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ACLU DEFENDS JACK RUBY'S DUE PROCESS RIGHTS

The web of legal complexities which has hovered over the three-year-old due process struggle of Jack Ruby, convicted slayer of Lee Harvey Oswald, accused assassin of President Kennedy, soon may be unraveled by the United States Supreme Court. The Texas Civil Liberties Union, along with a group of private attorneys including ACLU national Board member William M. Kunstler, will appeal to the high court to invalidate Ruby's 1963 conviction on the ground that the presiding judge was biased because he was writing a book on the case.

According to testimonial evidence, Judge Joe B. Brown, who sat on the case during the trial and later proceedings until June, 1965, conceived the idea of writing a book on Ruby in March or April, 1964. This period included the murder trial and various post-trial proceedings. However, Judge Brown's literary activities were not discovered by Ruby's lawyers until early 1965, the judge having later admitted that he had denied the book-writing so that "I wouldn't have to discuss it," in the event of a motion for his disqualification.

On March 8, 1965, the Texas CLU and the private attorneys submitted four motions to Judge Brown, including one which sought to disqualify him from further proceedings to determine Ruby's sanity. (The Texas Criminal Court of Appeals had ordered a sanity hearing before it would consider the full appeal of the case.) Judge Brown arbitrarily dismissed all four motions, without reading them or allowing evidence to be presented, and he then scheduled the sanity hearing for an early date. Ruby's lawyers then removed the case to the federal court on the ground that his civil rights had been violated by Brown's actions. Although the sanity hearing was subsequently returned to the state court, it was accompanied by an admonition from the United States Court of Appeals for the Fifth Circuit, to protect the defendant's constitutional rights.

In June, 1965 Judge Brown recused (disqualified) himself from the Ruby case in the face of further action to have him disqualified. Although Judge Brown is now out of the picture, civil liberties lawyers maintain that his participation throughout the Ruby case constituted a denial of the convicted murderer's due process right to a trial by an impartial judge.

When Ruby was declared sane by a Texas jury on June 13, 1966, with Judge Louis T. Holland presiding, a second major due process issue was still being played out: the right to employ legal counsel of one's choice. At the sanity trial there were two separate teams of defense lawyers, one group chosen by Ruby and his family (Sam Houston Clinton, Jr., general counsel for the Texas CLU, Phil Burleson, William M. Kunstler, Elmer Gertz, and Sol A. Dann), and a second group headed by Joe H. Tonahill who had participated in the 1964 trial. The Ruby family has been trying to get Tonahill off the case for the past year and a half, but Tonahill has refused to be discharged, arguing that Ruby was not of sound mind to hire or fire a lawyer.

When the jury found Ruby sane, he immediately notified the Texas Court of Criminal Appeals that he desired only Clinton, Burleson, Kunstler, Gertz and Dann to represent him in the pending appeal. The latter was argued on June 25, 1966, in an unprecedented five-hour hearing with Tonahill permitted to appear as a friend of the court. The chief issues raised by the defense during the marathon session were the carnival atmosphere of the original trial, the trial judge's refusal to grant a motion for a change of venue and the introduction of clearly inadmissible evidence. A decision is expected in early October.

In summing up to the Court of Criminal Appeals, Kunstler pointed out that "the more celebrated or notorious the case, the more care should be given to the requirements of due process. All involved -- the prosecution, the defense and the court -- must keep in mind that, no matter

how insistent the press or how spectacular the crime, the same standards of fair play applicable to unnoticed trials must prevail. Whether the defendant be Sam Sheppard, Jack Ruby, Lee Harvey Oswald or just plain John Doakes, due process can play no favorites."

VICTORY FOR FAIR HOUSING IN CALIFORNIA

The May 10 ruling by the California Supreme Court nullifying Proposition 14, the anti-fair housing amendment to the state Constitution which was enacted two years ago, is a major triumph in the campaign for integrated housing.

The American Civil Liberties Union of Southern California sponsored the case of Mulkey v. Reitman, one of seven challenging the constitutionality of the amendment which the court considered, and on which it based its main decision. The ACLU of Northern California supported other cases which brought the issue to the state's high court.

Writing the majority opinion, Justice Paul Peek declared Proposition 14 in violation of the Fourteenth Amendment, which he said "secures, without discrimination on account of color, race or religion, 'the right to acquire and possess property of every kind'...."

Writing the minority opinion, Justice Thomas P. White stated on the other hand that nothing in the Constitution gives a person the right to acquire property from another who does not wish to sell it, "even if the refusal ... is based on race or religion." Though he characterized racial prejudice as irrational, he said he did not believe the Fourteenth Amendment forbids discrimination by private owners of private residential buildings.

The case on which the Court made its historic decision involved a Negro postman, Lincoln W. Mulkey, and his wife, who had been refused rental of an available apartment in Santa Ana solely because of their color. Proposition 14 leaves desire or refusal to rent a property to the discretion of its owner or agent.

"Our resolution of the question of constitutionality," Peek wrote in the majority opinion of the court, "is confined solely to federal constitutional considerations." Proposition 14 had been accorded state constitutional stature through its enactment by ballot, he said. But like any state law, inorder to be enforceable, it had to conform to federal constitutional standards, which it did not.

Concerning himself with the "objective" of Proposition 14, Peek referred to California legislative action prior to the amendment which was designed to eliminate racial discrimination in housing - - the Unruh Civil Rights Act, the Hawkins Act, and the Rumford Fair Housing Act. Proposition 14, he commented, "was enacted... with the clear intent to overturn state laws that bore on the right of private sellers and lessors to discriminate...."

He then examined at some length the question of state involvement in discrimination. In the Mulkey case, he pointed out, discrimination was "recognized and admitted," but the problem was whether there was sufficient governmental action by the state of California in enforcing Proposition 14 to bring it within the scope and proscription of the Fourteenth Amendment.

Citing U.S. Supreme Court rulings against state statutes which encouraged, sanctioned or authorized discrimination, even though they did not impose it, Peek declared that by means of Proposition 14, California had taken legislative action "to make possible private discriminatory practices which previously were legally restricted." Even though discrimination is privately practiced, he said, it does not obscure "the ultimate result which is achieved through the aid of state processes."

MARYLAND HIGH COURT BARS STATE AID TO CHURCH-AFFILIATED COLLEGES

When Maryland's highest court invalidated grants of $2,000,000 in tax funds for the construction of buildings at three church-affiliated colleges on June 2, a signal victory was scored for the separation of church and state principle embodied in the First Amendment of the U.S. Constitution.

In the majority opinion of the Court of Appeals of Maryland, Justice Prescott stated that the issue in question was "how far all religions or a specific religion may be benefited by State action without the State stepping out of its role of complete 'neutrality,' and [without] such action losing its character as being incidental to lawful general welfare legislation."