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EDITORIAL

WHEN CAN OUTSIDERS WRITE ABOUT PENDING CASES?

A precept, a protest and refutation, all precipitated by proceedings involving persons accused of crime in the Republic of Indonesia suggest a comment on a note titled "Themis on the Rack in Indonesia" which was published in our last number. What follows below is not our diagnosis, but it is a capsuled version of sequence reflected in the above-mentioned note. The latter manifests a striking composition of the relation between competing interests in the criminal law area.

To point up "grave abuses" by police in Indonesia, two professors of law wrote a document which has been published in a Dutch law journal. It is under the same title as the note mentioned above, and it mirrors prisoners' complaints of allegedly forced confessions.¹

These printed polemics evoked the following reply from the High Commission of the Republic of Indonesia in the Netherlands:

1. In Indonesia legal proceedings are just now going on against Dutch subjects for participation or complicity in offences against the security of the state or, as expressed in ordinary language, for participation or complicity in plots to overthrow the lawful authority.

2. With respect to two suspects the trial has already begun, while that against the other suspects must still await the decision as to whether their cases will be referred to the court.

3. The current judicial investigation, which is public, must thus determine whether there have been conspiracies, and whether the suspects are guilty therein.

4. While that legal investigation is still going on, both Dutch professors have considered it proper to accept as fact:

a. that there never was a conspiracy.

b. that all Dutch suspects were forced by torture to make false confessions.

5. Both criminal law professors arrived at their conclusions solely and only: in the case of 4a, because persons who were named as participants in the subversive movements, at the moment when they were supposed to have been active, had long since left Indonesia; in the case of 4b, because this should have been evident with absolute certainty in letters from prisoners.

6. These rash conclusions are in flagrant conflict with the most elementary rudiments of legal procedure, since only the judicial investigation can determine the validity of a stated alibi, while the suspect's own statement, without support, can never be accepted as proof.

7. From the above it may be taken as evident that the protest of the two professors is not only rash but actually misleading.

¹ Viz. "submersion in a pond" which, of course, was abandoned in Salem, Mass., after dispatching the last witch, in favor of modern instruments such as hanging over a door, and methodical beatings with rubber hose and telephone books.

This particular instance in the human gamut probably steps off from, *inter alia*, twin prongs of an Indonesian legal benchmark: (1) "outsiders" are inhibited from expressing opinions concerning "the guilt or innocence of a suspect as long as an unprejudiced judge has not . . . given his verdict" and, (2) an interdiction against writing "anything about a legal action as long as the case is 'sub judice.'" Law Professors J. M. Van Bemmelen and D. Hazewinkel-Suringa, authors of our underlying source material and the initial protest as well, have pointed up the likelihood that when reproaching them for contravening "elementary principles of criminal procedure" the High Commission was invoking the dichotomic precept. Both Professors readily concede usefulness of a rule insulating judges against influences "before or during . . . trial, and, above all, that no one shall be considered guilty while he is still only a suspect." But upon assuming the foregoing curb on comment to be the Commission's focal point, these Professors content such a rule was "never intended to cover abuses which have taken place during police investigations." Indeed they assert:

. . . violations in the manner in which the investigation is conducted, especially when these take the form of forcing police-manufactured testimony by means of maltreatment and particularly before or during the time when the case is still 'sub judice.' For the public character of the hearing serves just this purpose: that criticism can be brought to bear on biased or inadmissible legal procedure.

Though taken out of context two other short paragraphs disclose the sweep of the Professors' position:

There is no denial that abuses occurred. This would, in any case, have been difficult. We quoted a number of letters in which prisoners complained that the police had mishandled them in order to force their testimony and confessions. These letters, written at different times and independently of each other, to families, friends, and authorities, give such a strong impression of trustworthiness as to convince every unprejudiced reader that maltreatment occurred. Because of the rule enforced in the *Nederlands Juristenblad* (Dutch Jurists Weekly.), to which no exception is ever made, that nothing may be written in connection with subjects on which the only information available is that published in the daily papers, we cannot discuss the widely circulated statement, published in a *Pia* press report—and as far as we know not yet denied—by Chief Prosecutor Sunarjo, "that a sound beating would not be serious, provided only truthful confessions followed thereupon."

Several more letters, carrying an equally strong impression of reliability, could have been added to those we quoted. For this reason, it was not in the least rash or misleading on our part to point out that in the hearings now pending in Indonesia, depositions were obtained by force. . . .

The object of our argument was to convince the government of the Republic of Indonesia that the police had gotten out of hand and that therefore the most elementary guarantees of a proper and unprejudiced administration of justice were lacking. We feared and still fear that the judge in Indonesia—perhaps unaware of the manner in which these confessions were obtained and put together by the police—will be misled by these false depositions.

It has always appeared that the Goddess of Justice's slender arm and hand holding scales is tightly wedged between law enforcement officials and individual mortals.—MELVIN F. WINGERSKY