Senators Survive a Constitutional Clash

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WASHINGTON, June 12 — The Senate Watergate investigation survived its first brush with the Sixth Amendment to the Constitution today, suffering little immediate damage, but the final report on this significant legal collision is not due for some time.

Chief Judge John J. Sirica of the United States District Court here refused to limit the power of the Senate Select Committee on Presidential Campaign Activities to question two key witnesses under a grant of immunity, denying the Government's contention that the rights of future criminal defendants would thereby be endangered.

But far from resolved was this underlying question: How far can a legislative inquiry proceed, continuously before television cameras and radio microphones, without making it difficult if not impossible to hold subsequent fair trials of those whom the inquiry might incriminate?

The Sixth Amendment, posing at least two problems, says in part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed."

Problem No. 1: An impartial jury, as defined by the courts over the years, is one that has no advance knowledge of the facts of the case it must decide. Individual jurors who have heard or read about the case may be admitted, if attorneys for both the prosecution and the defendant are satisfied that their knowledge has not prejudiced them on one side or the other.

Rules of Evidence Used

The rationale for this requirement is relatively simple. A court case, civil or criminal, should be decided only on the basis of information that is admissible at a trial under the rules of evidence applicable to all parties. Recollections of television or newspaper accounts, often fragmentary and inaccurate, are not subject to this rigorous filtering process at all.

"The theory of our system," Justice Oliver Wendell Holmes observed in 1907, "is that the conclusions to be reached in a case will be inducted only by evidence and argument in open court and not by any outside influence, whether a private talk or public print."

Problem No. 2: Under a 1952 ruling by the United States Court of Appeals for the First Circuit, one of the few precedents in the area, an income tax violator had his conviction reversed because media coverage of Congressional hearings at which he was a witness, coming between his indictment and trial, had "pretty thoroughly blackened and discredited" his character.

The Court of Apeals held that the defendant, Denis W. Delaney, should have been granted a postponement of his trial so that the adverse publicity could have had a chance to die down.

But what would happen if the adverse publicity created by accusations and appearance before the Ervin committee became so widespread, with the reinforcement of network television, that the courts required a postponement of weeks or months before a fair trial could be held?

Principles in Conflict

Some legal authorities believe that this kind of delay, in the interests of upholding one constitutional principle, could run afoul of another, the Sixth Amendment guarantee of a "speedy" trial.

Only two days ago, the Supreme Court ruled that criminal charges must be dismissed in the case of a man who waited 259 days between arraignment and conviction. At the rate the Watergate hearings are proceeding, even assuming an indictment in the relatively near future, it could be many months before adverse publicity involving the defendant was completed and then given an opportunity to subside in the interests of fair, if not speedy, trial.

In giving a green light to the Ervin committee, Judge Sirica cited another section of the Delaney decision, in which the court held that "it was for the [House] committee to decide whether considerations of public interest demanded at that time a full dress public investigation" of the accused man.

The problem of attempting to impanel a reasonable impartial jury is complicated procedurally as well as substantively by the national publicity given the Watergate hearings and accusations made there that are not subject to any cross-examination by the persons named.

"You're not going to be able to ask a prospective juror: 'Did you hear John Dean say on television that so-and-so and so-and-so" one Senate attorney said. "If he answers 'Yes,' he's disqualified himself. If he answeres 'no,' you've already told him what Dean said and disqualified him yourself in the process."