

PRETRIAL NEWSPAPER PUBLICITY
IN CRIMINAL PROCEEDINGS:
A CASE STUDY

THESIS FOR THE DEGREE OF M. A.

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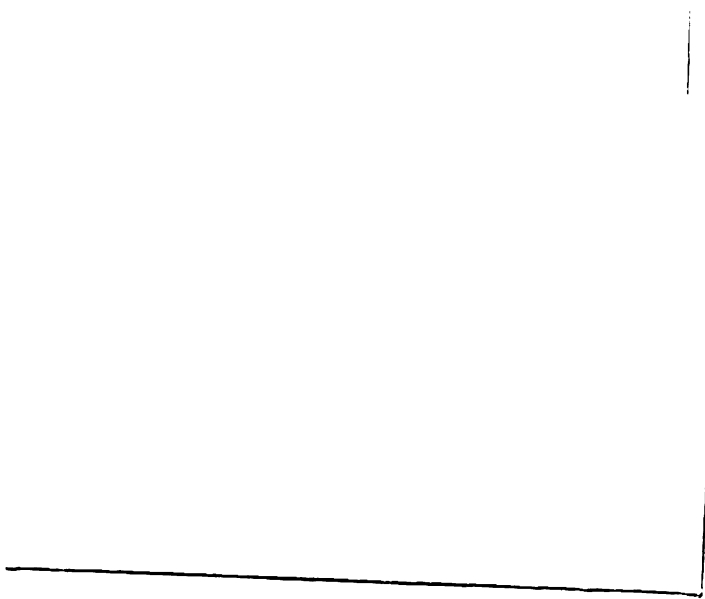
DON R. PEMBER

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ABSTRACT

PRETRIAL NEWSPAPER PUBLICITY IN CRIMINAL PROCEEDINGS: A CASE STUDY

By Don R. Pember

The purposes of this study were to: 1) evaluate the most frequently suggested "remedies" for the alleged problems caused by pretrial newspaper publicity in criminal cases, and 2) to make an intense examination of a single case in which a defendant challenged a conviction on the grounds that pretrial publicity had prejudiced the jury.

The single case chosen began in the autumn of 1963 in Oakland County, Michigan, and lasted for nearly two years. Twenty-one defendants were charged with the violation of Michigan gambling laws. At least three of the defendants were linked by the press with the reputed international crime syndicate, the Mafia.

In the initial portions of the thesis the author attempted to place his study into the perspective of the larger free press--fair trial problem by presenting a short explanation of the controversy set against the background of current writings on the topic. A brief explanation of the British remedy was included as well as a short history of the use of the contempt power in United States' federal and

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24 hours immediately following the arrests. Most interviewees blamed the news source rather than the press for the publication of prejudicial news.

The change of venue, the actual remedy applied in the case, did not have the desired results, as publicity of the case preceded the trial to the new site following the change of venue. Of the other remedies (assuming they would have been in effect in Oakland County at the time of the arrests) the only one which showed major positive results and minimum negative consequences was the Katzenbach Justice Department ruling which sets specific guidelines for the type of information which can and cannot be released by the arresting officers and the prosecutor, but places no prohibitions against the press or the defendant.

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By

Don R. Pember

A THESIS

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PREFACE

The problem which results from the supposed collision of two fundamental precepts of American democracy, the right of a free press to publish all the news and the right of an accused individual to a fair and impartial trial, is great in scope. The difficulties in studying this so-called collision are numerous. In even a study limited to a single aspect of the controversy the doors of many areas are opened. But for lack of time these thresholds cannot be crossed.

This study is devoted to one particular criminal case which received extensive publicity before the trial began. The research for this paper was stopped on September 1, 1966. Chapters I and II of this report are devoted to an explanation of the problem of pretrial publicity. In Chapter III a detailed account of the publicity given a single criminal case is presented. Also in this chapter an attempt will be made to show how the remedy selected to neutralize the effects of the pretrial publicity did not work and an explanation of the failure will be offered. Chapter IV is devoted to a series of open-ended interviews conducted in the area in which the case occurred. The interviewees were judges, lawyers, newsmen and police officers. In Chapter V an attempt will be made to determine the effectiveness of several proposed solutions to the pretrial publicity problem.

Finally, in an epilogue this author will briefly present his views on an aspect of the problem not fully explored in the body of this thesis.

Much more research is needed on the effect of publicity on the minds of the potential juror. At this time the answers to this question often conflict with each other and are really only educated guesses. Evidence to support the belief that publicity can prejudice a juror to the extent that he cannot be impartial, or evidence which would refute this belief is the key to ending the controversy over the effects of and solutions to the pretrial publicity problem.

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CHAPTER I

THE FREE-PRESS--FAIR TRIAL DILEMMA

An island in the Western Pacific was swept by terrible storms every ten or fifteen years. The storm would send the ocean completely over the island and wipe out most of its village and most of its population. After that had happened for centuries, the natives built a sea-wall which was effective. It kept them from disaster. But the wall was so successful that it wasn't long before the people who had built it more or less forgot about the devastation that the storms had wrought and when they died, their sons only knew about it from hearsay and although they remembered it, they didn't really have any visual recollection of what it was like. And when the second generation died, the succeeding generation had forgotten all about the former suffering. And after them, the next generation didn't even know why the wall had been built--and they began to take it down to use the stones for buildings.¹

The guarantee of a free press in the United States is clearly defined in the First Amendment to the U. S. Constitution. Adopted in 1791, the amendment clearly stipulates that "Congress shall make no law . . . abridging the freedom of speech or of the press;"

Since 1791 the language of this constitutional decree has not changed. Court interpretation has varied its application. Qualifications of its meaning have been added and taken away. But the principle of a free press has stood fast for 175 years.

¹Suggested by remarks made by R. R. McConnell from the record of the Judicial Conference for the Third Circuit, Philadelphia, Pa., September, 1964.

The press itself, however, has changed. It is unlikely that even the most farsighted colonial statesman envisioned the era of instant mass communication in which we now live. There is a serious concern in the minds of many persons that media technology has outmoded this constitutional guarantee, that more control of the press is needed.

While this proposal has come from many circles, none has been more vocal than segments of the legal profession who accuse the press of undermining the rights of defendants in criminal cases by publicizing these cases prior to trial, thus influencing potential jurors. The right to a fair and impartial trial is guaranteed in the Sixth Amendment to the U. S. Constitution. By publishing pretrial information the press is said to be disrupting the finely-balanced judicial process.

This is not a new charge against the press. It is one which has been consistently made, but receives a full-volume of publicity only after a major event during which irresponsibility by the press is subjected to national scrutiny. The most recent wave of criticism has its roots in Dallas in November of 1963 when President John Kennedy was shot and killed by Lee Oswald. In the report prepared by the Presidential Commission which investigated the assassination the press was criticized. "The Commission believes, however, that a part of the responsibility for the unfortunate circumstances following the President's death must be borne by the news media," the official commission

report said.² Commission members added that newsmen showed a regrettable lack of self-discipline, and that a code of professional conduct would be welcome evidence that the press was sincere in its affirmation of the need for a balance between the right of the public to be kept informed and the right of the individual to a fair and impartial trial.

The response by the legal profession was immediate. Scores of articles began to appear in law journals. Panel discussions were held and the debate reached a peak not seen since the Lindbergh kidnapping case in the 1930's when the press was severely censured for the coverage of the trial of accused kidnapper, Bruno Hauptmann. Press response was less enthusiastic. National and state press organizations and societies did meet for discussion of the problem. Studies resulted from the meetings, but there was often lack of agreement in even the definition of the problem.

In order to understand the problem of pretrial publicity several questions must first be answered. What type of publicity is referred to when the press is accused of undermining the rights of a defendant? A complete list of examples would include: (1) publicity demanding the arrest of a suspect before police have gathered sufficient evidence, (2) printing a confession which is not introduced into evidence or which is later determined to have been

²Report of the President's Commission on the Assassination of President John F. Kennedy, (Washington: U. S. Government Printing Office, 1964), p. 241.

involuntarily given or to even allude to such a confession, (3) printing denunciatory interviews with the victim's family, (4) interviewing the public before trial on the questions of guilt or innocence and possible punishment, (5) exposing a defendant's prior criminal record either before or during the trial, (6) printing inflammatory evidence which the court would not allow to be introduced, (7) linking the defendant with other crimes or portraying him as a "hoodlum" or "gangster", and (8) printing the personal feelings of the prosecutor, police or other trial participants.³

Newspapers have also been criticized for running a picture of a defendant if his identity will be a question at the trial. Most press critics would limit news coverage to a description of the crime committed, the fact of the arrest, the fact of the arraignment or indictment and then a fair and accurate report of the trial proceedings.⁴ It is also suggested that newspapers refrain from making any comment or speculation on the pending case. Since this report is concerned primarily with pretrial newspaper publicity, the matter of defining a "pending" case won't be considered. It is sufficient to note that some critics have suggested that the press remain silent until the final

³"The Case Against Trial by Newspaper," Publishing, Entertainment, Advertising and Allied Fields Law Quarterly, Vol. V (June, 1965), 132.

⁴W. Thad Cochran, "Pretrial Publicity as Denial of Due Process," Mississippi Law Journal, Vol. 36 (May, 1965), 388.

disposition of the case.⁵ In the case of the murder trial in Cleveland, Ohio, of Dr. Sam Sheppard, the final disposition has not yet occurred, though the first trial began in 1954.

Another question which should be considered after discussing type of news which newspapers are being asked to refrain from using concerns effect. Does this type of publicity really have such a prejudicial effect on a juror that he or she would be unable to make a decision solely on the evidence presented in court?

The answer from press critics is yes. The answer from most newsmen is no. Actually, neither side can say for certain. The facts are not known. There have been very few studies on this question. "One of the problems facing a researcher trying to experimentally investigate the interactive processes that take place in a jury, is the inability to use other than mock juries," researchers reported.⁶ A 1953 study by the University of Chicago, which did not concern itself with pretrial publicity but attempted to discern at what point a juror made up his mind during a

⁵Ibid.

⁶F. Gerald Kline and Paul H. Jess, The Effect of Prejudicial Publicity on Mock Juries at the University of Minnesota Law School, excerpts from a paper presented at Association of Education in Journalism Convention, Syracuse, N. Y., August, 1965, quoted in U. S. Congress, Senate, Subcommittee on Constitutional Rights and Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary, Hearings on S. 290, Free Press and Fair Trial, 89th Cong., 1st Sess., 1965, p. 759.

trial resulted in sharp disapproval from the press. "One of the consequences of the Chicago project was an outburst of criticism by the news media and the Congress in late 1955," a researcher said.⁷

Other law researchers have attempted to answer the question without a jury study, by merely applying basic psychological dogma. In one study it was determined that pre-trial publicity had a definite effect on the mind of a juror and in many cases this effect was unknown to the juror.⁸ This determination was made by proceeding through a series of known psychological principles. Briefly, the argument followed this line. It is common for a prospective juror to be exposed to a pretrial publication which relates many facts about the crime and the defendant. An event which disturbs the social order (such as a crime) will breed instinctive hostility for the person who committed or who is believed to have committed the disturbance. The first impression that an individual has about the character of another person, if the impression refers to a central dimension of personality, will tend to form a belief which refuses to yield or change, even when facts which contradict this opinion are presented. This is because a man tends to form a belief once he is exposed to a minimum of factual

⁷Ibid.

⁸Terrence P. Goggin and George M. Hanover, "Fair Trial v. Free Press: The Psychological Effect of Pre Trial Publicity on the Juror's Ability to Be Impartial; A Plea for Reform," Southern California Law Review, Vol. 38 (1965), 673-684.

information and tends to unconsciously exclude or distort facts contrary to this belief. A juror might, therefore, not carefully consider what is said in court if it is contrary to an established belief and at the same time might be unaware of this partiality. The psychologists add that even if a person was willing to make an admission of partiality the effect of a belief and even the belief itself is normally subconscious, unrecognizable to the potential juror.

