TRANSLATION FROM FRENCH

Two articles from "Informations & Documents," a bimonthly review published by the American Cultural Center, Paris, France, No. 197, April 1964.

DALLAS: REFLECTIONS ON A TRIAL

(1) A Study by Professor G. W. Foster,

page 24

At the time of the assassination of President Kennedy, many Europeans realized with amazement that the United States had no federal criminal legislation. The explanation is simple: the laws which define and punish crimes and misdemeanors emanate from the States and not from the federal power; and the assassination, whether of the President of the United States or anyone else, is a crime punishable by the law of the State where it was perpetrated.

Since every State is free, in a general way, to determine the nature of a misdemeanor or a crime and to fix proper penalties, there are notable differences from one region to another in the United States. Gambling, for instance, is permitted in certain States and illegal in others. The death penalty exists in a majority of the States, but has been abolished in others. The procedures, too, vary from State to State.

However, the attitude of various States toward the criminal law is fundamentally the same. Several elements of a historical nature conferred a profound unity upon it. In the first place, all the States have adopted legislation directly inherited from a common source: the Anglo-American law. There is, however, one exception: Louisiana, which,

TRANSLATED BY: Tn
TATIANA NIKONISHIN:hea
April 17, 1964

44-24016 1418

ENCLOSURE

one hundred and fifty years ago, was subjected to the French influence and reproduced the broad outlines of the Code Napoleon. This historic unity was reinforced by the actual unity: for the most part, the States fashioned laws largely in response to the same problems, which themselves were produced by the same form of culture. The Federal Constitution, finally, came to bring in the leaven of unification.

Problems of Procedure

Within this context, the attention of jurists, as well as the public, was fixed upon the long arguments in the trial of Jack Ruby before the Texas State Court of Dallas. Apparently, the case was simple: millions of television viewers saw Ruby assassinate Lee Harvey Oswald, presumed murderer of President Kennedy. Legally, it only involved the determination if, at the moment when he fired the shot, Ruby was sufficiently sane to be judged guilty of the death of Oswald. I do not intend to deal with this question, to which the Dallas jury replied in the negative (sic). I simply wish to present some observations on points of procedure which caused some sharp controversy in the course of the trial.

All the studies published on American criminal legislation frequently mention the fundamental principle: the defendant has the right to "a fair and impartial trial." In fact, injustice or partiality may creep into any stage of a criminal trial in the most diverse ways. Ruby's attorneys have argued at great length three points of procedure which, they said, were of a nature prejudicial to their client. They questioned the choice of Dallas for Ruby's trial, the impartiality of the jury, and the public character of the trial. These doubts will probably serve as grounds for an appeal to a superior court. Whatever the result of this appeal may be, a part of public opinion will remain troubled by certain questions raised.

The right of all the accused to be tried at the place where a misdemeanor or a crime has been committed is one of the oldest features of Anglo-American tradition. The founding fathers of the American Republic considered this

principle so important that they incorporated it in the Bill of Rights which accompanies the Federal Constitution. The States followed it and they, too, considered it was good to guarantee it.

This principle explains itself practically: in a majority of cases, it serves both the administration and the interest of justice. The easiest place to get witnesses together would be where a misdemeanor or a crime was committed. Likewise, it is there that a community would be most interested in justice being done.

Ruby's attorneys, however, expressed an opposite opinion: they thought and said that their client could not be judged impartially in Dallas and they requested the transfer of the trial to Houston, also in Texas, but a few hundred kilometers further to the south.

Legal rules applicable to a request of this type are easy to formulate but difficult to apply. Whether in Dallas or elsewhere, it is evident that Ruby had the right to a fair and impartial trial. If it were demonstrated that passions and public opinion in Dallas would cast a reasonable doubt upon the impartiality of the court, the case would have been considered. The attorneys, however, did not succeed in convincing the judge and their request was denied.

