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Symposium on a Free Press and a Fair Trial - Introduction

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SYMPOSIUM ON A FREE PRESS AND A FAIR TRIAL

INTRODUCTION

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CRIMES, criminal detection, and criminal trials are of absorbing public interest. Because society has both the desire and the right to be informed about these things, our news media are naturally going to tell us. Indeed, good reporting of crime and criminal trials is one of the most important features which make a newspaper or a news program both popular and salable.

Such reporting does more than just exist to satisfy public curiosity. At its best, effective news coverage can expose favor and corruption, prevent the miscarriage of justice, and educate the public as to the nature and meaning of the constitutional and procedural standards which have been developed to strike a balance between the rights of the individual and those of society.

A criminal trial, however, does not take place merely to be reported. While a trial may have great public significance because of the sensational nature of the crime, its central purpose of determining individual guilt or innocence should not be frustrated. To insure that a trial is fair, Anglo-American law has developed a complex system of constitutional and procedural protections for the accused. It is when the normal operation of these protections is threatened by publicity that the potential conflict between "A Free Press and a Fair Trial" comes into play.

Although this conflict has been considered at numerous meetings, symposia and seminars, and has long been the subject of professional concern,[1] we remain far from agreement. Such dialogue must be continued if a solution is to be found.

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1. See generally CONFERENCE ON PREJUDICIAL NEWS REPORTING ON CRIMINAL CASES, REPORT OF THE PROCEEDINGS (Inbau ed. 1964); FELSHER AND ROSEN, THE

Villanova University School of Law was thus very pleased to conduct a symposium on this topic on April 16, 1966. It was our desire to bring together for discussion some of those who have been most concerned with this problem in their own professional lives — a newspaperman, a radio and television news specialist, a defense attorney, a prosecutor, a representative of the Bar Association, a Judge and an academic commentator. We were most fortunate in being able to obtain an outstanding person to express each point of view and we are delighted to present for publication the papers which were presented by these panelists at the Symposium.

While it would not be appropriate for me to use the privilege of introducing these papers as an excuse to present my own views, I would like to indicate one area where I believe that additional discussion could be profitably directed.

The primary consideration of a "free press and a fair trial" falls naturally on the question of what effect publicity has on the opportunity of an accused to obtain a fair trial in a particular case. There is, for example, a great concern with the difficulty of obtaining an impartial jury when there has been extensive pre-trial publicity,[2] or of conducting a trial in a calm atmosphere when the news media wish to cover the trial with television or swarms of reporters and camera men.[3] Such problems are of course crucial. But I would suggest that behind the problem of "fairness" in a particular case is the more basic issue of whether or not the Bar and the news media have done an adequate job in making the public aware of the criminal process.

The public must indeed be confused when "startling witnesses" and "freshly uncovered evidence" exploited in the press never materialize in the court room. Often it is made to appear that defense attorneys mesmerize the court with legal sleights of hand, while valiant policemen make difficult arrests only to see that the thugs are set free because of legal technicalities. Such a picture of the administration of justice cannot fail to lessen the public's respect or faith in the legal process.

PRESS AND THE JURY (1966); FREE PRESS AND FAIR TRIAL, *Hearings Before the Subcommittee on Constitutional Rights and The Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary*, 89th Cong., 1st Sess., pt. 1 (1966); JOINT WORKING PARTY — INTERNATIONAL COMMISSION OF JURISTS AND INTERNATIONAL PRESS INSTITUTE, THE LAW AND THE PRESS (1965); PRESS AND BAR COMMITTEE OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, RADIO, TELEVISION, AND THE ADMINISTRATION OF JUSTICE (1965); American Bar Association Special Committee on Proposed Revision of Judicial Canon 35, *Interim Report and Recommendations* (July 23, 1962); American Society of Newspaper Editors, *Report of The Bar Press Committee*, 37 P.B.Q. 21 (1965); WRIGHT, *Fair Trial — Free Press*, 38 F.R.D. 435 (1966).

2. See Sheppard v. Maxwell, 384 U.S. 333 (1966); Irvin v. Dowd, 336 U.S. 717 (1961).

3. See Estes v. Texas, 381 U.S. 532 (1965).

Every complex profession is potentially misunderstood by those not familiar with its subtle jargon and obscure technicalities. A citizen who may well have a distorted concept of the healing arts seldom, if ever, would be expected to exercise the responsibility of a doctor, or to have to judge the soundness of basic medical institutions with the knowledge that he has casually acquired about medicine in the newspaper or on television. However, any citizen may be a juror, and all citizens should have some understanding of our basic constitutional and political institutions. It is therefore, the role of the press not just to report particular "facts," but to explain and educate.

It is possible for sensational or poor reporting to undermine the "fairness" of a particular trial, but uninformed or misleading reporting about the law itself could undermine the whole legal process. The press bears the responsibility to criticize antiquated or inadequate criminal procedures; but it cannot do this if it does not fully understand or adequately explain what is criticized. If the press believes some rule of evidence to be absurd, it has a responsibility to say so. However, it is irresponsible to play up inadmissible evidence without explaining that it is such, thus leaving the public with the view that the prosecution was incompetent, or the defense counsel devious and wiley. The public's right to know is not the right to be fed sensational "facts", but rather to be informed as to what is really occurring in the criminal process.

Lack of public information in this area is not due merely to a failure of responsibility on the part of the press. Too often lawyers and judges treat the technical aspects of the criminal process as an occult art, not to be discussed with those who are not of the priesthood. All too often there is both a lack of respect for the responsibilities of newsmen on the part of the Bar or bench and a lack of respect and understanding on the part of the news media for the obligations of the legal profession.

The views expressed in the following papers, as well as the goodwill which characterized the discussion during the Symposium, indicate that this kind of barrier can be broken down. A better understanding on the part of the news media of the law and the lawyer's responsibilities, and a better appreciation by the legal profession for the role that the press must play in securing the proper and effective administration of justice, could well eliminate the current controversy and provide a basis for the adoption of workable standards in this area.

We hope that this Symposium is an initial step in that direction, and that the process of educating newsmen in the problems of the law, and the lawyers in the problems of the press, will be carried on in a similar spirit of a mutual desire to know, not to blame.