

# Civil Liberties Aspects of Oswald Case

Following is the statement of the ACLU national office, issued last month, commenting on the civil liberties aspects of the Lee Harvey Oswald case.

The tragedy of John F. Kennedy's assassination defies adequate description. It was a brutal, evil deed that may change the course of history. The personal tragedy involved—members of his family and even those who did not know him—is of unmeasurable dimension. We all mourn his death.

At the same time, it would betray John F. Kennedy's own devotion to the traditions of freedom that are at the root of American life, if his death were permitted to obscure the gross departures from constitutional standards which, in the opinion of the ACLU, marked the events subsequent to his assassination.

## 1. TRIAL BY TELEVISION, RADIO AND THE PRESS.

Justice Felix Frankfurter, while sitting on the Supreme Court, said that "not the least significant test of the quality of a civilization is its treatment of those charged with crime, particularly with offenses which arouse the passions of a community." One of the absolute essentials of the civilized treatment about which Justice Frankfurter spoke is that an accused receive a fair trial before an impartial jury. It is our opinion that Lee Harvey Oswald, had he lived, would have been deprived of all opportunity to receive a fair trial by the conduct of the police and prosecuting officials in Dallas, under pressure from the public and the news media.

## Convicted in Newspapers

From the moment of his arrest until his murder two days later, Oswald was tried and convicted many times over in the newspapers, on the radio, and over television by the public statements of the Dallas law enforcement officials. Time and again high-ranking police and prosecution officials stated their complete satisfaction that Oswald was the assassin. As their investigation uncovered one piece of evidence after another, the results were broadcast to the public.

The accumulation of evidence was damning. The Dallas officials announced that the rifle was traced to Oswald; that Oswald's handwriting matched the handwriting of the letter ordering the rifle; that palm prints found near the warehouse window were Oswald's; that his wife said a rifle like the one used in the assassination had been in the garage of her living quarters but was now missing; that a photograph of Oswald holding the identical pistol and rifle used in the police officer's and President's slaying was found; that a paraffin test showed that he had recently fired a weapon; that Oswald had carried a long package to work on the day of the assassination; and that he was in the building from which the assassin's shots came.

All this evidence was described by the Dallas officials as authentic and incontestable proof that Oswald was the President's assassin. The cumulative effect of these public pronouncements was to impress indelibly on the public's mind that Oswald was indeed the slayer.

## Fair Trial Impossible

Under the best of circumstances, the enormity of the crime, which so inflamed the community, would have made it very difficult to find an unbiased jury. But the vast publicity in which the law enforcement officers participated made it simply impossible for Oswald to have received a fair trial on any of the charges against him. Where in Dallas, or anywhere

else in the State or Nation for that matter, could there be found twelve citizens who had not formed a firm and fixed opinion that he was guilty?

## Supreme Court Precedent

Not six months ago, the Supreme Court of the United States in *Rideau v. Louisiana* reversed a murder conviction in Louisiana because a motion picture was made of a twenty minute "interview" between the defendant and the sheriff in which the defendant admitted committing the crime. The film was broadcast three times over local television. Pointing out that the "interview" was carried out with the "active cooperation and participation of the local law enforcement officers," the Court said:

"For anyone who has ever watched television the conclusion cannot be avoided that this spectacle, to the tens of thousands of people who saw and heard it, in a very real sense was *Rideau's* trial—at which he pleaded guilty to murder. Any subsequent court proceedings in a community so pervasively exposed to such a spectacle could be but a hollow formality."

Oswald's trial would likewise have been nothing but a "hollow formality."

## Pressure On Police

We grant that the pressure on the police was extraordinary and the demands of the press enormous. This indeed was the crime of the century and the public's interest was intense. But precisely because of these circumstances, it was the responsibility of the Dallas officials to resist this pressure to assure that Oswald would be fairly tried on the monstrous charge against him. It is an ironic note that, if Oswald had lived to stand trial and were convicted, the courts would very likely have reversed the conviction because of the prejudicial pre-trial publicity. Thus, the spectacular publicity in which the officials took part would likely have defeated them in the end.

