

**REPORT ON
EXTRATERRITORIAL CRIME
AND THE CUTTING CASE**

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Report on Extraterritorial Crime and the Cutting Case by Various

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VARIOUS

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U.S. Department of State

REPORT

ON

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AND

THE CUTTING CASE.



WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1887.



DEPARTMENT OF STATE,
WASHINGTON.

SIR:

In accordance with your request, I have the honor to report to you the results of an examination of the jurisdictional claim made by the Mexican Government in the case of A. K. Cutting, a citizen of the United States, arrested at Paso del Norte, Mexico, on the 23d of June, 1886, on a charge of having published in El Paso, in the State of Texas, a libel against a Mexican.

On the 19th of July, 1886, there was sent to Mr. Jackson, Minister of the United States at the City of Mexico, the following telegram:

You are instructed to demand of the Mexican Government the instant release of A. K. Cutting, a citizen of the United States, now unlawfully imprisoned at Paso del Norte.

BAYARD.

The facts upon which this demand was based may briefly be summarized:

On the 1st of July, 1886, Mr. Brigham, Consul of the United States at Paso del Norte, Mexico, wrote to the Department of State at Washington that A. K. Cutting, a citizen of the United States, had been arrested in Paso del Norte on the 23d of the preceding month by the direction of the judge of a local court for the publication in Texas of a libel against a Mexican citizen. When arrested Mr. Cutting had, it was stated, been about eighteen months a resident of Paso del Norte, engaged in editing a newspaper called "*El Centinela*," in a recent number of which he had reflected upon the character and questioned the good faith of one Emigdio Medina,

a Mexican, who proposed to start a rival newspaper in the same town. For this publication Mr. Cutting was, at the instance of Medina, arrested, brought before a local court, and required to sign a "reconciliation," which is in the nature of a compromise or settlement between the parties, in consideration of which the party who feels himself aggrieved abandons penal proceedings.

What occurred after the "reconciliation" may be related in Mr. Brigham's own words:

Under the law here, when the parties agree to and sign a "reconciliation," the case is dismissed, which was done in this instance, Mr. Cutting being required by the court to publish it [the "reconciliation"] in his paper, which he did.

On the 18th day of June Mr. Cutting proceeded across the Rio Grande River to the United States, to El Paso, Texas, and published a card in the *El Paso Herald*, in which he reiterated his former charges, and made some others, branding Medina's conduct as contemptible and cowardly, &c. * * *

When Mr. Cutting returned to Paso del Norte he was again arrested, presumably at the instance of Medina, and taken before the judge of the second court. Before this court Mr. Cutting was refused counsel and an interpreter, both of which he requested, and with closed doors, no one being present but the judge, the court interpreter and the accused, the so-called examination of the case was proceeded with, which resulted in the committing of Mr. Cutting to jail. (Mr. Brigham to Mr. Porter, July 1, 1886; Ex. Doc. (H. R.) 371, 49th Congress, 1st Sess.)

Mr. Cutting at once appealed to the United States Consul for protection, stating that he had been cast into jail

"for an alleged offense committed in Texas." On the receipt of this communication, continued Mr. Brigham, I proceeded to the office of the official interpreter of the court to ascertain the exact charges against Mr. Cutting, and was informed that he was arrested for the publication in the *El Paso (Texas) Herald*; that he was examined upon this charge alone, and committed to jail on the same. * * *

Mr. Cutting still (July 1) languishes in jail, having been thus confined for more than one week. Bail was refused him, which he was prepared to give in any reasonable amount.

Accompanying this despatch of Consul Brigham, which was received at the Department of State on the 17th of July, were affidavits of the consul and other persons substantiating his statements. Among these affidavits is one of A. N. Daguerra, a Mexican, who accompanied Mr. Brigham's clerk to the court-room on the 24th of June, the day following the arrest, in order to inquire as to the progress of the case, and who deposed that the judge stated, in reply to a question of the clerk, that Mr. Cutting was held for the publication in Texas.