Since the judgment has been rendered, the problem of impartiality and fairness of the court is going to be brought before the higher courts. In a certain sense, it would be less difficult to settle, since the matter has passed from the realm of suppositions to that of facts: the Court of Appeals is going to examine from this angle the manner in which the hearings were conducted, whereas the Dallas judge had to try to evaluate what was going to take place then and there. If the Court of Appeals decides that the trial was neither impartial nor fair, it is going to refer it to another court, in Dallas or Houston, depending upon what it will consider as conforming to the interests of justice.

Equity and Impartiality

I would like to stress an additional point: the defendant alone has the right to request to be tried

elsewhere than at the place where the misdemeanor or a crime was committed. The prosecutor, for example, cannot do it, even if he is able to prove that the public opinion is favorable to the defendant.

When the United States obtained its independence at the end of the 18th century, the guarantee of a jury in a criminal trial had been already recognized by the English law. The thirteen original colonies immediately inserted this rule into their Constitution. Later, the same was done with the Federal Constitution.

However, the functions of the jury were very different in the 18th century from those existing in the English law at the beginning. Since the time of the Norman conquest, royal courts of England invited the inhabitants of their vicinity, known under the name of the "jurors" (sworn), to state under oath their knowledge of law, both royal and private. And from the fact itself that these "jurors" were in a good position to know about local crimes or misdemeanors, they were called upon to testify on the guilt or innocence of the accused.

At the end of the 18th century, this characteristic of a jury was completely changed. It was demanded from then on that a juror approach the case on trial in all impartiality and to decide on the innocence or guilt of the accused disregarding a previous preconception and relying solely upon evidence revealed in the course of a trial.

Jury and Publicity of Proceedings

The manner in which the American jury is designated nowadays follows very closely the 18th century procedures, except for the fact that now women are admitted.

In order to assure the most complete impartiality, every candidate submits to a very thorough interrogation conducted by the judge, attorneys and prosecutor. If it appears that one of the candidates displays, for one reason or another, some preconception, favorable or unfavorable, he is eliminated. In addition, the defense or prosecution has the right to take exception to a certain number of candidates without asking for proofs of their partiality: the two sides can thus disqualify some persons whom they suspect of partiality without being able to prove it. The process of selection of 12 or 14 jurors takes sometimes more than one week, as was the case in the Ruby trial.

After the jury is selected, the trial begins. The case is not judged by the jury but before the judge and jury, whose relations are characterized both by independence and cooperation. The judge has the entire responsibility for the procedure and eventual decision concerning the points of law. But it is incumbent upon the jury to finally decide the outcome of the trial, the guilt or innocence of the accused. The latter, after all, is presumed innocent until his guilt has been proved "beyond any reasonable doubt." Thus, the jury which is not completely convinced of the guilt of the accused must pronounce the verdict of "not guilty."

In the case of Ruby, the jury rendered a unanimous verdict of "guilty" and recommended to the judge to pronounce the death sentence. Ruby's attorneys are most likely going to file an appeal which should either present what they consider to be a proof of the partiality of one or several jurors, or even ask for reconsideration of the manner in which the jurors were selected. In the final analysis, it will be the appellate jurisdiction which will have the last word: either it will confirm the sentence of Ruby or decide that there should be a new trial, because it discovered some error in the interpretation of the law or some evidence of unfairness in the course of the trial.

Another fundamental principle accepted by the State as well as by the federal courts, is the right of the accused to a public trial. This right is, on the one hand, a survival of the fear that a trial "in camera" may turn into means of persecution. The secret proceedings of the Star Chamber in England, the misdeeds of the Inquisition in Spain and abuse of "letters de cachet" by the French monarchy justify this point of view.

There is no lack of arguments in favor of publicity of hearings. The most important one perhaps is that informed opinion is at present the best safeguard against injustice, of which the judges may become an instrument. Additionally the attention of unknown witnesses may be attracted and facts essential to investigation may come up. Finally, people who attend the trial enrich their knowledge of institutions and see their confidence in the courts of their country strengthened.

