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For 'Pervasive Publicity' of a Senate Trial

Jerome Barron's article on televising a Senate trial of the President misses the key issue and makes unwarranted analogies between an ordinary criminal trial and a Senate trial. The two could not be more different.

He cites the Senate as the jury, but disregards its power to overrule the judge (Chief Justice of the United States) on issues which arise during the trial. He further ignores the power of the Senate to establish its own procedures and rules of evidence for the trial. No ordinary jury has such power.

He chooses to ignore the method by which the Senate "jury" is chosen. Senators are popularly elected, and under the Constitution, can be petitioned by their constituents. Not even a Senate impeachment trial overrides that constitutional provision.

On the other hand, a conventional trial jury is chosen by the mutual consent of the prosecution and defense. Jurors are questioned about whether or not they have performed any opinions, and both the prosecution and defense can arbitrarily refuse to let certain jurors sit. Senators are not subject to such prohibitions.

During an important criminal trial, the jury may be sequestered (kept

locked up and not permitted to read anything about the trial during the trial). This could not constitutionally be done with senators.

In short, there are few analogies between the trial in the Senate and a conventional criminal trial. Perhaps the overriding concern in this matter, not addressed by Mr. Barron, is the need for the public to fully understand the basis upon which the Senate decision will be made. This cannot be accomplished through incomplete reporting or through "extensive and free-wheeling" press coverage and commentary on radio and television. In fact, I am shocked that Mr. Barron advocates such a procedure. Nothing could more distort the trial and leave the public confused than to have such free-wheeling commentary without the public having seen the trial itself.

Publicity should be all pervasive, contrary to what Mr. Barron says, but should be publicity based on what the public sees and hears of the actual trial itself, rather than hearing about it from others.

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