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A FAIR AND IMPARTIAL TRIAL

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In a world grown increasingly cognizant of the democratic apothegm that the "cardinal article of faith of our civilization is the inviolable character of the individual",[1] it is no wonder that liberty-loving peoples should concern themselves keenly with the protection of human rights in the administration of criminal justice. The "first step of the tyrant," it has been aptly observed, "is to use the criminal law to do away with the opposition" and "if there are no guaranties against such abuse, then no one is truly free".[2] Apropos of this conviction, all nations in the free world are one in the resolve to see to it that those caught in the meshes of criminal law are virtually encompassed with a veritable array of jealously guarded constitutional guaranties. Of these, perhaps, the most important protection to personal liberty consists in the mode of trial which is secured to every person accused of a crime.[3]

Of course, in so important an aspect of criminal procedure as the trial, constitutions or legislative enactments of modern democratic states expressly guaranty the speed and publicity with which the same should be conducted. The Philippine Constitution, for one, secures to an accused the right to have a speedy and public trial.[4] Seldom, however, do bills of rights ever make express mention of the right to a fair and impartial trial which, we venture to say, cannot be any less imperative than that of a speedy and public trial.

Not that this omission is in any sense a negation of the right to a fair and impartial trial. The guaranty of publicity which places the trial

* Associate Justice, Court of Appeals. This paper was prepared at the request of the United Nations Secretariat and read at the Seminar on The Protection of Human Rights In The Administration of Criminal Justice at Wellington, New Zealand, February 6-20, 1961.

[1] American Communications Asso. v. Douds, 339 U.S. 382, 421 (1950).

[2] FRAENKEL, OUR CIVIL LIBERTIES, 6.

[3] I COOLEY, CONSTITUTIONAL LIMITATIONS 637 (8th ed.).

[4] PHIL. CONST. art. III § 1, par. 17.

under popular surveillance is itself calculated to safe-guard against the dangers of persecution, abuse of judicial power and biased verdicts, obviously, upon the theory that impartial justice must be seen to be done. Besides, the right to a fair and impartial trial is well within the broad sweep of the term "due process of law".[5] Indeed, the very nature and extent of the specific rights granted to accused persons fairly drive home the conclusion that the end product of them all is no less than to assure the accused fairness and impartiality in the trial. But, in the development of law and jurisprudence on the matter of due process in criminal prosecutions, the right to a fair and impartial trial is more often than not taken for granted as a mere incident of other constitutional prerogatives. Is not a fair and impartial trial, *vis-a-vis* other fundamental safeguards, of such importance as to warrant separate treatment?

By nature, a trial is a competition of the highest order. Over the spirited rivalry, presides a judge. On general principles, the contest must be conducted under an atmosphere pervaded by that fundamental fairness essential in the very concept of justice.[6] The trial must be a real one, not a mere show or pretence.[7] Yet, not infrequently, such ideal appears to be too much of an oversimplification. When the actualities of the trial are reckoned with, the matter becomes much more involved than it is expected to be. For, it invariably becomes a human drama in which innumerable personal and emotional factors — often imponderable and unpredictable — come into play. So it is, that the determination of whether or not the requisite fairness and impartiality in the trial have been observed, to a large extent, depends upon the actuations of the judge, one of the main participants.

A judge occupies a unique position in a trial. He is an umpire who calls and rules on the plays. He is an arbiter in whose judgment victory or defeat depends. In his keeping, the State has placed not only the financial interests, but also the lives, liberty and honor of its citizens. So lofty is his function that it is no less sacred than a religious mission; it is to be discharged according to a norm of conduct compatible only with public faith and trust in his impartiality, sense of responsibility and with the same devotion to duty and unction done by a priest in the performance of the most sacred ceremonies of a religious liturgy.[8] Upon the truism that next in importance to the duty of rendering a righteous judgment is that of doing it in such a manner as will beget no suspicion of the fairness and integrity of the judge,[9] the latter is called upon, by

[5] Adamson v. California, 332 U.S. 46, 53 (1947); Arnault v. Pecson, 48 O.G., No. 2, 533, 535.
[6] Lisenba v. California, 314 U.S. 219 (1941).
[7] Palko v. Connecticut, 302 U.S. 319, 326 (1937); Chambers v. Florida, 309 U.S. 226, 236-238 (1940); People v. Castaneda, 63 Phil. 480, 485 (1936).
[8] People v. Bedia, 83 Phil. 909, 915-916 (1949).
[9] Dais v. Torres, 57 Phil. 897, 904 (1933).

express mandate of the Canons of Judicial Ethics, to be "temperate, attentive, patient, impartial".[10] These are the basic working tools of his position, the absence of which will relegate the trial to a game of chance and the much-vaunted regard for individual liberty, a farce.