In addition to showing that Mr. Cutting was held for the

publication in Texas, the affidavits accompanying Mr. Brigham's despatch alleged great cruelty in the manner of the prisoner's confinement; that the place of his incarceration was "loathsome and filthy;" that he was "locked up with eight or ten other prisoners * * in jail for various offenses * * in one room, 18 by 40 feet, with only one door, which is locked at night, making it a close room in every respect, there being no other means of ventilation," and compelled to endure other grievous hardships.

On the 16th of July a despatch was received at this Department from Mr. Jackson enclosing correspondence with Mr. Mariscal, the Mexican Minister for Foreign Affairs. This correspondence disclosed the fact that Mr. Jackson had, on the 6th of July, called Mr. Mariscal's attention to the circumstances of Mr. Cutting's imprisonment, the nature of the charge—"an offense committed upon the soil of Texas,"—the manner of his confinement, and the fact that he had offered ample bail, which was refused. Mr. Jackson stated, however, that his purpose was not to discuss the question of jurisdiction, which had been referred to the Department of State at Washington, but to direct the attention of the Minister for Foreign Affairs

to the fact that an American citizen, of respectable character, charged with no serious crime, but with acts which, even if he be guilty, constitute the simplest of misdemeanors, is now undergoing a very severe punishment before conviction, and after offering the best of security for his appearance to stand his trial; and that his health, and even his life, are placed and held in jeopardy, despite of the efforts of an official representative of his country in his behalf. But for this serious aspect of the case, said Mr. Jackson, I should have awaited instructions from my own Government before approaching your excellency on the subject, and do so now only for the purpose of praying that proper relief may be extended to Mr. Cutting at the earliest moment and through the speediest practicable channel. (H. Ex. Doc., 371, 49th Cong. 1st Sess., p. 12.)

To this note Mr. Mariscal replied, on the 7th of July, saying:

By advice of the President I to-day address the Governor of the State of Chihuahua, recommending him to see that prompt and due justice be administered to the alleviation of the rude situation in which Mr. Cutting is found, as well as all else permitted by the laws. (Ibid., p. 12.)

On the 17th of July, when all the facts above detailed were before the Department of State, a telegram was received from Mr. Brigham, saying that Mr. Cutting was still in prison,

and that nothing had been done by the local authorities for his relief. (Ibid., p. 13.)

The release of Mr. Cutting was then demanded, as appears by the telegram of July 19, above quoted.

On the 20th of July, the day after the date of the demand, Mr. Bayard sent to Mr. Jackson a full statement of the grounds thereof. After summarizing the facts, Mr. Bayard declared that

the proposition that Mexico can take jurisdiction of its author on account of its publication in Texas is wholly inadmissible, and is peremptorily denied by this Government. It is equivalent to asserting that Mexico can take jurisdiction over the authors of the various criticisms of Mexican business operations which appear in the newspapers of the United States. If Mr. Cutting can be tried and imprisoned in Mexico for publishing in the United States a criticism on a Mexican business transaction in which he was concerned, there is not an editor or publisher of a newspaper in the United States who could not, were he found in Mexico, be subjected to like indignities and injuries on the same ground. To an assumption of such jurisdiction by Mexico neither the Government of the United States nor the governments of our several States will submit. They will each mete out due justice to all offenses committed in their respective jurisdictions. They will not permit that this prerogative shall in any degree be usurped by Mexico, nor, aside from the fact of the exclusiveness of their jurisdiction over acts done within their own boundaries, will they permit a citizen of the United States to be called to account by Mexico for acts done by him within the boundaries of the United States. On this ground, therefore, you will demand Mr. Cutting's release.

But there is another ground on which this demand may with equal positiveness be based. By the law of nations no punishment can be inflicted by a sovereign on citizens of other countries unless in conformity with those sanctions of justice which all civilized nations hold in common.

