

Silbert Hearings Raise Issue of Special Treatment for Accused Politicians

Accused Politicians

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WASHINGTON, June 22—At courthouses across the nation stands the statue of the blind-folded woman, holding the scales of justice. The presumption is that she does not see the wealth or position of those before her.

The information office at the Department of Justice reports there is no such statue at the headquarters in the capital.

Assistant Attorney General Henry E. Petersen, head of the Criminal Division, underscored the symbolic point this week.

Politicians, he explained, are treated differently from average citizens in criminal cases.

"Well then," said Senator Sam J. Ervin Jr., Democrat of North Carolina, "justice as administered by the Department of Justice is not blind."

"I hope justice is not blind," Mr. Petersen replied. "I do not apply it blindly, I can tell you."

Headed Prosecutors

Senator Ervin was using the Senate Judiciary Committee hearings on Earl J. Silbert as a vehicle to take a long look at whether the Watergate scandals might have been broken open in 1972 if the Justice Department had handled the case more vigorously. The hearings also developed into an examination of the department's handling of political cases.

Mr. Silbert headed a three-man team of prosecutors investigating the burglary at Democratic national headquarters in the Watergate complex. Mr. Petersen held over-all supervision of the case. President Nixon has nominated Mr. Silbert to be United States Attorney for the District of Columbia.

The nomination itself appears to be in little trouble. But, in what was almost a one-man investigation, Senator Ervin asked over and over why the prosecutors ignored what seemed to him obvious leads and why important Government figures were not taken before the grand jury. Some were allowed to submit written statements rather than appear in person.

Part of Senator Ervin's questioning of Mr. Petersen follows:

Q. Now, do you not think it is rather poor practice, under a system of law which says every person should stand equal before the law, to take and excuse from going before a grand jury White House aides and a former Secretary of Commerce?

A. I sure don't. If I thought it was a poor practice, I wouldn't have done it. And, secondly, a little bit of philosophy, if you will. While I recognize that everyone is equal before the law, I also

recognize that not everybody can be treated equally. And that applies to Senators and Congressmen.

Q. Why can't they, Mr. Petersen?

A. Oh, I think more the principal reason is not because of the office, Senator, and there are many, many,

many concessions that are made because of the office.

For example, we indulge in a practice in the Department of Justice of, before we initiate an investigation of a member of a Senator's staff or a Congressman's staff, to give the Congressman the courtesy of advising him, not because he is Senator So-and-so or because he is a friend or enemy, but because of the office, so that if that aide has done something wrong, the Senator can move promptly to prevent any undue criticism from being directed at him or the office.

Political cases often throw prosecutors into the kind of dilemma that faced George Beall, the United States Attorney in Baltimore who investigated former Vice President Spiro T. Agnew.

"I think my stomach was in knots for seven days," Mr. Beall said. "I'm a Republican and it occurred to me that I might be looked at as the Benedict Arnold of the Republican party. But you go ahead and do what you have to do."

Stephen H. Sachs, a Democratic appointee who once held the same post in Baltimore, said by telephone, "It is a fact that you are always a recipient of half-baked allegations about famous people. Unless you handle them with some discretion, the mere information that you are investigating them can be devastating."

Citing what he called a byword around the Department of Justice, Mr. Sachs said, "If you strike at a king, you have to kill him." Translated, that means there is a higher burden of proof for a big shot. At the same time, a failure in such a case probably does more harm than good.

"To shoot and miss gives credence to a charge of improper motivation," he added. "There is no blinking at the fact that when political figures are charged, the stakes do change and sensitivity is heightened."

Charles Morgan Jr., head of the American Civil Liberties Union's Washington national office, attacked the central position that political figures

should receive special treatment. He has been long opposed to Mr. Silbert's nomination and has filed briefs with the committee questioning the department's handling of Watergate in 1972 and early 1973.

"Everyone runs on reputation," he said by telephone. "The leader of organized crime who lives out on Long Island lives on reputation."

"Do they think that the reputation of a citizen who works on an assembly line in Dearborn, Mich., who goes to church every Sunday, is married and has four children—do they think that his reputation is less hurt by a criminal investigation than that of a politician?" he asked, adding, "These politicians work for us. We pay their salaries. They aren't kings and princes."