Another researcher disagrees, and points out that there is too little research on communication effects to provide the information for an understanding of the subject.⁹ He accepts the psychological principle regarding beliefs presented previously, but challenges the idea that mass communication can have enough impact to create the initial belief. He notes a study done in Cincinnati following a six-month campaign to acquaint the city residents with the United Nations. Only two per cent changed their ideas, the author noted.¹⁰

The Supreme Court has had its own test of whether pre-trial information clouds a juror's mind. But the test has changed over the years and is still changing. In 1807 in the trial of Aaron Burr, Chief Justice John Marshall proclaimed that an impartial juror was one free from the dominant influence of knowledge acquired outside the courtroom,

⁹Charles R. Wright, Mass Communication: A Sociological Perspective (New York: Random House, 1959), p. 91.

¹⁰Ibid., p. 104.

free from the "strong" and "deep impressions" which close the mind.¹¹ However, a juror could have light impressions, ones which were capable of yielding to the evidence. In 1878 the court again ruled on the impartiality of jurors and generally reaffirmed the Marshall doctrine.¹² The court said a "partial" juror is not necessarily one who has formed an opinion, because everyone will have some impression in his mind. More important than this, though, was the court ruling that when an appeal is made on the grounds that the jury was prejudiced, the defendant must prove to the appellate court the actual existence of a preconceived opinion in the mind of a juror, an opinion strong enough to raise the presumption of partiality.

Prior to 1961 the Supreme Court had never reversed a conviction on the ground that a defendant had been denied an impartial trial by reason of prejudicial publicity. In 1961, however, the court modified its impartiality standard and reversed the conviction of Leslie Irvin who had been tried on a charge of murder.¹³ Irvin was arrested near Evansville, Indiana, in 1955 after six murders had been committed in the area. After Irvin's arrest, but before he was indicted, the prosecutor issued a statement that Irvin had confessed to all six murders. The statement was printed in papers throughout Indiana. When the trial began,

¹¹U. S. v. Aaron Burr, 8 U. S. (4 Cranch) 455 (1807).

¹²Reynolds v. U. S., 98 U. S. 145 (1878).

¹³Irvin v. Dowd, 366 U. S. 717 (1961).

Irvin's attorney asked for a change of venue. The trial judge granted the motion, but the trial was moved only to the adjacent county. A motion for another change of venue was denied. Publicity about the case continued to spread throughout the community.

Of nearly 400 persons called for jury duty, 90 per cent expressed an opinion that the defendant was guilty. Of 12 jurors finally selected, eight stated similar opinions, although they all declared that they could lay aside their opinions and judge the accused on the evidence presented in the courtroom.¹⁴

The court agreed that the mere existence of any pre-conceived notion of the guilt or innocence of an accused sufficient to rebut the presumption of a prospective juror's partiality would be an impossible standard. The key issue, it said, was whether the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.¹⁵ But, "where so many, so many times, admitted prejudice, such a statement of impartiality can be given little weight."¹⁶

In 1962 the court limited the Irvin decision somewhat in Beck v. Washington¹⁷ when it upheld David Beck's

¹⁴"The Changing Approach to Trial by Newspaper," Publishing, Entertainment, Advertising and Allied Field Law Quarterly, V (June 1965), 156.

¹⁵Irvin v. Dowd, 723.

¹⁶Ibid., 728.

¹⁷369 U. S. 541 (1962).

conviction. The court said that in the Irvin case 90 per cent of the jurors were prejudiced. In the Beck case, the court noted that the proportion of prejudiced jurors was less than 90 per cent. In 1963 it denied certiorari in Gaegin v. Gavin.¹⁸ The lower court had said the publicity did not arouse feelings of rage and vengeance as in the Irvin case, only 72 per cent rather than 90 per cent of the potential jurors admitted preconceived opinions, and only two rather than eight of the jurors selected admitted preconceived opinions.¹⁹

A case with perhaps even greater potential consequences was Rideau v. Louisiana.²⁰ A filmed interview of the defendant, Wilbert Rideau, confessing to a sheriff that he had robbed a bank and killed two employees was televised on three separate instances. This interview was viewed by many citizens in the small community; three members of the jury which convicted Rideau admitted seeing it. Without any extensive examination of the voir dire (the examination by the court of all potential jurors to determine if they have preconceived notions on the case) the court concluded that the pretrial publicity was so overwhelming that the confession had amounted to a trial and the conviction was reversed.²¹ This was only the second time the court had

¹⁸292 F2d 244 (1st Cir 1961), cert den, 370 U. S. 903 (1963).

¹⁹Ibid., 247. ²⁰373 U. S. 723 (1963).

²¹Ibid., 727.

reversed a conviction solely on the grounds of prejudicial pretrial publicity.

More recently the court reversed the conviction of Dr. Samuel Sheppard, but this case will be discussed later in the chapter in connection with trial-level remedies available to neutralize the effects of pretrial publicity.

The cases cited have all been state cases in which the court had exercised its right to guarantee due process of law to every citizen. In federal courts where the Supreme Court exercises direct supervisory power, a 1959 case offers an interesting precedent. In Marshall v. United States²² the court reversed the conviction of a defendant because during the trial the jury had read in a newspaper material which had previously been ruled inadmissible. There was no sensational publicity in the case and the newspaper accounts were published after the trial began. Yet the precedent is clear and, as one observer points out, offers a defendant in a federal prosecution greater protection from prejudicial publicity than a defendant in a state court under the standard of the due process clause of the fourteenth amendment. "When a defendant is prosecuted in a federal court, he will only have to prove that the jurors had read material which would have been excluded as evidence because of its prejudicial nature. He will not have to show that the jurors were, in fact, prejudiced by the information," it was

²²360 U. S. 310 (1959).

noted.²³

It can be seen that the Supreme Court has a changing viewpoint on the possible effects of pretrial publicity and the definition of an impartial juror. The court places more faith in the ability of the American juror than does the psychological community which pictures the typical juror as a virtual prisoner of his subconscious.

Thus, the problem has been outlined. The type of publicity which is usually identified as prejudicial has been listed and the possible effect on the mind of the juror has been noted. Now it is time to consider the solutions or remedies for the problem. Some remedies have been built into the American judicial system. Others are currently available as the result of action by private organizations, such as the American Bar Association. Still others have been proposed by legislators, attorneys, judges and newsmen.

The effectiveness of the "built-in" remedies is questionable. After a survey of a large portion of the literature in the field and numerous interviews this author concludes that the press and many judges are satisfied with the so-called trial-level solutions. Many lawyers, however, indicate that the trial-level remedies are not adequate.

The trial-level remedies most commonly considered are:

1. Change of venue, moving the trial to a distant area.
2. Continuance, postponing the trial.
3. Voir dire, examination of potential jurors.
4. Sequestration, isolation of the jury.

²³"The Changing Approach to Trial by Newspaper," supra note 14, 161.

- 5. Blue ribbon jury.
- 6. Contempt of court.

Change of venue is the most common trial-level remedy used to neutralize the effects of publicity before a trial. When a change of venue is granted the site of the trial is moved, sometimes just to the next county, as in the Irvin case. More often the trial is moved a great distance away, across an entire state if possible. But there is no guarantee that bad publicity will not precede the arrival of the trial at the new site. If the trial is moved from city A to city B, what was at one time only a state story for the newspaper in city B now becomes a local story, and worthy of much more news space. In addition, the accused must waive one of his constitutional rights--to be tried in the community where the crime occurred--in order to move the trial. Because of this, the failure of the defendant to move for a change of venue does not mean that subsequent opportunities to protest pretrial publicity are waived. It has been established in federal court that "The right to apply for a change of venue is given for the defendant's benefit He is not obliged to forego his constitutional right to an impartial trial in the district where the offense is allegedly committed."²⁴

Another remedy is a continuance, postponement of the trial until the publicity dies down. The continuance motion is granted on the premise that the level of the present

²⁴Delaney v. U. S., 199 F2d 107, 116 (1st Cir 1952).

publicity will recede and the public will forget what has already been said and printed. But when the trial is ready to start again there is no assurance that the publicity won't begin again. During the delay, important witnesses may leave town or die. And again the defendant must forsake one of his rights, the right to a speedy trial, to gain a continuance.

As described earlier voir dire is a question-and-answer period where potential jurors are dismissed "for cause" if they are shown to be prejudiced. Psychologists point out that the prejudice may be subconscious²⁵ and would not show up on voir dire. The potential juror may not tell the truth. And it has been shown by the Supreme Court's reversal in Irvin that the voir dire cannot guarantee an impartial jury. Nevertheless, the voir dire is an effective tool and probably one of the best available trial-level remedies.

Another remedy includes sequestration, the power to isolate the jury. Judges are reluctant to do this today because of the complexities in the life of the average person. Also, this would have no effect on publicity seen by jurors before the trial.

The judge can issue cautionary instructions to the jury, but again these instructions, if followed, would only have an effect after the trial had started.

Another available tool, which is infrequently used, is

²⁵Goggin and Hanover, supra note 8, 634.

the blue ribbon jury. Usually, either the defense or the prosecution is empowered to empanel a special jury on the grounds that the case has received such publicity that an ordinary jury could not be assembled without great difficulty.²⁶ The jurors are chosen on the basis of questionnaires and personal interviews. It is assumed that more intelligent persons will be better able to maintain an impartial attitude during the trial. It has been suggested that psychological tests could be used to test a potential juror's resistance to propaganda. While this remedy might prove to be an excellent tool, it is expensive. And if the problem is of the proportion complained of by many critics, it would not be feasible.

The last suggested trial-level solution, contempt, will be discussed fully in Chapter II.

While some argue, as it was shown, that the first five discussed remedies are worthless, there are others who argue that if all of these opportunities are taken that defendants will have the fairest possible trial under the prevailing circumstances.

An extra-judicial remedy for the indirect control of pretrial publicity is Canon 20 of the American Bar Association's Code of Professional Ethics. The canon generally prohibits comments by attorneys on pending law cases. The

²⁶Lawrence E. Edenhafer, "The Impartial Jury--20th Century Dilemma: Some Solutions to the Conflict Between Free Press and Fair Trial," Cornell Law Quarterly, Vol. 31 (Winter, 1966), 326-7.

theory behind the canon is that if lawyers refuse to comment on a case, the press will have little or at least less to publish or broadcast. The exact wording of the canon is:

Newspaper publication by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the courts and otherwise prejudice the due administration of justice. Generally they are to be condemned. If the extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously. An ex parte reference to the facts should not go beyond quotation from the records and papers on file in the court; but even in extreme cases it is better to avoid any ex parte statement.²⁷

The only persons this canon has an effect upon are attorneys. An opinion by the American Bar Association (ABA) ethics committee indicates that the canon does not prohibit the issuance of statements by public officials, such as district attorneys or an attorney general, but suggests that such statements should avoid the mention of fact likely to create an adverse public attitude respecting the actions of the defendant.²⁸

The problem with Canon 20 is that it has never been enforced. This fact was noted by the ABA President for 1965, Lewis F. Powell, who said at the ABA convention at Miami Beach in 1965 that "'lawyers themselves are a major source of [news] information which may affect the fairness of trials.'"²⁹ Powell said there was no known case of a lawyer

²⁷Canon 20, American Bar Association Code of Professional Ethics, as quoted in Senate Subcommittee on Constitutional Rights, Free Press and Fair Trial Hearings on S. 290, 1965, p. 547.

²⁸Ibid.

²⁹New York Times, August 10, 1965.

being disciplined for this and added that Canon 20 was unenforceable.

Several "new" solutions or remedies for the control of pretrial publicity have been proposed since the Kennedy assassination. Most of the proposals fall into three basic categories:

1. Voluntary codes of ethics adopted by press associations or by press-bar groups.
2. Laws which would silence participants in the trial, such as the lawyers, police and defendant.
3. Administrative rules to prescribe limits on statements made by law enforcement officials.

In addition to these proposals there have been indications that some judges believe the court should take a stronger stand in controlling the sources of publicity during a trial. The relative effectiveness of these proposed solutions will be judged in Chapter V of this report. At this time the discussion will be confined to a detailed explanation of specific proposals.