However, like most of the great principles, the legitimacy of a public trial collides with other rights likewise worthy of respect. Most often, the conflicts are due to incidents resulting from the presence of spectators and newspaper reporters in the courtroom. It is indeed obvious that public opinion and the press contribute greatly to preventing excesses which can always taint the courts of justice. But it is no less obvious that, in certain cases, these two forces dangerously affect the order and objectivity which are indispensable to a discovery of truth and administration of justice. The essential problem is thus to establish equilibrium between these two factors and to preserve the advantages of the system while limiting its drawbacks.

Few Americans would be ready to deny to the journalists the right to be present at court hearings. To the extent that they limit themselves to quietly observing the proceedings and taking notes without otherwise manifesting their presence, the chroniclers fulfill their normal role of reporters. The intervention of press photographers presents more serious difficulties. Still, it is only half bad when they conduct their work in a discreet manner, without employing flash bulbs or spotlights. But even in admitting that it is not always like this, the objection has been raised that certain witnesses refuse to testify so as not to see their photographs appear in the newspapers.

Radio and television present still more serious problems. Radio can operate with microphones which are not too cumbersome, but television uses auxiliary lights and bulky equipment which disturb the calm of a courtroom. Moreover, participants, such as they are, are distracted by this complex apparatus and get an impression of playing a role in front of an invisible audience. Experience proves that witnesses, attorneys and even judges then have a tendency to be more verbose and often succumb to the temptation to address their unknown audience. At best it is unseemly, at worst - disastrous. The purpose of a trial is the search for truth and justice, not discovery of gifted actors for radio or television.

It must be added that the press is not always represented in courts: it stays away every time the case does not seem to it to be "news." It is interested in sensational or unusual crimes or cases involving well-known personalities.

In some States, laws or statutes determine the limits within which the press, radio and television may accomplish their mission. But, generally, the decision is left to the judge and varies from one case to another. It is usually accepted that organs of information should have the advantage of a maximum of freedom compatible with maintenance of order and respect for impartiality. Actually, judges apply this rule in very different ways. We can, however, say that, on the whole, this is handled in the following manner: reporters, accredited by newspapers, are permitted to follow the entire proceedings; photographers may take pictures at the end of the trial (and sometimes during it), flash bulbs being, however, not permitted; radio and television cannot, in principle, operate in the courtroom, although this practice is tolerated by certain courts.

In Dallas, the judge did not permit the intrusion of recording equipment, except in the course of the last part of the trial, and television could not broadcast anything, except the reading of the verdict, after the deliberations of the jury. The advisability of this decision was questioned and the problem will be raised again in an appeal.

Public Opinion

Possible repercussions of a trial in public opinion raise many other, quite considerable, difficulties. The controversy and violent passions aroused by some cases may render impossible a completely fair and impartial judgment. The judge disposes, however, of an authority sufficient for maintaining order in the courtroom. If some spectators engage in public demonstrations, he can expel them temporarily; he can also punish for offenses against the court, those who by their attitude threaten the tranquillity of the hearing.

But the greatest danger lies in the pressure of public opinion which arises outside of the court and influences indirectly the unfolding of the trial. It happens very seldom, but we did see a popular emotion reach such heights that witnesses refused to testify, or if they did testify, they abstained from telling the whole truth. It also happens that the jury dreads to render a verdict which may expose its members to reprisals. And the judges, whose profession demands that they do not let themselves be swayed by anything, have difficulty sometimes in disregarding these outside pressures.

When a wrought up opinion thus threatens the principles of justice, it is quite likely that some segment of the press aided in kindling the fire. If the court could permit itself this luxury, it would willingly bring the responsible ones to justice and would not hesitate to punish them. But this happens only in exceptional cases; freedom of the press - even when it borders on irresponsibility - is sacrosanct in the United States and generally excluded from the exercise of judiciary constraint. Under the circumstances the case which aroused the passions is either postponed until public opinion is calmed down or, if the accused requests it, is tried by another court.

To return to the Dallas trial it will rest with the appeal jurisdictions to decide if the pressures of public opinion were such that they were able to sway the court. Theirs will not be an easy task.