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Relations between the Judiciary and the Press during the “11-M” trial, concerning the 2004 Madrid bombings

**Presentation by
Carlos BERBELL, Communication Adviser to the Presidency,
Spanish General Council for the Judiciary**

Madrid. March 11, 2004. **The bloodiest terrorist attack in Spanish history. 191 people were killed when they were going to their jobs aboard five commuter trains, in the peak of Madrid rush hour, on the morning. 1.755 were wounded as well.** It was a terrorist attack of Islamic inspiration linked to Al Qaeda. Police arrested 29 people. Three years afterwards were judged for their alleged involvement.

The trial took place in Madrid, between February and June 2007, at the National Court. **This Tribunal has provided an example of maximum judicial transparency in the organisation of the 11-M trial. 400 press representatives from all over the world were given full access to the sound and images of the trial, and were able to follow events live on television in the adjoining Press Room.**

The 29 defendants were legally represented by 23 defence lawyers – a number equivalent to almost two football teams. On the other hand, **another 23 lawyers acted as private and public prosecutors** on behalf of victims and people affected by the attacks. **There were, therefore, 46 lawyers in the Courtroom besides the Public Prosecutor and the State's Attorney.**

In the Madrid “11 M” trial there were four defendants more than in the main Nuremberg trial. The enquiry was three times larger than that one. And, of course, there were more lawyers too. On the contrary, in the Nuremberg trial were used four languages against two in the Madrid one.

The 29 defendants were accused of taking part in the terrorist attacks against the trains; the sentences requested by the Public Prosecutor, Javier Zaragoza, amounted to a total of 74,000 years in prison.

Day one

The first day of the trial on February 2007, came as a considerable surprise to press. Contrary to their expectations, the building was prepared and equipped for the “11 M” court case with the communications media in mind, so as to provide maximum transparency.

The main legal judicial officials responsible for this decision were the president of the National Court, Carlos Dívar -today the new President of the Supreme Court and the Spanish Council for Judiciary-, and the President of the Criminal Court -“Head” of the four existing sections or tribunals– the Senior Magistrate Javier Gómez-Bermúdez. He was in addition to preside over the trial –he was the rapporteur too- with the magistrates Fernando García-Nicolás and Alfonso Guevara.

Judge Gómez-Bermúdez said, before the beginning, that he wanted the trial to be as transparent as crystal. The decision to ensure that maximum transparency of information was endorsed and financially supported by the Ministry of Justice. It should be remembered that the National and the Supreme Courts depend financially and in material matters on the ministerial budget.

To do that it was necessary to change the building because the main chamber, the main court room, of the National Court was too small and unsuitable.

The new provisional judicial building of the National Court -the competent body in financial and drug trafficking cases, as well as and terrorism and extraditions- was found about 10 km away from the permanent National Court Building, at the west of Madrid.

Cameras and flat TVs at the heart of the Courtroom

Notwithstanding the fact that the new court room was three times larger than the main chambers of the National Court, not all the lawyers were able to have eye contact with those declaring during the trial, as defendants, witnesses and experts, during the interrogations. Nor was it viable for lawyers who were physically distanced from the stands to get up when it was their turn to occupy one of the six privileged positions among the forty six places established, in order to carry out a face to face examination or cross examination. The continuous hustle and bustle this would have entailed would have hindered the progress of the procedure.

This problem was a real challenge. Finally the same solution used for the main court room of the National Court was implemented. The court room was equipped with a network of five mini television cameras operated from out of it with a “joystick” by a TV Editor at the direct orders of the President of the Tribunal. Each mini-camera was remotely controlled from the entrance of the courtroom where the mini-camera shots were transferred to four TV flat television screens distributed all over the court room.

Therefore, lawyers who were sitting obliquely or behind the person giving evidence would be able to see their facial expressions when they were being interrogated, without having to move from their seats, however distant.

The ability to carefully observe the facial expressions and body language of the person questioned on extremely important matters is crucial. Those speaking may emphasise the truth of their words or deny them, showing that they are not speaking the truth which contributes in determining the opinions formed, either way, by the judges.