At least three national press associations have restudied the problem of pretrial publicity. The Associated Press Managing Editors Association released a "fact guide" on the problem in March of 1965. The small booklet is really not a statement of policy by the association, merely a thumbnail sketch of the problem and some suggested answers from groups throughout the nation. The APME view on the problem, however, is summed up quite well in a paragraph entitled, "Where is the Answer?"

The answer lies in a willingness on the part of both the press and the bar to understand more deeply the problems and goals of the other. Just shouting at each other

doesn't help. Lawyers must understand that editors, too, are concerned about fair trial. Editors must appreciate that lawyers, too, are committed to the importance of having a free press.³⁰

In addition to this booklet the APME has named a committee of its members to meet with representatives of the American Bar Association to study the problem. The organization has not stated whether an official report will result from these joint meetings.

The American Society of Newspaper Editors (ASNE) and the American Newspaper Publisher's Association (ANPA) have both undertaken studies of the problem. The ASNE adopted a committee report on the problem on April 14, 1965. The ANPA report is scheduled to be released before the end of summer, 1966. These are not the first times these two groups have gathered to study this problem. In fact the history of journalism codes dates back to 1923.

The idea of codes within professional organizations began in 1908 when President Theodore Roosevelt appealed to all professions and industries for more ethics and morality in American business life. About 200 codes were adopted then, all of them voluntary and self-policing, but the news media failed to respond to the President's call.

In 1923 the ASNE did adopt a set of canons which contained admirable declarations of policy. But no authoritative action was ever taken on the part of the editors

³⁰ APME Fact Guide on the Free Press-Fair Trial Debate, as quoted in Senate Subcommittee on Constitutional Rights, Free Press and Fair Trial Hearings on S. 290, 1965, p. 416.

through their official organization. Hence, these very canons of journalism conclude as follows: "Lacking authority to enforce its canons the journalism here presented can but express the hope that deliberate pandering to vicious instincts will encounter public disapproval or yield to the influence of a preponderent professional condemnation."³¹

A committee of distinguished representatives of the ANPA, ASNE and ABA met in 1935 to consider the problem of pretrial publicity. The group agreed on the problem, but disagreed on solutions. Nevertheless the committee report issued some interesting statements regarding lawyers, judges and newspapers. The group condemned lawyers who yielded to the temptation of seeking publicity for their professional efforts as a basis for furthering their careers or furthering their cause. Judges must expect to have their conduct subjected to the freest criticism, the committee concluded unanimously. Three primary functions of the media were listed: dissemination of news, editorial guidance of public opinion and conduct of commercial business. The committee report added that a newspaper should exclude "anything that would tend to corrupt the judgement of the jury by introducing prejudice or substituting somebody else's uninformed judgement for the deliberate and supported judgement which they are expected to render."³²

³¹Edwin M. Otterbourg, "Fair Trial and Free Press; A New Look in 1954," Communications Media Legal and Policy Problems (Ann Arbor: University of Michigan Law School, 1954), p. 85.

³²Ibid.

The ASNE report of 1965 is largely a denial of charges leveled against the news media and a statement of rededication to the principles of fair and honest reporting. Statements from the report show this clearly.

A year's study of the issue of "free press--fair trial" has brought your committee to the uncomfortable realization that the American press--to reverse a sententious cliché--is confronted not with facts but with a theory Convincing or even credible evidence on the degree to which press coverage of criminal proceedings injures the chances of fair trials for defendants is almost totally lacking. . . . To perform its functions, the press must not be bound by the same regulations that govern the operation of law enforcement agencies and the courts. . . . We are convinced that the repression entailed by those proposals would not only cause a forfeiture of the public's credence in their news media but would withdraw the essential safeguard of public awareness and scrutiny from the processes of justice. We believe that the issues in free press--fair trial can best be solved by the approach that has always had the most success in our democratic system; that is by energetic, frequent, and continuing conversations among those concerned.³³

The report pointed out that each newspaper is unique and has unique problems, but urged all segments of the newspaper press to use good taste and restraint in reporting criminal news.

On February 3, 1965, the ANPA formed a 12-man committee to study the problem of free press--fair trial.³⁴ The report from this committee has not yet been made public; however, after a conversation with one member of the

³³Report of the Press-Bar Committee, American Society of Newspaper Editors, 1964-65, as quoted in Senate Subcommittee on Constitutional Rights, Free Press and Fair Trial Hearings on S. 290, 1965, pp. 93-97.

³⁴New York Times, February 4, 1965.

committee, Louis J. Weil, Jr.,³⁵ publisher of the State Journal of Lansing, Michigan, it is believed that the ANPA report will parallel the ASNE report. Publisher Weil said that there is a reconciliation of viewpoints between the ANPA and the ABA and the fear of an impending conflict has diminished greatly. Weil indicated that the ANPA report would reveal a great area of agreement between the two groups. He indicated that the ANPA committee believed that the recent uproar caused by the assassination is dying down and that most of the proposals for action will fade away. The publisher said he was unable to make public the specific contents of the report as it was still being formulated.

Several state press associations and bar associations have studied the problem of free press and fair trial and formulated joint policy statements or codes. (Two complete codes or guides are included in Appendixes B and C of this report.) Some, such as the bench-bar-press principles outlined in Washington, are general. The guidelines in this type of code are a restatement of basic American freedoms guaranteed by the constitution coupled with an expression of a sincere desire to protect the rights of both the defendant and the free press. There are few, if any, specific suggestions made.

Other press-bar guides are specific, such as the news media guide formulated by the Massachusetts's press association and bar association. This guide outlines specific

³⁵Interview with Louis J. Weil, Jr., June 9, 1966.

types of information which "should be avoided" in news stories. Included are such items as criminal records, confessions, testimony stricken by the court, interviews with witnesses and leaks on the outcome of the trial from informed sources. The Massachusetts guide also lists several types of statements which should be avoided by lawyers and prosecutors. These include out-of-court statements by the prosecution or defense attorneys, conclusions as to guilt or innocence, information regarding confessions and anonymous announcements or tips to the press.

Neither of these two types of codes or the many other types which have been developed in the past two or three years by joint effort of the press and the bar have any means of enforcement attached. Their strength lies in the continued good faith of both parties to uphold the principles as they are outlined. Joint committees have worked on guidelines in Texas, Virginia, Oregon, Kentucky, Louisiana, Colorado and Arizona, in addition to the two states already mentioned. In the city of Philadelphia a much publicized bar-press guideline was voted into effect in the fall of 1965. Although listed as a joint effort, the three major newspapers in the city refused to send representatives to the study meetings. It was adopted by 100 members present at a meeting of the 4,000 member Philadelphia Bar Association.³⁶

Senate Bill 290 was introduced in the U. S. Senate by

³⁶New York Times, October 24, November 11, 1965.

Democrat Wayne Morse in 1965. Morse, formerly the dean of the University of Oregon Law School, testified upon introducing the measure that "criminal trials have been disrupted and the impartiality of jurors contaminated by the publication of such material as confessions, past criminal records and derogatory characterizations of defendants by prosecutors and police officials."³⁷ The bill is an attempt to curb statements by court officers in federal courts and proposes no direct action against the press. It stipulates:

It shall constitute a contempt of court for any employee of the United States or for any defendant or his attorney or the agent of either to furnish or make available for publication information not already properly filed with the court which might affect the outcome of any pending criminal litigation, except evidence that has already been admitted at the trial. Such contempt shall be punished by a fine of not more than \$1,000.³⁸

Again this measure uses as its basis the thesis that the press is merely an observer and recorder. If all questions are met by silence there will be nothing to record and report. Four days of testimony was heard with leaders in the field of journalism, law and government appearing to testify for and/or against the bill. No action has been taken by either the committee or the full Senate since the hearings.

In the spring of 1965 the Attorney General of the United States, Nicholas deB. Katzenbach, announced a new Justice Department policy on the release of information

³⁷Ibid., August 18, 1965.

³⁸U. S. Congress, Senate, Bill 290, 89th Cong., 1st Sess., 1965.

about defendants in the custody of the federal government.³⁹ The announcement was made at the ASNE convention in Washington and was met with general approval of the editors at the meeting.⁴⁰ The policy outlined eight categories of information and the Justice Department policy on each. The attorney general, in presenting the new doctrine, noted that unofficially these rules had been Justice Department policy since 1963. The policy stated that the Justice Department would furnish to the press the defendant's name, age, residence, employment, marital status, other background information, the substance or text of the charge, the identity of the investigating and arresting agency and the length of the investigation and the circumstances immediately surrounding the arrest, which might include the time, place, any resistance, pursuit, the possession or use of weapons and any items or goods seized in the arrest. Katzenbach said photos of the accused would be available if a valid law-enforcement function would be served and the Justice Department would not try to prevent the taking of photographs of the defendant in public places. But the department would not encourage such picture-taking or pose prisoners. The Attorney General said the government would be circumspect in the disclosure of a criminal record and would not volunteer such information. When queried the

³⁹See Appendix A for complete Justice Department policy.

⁴⁰New York Times, April 17, 1965.

department would only supply information on federal convictions. Katzenbach stated that no confession or the fact that a confession had been made would be released and technical evidence such as polygraph tests, fingerprint and ballistic reports would not be given out. Katzenbach told the editors that it was not the function of the Justice Department to regulate conduct of the press. "For us to try to impose our judgement on yours denies your share of the responsibility that belongs to the press and public officials alike,"⁴¹ he said.

On November 16, 1964, Justice John J. Francis of the Supreme Court of New Jersey upheld the first degree murder conviction of Louis Van Dwyne which had been appealed on the grounds that publicity had prejudiced the jury.⁴² But while upholding the conviction Justice Francis leveled a sharp blast at police, prosecutors and attorneys for their role as the source of the prejudicial publicity. Justice Francis' comments included:

We interpret these canons, particularly Canon 20, to ban statements to news media by prosecutors, assistant prosecutors and their lawyer staff members, as to the alleged confessions or inculpatory admissions by the accused, or to the effect that the case is "open or shut" against the defendant and the like or with reference to the defendant's prior criminal record, either of convictions or arrests. . . . With respect to prosecutors' detectives and members of local police departments who are not members of the bar, statements of the type described are an improper interference with the due administration of criminal justice and constitute conduct

⁴¹Ibid.

⁴²State v. Van Dwyne, 43 N. J. 369, 204 A. 2d 841 (1964).

unbecoming a police officer. As such they warrant discipline at the hands of the proper authorities. The ban on statements by the prosecutor and his aides applies as well to defense counsel. . . . The courtroom is the place to settle the issue and comments before or during the trial which have the capacity to influence potential or actual jurors to the possible prejudice of the defendant are impermissible.⁴³

Nineteen months later the U. S. Supreme Court, seeming to echo Justice Francis in less stinging terms, rendered a similar admonishment to judges and other court officers in the decision reversing the conviction of Dr. Samuel Sheppard.

The Sheppard case began on July 4, 1954, when Marilyn Sheppard, wife of the prominent physician, was bludgeoned to death in her home in Bay Village, Ohio, a suburb of Cleveland. Several days went by and no arrests were made in the case. Many persons, including Louis B. Seltzer, editor of the Cleveland Press, believed that Marilyn's husband Sam should be questioned in connection with the murder.⁴⁴ Seltzer used the Press to get his message across. The doctor was finally arrested and what transpired between his arrest and conviction in late autumn of 1954 was described as a "Roman holiday for the press."⁴⁵ Debates were held, preliminary proceedings were televised, public interviews were held, nearly all witnesses were interviewed on the radio and in the papers, and all the time the Press kept up its campaign to convict Sam Sheppard. Judge Joe Brown did

⁴³Ibid.

⁴⁴New York Times, November 21, 1965.

⁴⁵Description by the Ohio Supreme Court, as quoted by the New York Times, November 21, 1965.

little to control or restrain either the actions of the press in and around the courtroom or the publicity being generated.⁴⁶

It took 11 years for the case to reach the Supreme Court. Justice Thomas Clark wrote the majority decision for the court and admonished the trial judge, who had since died, for his basic failure to control the publicity and the actions of the news media.