But, judges — in the final analysis — are but men beset by the frailties of other men. However tenacious may be their adherence to the standards of judicial equanimity demanded of them, times there are when that hold will relax, that firmness shaken. Threats there are to the fairness and impartiality with which the trial should be conducted and inroads there will be into the orderly administration of justice. That these be minimized — if not altogether annihilated, should be part of our mission.

— Roadblocks concededly stand in the way of a fair and impartial trial. We start with the least common: local passions and prejudices. A defendant could be of the worst type of man. The crime committed could be so revolting, i.e., treason, rape, and the like. Those in attendance at the public trial may mince no words in making vocal their unqualified condemnation of the crime perpetrated and the person charged thereof. In such a situation, a trial judge could be "unduly influenced, unconsciously no doubt, by the local atmosphere"[11] which is palpably unfavourable to the accused. It is in this posture that we envision one possibility that the basic right to a fair and impartial hearing may be impaired.

A recurring complaint aired against judicial administration is the clogging of courts' calendars. Judges, quite often, exhibit overconcern for this state of things. Occasionally, they veer to the other extreme of expediting cases. A judge's obsession to administer justice as speedily and inexpensively as possible necessarily has to meet and clash with the tolerance which he is expected to display.

Confronted with these opposing forces, a judge could ride roughshod over a defendant's right to a just treatment, short-circuit justice and railroad him to prison. Thus, his penchant for speedy justice may overtax his patience. He may unceremoniously dismiss efforts to produce vital evidence with the stock phrase: "That is enough". In a moment of exasperation, he may threaten a witness with prosecution for perjury.[12] Or, he may wave off further cross-examination or curtail or limit the same unreasonably.[13] On one occasion,[14] our Supreme Court censured a

[10] No. 4 CANONS OF JUDICIAL ETHICS.
[11] People v. Ancheta, 66 Phil. 638, 644 (1938).
[12] People v. Tamares, (CA) 54 O.G. 4982, 4988.
[13] People v. Anabon, (CA) G.R. No. 5774-R, April 28, 1951, citing: Farmers' National Bank v. Frazier, 13 Ohio App. 245; Jones v. Lozier, 195 Iowa 365, 191 N.W. 103.
[14] People v. Bedia, 83 Phil. 909, 915 (1949).

trial court for having acted with arbitrariness in the conduct of the trial, exhibited unnecessary impatience, unnecessarily curtailed defendant's opportunity to cross-examine prosecution witnesses and attempted to browbeat the defense. These and allied reprehensible conduct should be avoided, if respect for judicial process is to be advanced. If a man is to be deprived of his life, liberty or property, so let it be done, but in the name of the law, give him a fighting chance. An effort at speedy justice should not degenerate into speedy injustice.

And more. A judge — to obviate false impressions in the minds of the litigants — must refrain from showing any semblance of one-sided or more or less partial disposition or from evincing a more patronizing attitude towards the case for the People.

A sorely unpleasant picture presents itself when a judge unconsciously permits himself to make unnecessary comments or remarks derogatory to an accused. He may be convinced of the guilt of the defendant. He could be impressed with the catalogue of crimes previously committed by him. But these are no justification for a judge to let fall any expression capable of being interpreted as an index of his convictions. Stock should be taken of the fact that a judge's position is characterized with authority. In the courtroom, he is more powerful than the President. Withal, his utterances during the progress of the trial may be interpreted as the most compelling coercion calculated to put an abrupt end to the proceedings. An innocent man, in utter desperation, may adopt an "what-is-the-use" attitude, be compelled to throw himself at the mercy of the court and suffer for a crime he did not commit.

