The End of L'Affaire

French high-ups escape justice in '80s blood scandal

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The French word *affaire* can mean both "scandal" and "business," and so one of France's better investigative journalists, Denis Robert, titled his recent book on political corruption *Pendant les Affaires*, *les Affaires Continuent*—meaning, "despite all the scandals, it's business as usual." Robert's play on words neatly sums up the lesson of last March's Paris trial and acquittal of a former prime minister and two ex-ministers on charges of "complicity in poisoning" some of the 6,000 transfusion recipients who were infected with HIV-contaminated blood from state-run stocks between 1982 and 1985. More than 1,500 of those infected—many of them children with hemophilia—have died.

Although Red Cross officials in Belgium, Switzerland and Canada have been convicted for distributing contaminated blood during the same period, the only other country where a leading politician has faced criminal charges is Portugal. There, the minister of health was indicted for "propagation of a contagious disease" through the infection at public hospitals of 136 hemophiliacs, half of whom have died. (The minister's trial is still pending.) Other European countries—notably Britain, Germany and Spain—created special funds to compensate their victims, who were required to sign away their rights to bring criminal complaints to get the cash.

Not in France, where the first criminal complaints against the pols in power at the time of the infections were lodged in 1987. The French judicial system is normally maddeningly slow in bringing criminal cases to trial, and even more so when a politician is involved. And as tainted-blood victims—represented by lawyers for the French associations of hemophiliacs and transfusion users—pursued their case doggedly for a dozen years, it became clear that the case against the pols was much larger. At the heart of it was a sordid chase for profits in what some of the Parisian press labeled a plot by the state-dominated "health-industrial complex."

In American terms, the recent Paris trial would be comparable to the unimaginable prospect of having Ronald Reagan, former health secretary Margaret Heckler and her deputy all facing prosecution at the same time. In the dock was Laurent Fabius, who as the Socialist prime minister from 1985 to 1986 was the youngest head of government in the history of France's Fifth Republic. A savvy orator and yuppie dandy, Fabius was then–President Francois Mitterrand's favorite, and as arrogant and ambitious as his sponsor. (Today he is the speaker of the National Assembly, his supporters still control about a quarter of the Socialist Party and—balding but still elegant and

power-hungry at 54—he remains a major figure on the French political landscape.) Also on trial were two codefendants: Fabius' minister of social services, Georgina Dufoix (a former head of the French Red Cross who, since her indictment, had a religious conversion and left politics) and Edmond Hervé, Dufoix's deputy as minister of health, a dry and colorless political veteran.

Here's the story on the money chase that infected so many: By 1984, the danger from transfusions with HIV-infected blood was known, and the U.S. government adopted the first test to detect antibodies to the virus—developed by the American pharmaceutical giant Abbott Laboratories—in a highly publicized announcement by Heckler in early March 1985. Determined not to lose the French market to the Abbott test, France's Pasteur Institute—the home of HIV codiscoverer Luc Montagnier—began a frenetic campaign of lobbying the French government ministries to delay approval of the test until Pasteur's profit-making industrial arm was ready to market its own. The pressure worked; at a crucial meeting in Fabius' office later that March, aides to the three French officials agreed—as the official record shows.

That year the French press was running front-page headlines on the contaminated-blood crisis: "AIDS—A State of Emergency—100 to 200 People Contaminated Each Week," blared *Le Matin*, the daily edited by Mitterrand's former press secretary that, as obligatory reading for politicians, the ministers could hardly have ignored. So Fabius had to have known the murderous effects of the delay—even though his principal scientific counselor was the former director of the Pasteur Institute, which wanted to minimize concerns. Hervé, his health minister, wanted to publicly announce the obligatory testing of blood for HIV before a medical congress on May 22, 1985. But in yet another delay, Fabius refused permission, choosing instead to grab credit for fighting AIDS by making the announcement himself to the National Assembly a month later, on June 19. Even then, Fabius did not specify the date when the order was to go into effect; in fact, regular blood testing did not begin until August—when the French test mandated for use in the state-run transfusion centers was finally available.