Excerpts from the decision will give readers the basic theme.

Bearing in mind the massive pretrial publicity, the judge should have adopted stricter rules governing the use of the courtroom by newsmen . . . the court should have insulated witnesses [from the media]. . . . The court should have made some effort to control the release of leads, information and gossip to the press by police officers, witnesses and the counsel for both sides. . . . And it is obvious that the judge should have further sought to alleviate this problem by imposing control over the statements made to the news media by counsel, witnesses, and especially the coroner and police officers. . . . The trial court might well have proscribed extrajudicial statements by any lawyer, party witness or court official which divulged prejudicial matters . . . the court could also have requested the appropriate city and county officials to promulgate a regulation with respect to dissemination of information about the case by their employees. In addition, reporters who wrote or broadcast prejudicial stories could have been warned as to the impropriety of publishing material not introduced in the proceedings. . . .⁴⁷

The implications of this decision are quite clear. The Supreme Court, while still hesitating to restrain the press, has adopted the theory that if there are no statements from participants in the trial, then the prejudicial

⁴⁶New York Times, November 21, 1965.

⁴⁷New York Times, June 7, 1966.

publicity can be minimized. But the court apparently does not agree that a new law or restrictive codes are needed. Justice Clark implied that the power to control the lawyers, police, prosecutors and witnesses is currently in the hands of the trial judge.

At this point the reader should have a clear and fairly complete picture of the controversy and the available and proposed solutions. While most of what was said concerned activities which had a national scope, they each have a definite effect in Michigan and even in a single county of Michigan. Local courts must abide by Supreme Court rulings. Local newspapers are members of national groups. The local press deals with the Justice Department in everyday work situations.

It should be noted before concluding the discussion of the problem that Michigan has been fortunate in that the free press--fair trial controversy has not reached the critical stage in this state. There have been isolated cases, such as the one to be discussed in Chapter III, but the cry for "action" heard in many states in the past four years has been a relative whisper here. The Michigan Press Association has met informally with the Michigan Bar Association to discuss the problem, but no formal reports have been produced. In addition, the Criminal Jurisprudence Committee of the Michigan Bar Association is currently undertaking a study of the free press--fair trial controversy, but no report has been prepared.

CHAPTER II

THE BRITISH SOLUTION--CONTEMPT OF COURT

Critics of the American press in the controversy caused by publication of allegedly prejudicial information before the trial often point to the British system of justice in which the press is rigorously restricted in their coverage of criminal cases. British courts use their power of contempt to regulate the performance by the press and by many standards, the system has worked quite successfully.¹

The British press can't quote from a confession before a trial or even reveal there is a confession; they cannot publish material which would not be admitted as evidence, which includes a previous criminal record; they cannot print the results of their own investigation; it is considered dangerous to interview witnesses and use quotes; and editors are urged to check with police before a picture of the defendant is printed. Lord Devlin, a distinguished British legal scholar said "almost any comment on a matter before the courts that might influence a jury one way or the other is capable of being contempt of court, even though it is done innocently by an error of judgement or an honest

¹See Harold W. Sullivan, Trial by Newspaper, (Hyannis, Mass.: The Patriot Press, 1961), for a favorable evaluation of the British system.

mistake."² After the proceedings begin, however, the British press cover the trial with stenographic gusto, but still must present a fair and accurate report of the proceeding.

One American journalist, Anthony Lewis of the New York Times, has noted some important differences between the United States and Britain which would make adoption of such a system here perilous, if not illegal.³ Lewis points out that the trial process is a much more rapid one in England. Even the most important charges are likely to have been heard within a month and the sentence is passed at once. All appeals are usually disposed of within a few weeks. The interpretations of the U. S. Supreme Court restrict judges from exercising the British type of regulation over the American press, Lewis said. Britain is a small homogeneous nation with a tradition of a parliament sensitive to abuses by judges, policemen or prosecutors. Police corruption has been virtually unknown, and historically there has been very little serious organized crime. Occasionally, policemen and judges are bought and sold in the U. S., Lewis alleges, and organized crime is big business here. Concerning fraudulent prosecutions Lewis notes that in a community where crimes against a given race or group are traditionally tolerated, publication of the facts of the crime may be the instrument which forces justice, rather than obstructs. Another consideration which Lewis points

²New York Times, IV, June 20, 1965.

³Ibid.

out is the political aspect of United States judicial systems. Judges and prosecutors are elected here while in Britain the bar is a small, cozy group and an attorney may be prosecutor one day and defender the next. There are no young prosecutors trying to make a name for themselves or judges trying to ascend the judicial ladder on spectacular criminal trials.

More important than the differences in British and American social and moral climates, there is a distinct difference in the American and British interpretation of the contempt power, as Lewis briefly pointed out. As interpreted today, there is a serious doubt whether the contempt power could be applied in American courtrooms against "offending" publications. Before exploring this idea, however, a short explanation and history of the contempt power is essential.

There are two types of contempt, civil contempt and criminal contempt. The latter is divided into two categories; direct contempt, which normally occurs in a courtroom, and indirect contempt, which takes place outside a courtroom. The indirect or constructive contempt power can be used to control publicity in newspapers before and during a trial, but the rule of law as established by the Supreme Court is so strict that the nature of the publicity must be highly inflammatory and grossly prejudicial before it might be considered contemptible.

A federal contempt law was enacted in 1831 and has

been interpreted and reinterpreted by the Supreme Court. The law was the result of an impeachment proceeding initiated against federal judge James H. Peck for a misuse of the contempt power. Under the 1831 law the summary contempt⁴ punishment was restricted from use in any case "except the misbehaviour of any person or persons in the presence of said courts, or so near thereto as to obstruct the administration of justice."⁵ Until 1918 the phrase "or so near thereto" was accepted to have a causal meaning. But in the case Toledo Newspaper Company v. U. S. this interpretation was challenged, not in the opinion of the court but in a dissent by Justice Holmes.⁶ In the Toledo decision the majority of the court agreed that any publication which had a reasonable tendency to obstruct justice could be cited for constructive contempt. But Holmes challenged the authority of the court to punish out-of-court publications. A newspaper was not published in the presence of the court or "so near thereto" as to obstruct the administration of justice, Holmes said.

Twenty-two years later the court accepted the Holmes interpretation and in Nye v. U. S.⁷ in 1940 overruled the

⁴Summary contempt power is exercised through the discretion of the court. This is opposed to statutory contempt which is authorized by statute, or law.

⁵Act of Mar. 2, 1831, c. 98; 4 Stat. 487.

⁶247 U. S. 402 (1918).

⁷313 U. S. 33 (1940).

Toledo decision. In the majority opinion the court said that "so near thereto" referred to physical proximity. This interpretation still stands today and the sentiments of many lawyers and judges are echoed in the words of one legal scholar: "The federal courts are presently unable to summarily punish constructive contempt."⁸

While the Supreme Court has limited the contempt power in federal courts, it has also restricted the use of this power by state courts. Following the 1918 Toledo decision which established the "reasonable tendency" test for contempt, most states enacted laws using this rule as a foundation. Beginning in 1940, a series of U. S. Supreme Court decisions demolished this test in state courts and strict new standards were applied to contempt actions.

Bridges v. California,⁹ which reached the Supreme Court in 1940, was the first state contempt case ever reviewed by the high tribunal. The case produced a landmark decision which overruled the conviction of the Los Angeles Times and labor leader Harry Bridges. The court refused to accept the "reasonable tendency" test as a sufficient criterion, in essence voiding the California law.

The Times had been convicted in California state courts for publishing a series of editorials dealing with cases which had not been finally adjudicated. In an editorial,

⁸ "Contempt by Publication," Northwestern University Law Review, Vol. 60 (September-October, 1965), 540.

⁹ 314 U. S. 252 (1941).

the editors urged the court to deal severely with two union members accused of assault. The men had been found guilty and were awaiting sentence. Other editorials commented in a similar manner on different subjects. Bridges was cited for contempt for allowing the contents of a telegram that he had sent to the Secretary of Labor to be published. The telegram threatened a general strike if a pending trial resulted in a decision unfavorable to the union.

In the five to four decision written for the court by Justice Black the "clear and present danger" test, first enunciated by Justice Holmes in Schenck v. U. S.¹⁰ in 1919, was introduced as a measure of constructive contempt. In Schenck, a case involving seditious rather than contemptuous remarks, Holmes said

the question in every case is whether the words are used in such a circumstance and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has the right to prevent.¹¹

In Bridges, Black said what finally emerged from the Holmes doctrine is a "working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished."¹² Black said that the thesis that the contempt power had its roots deep in English common law was a dubious contention and added that "one of the objects of the American Revolution

¹⁰63 U. S. L.Ed. 470 (1919).

¹¹Ibid., 473.

¹²Bridges, 263.

was to get rid of English common law on liberty of freedom of speech and press."¹³ He said that it was while a trial or proceeding was underway that public interest was the highest and that to require the press to withhold comment until the conclusion of the case would be a significant abridgement of freedom of the press.

We cannot start with the assumption that publications actually do threaten to change the nature of legal trials and that to preserve judicial impartiality it is necessary for judges to have a contempt power by which they can close all channels of public expression to matters touching on the pending cases, Black said.¹⁴

An inherent or reasonable tendency to obstruct justice was not enough to restrict free speech, he added.

Five years later in Florida the Supreme Court of that state upheld the conviction of the publisher of the Miami Herald for publishing two editorials and a cartoon criticizing the alleged leniency of the circuit court in Dade County. The contempt citation charged that the newspaper had attacked the integrity of the court and thereby impeded the administration of justice. The U. S. Supreme Court was called upon for a decision and in Pennekamp v. Florida¹⁵ restated the "clear and present danger" test and reversed the conviction. Justice Reed, speaking for the court, enlarged the test concept by stating that contempt didn't exist even though the newspaper may have distorted the facts about the case. Free

¹³Ibid., 264.

¹⁴Ibid., 271.

¹⁵323 U. S. 331 (1946).

discussion is a cardinal principle of Americanism, Reed said, and discussion after a trial has ended may be inadequate and endanger the public welfare. "Freedom of discussion should be given the widest range compatible with the essential requirement of the fair and orderly administration of justice," he added.¹⁶

The third case in this trio came one year later. In Craig v. Harney¹⁷ three Texas newspapermen were cited for contempt for publishing several articles critical of a Corpus Christi lay trial judge and his decisions. The newspaper article called the judge's rulings "arbitrary actions" and "travesties on justice." The case concerned a well-liked serviceman who had missed a rent payment on a cafe which he leased in the city. The trial judge instructed the jury on three occasions to find for the plaintiff who sought to retake possession of his building, which he had leased to the defendant. But the jury refused three times. Finally the jury followed the judge's instructions upon the request of the defense attorney.

The Texas Court of Appeals claimed the published material satisfied the clear and present danger test laid down in Bridges, and then attempted to distinguish Bridges claiming the Texas case concerned private litigation not involving a public interest.

Justice Douglas wrote the opinion of the court in the

¹⁶Ibid., 347.

¹⁷331 U. S. 367 (1947).

six-to-three decision, and disagreed with both points. He dismissed the notion that the permissible comment should be lessened in a case which generated no public interest and stated that the facts in the case did not satisfy the "clear and present danger" test.

The history of the power to punish for contempt and the unequivocal command of the First Amendment serve as constant reminders that freedom of speech and of the press should not be impaired through use of the exercise of that power unless there is no doubt that the utterances in question are a serious and imminent threat to the administration of justice. . . . A trial is a public event. What transpires in a courtroom is public property. . . . Those who see and hear what transpires can report it with impunity. There is no special prerequisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit or censor events which transpire in proceedings before it.¹⁸

Douglas admitted that the news articles did not reflect good reporting, and that they were unfair and inaccurate. "Certainly a reporter could not be laid by the heels for contempt because he missed the essential point in a trial or failed to summarize the issues to accord with the views of the judge who sat on the case," he added.¹⁹

These three cases form the modern foundation for the interpretation of the constructive contempt power in state courts. The court has spent little time in reviewing state decisions in this area since 1947. In 1962, however, the court did reverse the contempt conviction of a Georgia sheriff who was cited for issuing a statement to the press

¹⁸Ibid., 373-4.

