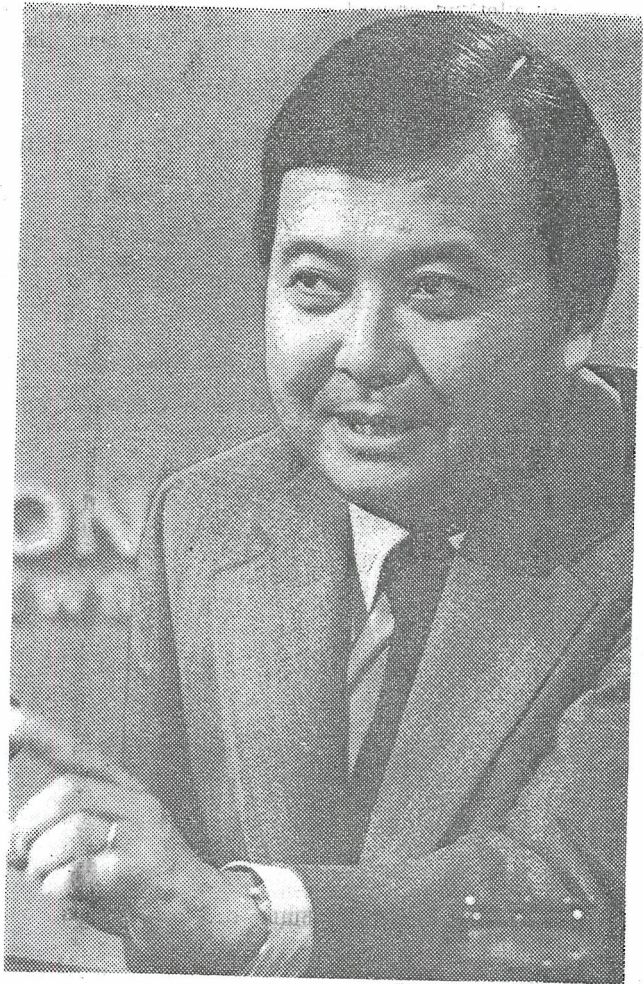
precipitated Mitchell's lament about being on "trial." The second was a sharp challenge to Mitchell's credibility by Chief Counsel Samuel Dash near the close of his testimony.

Noting two cases where Mitchell's committee testimony had differed "diametrically" from what he had said in a civil suit deposition on Watergate, Dash bluntly said:

"What I have to say to you on that, Mr. Mitchell, is that since you may have given false testimony under oath on prior occasions, is there really any reason for this committee to believe your testimony (on other matters)?"

But the Watergate hearings have yet to produce very much of the kind of hammering cross-examination for which men like McCarthy, Sen. John L. McClellan (D-Ark.) and Robert F. Kennedy as chief counsel of the labor rackets committee became famous.

As congressional "trials" go, this one so far has been conducted mostly with the gloves on. Undeniably, exposure is an immediate product. But in light of the clamor already building on Capitol Hill and in the country for election reform, legislation almost certainly will result down the road.



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Sen. Inouye: 'President's word is not being taken.'