Fabius has always claimed that he was "responsible but not guilty"—a classic denial of culpability—and that he had acted as soon as he was informed of the urgency of testing. To believe that requires one to believe that this canny politician didn't read the newspapers. And as the head of the French hemophiliacs' association has pointed out, "If Fabius took control of the decision process as prime minister, it was not to accelerate it, but to put on the brakes. In fact, there was no need for his office to get involved and make it a political decision: It would have been sufficient for the National Laboratory of Health to give its approval for a test—either Abbott's or Pasteur's—to be used."

From the beginning of the trial of Fabius and his colleagues in February 1999, it was clear that the fix was in—the French elite were unlikely to bring down one of their own. First, the justice system proved pliable: Up until 1993, ministers were tried for crimes committed in the course of their official duties (after indictment by the National Assembly, the lower house of the French parliament) by the *Haut Cour*, a court with the Senate sitting as jury. (The most recent conviction of a minister was in 1920.) But when the charges against Fabius finally came before the *Haut Cour* in 1992, the Senate rejected the indictment. This provoked considerable public outcry, and

Fabius—in a maneuver to save his reputation—asked the National Assembly again "to indict me for a crime I did not commit" as part of an attempt to clear himself. So, with the quasi-unanimous support of all political parties, the contaminated-blood case sparked the replacement of the *Haut Cour* with a new Court of Justice of the Republic (CJR). But the CJR was hardly an independent voice. France was then awash in a highly publicized series of political-corruption scandals centering on secret campaign cash and bribes that financed all major political parties and touching many top politicians. It was circle-the-wagons time, and the officials who structured the CJR tried to make it as difficult as possible to convict their colleagues.

Under French law, victims of crimes and their families can have their own lawyers present evidence and question witnesses in criminal trials. But the CJR forbade this, for reasons that remain unclear, in the blood trial. Another fix: The prosecutor general, who was beholden to the political establishment, had demanded acquittal twice on technicalities before the trial even began. His unaggressive questioning ignored much of the evidence, as did questioning of the witnesses by the politically compromised CJR judges.

The exclusion of the victims' lawyers from the trial became even more important because of the manipulation of the judicial calendar. While no one from Pasteur was ever indicted for the institute's lethal lobbying, 30 lower-level government officials—doctors, bureaucrats and aides to the indicted ministers—have been indicted on poisoning charges and are facing trial in ordinary criminal court. But even though prosecutorial logic usually dictates pursuing the small fish before the big ones, in the hopes of securing the underlings' testimony against their superiors, the CJR decided to judge the ministers first, months before the other trials. Consequently, many of the 30 refused to testify in the Fabius trial to avoid incriminating themselves—which, as the Nouvel Observateur pointed out, "in large measure drained the trial of its meaning." In yet another fix, of the 367 specific cases of poisoning brought by the French hemophiliacs' association (whose leaders, by the way, were wiretapped by the government during trial preparations), the CJR allowed only seven to be tried by the court, further narrowing the chances for conviction.

When the CJR rendered its verdict this past March, it was, as expected, a whitewash: Fabius and Dufoix were found not guilty, while Hervé was convicted of only a minor infraction and released without punishment. The crowded courtroom was filled with the families of victims—such as the Gaudins, whose two small children died after transfusions, and Joelle Bouchet, whose hemophiliac son has AIDS—and they screamed their outrage: "Shame on this parody of justice!" "You all have blood on your hands!"

Even though the victims' persistence sparked the creation of a new court, it was a hollow victory: The trial was a farce, and the verdict a political one that had little to do with the facts. The CJR even refused to express an opinion on the crucial ministerial meeting that blocked approval for the use of the Abbott test, citing "lack of evidence." The contrived nature of the CJR's decision was universally criticized in the French press.

Believing himself vindicated, Fabius has resumed his eternal scheming to become president of France—while the victims of the blood-testing delays that he and his colleagues imposed continue

to suffer and die. Truly, despite all the scandals, in France it’s business as usual.

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