¹⁹Ibid., 375.

accusing county judges of "judicial intimidation" of Negro voters and leaders.²⁰

Two things should be noted about these decisions. First, in each decision there was a vocal minority, usually led by Justice Frankfurter, which opposed the liberal interpretation of the First Amendment and believed that the administration of justice was too important to be even slightly tainted by the outside influence of the press. While this minority view did not prevail, a change in the composition of the court can sometimes make the minority the majority.

It should also be noted that the publicity in each case occurred during a trial and was directed at a judge. While it is true that this is a different situation from pretrial publicity which has its effect indirectly on a defendant, the attitude of the court, as exhibited by the decision, is nevertheless very liberal in regard to free press. Because of this prevailing attitude it can be safely assumed that a contempt citation against the press must have its foundation in a problem of highly prejudicial material, which presents a clear and present danger to the administration of justice. In all its action in both pretrial and trial publicity cases the court has taken no action against the press, but rather, when the rights of a defendant have been jeopardized, has ordered a new trial or reversed the conviction.

²⁰Wood v. Georgia, 370 U. S. 375 (1962).

As a tool, a threat against pretrial publicity, the contempt power currently within the powers of the court, is of little value. T. E. Crosley, Jr., writing in the Virginia Law Review, spoke for many legal scholars when he said

Several decades ago one writer commented that trial by newspaper might be stopped if judges would only use the contempt power at their disposal. Today, the same author probably would argue that trial by newspaper might be effectively stopped if judges only had contempt power at their disposal.²¹

Before leaving the discussion of contempt, two Michigan cases which have a bearing on this topic should be noted. Neither of these cases have great significance, yet they represent the Michigan law which has come down from the state courts.

The first was in 1922 and involved a breach of promise suit between two persons prominent in Detroit society. The case received heavy publicity in the newspapers.²² After the court found for the plaintiff, the defendant charged that the jury had been influenced by the publicity. During the trial the judge had noted that a great deal of publicity was being given to the proceedings and admonished the jurors not to read the newspapers and not to form an opinion from material presented outside the courtroom. In the appeal, the Michigan Supreme Court upheld the decision for the plaintiff. The court said that there was no evidence that

²¹T. E. Crosley, Jr., "Contempt by Publication: The Limitation on Indirect Contempt of Court," Virginia Law Review, Vol. 48 (April, 1962), 572.

²²Hatton v. Stott, 220 Mich. 262 (1922).

the plaintiff had anything to do with encouraging the publicity and that it did not believe the jury would have reached a different verdict if there had been no publicity. The most significant part of the decision was a statement in the Supreme Court opinion that the trial court had no means to control such publicity. Apparently in 1922 contempt was not considered a solution for such a problem.

Seven years later in In Re Simmons²³ the Michigan Supreme Court held that a statement made outside the courtroom by an unsworn witness which was published by the press was contemptible and upheld the conviction of an attorney who made the statement. No action was taken against the newspaper which published the statement or the reporter who obtained the statement. Simmons, the lawyer, charged that it was the newspaper which should be charged with contempt, that answering questions of a man known to be a newspaper reporter is not sufficient to charge a person with responsibility for publication. The court disagreed.

If the statement is indicated for publication, with the intention that it will be written and published, and the purpose in that respect is carried out, the party who makes it with such intent and understanding is equally guilty as if an express request for publication was made.²⁴

While neither of these represent landmark decisions in the field of law, it is interesting to note that even in 1929 the Michigan court was reluctant to infringe on the

²³226 N. W. 907 (1929).

²⁴Ibid., 909.

freedom of the press guaranteed in the First Amendment.

The discussion of the problem and an explanation of the solutions, both proposed and existing, is complete. It is necessary now to look at an actual case in which newspaper publicity was considered a factor before the trial. Using this case as an example it will be easier to evaluate the extent of the problem and the probable effectiveness of both the existing and the proposed solutions.

CHAPTER III

THE STEREN ASSEMBLY CLUB CASE

The county of Oakland in the state of Michigan is considered by many recreation enthusiasts as the "playland of the Midwest." With an estimated population of 690,259,¹ the county is situated in Southeastern Michigan with its southern border abutting the city limits of Detroit, the largest city in the state. Detroit's night spots, theaters, restaurants, and hotels offer a haven to the night people in the area, while Oakland County's many-hundred lakes, beaches, parks, picnic areas, fishing sites and ski resorts beckon the outdoor lovers from throughout Southeastern Michigan.

On October 11, 1963, Michigan State Police, assisted by agents of the United States Immigration Service and members of the Madison Heights Police Department raided one of Oakland County's play spots, the Steren Assembly Club, located at 25300 John R., Madison Heights, and arrested 49 persons on charges of either operating or frequenting a gambling establishment. The raid was led by Frederick Davids, then a State Police captain and commander of the Detroit District. Today Davids is the director of the Michigan

¹U. S., Bureau of the Census, Eighteenth Decennial Census of the United States: 1960. Population, Vol. I, Part A, 24-20.

State Police. According to Davids the successful raid capped nearly three years of work and frustration in attempts to crush the gambling operation which moved from time to time to different spots throughout the area.² There had been three previous raids on the Steren Club, Davids said, but in each case the only law violations police could find were infractions of the state fire laws. Each time the club owners were cited for violation of the fire code. Davids recounted recently that everyone in the area knew that gambling was going on in the club. "The local police knew, the state police knew, the people that lived in the area knew. This was a poorly kept secret. But they [the club owners] had a good security network and we could never catch them at it," he said.³

While the raid capped three years of frustration on the part of police, Davids and the other participants and patrons of the Steren Assembly Club could not have imagined as the door of the club was broken down that there would be nearly two more years of frustration before the case reached its "first" conclusion, the end of the first circuit court trial. Today, nearly three years later, the fate of the defendants is still undecided as the conviction of the 19 who have been tried is being appealed on the grounds that "sensational" publicity had made a fair trial impossible. This

²Interview with Frederick Davids, Director, Michigan State Police, July 20, 1966.

³Ibid.

chapter is a detailed study of this so-called sensational publicity. But before the newspaper coverage is considered, a brief history of the case is required.

The story really begins on October 10, 1963, the day before the State Police raid. Federal Judge George Edwards, a former Detroit police commissioner, presented testimony on the structure of organized crime in Detroit to a United States Senate subcommittee meeting in Washington. Edwards reported to the committee that the Mafia organization (the Mafia is believed to be an international crime conspiracy which operates most of the organized illegal operations in the United States) in Detroit was a \$200 million per year operation. Edwards described the alleged leaders of the local Mafia group and presented a detailed list of the hierarchy of organization. The list was comprehensive, but for the purpose of this report, only three names on it have a significance: Eddie Guarella, 45, of St. Clair Shores, Michigan, Joseph Brooklier, 50, of Mt. Clemens, Michigan, and Tony Randazzo, 56, of Detroit.⁴ All three men were arrested the following day at the Steren Assembly Club.

Needless to say, the local newspapers gave detailed coverage to the charges by Edwards. One can speculate that if the Edwards story had not broken on the day before the raid, if the revelation of local Mafia operations had not been presented so graphically, perhaps the Steren Club raid would have been little more than an item on an inside page.

⁴Pontiac [Mich.] Press, October 10, 1963.

But this is only speculation.

Soon after the raid the police and the Oakland County prosecutor's office decided to try the 24 defendants charged with operating the club first. The remaining 25 defendants, who had been charged with frequenting a gambling place, would stand trial only after the operators had been convicted.

The 24 operators would stand trial on three counts of conspiracy to violate state gambling laws and three counts of violation of state gambling laws.⁵ Brooklier and Guar-ella, noted previously in connection with the Edwards' testimony, were charged as operators of the club.

After several delays, the preliminary examination began on February 3, 1964. There were 24 complete days of testimony, but the examination did not conclude until late September. During the examination it was revealed that a State Police agent had been smuggled into the club prior to the raid. This aspect of the case took on an even more interesting news angle when it was learned the agent was an attractive former model named Margaret (Peggy) Allen.

At the close of the examination 18 defendants were bound over for trial in circuit court on one count of conspiracy and one count of violation of gambling laws, three were bound over on two counts of each charge, and Farmington Township Justice Allen Ingle dismissed all charges

⁵Detroit News, October 22, 1963.

against three defendants.⁶

The Circuit Court arraignment was held on September 28, 1964 and trial was scheduled to begin in mid-November. Several postponements occurred. Finally, on April 21 the trial was set for May 11, 1965.⁷ Prior to the trial day the defense attorney for the 21 defendants, Carlton Roeser, petitioned Judge Stanton Dondero for a change of venue. Roeser said the publicity in the case made it impossible that an impartial jury could be found.⁸ This motion was granted on May 11⁹ and on May 15 it was announced that Manistee had been chosen as the site for the trial, which was now scheduled to begin on July 22.¹⁰ On June 27 Dondero had a fatal heart attack and Judge Frederick Ziem was assigned to hear the case, which opened on July 23.

Manistee is a relatively small town on the shores of Lake Michigan between Ludington and Traverse City. The city has a population of 8,342, less than half of the county's 19,042 residents.¹¹

The selection of a jury was the first undertaking at the trial. This was a difficult task. Nearly 300 citizens

⁶Daily Tribune (Royal Oak, Mich.), Sept. 19, 1964.

⁷Ibid., Sept. 28, 1964, and April 21, 1965.

⁸Ibid., April 27, 1965.

⁹Ibid., May 12, 1965.

¹⁰Ibid., May 15, 1965.

¹¹U. S., Bureau of Census, Eighteenth Decennial Census of the United States: 1960. Population, Vol. I, Part A, 24-19.

were called to the courthouse before a jury panel of 14 was selected. Only five persons of the 300 called had never heard of the case. Sixty-five jurors were excused because they had already formed an opinion about the case.¹²

On August 11, 1965, 20 defendants were found guilty. (One had been excused from immediate trial after suffering a heart attack.)

Three other factors should be mentioned before a survey of press coverage is undertaken. Three participants in the trial were running for public office during the preliminary examination. Justice Ingle was a candidate for the Oakland County Circuit Court. Assistant prosecutor Robert Templin, in charge of the case, was a candidate for prosecutor. Joseph B. Sullivan, an "observer" from the Michigan Attorney General's office was making a bid for the Wayne County prosecutor's post. All three men lost.

During the examination a \$100,000 suit was filed against police agent Margaret Allen and the Michigan State Police by Mrs. Barbara McLeod of Los Angeles who claimed that Miss Allen had used identification bearing Mrs. McLeod's name and former Michigan address when entering the Steren Club and had defamed her character. The suit is still pending.¹³

Finally, Miss Allen, the state's star witness, fled from Michigan in July of 1965 just prior to the opening of

¹²Manistee News Advocate, July 29, 1965.

¹³Pontiac Press, March 11, 1964.

the trial in Manistee. She told the press that she would not return to testify because the pressure (she did not specify the type of pressure but presumably meant threatening phone calls and loss of her job in Lansing as stenographer for the Democrats in the legislature) was too great. She did return, however.

The remainder of the chapter will be devoted to a brief survey of the publicity given the case by five newspapers; the Daily Tribune, which is published in Royal Oak, a city adjacent to Madison Heights, the site of the raid; the Pontiac Press, published in the Oakland County seat; the Detroit Free Press; the Detroit News and the Manistee News Advocate.

The coverage of the Steren Assembly Club case began in a curious manner. A Free Press reporter on his way home from work on October 11, 1963, noticed a large number of police cars in front of the club. He stopped, went inside to see what was going on and soon learned of the gambling raid. He called the Free Press in time to get a story in the final edition of Saturday's paper.¹⁴ It wasn't long before other reporters and photographers were at the scene.