As it has been said, in the “11 M” court room there were five Sony mini cameras installed. The first was fitted in the roof on the public gallery area and covered the court,

the public prosecutor, the lawyers and the defendants. A second mini-camera was installed in the wall at the side of the lawyers, so that its zoom lens could film the statements of those declaring the public prosecutor, and the bullet-proof glass screen where most of the 24 defendants sat. The third mini-camera was installed on the wall by the public prosecutor and this made it possible to film the defence lawyers and those declaring. The fourth one was installed in the ceiling, at the back of the court room. There was a fifth one, very little. Its use was to facilitate projection of documental evidence via a mini-camera with zoom lens and macro installed 3 metres above the court secretary, thus it was possible to reproduce in detail on the flat screens all kinds of photographs, briefs, maps and anything else required; a similar solution has been adopted in various court rooms in Spain.

Those present in the court room would not have noticed the five mini-cameras were it not for the fact that the images filmed could be viewed on four 52 inch plasma television screens with Fujitsu loudspeakers, installed on the wall on the public prosecutor's side and on the lawyers' side, with a third and a fourth installed on the back wall of the court on the right, close to the public.

The five mini-cameras are barely noticeable, unlike the classic Sony Betacam SP, SX or Digital (or other equivalent brands or types) which most commercial television channels use.

Multi-purpose television signal

The five mini-cameras of this court room were operated in the same way as in the main court in Génova street: by remote control and by a TV Editor, through a "joystick", from the TV control area with technical staff from the National Court. The recording was **under the direct command of the President of the Tribunal.**

The TV Edition Room was located at the end of the court room to the right of the exit door. The TV Editor chose the shoots and then played them on screen.

Three basic uses

The trial television signal had three basic uses. The first, and most important, was the recording on DVD for the official records; it was impossible for the Court Secretary to record everything in the trial; all the lawyers had access to this material for study purposes. The second purpose was, as mentioned, to enable all the lawyers to hear the declarations and to see the faces of those declaring. The third aim was distribute the pictures to the communication media. Pictures edited under the rules of the President of the Tribunal, like not to show on screen protégé witnesses, although it allows to listening the audio of their depositions.

Almost 6 kilometres of cable were laid throughout the building, with incomparable results. The quality of broadcasting was extremely professional and comparable to any television studio.

The final decision permitting broadcasting of the “11 M” by the communications media fell to senior judge and magistrate Gómez-Bermúdez, as President of the Court, who was therefore responsible for “court policing” that is, for maintaining public order in the court room and therefore, required to settle the question of radio and television coverage.

For Gómez-Bermúdez it was obvious from the start that the international dimension of the trial required an open approach. He knew the world would be watching us. And he knew too that neither Spanish justice nor the National Court could be called into question.

Therefore, for maximum transparency of information, not only was full broadcasting of the trial permitted – audio and video- to television channels but also a modern press room was installed a few metres from the court room, where five 42” flat television screens were installed with loudspeakers, identical to those in the court room itself.

From here representatives of 400 media companies from all over the world - television, radio, press and agencies, from CNN and Al Yazira, to the Washington Post, the New York Times, The Times or Le Monde- were able to follow events in the court at all times.

The hearings took place every week, from Monday to Thursday, and from 10 a.m. to 2 p.m., in the mornings, and from 4 p.m. to 8 p.m., in the evenings. The trial lasted four months and a half, three times less than it should have taken, thanks to the technical treatment given to the enquiry of the case, which was reduced to a simple DVD.

There were 650 witnesses and 95 expert witnesses. 19 of the defendants remained inside the bullet proof glass box, built inside the court room, because they were in protective custody. And 12 remained in the seats, at the front, because were in conditional bail.

The television channels were able to pick up the institutional signal via Televisión Española –the Spanish public television- in “pool” mode, sharing the costs. TVE carried the signal from the Casa de Campo to Torre España and from there it was distributed to the various interested channels. Small television channels unable to bear the costs of “pool” also had access to the signal, by using a recorder and picking up the signal directly from the press room.

At the same time as all these information facilities were provided, specialists also ensure that the President of the Court had the technical resources available to reinstate order in the event of any difficult moments of the trial. **A Toa discussion system was installed, which is a technical resource enabling Gómez-Bermúdez to cut off, using a simple button, the audio connection to the bullet proof glass box of the defendants, the public prosecutor and the lawyers.**

Investment

The Ministry of Justice invested a total of 900.000 € in equipping and preparing the building. It also undertook the installation of a computer room, internet connection and a specific room for radio journalists to make their broadcasts in a convenient manner.