## Vexing Problem

Although the primary responsibility for assuring that an accused is not prejudiced by pre-trial publicity necessarily falls upon the law enforcement officials, television, radio and the press are not themselves without responsibility. Certainly the rights of a free press (and the right of the public to be informed) compete with the right of an accused to a fair trial. This raises a vexing problem to which there is no easy solution. There is a legitimate interest—most intense in this case—in obtaining information which satisfies the public concern for energetic law enforcement. Failure to satisfy that interest might even have contributed to public unrest. Moreover, it could be argued that public exposure of police conduct will deter improper police practices. Nonetheless, putting these competing interests in the balance, we believe that the paramount interest rests with the defendant's right to a fair trial and that the other interests are adequately served by the orderly disclosure of evidence at trial.

## Self Restraint Needed

If anything useful can emerge from the tragedy of the assassination, we hope that it would impress every local community—including its news media, police and prosecutors—with the importance of self-restraint where publicity in criminal matters is concerned. The primary concern must be focused on the rights of the accused. The administration of our criminal law, like the successful functioning of our democratic society in general, depends in the last analysis on the intelli-

gent cooperation of all citizens. Without an abiding concern for the preservation of an impartial atmosphere in criminal prosecution, the deterioration of fairness in criminal prosecutions is inevitable. Even when a crime of such enormity as the President's assassination occurs, law enforcement officials must exercise self-restraint. The news media must themselves accept their share of the responsibility to assure fair trial by curbing their pressure on the police and prosecuting officials to publicize the case.

## 2. POLICE RESPONSIBILITY FOR OSWALD'S KILLING.

In our view, Oswald's killing is directly related to the police capitulation to the glare of publicity. Having surrendered to the public clamor during the preceding two days, the police arranged Oswald's transfer from the city to the county jail to suit the convenience of the news media and thereby exposed Oswald to the very danger that took his life.

Minimum security considerations would dictate that the transfer of this prisoner at least ought not, in effect, have taken on the quality of a theatrical production for the benefit of the television cameras. These concessions to the demand for publicity, however, resulted in Oswald's being deprived not only of his day in court, but of his life as well.

## Police Responsibility

The police have the responsibility of assuring the safety of their prisoners. Due process requires not only that the accused have a fair trial, but it also requires, of necessity, that no matter how heinous the charge against him, he may not be denied his day in court because of gross negligence by the police which results in his death or injury before trial.

## 3. THE RIGHT TO COUNSEL AND THE INTERROGATION.

The circumstances surrounding Oswald's detention are still ambiguous. We lack answers to such fundamental questions as: How much time elapsed before he was advised of his right to counsel? How much time elapsed before he was permitted access to a telephone to call his family and an attorney? During what periods and for how long was Oswald interrogated? What methods of interrogation were used? Was he advised of his right to remain silent?

## Right To Consult Counsel

Oswald should have had the right to consult counsel from the moment of his arrest if he so desired. Whether or not he wished immediately to avail himself of that right is uncertain, for the reports go both ways. At one point on Friday night, when Oswald was passed before the television cameras, he said he had been denied "legal representation." On the next day, however, the President of the Dallas Bar Association reported over television, just after a conference with Oswald, that he had offered the prisoner the services of the Association in arranging for counsel. He said that Oswald had declined for the time being, for he preferred John Abt, a New York attorney, or if he were not available, a lawyer connected with the ACLU. Until further information is disclosed, no purpose would be served by speculation on this issue.

## ACLU Function

(The ACLU ordinarily does not provide counsel for individuals merely because they are charged with crimes. It is not a legal aid organization providing counsel for indigents accused or for those who think they want to be represented by ACLU volunteer lawyers. That is not its function. It intervenes in cases when the constitutional rights of an accused are violated, but the ex-

tent of its intervention depends on the facts of the individual case. Ordinarily where there is a factual controversy as to whether the accused did or did not commit a crime, such as murder, the ACLU does not provide counsel to represent him at the trial. In such cases the Union usually files a friend of the court brief on the constitutional points either at the trial or appellate level. Because the crime with which Oswald was charged was of such ugly proportions, he might have had difficulty in obtaining counsel. That problem seems not to have been present, however, because the Dallas Bar Association, consistent with the highest standards of professional responsibility, offered its services in supplying counsel to Oswald. If it had become impossible for Oswald to obtain counsel, the ACLU because of its concern that all persons are entitled to legal defense, no matter how unpopular their case, would have helped to secure the independent services of a lawyer.)