Among these sanctions are the right of having the facts on which the charge of guilt was made examined by an impartial court, the explanation to the accused of these facts, the opportunity granted to him of counsel, such delay as is necessary to prepare his case, permission in all cases not capital to go at large on bail till trial, the due production under oath of all evidence prejudicing the accused, giving him the right to cross-examination, the right to produce his own evidence in exculpation, release even from temporary imprisonment in all cases where the charge is simply one of threatened breach of the peace, and where due security to keep the peace is tendered. All these sanctions were violated in the present case. Mr. Cutting was summarily imprisoned by a tribunal whose partiality and incompetency were alike shown by its proceedings. He was refused counsel; he was refused an interpreter to explain to him the nature of the charges brought against him; if there was evidence against him it was not produced under oath, with an opportunity given him for cross-examination; bail was refused to him; and after trial, if it can be called such, violating, in its way, the fundamental sanctions of civilized justice, he was cast into a "loathsome and filthy" cell, where, according to one of the affidavits attached to Mr. Brigham's report, "there are from six to eight other prisoners, and when the door is locked there are no other means of ventilation"—"an adobe house, almost air-tight, with a "dirt floor;" he was allowed about "8½ cents American money for his subsistence;" he was "not furnished with any bedding, not even a blanket." In this wretched cell, subjected to pains and deprivations which no civilized government should permit to be inflicted on those detained in its prisons, he still languishes, and this for an act committed in the United States, and in itself not subject to prosecution in any humane system of jurisprudence, and after a trial violating the chief sanctions of criminal procedure. (Ibid., p. 13.)

Under date of the 27th of July Mr. Bayard sent to Mr. Jackson another communication, from which may be quoted the following pertinent passages:

On Saturday last, the 24th instant, I was called upon by Mr. Romero, the minister from Mexico at this capital, in relation to the case referred to.

Mr. Romero produced to me the Mexican laws, article 186, whereby jurisdiction is assumed by Mexico over crimes committed against Mexicans within the United States or any other foreign country; and under this he maintained the publication of a libel in Texas was made cognizable and punishable in Mexico. And thus Mr. Cutting was assumed to be properly held.

This claim of jurisdiction and lawful control by Mexico was peremptorily and positively denied by me, and the statement enunciated that the United States would not assent to or permit the existence of such extraterritorial force to be given to Mexican law, nor their own jurisdiction to be so usurped, nor their own local justice to be so vicariously executed by a foreign government.

In the absence of any treaty of amity between the United States and Mexico providing for the trial of the citizens of the two countries respectively, the rules of international law would forbid the assumption of such power by Mexico as is contained in the Penal Code, article 186, above cited. The existence of such power was and is denied by the United States.

Mr. Romero informed me that the local or state jurisdiction over Cutting's case did not allow interference by the national Government of Mexico in the matter, and that it was this conflict that had induced delay in responding to the demand of this Government for Mr. Cutting's release. (*Ibid.*, p. 17.)

On the 2d of August the President of the United States, in response to a resolution of the Senate, transmitted to that body a report from the Secretary of State, in which the jurisdictional issue was again defined, as follows:

A copy of article 186 of the Mexican code, which was handed to the undersigned by Mr. Romero in support of the claim of Mexico to take cognizance of crimes of which Mexicans were the subject in foreign countries, is herewith appended.

This conflict of laws is even more profound than the literal difference of corresponding statutes, for it affects the underlying principles of security to personal liberty and freedom of speech or expression, which are among the main objects sought to be secured by our framework of Government.

The present case may constitute a precedent fraught with the most serious results.

The alleged offense may be—and undoubtedly in the present case is—within the United States held to be a misdemeanor, not of high grade; but in Mexico may be associated with penal results of the gravest character. An act may be created by a Mexican statute an offense of high grade, which in the United States would not be punishable in any degree. The safety of our citizens and all others lawfully within our jurisdiction would be greatly impaired, if not wholly destroyed, by admitting the power of a foreign state to define offenses and apply penalties to acts committed within the jurisdiction of the United States.

The United States and the States composing this Union contain the only forum for the trial of offenses against their laws, and to concede the jurisdiction of Mexico over Cutting's case, as it is stated in Consul Brigham's report, would be to substitute the jurisdiction and laws of Mexico for those of the United States over offenses committed solely within the United States by a citizen of the United States.

The offense alleged is the publication in Texas, by a citizen of the United States, of an article deemed libelous and criminal in Mexico.

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