

Immunity Part of '70 Crime Act Ruled Invalid by Federal Judge

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JAN 30 1971

A key provision of the 1970 Federal omnibus crime act was declared unconstitutional yesterday on the ground that it failed to provide sufficient protection against self-incrimination.

The Government said it would appeal the decision, which was made in Federal District Court here by Judge Constance Baker Motley, in an important test case involving the Fifth Amendment.

Judge Motley declared that the privilege against self-incrimination must be upheld with a liberal construction "if we are to keep faith with the patriots who fought for inclusion of the Bill of Rights in the Constitution."

The case, which is expected

to reach the Supreme Court, grew out of an attempt by Federal prosecutors to compel Joanne Kinoy to testify before a grand jury that wanted to ask her questions about a fugitive sought in a bombing conspiracy.

A subpoena was served here last Dec. 31 on Miss Kinoy, the 21-year-old daughter of Arthur Kinoy, a Rutgers University law professor who has served as a defense lawyer for radical opponents of United States policies.

The Justice Department asked the Federal Court here to grant Miss Kinoy advance immunity from prosecution on her testimony, so that she could not refuse to testify on the

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Continued From Page 1, Col. 2 grounds of possible self-incrimination.

This immunity was requested under a provision of the new crime bill that provides for granting a witness immunity from prosecution, but this immunity applies only to the use of the witness's testimony.

This means that a witness can be prosecuted for the crime he testifies about if the evidence against him comes from independent "untainted" sources, even though his own testimony can never be used against him.

Before Congress adopted the omnibus crime bill, known as the Organized Crime Control Act of 1970, the granting of immunity meant that a witness could not be prosecuted for the crime or transaction he testified about.

An Example

If a person received immunity to answer questions about a bank robbery, for instance, he could never be prosecuted for that robbery, according to the previous immunity provisions.

Under the new provision, however, the same person might be questioned about the bank robbery and could be prosecuted for it if the authorities found evidence that was not derived from his own testimony.

Federal authorities regarded this provision as a significant means of obtaining information in criminal investigations without precluding future prosecutions of witnesses who had received immunity.

The constitutionality of the new clause was challenged in Federal Court here by Miss Kinoy, who contended it deprived her of the full protection against self-incrimination that the Fifth Amendment guaranteed.

Miss Kinoy, a former student at the University of Wisconsin, wanted to avoid testifying before a grand jury seeking Patricia Swinton as a defendant in a case that resulted in

the conviction of Samuel Melville for the bombing of Federal buildings here.

After Judge Motley ruled in favor of Miss Kinoy's challenge, Professor Kinoy exclaimed, "It's a fantastic victory."

The small, sprightly, bearded law professor embraced his daughter and congratulated the lawyers who argued her case, Morton Stavis and Herbert O. Reid.

Peter L. Truebner, the assistant United States attorney who argued the Government's case, said the decision would be appealed, and Judge Motley adjourned the subpoena against Miss Kinoy pending the appeal.

In her 34-page decision, Judge Motley observed that the Fifth Amendment privilege against self-incrimination had become "the touchstone of our adversarial system."

"Unless the immunity granted under the statute is coextensive with the privilege," she said with regard to Miss Kinoy, "the statute does not fully protect her and she cannot be ordered to testify."

'Giving Up Nothing'

When the Government grants the limited immunity provided by the 1970 law, Judge Motley said, "it is really giving up nothing in return for the witness's forced waiver of the privilege."

"The Government gains knowledge and information about the crimes of the witness and the crimes of others from the witness and retains the right to prosecute the witness who has given up his right not to incriminate himself," the judge maintained.

"This is not consistent with our constitutional notions of fair play."

Judge Motley agreed with the defense contention that the law must provide not only immunity from the use of "the compelled testimony and its fruits" but also "absolute immunity from future prosecution" for the crime that the witness is questioned about.

Recalling a ruling by associate Justice Felix Frankfurter of the Supreme Court, the judge said that the court was "duty-bound to give the self-incrimination clause a liberal construction."

"The privilege against self-incrimination," she declared, "is shorthand for the citizen's unabridged guarantee that he can never be forced to convict himself."