

The Ethics Committee's Show

Part 9/15/76

THE CASE of the House Ethics Committee v. Daniel Schorr reaches show and tell time today. The committee has commanded that he appear and reveal to it where he got a copy of last January's final report of the House Select Committee on Intelligence. Mr. Schorr has said he will not reveal his source. If both sides stand fast, the committee will have the choice of dropping the matter or of asking the full House to cite Mr. Schorr for contempt of Congress, setting the stage for constitutional clash between the power of Congress to investigate and the right of the press to publish. But before the show goes that far, it is worth scrutinizing the issues in order to put this matter in its proper perspective.

Some facts are relevant. Last Jan. 23, the Intelligence Committee voted, nine to four, to make its final report public. By Jan. 25, Mr. Schorr had a copy of that report; he used the material in it that day and on two subsequent days in broadcast news reports. On Jan. 29, the House overrode the committee and voted to keep the report secret on national security grounds. Sometime early in February, Mr. Schorr provided a copy to the Village Voice, a newspaper in New York which published the full text. On Feb. 19, the House directed the ethics committee to "inquire into the circumstances surrounding the publication of the text" and report its findings and recommendations.

The critical question based on these facts is: why does the ethics committee want to know who made the report available to Mr. Schorr? At first glance, the answer might seem to be: so that it can recommend action, either censure or a charge of leaking security information, against the source. But if the recommendation were to be censured, what would it be censured for? Leaking a report at a time when the committee that wrote it had cleared it for publication once final editing was completed? Violating a House resolution that had not been passed when the leak occurred? If the recommendation were to be a charge of leaking security information, the committee would have an equally difficult legal problem. The intelligence committee had voted that the material in the report was not classified and that vote had not been overturned when the leak occurred. Beyond that, if

the committee stands by what it has told Mr. Schorr's attorney, it will be hard put to show that there were any secrets in the document. It recently said it could not reveal what information in the report was classified since to do so "would simply compound any damage that has already been done or may be done to the national security."

All of these factors (and others) contribute to making the prospective case against Mr. Schorr for contempt of Congress quite weak on purely technical grounds. There is, for example, a legal question about whether inquiries into the source of the document are relevant to the committee's assignment, which speaks only of the circumstances surrounding its "publication." Even if such inquiries were relevant, the committee has not yet exhausted all other ways of trying to get answers—it has not called all those who had copies—and that, at a minimum, is what the Supreme Court has said an investigating body must do before it compels a newsman to reveal a confidential source. Normally, government does not like to litigate major constitutional issues on so flimsy a record. And, make no mistake about it, the ultimate thrust in this case—like the one in Fresno, California, where four newsmen are still sitting in jail—is an effort to weaken the First Amendment.

Why, then, is the committee pursuing this inquiry into Mr. Schorr's source so vigorously while neglecting other things that have been assigned to it, such as the bill tightening up lobbying regulations which it seems intent on burying? The reason, we suspect, is that the committee knows it is not going to find out how Mr. Schorr got the report (from him or anyone else) and wants to make a big show out of its inability to find out. There will be no doubt, a great deal of posturing for the cameras and a good many speeches, some railing against the press and others praising the First Amendment. That may make good theater—and provide lots of publicity back home in an election year. But any effort by the committee to go beyond the predictable ordeal of asking its questions and being denied answers will produce a result that is either embarrassing to the committee or destructive of the First Amendment.