The Daily Tribune in Royal Oak is the local newspaper in this particular case. The paper circulates nearly 65,000 copies in the southern half of Oakland County and

¹⁴State Police Director Frederick Davids related this story in an interview on July 20, 1966. He was unable to recall the reporter's name. A check with the Free Press also turned up no clues to the identity of the unnamed newsman.

saturates the Madison Heights area.¹⁵ The newspaper published 128 stories on the case from the night of the raid until the conviction in Manistee.

(In order to facilitate this survey the author will take certain liberties with style and form. The gist and important quotes from significant stories will be included in a single spaced paragraph following the date the story appeared in the newspaper. If headlines are noted they will be in all capital letters. Direct quotes will be within quote marks. Other material will be a summation of the article and will not be attributed to the paper or reporter in each case. Selected phrases will be underlined. In the opinion of the author these phrases are important in an evaluation of the publicity. The selection will be made on a subjective basis.)

October 12, 1963. (Banner headline) SOCIAL CLUB RAIDED BY STATE POLICE . . . "police swooped down on a posh Madison Heights gambling house late Friday . . . named as alleged members of the local Cosa Nostra (Mafia) hierarchy, Eddie Guarella, 45, St. Clair Shores, Joseph Brooklier, 50, Mt. Clemens, Tony Randazzo, 56, Detroit." George Edwards described Guarella as one of the top 30 men in the Detroit Mafia, Brooklier was a section leader (whatever that is). Captain Frederick Davids (now commissioner Davids) "called the Steren Club 'the biggest gambling operation this side of Las Vegas.'" The Steren Club has an atmosphere like that "found in thousands of legitimate social clubs across the nation." Davids said "'there were penny ante games in progress in the front room . . . the big games, craps and blackjack were in the back room.'" In the back room Davids' men uncovered "ingenious devices for disposing of gambling equipment in a hurry, for example this pipe where dice can be dropped in a hurry and will be ground up like a disposal at home. 'This is great,' Davids

¹⁵Interview with Grant Howell, managing editor, the Daily Tribune, June 7, 1966.

said, 'we've waited a long time for this hit.'"

Nine pictures taken at the scene of the raid were also included in the October 12 edition. Many appear as though they were posed, but Commissioner Davids denies this, saying that the pictures were taken while one of his men pointed something out to a fellow officer.¹⁶ Cutlines for the pictures included statements such as these:

"Dice disposal machine uncovered by Trooper Ray C. Valley. . . . Police said dice were flushed down the trap. Dice rakes were found . . . Police also found charred cards and dice wrappers. . . . Snooker balls were mixed hurriedly with chips and cards in an unsuccessful attempt to hide gambling. . . ."

Other pictures showed defendants sitting at tables which were covered with partially filled drinking glasses, poker chips and cards.

In addition to the lead story and the pictures, the Tribune also carried a sidebar on the raid in their October 12 edition.

October 12, 1963. "State police sledgehammered their way into the county's most frequently-raided gambling establishment in Madison Heights. 'As far as I'm concerned they're through operating here,' Davids said." Eddie Guarella, arrested during the raid "is one of the top 30 Detroit Mafia members." A shoeshine stand in the back room was the lookout's chair. He could watch all the games at once from this vantage point.

It should be noted at this time that Commissioner Davids denies making the quote attributed to him in the lead story. He said in an interview that he never called the Steren Club "the biggest gambling operation this side of Las Vegas." He said that he couldn't possibly have known

¹⁶Davids interview.

if the Club was the biggest gambling operation even in the Midwest. A Tribune reporter asked him, he said, if this was the biggest gambling operation in the area. "I laughed and told him, 'Well, I suppose you could find a bigger one if you went to Las Vegas.'"¹⁷

The coverage of the case by the Tribune continued Monday. (The newspaper is not published on Sundays.)

October 14, 1963. Twenty-two men arrested Friday night in a State Police gambling raid on the Steren Assembly Club were ordered released on \$1,000 bond. "Three of them were linked last week to Detroit Mafia operations. . . ." Defense attorney Bernard Girard said upon the release of the 22 defendants, "After all these people have rights and the autocratic police have deprived them of them."

October 17, 1963. Felony warrants were issued against 24 defendants. Eddie Guarella and Joseph Brooklier, alleged members of the Detroit Mafia, were among the 24 defendants arrested at what was called by State Police as "the biggest gambling operation this side of Las Vegas."

October 23, 1963. Twenty-four arrested charged with three counts of conspiracy and three counts of gambling. Eddie Guarella and Joseph Brooklier linked to the Detroit Mafia by Judge George Edwards. "The raid (on the Steren Club) ended three years of concentrated effort by State Police Capt. Fred. O. Davids to prove gambling was going on at the club. . . ."

On October 24 the Tribune carried a story which was unrelated to the Steren Club raid, but had a direct bearing on the news coverage being given the case. Judge Edwards spoke before the Detroit chapter of Sigma Delta Chi the night before and in essence reiterated the charges he made in Washington about the Detroit Mafia organization.¹⁸

¹⁷Ibid.

¹⁸Daily Tribune, Oct. 10, 1963.

The Tribune tied the story to the Steren raid.

October 24, 1963. George Edwards said he could not obtain warrants against the 81 persons he named as Mafia members at the Senate hearings in Washington. Three of those named, Eddie Guarella, Joseph Brooklier and Tony Randazzo, were arrested in a raid on the Steren Club on October 11. Edwards described the Mafia. "The Mafia uses fear and murder as its weapons--murder to discipline its members and to eliminate those who stand in its way. The numbers racket and gambling are the life blood of any major criminal conspiracy and there is some apathy on the part of the city about it." Edwards also noted that the Mafia didn't "kill as many as they used to, but they get a lot more mileage."

November 6, 1963. The Steren Club was ordered padlocked by Oakland County Circuit Judge Frederick Ziem. Two men arrested there, Eddie Guarella and Joseph Brooklier, are alleged Mafia members.

The preliminary examination began on February 4 in Farmington Township Justice Court which, for the purposes of this case, had been moved to West Bloomfield Township Hall to use a larger courtroom. Michigan law provides that the preliminary examination does not have to be held in the city or township in which the offense occurred.

February 4, 1963. GAMBLING SUSPECTS FACE MYSTERY GIRL. "A tall, attractive brunette described as a police spy came out of seclusion today to testify at the examination on gambling charges of 24 alleged operators of the Steren Assembly Club in Madison Heights." Two of the operators, Eddie Guarella and Joseph Brooklier, have been linked to Mafia. Peggy Allen, the agent, was taken to the club by Joseph Sabina, who was killed in an auto accident in December. "Davids (State Police) said his men investigated the mishap and were satisfied that it was an accident." Assistant prosecutor Tomplin said that Miss Allen "had been threatened on the phone several times since October. . . ." Defense attorney Carlton Roeser asked Justice Allen Ingle for a change of venue because of "the notorious publicity" the case had received. Ingle said he very seldom read the newspaper and watched only "Wagon Train on TV."

February 5, 1964. EVIDENCE, PUBLICITY ENTER GAMBLING CASE. Defense attorney Carlton Roeser said the press coverage "was designed to inflame the judge. . . ."

Assistant prosecutor Robert Templin said, "'The newspaper articles have been fair and accurate . . . the issue has no bearing on the defendants guilt or innocence.'"

In the February 4 story in the Tribune mention was made of Joseph Sabina and his death in Ontario, Canada. Davids was asked during an interview if he had initiated the line of thought that Sabina's death might have been anything other than an auto accident (i.e., a gangland revenge killing). He said he had not.¹⁹ He said that reporters queried him about a possible plot against Sabina so he sent two men to Windsor, Ontario to check the accident report made out by the Ontario Provincial Police.

Throughout February and March the Tribune covered the examination closely publishing 30 stories on the proceedings. Most of the stories dealt with testimony given on the witness stand by Peggy Allen and State Police officers.

On March 10 the Tribune reported that Miss Allen and State Police were being sued for \$100,000.²⁰ The newspapers reported that assistant prosecutor Robert Templin called the suit "an intimidation plot."²¹

Peggy Allen left the witness stand on March 19, 1964.

March 20, 1964. SMALL SMILE SURVIVES AS POLICE SPY ENDS ORDEAL. The role of the demure, attractive brunette has been a tough one as she stood up to the "sarcastic" questioning of Carlton Roeser, and to his implications "about her sleeping in motels."

May 5, 1964. Attorneys are expected to argue their

¹⁹Davids interview.

²⁰See page 47 of this report.

²¹Daily Tribune, March 10, 1964.

cases on June 1. Roeser expected to make a motion for a change of venue. "The attorney contends the adverse publicity made it impossible to receive an objective examination."

The hearing was delayed many more times and did not resume until August 12. An explanation for the continual delays can be found in the procedural rules of the Michigan judicial system. Appearances in higher courts, such as circuit courts or federal courts, take precedence over lower court proceedings. Consequently, if any of the participants in the preliminary examination, which is a lower court proceeding, was scheduled to appear in a higher court, the examination had to be postponed.

Roeser's request for a change of venue was denied on August 13.²² The Tribune coverage continued.

August 26, 1964. In an interpretation of a technicality raised by defense attorney Carlton Roeser, Justice Allen Ingle dropped two of the six charges against each of the 24 defendants. Assistant Prosecutor Robert Templin told the press, "This statute has been in effect since sometime in the 1800's. Never before has this interpretation of it been made."

September 16, 1964. STEREN CLUB THRILLER NEARING FINALE WITH POLITICAL CRESCENDO. The Steren Club case has "all the elements of a Perry Mason thriller." The case began with a "police raid followed by the shouting of opposing attorneys. Throw in an attractive police spy and the story's ready for prime viewing on television." Three of the principal participants are running for public office.²³

September 19, 1964. Three defendants are released by Justice Allen Ingle. Charges against 18 others are reduced from two counts of conspiracy and two counts of gambling to one count of each. State Police Capt. Frederick Davids said, "I am disappointed to see three key

²²Daily Tribune, August 14, 1964.

²³See page 47.

people in the operation released." In a prepared statement for the press Justice Ingle said, "'Templin made untrue statements to the press about my rulings. He failed to present an adequate prosecution by not allowing State Police to testify enough. His written arguments were inadequate. . . . It is amazing to me that with all the information the press had, why more evidence was not presented in this court. . . .'"

In a recent interview Justice Ingle confirmed that he had made these statements to the press and added that in his opinion they were consistent with good judicial demeanor.²⁴

The defendants were arraigned on September 28²⁵ and between this date and March 29, 1965 the Tribune published nine stories on the proceedings.

March 29, 1965. Circuit Judge Stanton Dondero upheld Justice Allen Ingle's ruling which freed three defendants and reduced the charges against 21 others.

April 27, 1965. Defense attorney Carlton Roeser filed a petition with Circuit Judge Stanton Dondero to move the trial out of Oakland County. Dondero said the request would be considered. Roeser said he was agreeable to move the trial to Wayne County or "'anywhere outside the Daily Tribune circulation area. You can't blow your nose in this case where there isn't a Tribune story about it.'"

May 11, 1965. CHANGE OF VENUE GRANTED. The requested change of venue was granted by Judge Stanton Dondero. "'I feel this case should not only leave this county, but the whole metropolitan area,' Dondero said. . . . 'With 21 defendants and with the fact so many persons involved are located in or about South Oakland County, the papers picked it (the raid) up as a news item. It would be extremely difficult to find jurors who have no feelings of some kind about this case.'"

May 15, 1965. Manistee selected as site for Steren

²⁴Interview with Allen Ingle, former Farmington Township Justice of the Peace, July 21, 1966.

²⁵Daily Tribune, September 23, 1966.

trial by Supreme Court Administrator Meredith Doyle. This is the normal procedure in selecting a new site. Carlton Roeser said, 'We are pleased with the site.'

In a recent interview Roeser said Manistee was a terrible place to hold the trial and denied ever saying that he was pleased with the site. His explanation for the quote: "The reporter probably needed something to put in his story that day."²⁶

The Tribune is not circulated in Manistee County. Thus, its reports on the proceedings after the change of venue was announced had no bearing on the Manistee jury. The newspaper did send a reporter to Manistee for the duration of the trial and provided coverage of the proceedings for local readers.