True, defense lawyers, in their zeal, may overstep the bounds of propriety. Biting language, frequent frivolous objections and clashes on legal points could exasperate the judge. But, such transgressions need not be repressed by the use of unwarranted harshness — to the prejudice of the defendant at bar. A judge could be stern, as he often must be, but never tyrannical. A furious and spluttering judge who indulges in uncalled for verbal exchange with counsel is never an edifying spectacle. As Judge Learned Hand is reputed to have wisely said, "Justice can be as readily destroyed by the flaccidity of the judge as by his tyranny; impartial trials need a firm hand as much as a constant determination to give one his due".[15] "At the present day," said a noted English lawyer, "the tradition of judicial self-restraint is regarded as a fundamental part of criminal procedure. Bacon expressed it pithily when he declared that 'an over-speaking judge is no well-tuned cymbal. It is no grace to a judge first to find that which he might have heard in due time from the Bar.' The classic advice to a newly appointed judge is that he should take a cup of holy water in his mouth at the

[15] BOTEIN, TRIAL JUDGE, 129.

beginning of a case, and not swallow it until the evidence on both sides has been heard. Lord Hewart said in the same vein that 'the business of a judge is to hold his tongue until the last possible moment, and to try to be as wise as he is paid to look.' "[16]

The exercise of the judicial prerogative to interrogate witnesses poses another serious problem to the maintenance of judicial impartiality.

In the quest for truth, all democratic systems of judicature mark out in bold relief the traditional division of labor between the prosecutor and the judge. To the former belongs the management of the prosecution; to the latter, the verdict. The two should never be merged in one and the same person. In the Philippines, however, a judge is not placed in that high situation merely as a "passive arbiters(s) charged exclusively with awarding a prize to the more skillful contestant".[17] He has a duty of his own, independent of the parties, and that duty is to investigate the truth.[18] The right — nay the duty — of a trial judge to interrogate witnesses with a view to satisfying himself upon a material point which presents itself during the trial of a case over which he presides is well recognized.[19] A reasonable degree of inquisitiveness must indeed necessarily be expected of a judge who, with full consciousness of his responsibilities, could not easily be satisfied with incompleteness and obscurities in the testimonies.[20]

But here, more than anywhere else, the exercise of this prerogative is fraught with the grave danger of excess. The line of demarcation is blurred, and it is not an easy task to pin-point where the prerogative ends and partiality begins. Superior courts have done no better than caution that in order to avoid encroaching upon what properly belongs to the prosecutor and thus obviate unwarranted criticism, the power to question witnesses should be done sparingly and judiciously.[21] What is sparing and judicious is, of course, relative. Human element plays a role; personal equation, decisive.

In the dispensation of criminal justice, concededly much depends upon the sterling qualities of the judge — he who by the constitution and the laws is called upon to give human rights their due. That, on the one hand. On the other, we find that the rights accorded to

[16] WILLIAMS, THE PROOF OF GUILT, 25 (1955 ed.)
[17] People v. Bolotano, 47 O.G. 3608, 3612.
[18] BOTEIN, TRIAL JUDGE, 98.
[19] U.S. v. Hudieres, 27 Phil. 45, 47 (1914); People v. Ferrer, 44 O.G. 112, 116; Abutan v. Fernandez, 44 O.G. 1849, 1860; Carrascoso v. Robles, 44 O.G. 2780, 2786-2787; People v. Lila, 44 O.G. 4968, 4970-4971; People v. Olorasa, 51 O.G. 234, 236-237; People v. Largo, G.R. No. L-4913, Aug. 28, 1956.
[20] People v. Largo, *supra* note 19; People v. Moreno, 83 Phil. 286, 294 (1949). This is of utmost importance in the Philippines where the jury system does not obtain.
[21] People v. Ferrer, *supra* note 19; Abutan v. Fernandez, *supra* note 19; People v. Hinolan, 47 O.G 3596, 3600-3601.

a person accused of an offense all funnel down to the proposition that justice be done — fairly. A written expression of a right accorded a defendant charged with an offense is a mandate to a court of justice. Elevated to a constitutional directive, that right looms large, the duty to comply therewith heavily underscored. We are with Branch Cabell in the espousal of the philosophy that we should not worship the "God-of-Things-as-They-Are." So that, if only because judges should be reminded in black and white that a complete catalogue of human rights exists and that such rights should serve them as guideposts in the discharge of their solemn duty to administer criminal justice, we venture to say that the insertion of an additional precept in the fundamental law — where it is in written form — that in all criminal prosecutions the defendant should be entitled:

"To a fair and impartial trial",

becomes highly desirable. And this, we propose.

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