Media access was organised by the Press Officer of the National Court, Maite Cunchillos, in a post created by the Spanish General Council of the Judiciary, the governing body of judges, in order to promote transparency of information in matters of Justice.

This effort by the Judges' body at improving communication was substantiated with the approval in 2004 of the Justice Communications Protocol, approved by the full council of the General Council of the Judiciary.

It is clear that this proactive communications policy facilitated to a considerable extent the work of the press in this crucial trial. In particular as our judicial system is not Anglo-Saxon, but continental, and has some peculiarities which make it difficult for the layman, those new to it, or a foreigner to understand.

To remedy this deficit, the Senior Judge Gómez Bermúdez visited the press room every week to speak in person to journalists and to clarify and resolve any such queries. This availability was a surprise to everyone, since this type of gesture is not at all common. However, the importance of the case demanded a response to match its requirements. The results in terms of the image of Justice could not have been bettered.

In addition to the personal effort done to help the media representatives, Gómez-Bermúdez, in collaboration with the Spanish General Council for Judiciary, undertook another communicational effort as hard and difficult as the mentioned. During the four months and a half that the trial lasted, the President met with the public –University and High School Students, members of cultural associations as well as opinion leaders-, during the rest time of some of the hearings.

The norm in Spain

This type of audiovisual maximum coverage is the norm, and has been applied in the National Court for just over fifteen years. The “tradition” of cameras present in trials goes back to 1986.

Three recent judgments of the Constitutional Court have made easier the work for TV and radio stations because, until 2004, television and radio access to court rooms was prohibited unless the court expressly authorised it. Now audiovisual media are permitted access to hearings provided that they give advance notice.

This new context has encouraged many members of the press to think that television cameras now have a universal right to enter any court room as they wish. However, that is not true because judges continue to hold the key to policing the court room.

The judge who delivered two of the three constitutional judgments, Javier Delgado Barrio, former President of the General Council of the Judiciary and the Supreme Court, did not give any credence to that interpretation of the universal right of television access, and nor did he say in a clear or restrictive manner that total publicity should prevail in all trials in the style of the “11 M” case. This is a question for each court, which should, however, give reasons for denying access when it is formally requested:

“While the legislator, in accordance with the requirements of the principle of proportionality and weighting, does not as a general rule limit this form of exercise of the freedom of information, its prohibition or restriction, in each case is part of the competence of the Organic Law of the Judiciary and the various procedural laws attributed to Judges and Courts to decide on the limitation or exclusion of making trials public, a competence which should also be exercised in accordance with the principle of proportionality. In this respect for example, it would be possible to use these means of filming and broadcasting images only before, after and during breaks in an oral hearing, depending on the circumstances of the case; or to apply the solution known as pool; or to impose the requirement of digitally treating the images obtained so that specific faces would not be recognised etc.”.

The judgment made it quite clear that there was no single solution, but rather several, which should be adopted according to each case. The solutions proposed translated into journalistic language were: 1. Silent, images of two participants in the trial minutes before it began, during the break, or at the end; 2. Universal publicity, as in the “11 M” trial –the audiovisual communications media covered the trial without restrictions using the “pool” system-; 3. Recording, without simultaneous broadcasting and its subsequent

audiovisual treatment in post production, covering shots of specific persons with mosaic to make them unrecognisable; 4. In the “etc” of the judgments, there is a further possibility: carefully framed images of those taking part, shooting aspects of persons which does not permit their identification.

Many magistrates and judges argue that the ultimate solution to this problem would be for Parliament to pass a Law which would clarify matters once and for all. And this would need to be an Organic Law, as it affects fundamental rights such as the right to freedom of expression, the right of access to information, the right to one’s own image, or the right to honour.

Even so, despite the existing lack of legal definition, Spanish justice is one of the most accessible in Europe in terms of audiovisual presence at trials. It allows procedures such as the “11 M” case to be followed live –through TV, Satellite TV or Internet TV- by US, Arab and Chinese citizens, in equal conditions and with maximum transparency, which increases public confidence in the Spanish judicial system. And that is what counts.

The results –in terms of trust and confidence from the people to justice- did not take long. In September 2007, the Spanish Notary’s Association published an opinion poll about the level of trust of the Spaniards in their institutions. Tribunals had a 5.9 note, the highest in 25 years.

TV proofed to be the most powerful communication tool for Justice.