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Protection From Punishment?

It is time for everyone to understand what almost no one in this ghastly city now seems to understand. Briefly, the way the Watergate horror is currently being handled can too easily protect the criminals, if any, from the normal punishments that the law imposes.

Maybe this is the right thing to do. The chairman of the Senate's Watergate investigating committee, Sen. Sam J. Ervin of North Carolina, has openly argued that it is more important to ventilate all the ugly facts than to send the guilty men to jail. There are good arguments for Ervin's view. But there is a choice here; and its hard realities badly need to be faced.

There is a choice because of the existing law of the land, which was laid down in the case of *Delaney vs. United States* in October 1952. As Ervin and his chief counsel, Samuel Dash, are both well aware, what kept Denis Delaney from going to jail for taking bribes was legally identical with what Ervin's committee is now doing.

Delaney was an amiable, picturesque Irish politician, who managed to secure the collectorship of internal revenue in Massachusetts, and then got caught taking money from tax dodgers. It was an open and shut case, except for one thing: Before the trial in court, Delaney's misdeeds were given enormous publicity by the King committee of the House of Representatives, which was then investigating the Internal Revenue Service.

When Delaney was convicted and sentenced by Judge Charles Wyzanski Jr., he therefore appealed. The U.S. Court of Appeals thereupon annulled Delaney's conviction, on the sole, carefully specified ground that his trial in court had been hopelessly prejudiced by his trial in Congress. The Court of Appeals remarked, acidly: "It is fair to say that, so far as the modern mass media of communication could accomplish it, the character of Delaney was pretty thoroughly blackened and discredited as the day approached for his judicial trial."

The court held that the blackening had been done by "the United States, through its legislative department." The court pointed out that the United States was "put to a choice in this matter." And the court added that the United States by its own choice made by "the legislative department," had made it impossible for Delaney to have "a fair trial before an impartial jury."

So Delaney's conviction was reversed. The U.S. government got him anyway, because he had also failed to pay the income taxes he was charged with collecting. But it is doubtful whether any of the more highly placed personages involved in the Watergate horror, have obligingly provided the U.S. government with this kind of easy way of sending them to jail.

Meanwhile, the parallel is exact with the way the Watergate horror is being handled. The grave problems raised by the Delaney case are, in fact, freely admitted by Samuel Dash—if you insist upon asking him about these problems (which he does not seem to like

very much). The chance that the guilty men may be saved from jail by the Watergate investigation has even been admitted by Ervin, at least by implication, in his forthright statement of priorities already quoted.

Committee counsel Dash instead talks about the government prosecutors asking for "continuances," in order to put off trying those guilty of crimes in the Watergate horror until the whole commotion has died down and been forgotten: If and when the commotion has indeed been forgotten, of course, those guilty of Watergate-linked crimes can then be given the "fair trial before an impartial jury" required by the U.S. Court of Appeals in the Delaney case.

But who is fool enough to expect early forgetfulness of this Watergate horror, that threatens to destroy a

President of the United States? Will the courts still be willing to grant continuances to the government prosecutors 10, 20, or 30 years from now?

In that connection—and here is another question that makes Dash just a mite edgy—what about the constitutional right of the guilty men to a speedy, as well as fair, trial? Can the U.S. prosecutors argue that those charged with crimes can be kept in a kind of limbo for decades because the calm oblivion needed to assure a fair trial has not yet descended over the Watergate horror?

In sum, is the undoubted gain from the Senate investigation worth the attendant risk? This is the risk that those guilty of crimes will escape the law's punishments. It is an interesting question. All will have their own answers.

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