The Pontiac Press, with a circulation of nearly 75,000, is distributed primarily in the northern half of Oakland County.²⁷ According to managing editor Harry Reed, Madison Heights is out of the Press' circulation area. It is a policy of the Press, according to Reed, to provide only minimum local news coverage of stories which occur outside the circulation area.²⁸ The newspaper is published six days each week, and carried 25 stories on the Steren case.

²⁶ Interview with Carlton Roeser, July 8, 1966.

²⁷ Newspaper Circulation Analysis, 1964-65, Vol. VII (Skokie, Ill.: Standard Rate and Data Service, Inc., August, 1964), p. A164.

²⁸ Interview with Harry Reed, managing editor, Pontiac Press, July 21, 1966.

The Press began its coverage of the raid with a story from the Associated Press.

October 12, 1963. AP--Police raided an alleged gambling spot in Madison Heights arresting 49 persons, 'two of whom have been named before a Senate committee as Mafia members.' Capt. Frederick Davids, commander of the raid, called the Steren Club, 'The biggest gambling operation this side of Las Vegas.' Eddie Guarella named by Judge George Edwards as a 'Lieutenant in the Mafia in Detroit.' Joseph Brooklier was described as 'a section leader, the lowest ruling echelon in the Mafia hierarchy.' 'There's no doubt that this is part of the over-all crime conspiracy in the Detroit area,' Davids said. United States Immigration Service agents who participated in the raid said 'some persons arrested are being investigated in regard to possible deportation.' A detailed description of the club completed the story.

October 14, 1963. THREE FACE COURT; SAID IN MAFIA. United Press International--'Three men named by Detroit Police Commissioner George Edwards as Mafia members were in jail today awaiting arraignment. Eddie Guarella and Joseph Brooklier, named by Edwards in testimony in Washington are among 48 persons arrested in a raid on the Steren Club and are awaiting arraignment. The third Mafia suspect was arrested Saturday on a charge of stealing television sets and is not connected with the Steren raid.'

On October 15, 18, 19, and 22 and November 16 the Press used stories which traced the progress of the proceedings and on each occasion noted the link between the Mafia and suspects Guarella and Brooklier.

February 5, 1964. Peggy Allen was mentioned in testimony at the preliminary examination. She was introduced at the club by 'known gambler' Joseph Sabina, who died in an auto accident in Ontario in December. 'Two of those arrested in the raid on the Steren Club were named by former Police Commissioner George Edwards before a Senate Committee as leaders of the Mafia crime syndicate in the area. The two are Eddie Guarella . . . and Joseph Brooklier. . . .'

February 6, 1964. State police said Margaret Allen 'spied' for them inside the Steren Club on three occasions. Two arrested in the raid were connected with the Mafia.

Press coverage slackened and only three stories appeared between February 7, 1964 and September 28, 1964, the day of the circuit court arraignment.

September 28, 1964. Arraignment was scheduled today for 21 persons in connection with what State Police called 'one of the richest gambling operations east of Las Vegas.' . . . Police confiscated about \$15,000 in the early evening raid last October 11, but claimed the alleged gambling operation grossed 'in the millions annually.'

Five stories appeared between September 29, 1964 and April 8, 1965. Then on April 9 the newspaper published a comprehensive account of the case, including the Mafia connections of Guarella and Brooklier, and listed each postponement in the proceedings and the reason for the delay. The Press coverage continued on April 28.

April 28, 1965. Defense attorney Carlton Roeser petitioned the court for a change of venue and suggested Wayne County, 'because it would be convenient and economical to all. . . . It would be impossible to get a fair and impartial trial in Oakland County because of the notorious and sensational publicity given the case by the news media,' Roeser said. The attorney submitted a scrapbook of 140 newspaper articles to the court and said 'All these have biased the case of the defendants.'

May 11, 1965. GAMBLING TRIAL WILL BE MOVED. The change of venue was granted by Judge Stanton Dondero because of 'notorious and sensational publicity given the case by the news media.'

May 15, 1965. GAMBLING TRIAL TO BE HELD IN MANISTEE COURT.

The Pontiac Press does not circulate in Manistee County and consequently its coverage of the case beyond the change of venue has no effect on this study.

The Detroit Free Press published 24 stories on the Steren case from the night of the raid until the trial

ended in Manistee. The newspaper has a circulation of 59,838 in Oakland County and 794 in Manistee County.²⁹ For nearly five months during the proceedings the newspaper was not published because of a labor dispute.

The Free Press was the first of the metropolitan papers to get the story of the raid.³⁰

October 12, 1963. 45 ARRESTED AS POLICE CRASH MADISON HEIGHTS SPOT; GAMBLING SPOT IS 'BIG TIME.' A Madison Heights gambling spot--where previous arrests have snared men named in Washington Thursday as members of the Mafia--was raided Friday night. . . . State Police Capt. Frederick Davids said 'It's the biggest operation this side of Las Vegas.' McConnell (Lt. Raymond McConnell of the Michigan State Police) said the gambling spot specializes in cards and dice. . . . Police called it the biggest Mafia interest next to the syndicate's floating barbut game which was chased out of Detroit several months ago. . . . Davids said this game was the same 'big operation' formerly in the castle in Farmington, which moved to Windsor after police raids, and shifted from there to three different locations in Oakland and Wayne Counties. 'This game has no limit,' Davids said in describing the magnitude of the operation.

October 13, 1963. Twenty-two men, including two named in Congressional testimony as leaders of the Detroit area Mafia underworld organization, were held in Oakland County Jail . . . to be charged with conspiracy to violate state gambling laws. A reputed Mafia leader was among those charged with frequenting a gambling place. Eddie Guarella and Joseph Brooklier face conspiracy charges while Tony Randazzo was named as a frequenter. Guarella is reputed to be a Mafia lieutenant, Brooklier and Randazzo are allegedly section leaders in the Mafia. Scores of packets of playing cards and poker chips, plus \$20,000 in cash were confiscated during the raid. But the dice had been disposed of, according to Davids. . . . Davids said two pockets of one of the pool tables (found in the club) had sponges stuffed in them to keep the dice from falling through.

Two more stories appeared in the Free Press prior to

²⁹Newspaper Circulation Analysis . . . , supra note 24, pp. A163, A164.

³⁰See page 48 of this report.

February 6, 1964.

February 6, 1964. A beautiful 23-year-old stenographer for the State Legislature Wednesday said she did not hesitate to become a spy for the State Police last fall because 'I thought I should co-operate.'

February 8, 1964. Peggy Allen identified 12 of the 24 defendants arrested in the raid on the Steren Club. Two of the 12, Eddie Guarella and Frank Bonnarito, 50, of Detroit, 'have been called members of the Cosa Nostra or Mafia operation by Detroit Police.'

The Free Press published stories on the preliminary examination on February 20 and March 19. The next story on the case didn't appear until March 30, 1965, more than a year later.

March 30, 1965. Circuit Judge Stanton Dondero charged that the prosecutor's office was 'foot dragging' in the Steren Assembly Club case.

May 15, 1965. GAMING TRIAL TO BE SHIFTED TO MANISTEE. Judge Stanton Dondero agreed to move the trial out of Oakland County because of widespread publicity in the Detroit area.

Because the Free Press is circulated in Manistee County, stories which were published between the time of the change of venue announcement and the final selection of a jury are relevant. Material published after the jury had been selected will not be considered for the purposes of this study.

July 20, 1965. STAR WITNESS' TRIP EAST TRIGGERS A LEGAL HASSLE. An unexpected trip to New York by Peggy Allen triggered a 'bitter exchange between Oakland County Prosecutor S. Jerome Bronson and defense attorney Carlton Roeser. . . .' 'She is a woman,' Bronson said, 'and a woman of normal stature would have caved in long ago under the pressures she has been subjected to.' Bronson did not elaborate for the record, but he made it clear that he feels she was intimidated. Miss Allen herself said . . . that she has been threatened. . . . Three of the men arrested in the Steren Club raid have been linked to the Mafia. Roeser

labeled her disappearance a 'publicity stunt to try this case in the newspapers instead of the courts.'

Two more stories were published in the Free Press before the trial started, but neither have a significance to this study.

The Detroit News has the largest circulation in Oakland County of any daily newspaper. Nearly 30,000 families receive copies of the paper each day in the suburban county, and 742 copies of the News are circulated in Manistee.³¹ The News also failed to publish for about five months during the two-year span of the case, but still published 45 stories from the time the raid was held until the trial ended.

The coverage by the News began on October 12, 1963.

October 12, 1963. 49 ROUNDED UP IN PLUSH CLUB. State and local police . . . smashed their way into a plush Madison Heights gambling place last night and arrested 49 persons, including three men named by Police Commissioner Edwards Thursday as members of the Mafia crime conspiracy in Detroit. Eddie Guarella was named by Edwards as 'a lieutenant in the Detroit Mafia hierarchy,' Joseph Brooklier as a 'section leader,' and Tony Randazzo as 'a section leader.' Davids said the Steren Club 'was the biggest operation this side of Las Vegas. There is no doubt that this is part of the over-all crime conspiracy in the Detroit area.' The Immigration officials said 'a number of those arrested were under investigation for possible deportation.' Davids described the moments as the police broke down the door. 'Some operators were still panting from their hurry to hide the gambling equipment, but we found numerous dice wrappers. . . . There were no limits on the dice tables, all bets would be covered by the house.'

The News published two additional stories on October 12. One listed the names and addresses of all those arrested and the other described how Davids had spent 10 years

³¹Newspaper Circulation Analysis . . . , supra note 24, pp. A163, A164.

of investigation attempting to stop the "gambling operation."

"I can go home happy this morning," he was quoted as saying.

October 13, 1963. RAID PULLS A 'THORN IN SIDE OF SUBURB'--GAMBLERS EYED FOR THREE YEARS. The City of Madison Heights had been attempting to close the club for three years. Three men with alleged Mafia connections were arrested there Friday night.

October 15, 1963. Twenty-two persons arrested Friday night released on \$1,000 bond. Two of these persons have been linked to the Mafia.

October 22, 1963. Twenty-four persons arraigned on October 21 before Justice Allen Ingle. Eddie Guarella, 'reputed proprietor of the Steren Club,' and two others arrested, Brooklier and Randazzo, allegedly have Mafia connections.

November 6, 1963. The Steren Club was ordered padlocked by Judge Frederick Ziem. Three men arrested there are reputed Mafia leaders.

The preliminary examination began on February 5, 1964, and the News published 19 stories on the proceedings during February and March. Included were these three stories.

February 5, 1964. Peggy Allen appeared at the hearing under police guard. She did not seem nervous even when associating with the defendants, 'including men who police say are Mafia leaders.'

February 7, 1964. MAFIA SUSPECT IS NAMED IN STEREN GAMBLING CASE. The name of an alleged Mafia syndicate leader was in the record today in the Steren Assembly Club gambling case, linked with identifiable money which State Police say they planted in the club. Eddie Guarella was linked with the money found in the club after the raid. Detroit police listed the 45-year-old Guarella before a Senate Committee as a Detroit Mafia member with the rank of 'lieutenant' and with a record of gambling activities.

February 14, 1964. Peggy Allen testified that she lost \$500 in two nights of gambling at the Steren Club. She pointed out Eddie Guarella as one of the men at the club. Police say Guarella is a Mafia leader.

The News ran a story on June 30 in which Roeser criticized the State Police for "overdramatizing the activities

of a private social club." The next story appeared on March 9, 1965. Two more stories appeared in March and then on May 19, 1965 the News published a story which reported that the change of venue was granted and the trial would begin on July 22 in Manistee. The News quoted Judge Stanton Dondoro as saying the raid received "too much notoriety in the metropolitan Detroit area."

The News broke the story that Peggy Allen had gone to New York on July 19, 1965.

July 19, 1965. Peggy Allen had fled to New York after being under what Prosecutor S. Jerome Bronson called 'tremendous pressure. A lesser woman would have caved in long ago,' Bronson said. Carlton Roeser said 'her departure was an attempt to get more bad publicity for the case.'

