William Raspberry

WXPost

MAY 1 1974

'The Jury Was Mostly Right'

For two and a half months, I read the news stories on the New York trial of John N. Mitchell and Maurice Stans and wondered whether I, on the basis of the testimony reported in the news accounts, could vote to convict them of conspiracy, obstruction of justice and perjury.

I ought to confess that I tended to think them guilty on most of the counts —still do, I guess. But on the basis of what was said in court, and who said it, I have to say that I probably would have voted for acquittal on the conspiracy and obstruction charges. Some of the perjury counts would have given me a bit more of a problem.

The point here is that in spite of the shocked incredulity of many who see the outcome as damaging to the impeachment case against the President, Sunday's jury verdict acquitting the two former members of the Nixon cabinet of all charges against them was not the travesty some people are making it out to be.

In fact, I find it reassuring to know that 12 men and women were able to overcome whatever emotions and unsupported beliefs they might have had about Watergate, et al., and to consider the Stans-Mitchell case on the basis of the facts before them.

To this nonlawyer, relying only on second- and third-hand accounts of what happened in Judge Lee P. Gagliardi's U.S. District Court, it seems the jury was mostly right.

Not that I now believe that the defendants never did any of the things they were charged with. I'm saying only that the government failed, in my view, to make its case sufficiently convincing. There was resonable doubt.

As is the case with most conspiracy trials, it proved difficult to get witnesses who were both sufficiently knowledgeable and sufficiently credible to be of much help. The prosecutor in the New York trial elicited testimony from G. Bradford Cook, former head of the Securities and Exchange Commission, who said in court that he earlier had lied under oath to protect Stans, the SEC and his own job.

The court heard from New Jersey politician Harry Sears, who had been indicted along with Stans and Mitchell. Sears acknowledged that he had tried to use his friendship with John Mitchell to help his own chief political contributor, Robert L. Vesco. But Sears' testimony was generally so unhelpful that the prosecution at one point moved to have him declared a hostile witness.

It heard, too, from John Dean III, whose advance billing as star witness was more striking—and apparently more convincing—than his testimony.

Another government witness, William J. Casey, also a former head of the SEC, suffered memory lapses at critical junctures. It was embarrassingly clear that Sears and Casey were not saying in court what the prosecution had

Associated Press

"While there is little doubt that Mitchell and Stans made some intercessions on Vesco's behalf, it is awfully tricky to make that into a conspiracy."

expected them to say. It would be interesting to know why, but that wasn't the question before the jury.

The jury was confronted with the question of whether Robert L. Vesco's $200,000 contribution to the 1972 Nixon campaign was by way of payment for intervention by Mitchell and Stans in an SEC investigation of Vesco.

That was the brunt of the conspiracy count. The obstruction-of-justice charge stemmed from alleged attempts to conceal the cash contribution, which apparently was made before the new campaign reporting law took effect on April 7, 1972. The perjury counts were allegations that the two men had lied to a grand jury about the affair.

While there is little doubt that Mitchell and Stans made some intercessions on Vesco's behalf, it is awfully tricky to make that into a conspiracy. Is it conspiracy, for instance, for a senator to intercede with the General Services Administration on behalf of a constituent who has a government contract pending? Is it bribery if that intercession is made on behalf of a constituent who has been a generous supporter of the senator's campaigns?

Well, sometimes. The question is whether the contributor considers that he has bought something with his contribution and whether the politician considers that he has sold something in accepting it.

At what point does the use of "good offices" or even influence peddling become criminal conspiracy? The jury in New York had reasonable doubt that that point had been reached by Stans and Mitchell.

And I, for one, see it as evidence that the system really does work pretty well. After all, any system that can manage fair trials for people as wildly unpopular as John Mitchell and, say, Angela Davis, must be doing something right.

Apparently the prosecution in the Stans-Mitchell trial went too soon to trial, or had too little by way of evidence and witnesses, or simply was outlawyered in the courtroom. And if the result "buoys" the President for a while, as newspapers said the other day, that's okay too.

The double acquittal may have been disappointing, but it was no travesty.