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AN INDEPENDENT NEWSPAPER

An End to the North Case

AFTER ALMOST five years of investigation, congressional testimony, trial, conviction, appeal and reconsideration, the government's case against Oliver North was finally dismissed yesterday. The former defendant has claimed total exoneration, and indeed his criminal conviction has been wiped out, his military pension has been restored, and he becomes once again eligible to run for public office, though he emphasized that he has no intention to do so. Dismissal of the case was requested by the independent counsel, Lawrence Walsh, because the standard set by an appeals court for reexamining the connection between court testimony and immunized congressional testimony was too difficult to meet.

The collapse of the case is really no surprise. Both the prosecutor and Judge Gerhard Gesell, who presided at the trial, had conceded the difficulty of proceeding under the conditions set by the Court of Appeals to reexamine every bit of grand jury and trial testimony "word-by-word, item-by-item" to determine whether any part of it had been tainted. But the final blow came last week when former national security adviser Robert McFarlane, the first witness to be reexamined, testified that he had certainly been

influenced by the television coverage of the congressional hearings. If his crucial testimony for the prosecution could not be sustained, few believed that the conviction could stand.

The impact of Monday's action goes beyond the North case. John Poindexter's conviction in the Iran-contra scandal is now on appeal, and the same arguments involving immunized testimony were made in his behalf. Judge Harold Greene presided at the Poindexter trial, and he did conduct a more extensive interview of witnesses to determine whether they had been influenced by the congressional hearings. But does that procedure meet the new, stringent test? Moreover, Mr. North and Mr. Poindexter were indicted by the same grand jury, and none of the grand jury testimony has yet been reexamined.

In the long run, the ruling should affect congressional decision-making. Every lawmaker is now on notice that the granting of immunity for purposes of congressional testimony severely handicaps the prosecutor at any subsequent criminal trial. It might have been a reasonable price to pay, as some congressional leaders maintained this week, for a full and public airing of all the facts in the scandal. But the cost of using immunity to get around Fifth Amendment rights is—and ought to be—high.