## Declined To Request Counsel

(The ACLU did exhibit an organizational interest during the period of time when Oswald was being interrogated because of his public complaint that he was being denied the opportunity to consult counsel. Through the ACLU lawyers and the President of the Dallas Civil Liberties Union did go to the city jail late Friday night but were informed by police officers and the Justice of the Peace before whom Oswald had been first arraigned that Oswald had been advised of his right to counsel and that he had declined to request counsel. Since the attorneys had not been retained by either Oswald or his family, they had no right to see the prisoner nor to give him legal advice.)

## Oswald's Interrogation

The related question of Oswald's interrogation is difficult to assess with the limited information at our disposal. The ACLU has never said that the police are forbidden to interrogate a person taken into custody. We have said that any interrogation which takes place while a person is under arrest and in the police station must be surrounded by the strictest safeguards. Thus, before such questioning begins, we believe the prisoner should be taken before a magistrate and explicitly advised of his right to counsel and that he is under no compulsion to answer. We also believe that he should have the indefeasible right to consult with an attorney before any questions are put to him and during interrogation. The right to counsel is not satisfied merely by advising the accused of the right. He must be permitted to call an attorney, his family, or a friend in order to secure the services of an attorney. If he cannot afford to hire counsel, a lawyer should be promptly appointed to represent him. In this case, the advice of an attorney may well have resulted in the reduction of adverse publicity. In addition, an attorney might have objected to Oswald's public transfer and thus might have averted his murder.

## Right To Keep Silent

If the right to keep silent or to consult an attorney is not made clear to the suspect, it is our view that any admissions or confessions should be inadmissible against the accused at trial. More than that, any set of circumstances—such as the duration and intensity of the questioning—which results in the involuntary extraction of incriminating statements from a prisoner renders those statements inadmissible.

In Oswald's case, it appears that the police interrogation did

not yield a confession. It is reported that Oswald continually asserted his innocence. Under those circumstances, the nature of his interrogation did not yield an unconstitutional confession, but the question whether the interrogation—given all the attendant circumstances—violated any constitutional standards must nonetheless be further explored.

## 4. THE RUBY CASE.

The disaster of Oswald's murder seems to have had its effect on the handling of the Jack Ruby case. Immediately after the shooting, Ruby was taken out of the sight of the reporters and, as far as we know, was by and large kept from the news media thereafter. Official statements about Ruby to the press were apparently kept to a minimum. There was considerable publicity given to Ruby and his background, but the bulk of this information seems to have come from private sources and his attorney.

## Conflicting Rumors

The greatest danger to Ruby's opportunity for a fair trial stems from conflicting rumors that he was part of a conspiracy. The rumors say that he was both in league with Oswald and in league with Oswald's enemies. Whatever the truth, if any, about these rumors, the official must have no part in generating or perpetuating them. He is charged with murder and should be tried for murder. Any official statement connecting him—however tentatively—with a plot, will defeat his right to be tried by an unbiased jury.

## 5. THE PRESIDENTIAL COMMISSION.

We wholeheartedly support the appointment of a Commission by President Johnson to investigate the assassination of President Kennedy. The Commission undoubtedly will concentrate on the facts of the assassination and all the relevant information that bears upon it. In addition, the public interest would be served if the Commission were to make a thorough examination of the treatment accorded Oswald, including his right to counsel, the nature of his interrogation, his physical security while under arrest, and the effect of pre-trial publicity on Oswald's right to a fair trial.

Normally, the ACLU would oppose any judicial or quasi-judicial inquiry into the facts of a crime charged against a man now dead. In the extraordinary circumstances of a presidential assassination, however, nothing is normal.

## Accused Not Present

To hold an inquiry into the facts of the assassination in the absence of the individual charged with the crime presents the major objection that he is unable to provide his counsel with information bearing on his defense and the evidence against him. Evidence damaging on its face has, in other cases, been explained satisfactorily to jurors. No matter how scrupulously fair an inquiry now might be, there can be no substitute for the presence of the accused.

On the other hand, the ambiguities of the present state of facts about the crime and the major suspect ought to be resolved if possible. It would be dangerous, we think, to allow any lingering uncertainty over who killed the President.

## Public Interest

On balance, we think a complete and impartial presentation of all the evidence will best serve the public interest. As matters

—Continued on Page 4