July 20, 1965. WITNESS TELLS WHY SHE FLED. Her life has been beset with frustration, bitter disappointment and sometimes fear ever since testimony, she said. She had been threatened, her family had been threatened, she broke up with her boyfriend, she lost her job and her name had been dragged through the mud.

The News had located Peggy Allen in New York City and telephoned her to get the material for the story related above. The News sent a reporter to Manistee and published 10 stories during the trial.

This brief survey has been a sample of the publicity given to the raid on the Steren Assembly Club by the four daily newspapers which circulate in Oakland County. How much of this material could be considered prejudicial by standards suggested in Chapter I of this thesis?

On page three there appeared a list of eight "types" of publicity generally referred to when the press is accused

of undermining the rights of a defendant. The eight types were:

1. Publicity demanding the arrest of a suspect before police have gathered sufficient evidence.
2. Printing a confession which is not introduced into evidence or which is later determined to have been involuntarily given.
3. Printing denunciatory interviews with the victim's family.
4. Interviewing the public before trial on the questions of guilt or innocence and possible punishment.
5. Exposing a defendant's prior criminal record either before or during a trial.
6. Printing inflammatory evidence which the court would not allow to be introduced.
7. Linking the defendant with other crimes or portraying him as a hoodlum or a gangster.
8. Printing the personal feelings of the police or prosecutor or other participants in the trial.

There were no instances in which material as described in categories one through five was publicized. Some statements were made and pictures taken of material which the court did not or might not have admitted as evidence. (Critics point out that it is not known what the court will admit as evidence until the trial is underway. Consequently, all material or testimony which might be used as evidence should not be publicized until the court rules on its admissibility.)³² The pictures and outlines used by the Tribune and described on page 50 would fall into this category. The fact that poker chips and cards were confiscated, as noted

³²See generally Sullivan, Trial by Newspaper, supra note 1, Chapter II.

on page 59 in a Free Press story would also fall into this category. It is fair to say, then, that nearly all the statements and pictures concerning alleged gambling apparatus would be considered prejudicial under the standards listed.

The alleged Mafia connections of three of the suspects noted enumerable times would certainly be the type of remark considered prejudicial applying the criteria stated in category seven. It is conceivable that Davids' alleged statement that the Steren Club was the "biggest gambling operation this side of Las Vegas" noted on page 49 and other places would also fall into this category. This could also be true for the references by the press to the "plush Madison Heights gambling place" or the "Madison Heights gambling house" listed on pages 49, 61 and other places. The statement that the Steren Club was "part of the over-all crime conspiracy in Detroit" as listed on pages 57 and 61 also would qualify. The same logic applies to all these statements. If the operation was part of a crime conspiracy, then persons participating in the operation were criminals. Critics point out that this must be proven in court. The same logic can be applied to use of the term "gambling house" rather than the qualified "alleged gambling house." If a building is a gambling house it is supposedly assumed that gambling occurs in the building and the persons inside are gamblers. And this also must be proven in court, critics point out. There are flaws in this type of logic, but

for the purpose of this particular section of the study we will accept these premises.

There were numerous occasions when the police, lawyers, witnesses and even the judge expressed personal feelings outside the courtroom on matters having to do with the case. Commissioner Davids' quoted comments on the size of the alleged gambling operation are personal opinions. On page 51 defense attorney Bernard Girard expressed an opinion about the police. On page 53 assistant prosecutor Templin called the suit against Peggy Allen and the State Police an "intimidation plot," a personal opinion. Also, on page 55 Justice Ingle's comment that Templin had presented an inadequate prosecution is another personal opinion. There are numerous other examples.

Using the standards set forth, a great deal of allegedly prejudicial information was published during the two-year span of the proceedings. Attorney Roeser used these standards when he asked for the change of venue. But what happened in Manistee when the announcement came that the trial would be held in the small western Michigan town?

Manistee County is served by three daily newspapers. A total of 1,500 copies of the Detroit News and the Detroit Free Press are circulated in the county. The families which received these newspapers had been exposed to the same information which Oakland County subscribers received. The Manistee News Advocate is published six times each week and

delivered to 4,700 homes in the community.³³ Since there are only 12,000 residents in the county, it is a fair assumption that nearly everyone saw copies of one of these three newspapers.

The News Advocate began its coverage of the Storen case on July 19, 1965.

July 19, 1965. BIGGEST JURY PANEL EVER CALLED FOR PONTIAC CASE. The trial was scheduled to begin on July 27 after being transferred from Oakland County where it was believed that the defendants could not get a fair trial. Three persons arrested in the 1963 raid were named in testimony before the U. S. Senate Crime Committee hearings on organized crime in Detroit as leaders of the Mafia. . . . Two of the defendants facing conspiracy charges, Eddie Guarella and Joseph Brooklier, were mentioned in the crime commission hearings. These two men are believed to be leaders of the Detroit Mafia.

July 20, 1965. UPI. STATE'S STAR WITNESS FLEES STATE. The departure of Peggy Allen touched off an exchange of accusations between the defense and the prosecution. 'She should have caved in long ago,' Prosecutor Jerome Bronson said. The prosecutor said he thought Miss Allen had been pressured and threatened.

On July 21, 23, 24, and 27 the News Advocate published stories on the progress being made in selecting a jury. In each story a summary of the case would be included, but only once was the Mafia connection of the two defendants mentioned.

July 26, 1965. Attorney Carlton Roeser asked Judge Frederick Ziem to move the case back to Oakland County. His motion, which he said he made to expedite selecting a jury, was denied. Roeser also moved that the entire jury panel be dismissed because of an atmosphere of 'fear' and prejudice which he claimed was to be found in the community because of articles in the Detroit newspapers and in the Manistee News Advocate and because of local gossip. This motion was denied.

After summoning 289 potential jurors to the courthouse

³³Newspaper Circulation Analysis . . ., p. A163.

a jury was finally selected on July 22 and the trial began.³⁴ Peggy Allen returned from her trip to New York in time to testify for the state. On August 9, 12 days after the jury selection, the case was turned over to the eight women and four men for a decision. On August 11 the jury completed its deliberation and found all 20 defendants guilty, three on two counts of conspiracy to violate state gambling laws and two counts of violation of state gambling laws, and 17 on one count of each charge.³⁵

On September 10 all 20 defendants were sentenced in Oakland County by Judge Ziem. Three men, including Eddie Guarella, were sentenced to two to five years in prison; nine defendants were sentenced to one and one half years in prison; four men were sentenced to one to five years in prison and four others were put on probation for five years with the first ninety days to be spent in jail.

As of September 1, 1966, no one has been or is in jail. The convictions are being appealed by Carlton Roeser on the grounds that the publicity in the case made it impossible for his clients to receive a fair trial. The first motion in the appeal will be heard by Judge Ziem in September, 1966.

It had taken nearly a week to select a jury from the residents of this small Western town supposedly isolated from the publicity on the Steren case. The primary cause

³⁴Manistee News Advocate, July 23, 1965.

³⁵Ibid., August 11, 1965.

for the difficulty was that most potential jurors had previously heard of the case. Judge Ziem dismissed 65 persons because they had already formed an opinion as to the guilt or innocence of the defendants in a crime which allegedly occurred 300 miles away. Only five of the 282 jurors called had never heard of the case.³⁶

Two things had happened. First, publicity through the printed media preceded the trial. Both Detroit papers covered the pretrial period extensively. Then, nine days before the trial was scheduled to open, the Manistee News Advocate began publicizing the raid and the upcoming trial. An incident which had occurred in a county across the state had suddenly become local news for Manistee readers. While the paper did not present all the details the Oakland County and Detroit papers had used, it informed readers of the alleged link between two defendants and the Mafia, it told readers of the alleged threats against Peggy Allen, and it also conveyed to readers the impression that the Steren Club was a bigtime gambling operation.

In addition to publicity through the printed press the news about the Steren Club trial can reasonably be assumed to have spread through the county by word of mouth. This was a big event in the history of the small rural community. Professor of law Gerhard O. W. Mueller once painted this picture of the process of justice in rural America.

³⁶Interview with Frederick Ziem, judge, Oakland County Circuit Court, July 21, 1966.

In the early frontier America, when no motion pictures, no television and no radio provided entertainment, trial day in the county was like fair day, and from near and far citizens young and old converged on the county seat. The criminal trial was the theater and spectacle of old rural America. Applause and cat calls were not infrequent. All too easily lawyers and judges became part-time actors at the bar, American lawyers still have some demeanor of stage folk, and they are still very active participants in the trial process. . . .³⁷

This is not used to imply that the Storen trial became a carnival in Manistee. It is only to show the interest in criminal proceedings in 19th and 20th century rural America. In the city of Manistee the local board of commerce claimed the trial as a tourist attraction, "something no other city can claim."³⁸ Motels and hotels were filled to capacity. "It's like there is a convention in town," one motel owner said.³⁹ Businessmen said they believed the trial would put the town on the map. Residents visited the courthouse on their lunch hours and drove past the hotel at night to see the defendants sitting on the front porch.⁴⁰ "Word has spread through the community that some 'Detroit gamblers' are on trial here. There also has been widespread talk of 'organized crime and the Mafia,'" one Detroit newsman wrote from Manistee.⁴¹ The publicity obviously affected

³⁷Gerhard O. W. Mueller, "Problems Posed by Publicity," Publishing, Entertainment, Advertising and Allied Fields Law Quarterly, V (June, 1965), p. 37.

³⁸Detroit News, July 25, 1965.

³⁹Ibid.

⁴⁰Ibid.

⁴¹Ibid.

some potential jurors. Defense attorney Roeser said that one man flatly refused to serve on the jury panel. "In front of the entire jury panel he said, 'These guys have friends, I don't want to be on this jury.'" ⁴²

The change of venue did not eliminate the phrases in pretrial coverage which characterized the original pretrial stories in Oakland County. The news value of the event preceded and accompanied the shift from Oakland to Genesee county. Whether other remedies which have been proposed would have worked more effectively in neutralizing the effects of the publicity or would have eliminated that portion of the publicity which was considered by some as prejudicial will be considered in Chapter V.

⁴² Roeser interview.

CHAPTER IV

PRETRIAL PUBLICITY IN ONE COUNTY--

THE STEREN CASE IN RETROSPECT

As it was stated previously, this study is designed to focus on the problem of pretrial publicity in one county. While one particular case has been selected for this study it should be remembered that this case is by no means typical. There are no statistics available which tell the percentage of cases in which a change of venue is granted. Most persons would agree, however, that the change of venue is the exception rather than the rule. This is primarily true because most criminal cases don't receive the amount of news coverage which the Steren case received. Consequently an atypical case in point has been used to study a problem as it exists in a single county.

To add a greater perspective to the study a series of open-ended, non-structured interviews was conducted. The interviewees, with a single exception, were newsmen, lawyers or judges who are a part of the press and legal systems which serve Oakland County. Many participated directly in the Steren Assembly Club case. Others did not.

The managing editors of the four daily newspapers which serve Oakland County were interviewed. One police officer was interviewed, the director of the Michigan State

Police, who was in command at the Steren Club raid. Two other law enforcement officials in Oakland County expressed views and outlined policy in personal letters. Four attorneys were consulted. One is the prosecutor of Oakland County who prosecuted the defendants in the Steren case. Another was the justice of the peace who presided over the preliminary hearing for the defendants. The remaining two are leading defense attorneys in the county; one acted as defense counsel for the Steren Club defendants and the other was an Oakland County assistant prosecutor for five years before beginning private practice. Three judges were also interviewed. Two of these men are members of the Oakland County circuit bench; one presided at the Steren Assembly Club trial. The third judge is the Chief Justice of the Michigan Supreme Court, the highest judicial officer in the state.

Questions asked the interviewees related both to the Steren case and the free press--fair trial conflict. Their answers provide a more complete picture of the administration of justice and the promulgation of news in Oakland County.

Carlton Roeser, the attorney who defended the 21 men arrested as operators of the Steren Club, was the most outspoken on the subject of free press and fair trial. "The problem of pretrial publicity is not caused by the news media, but by the source of the material, usually the police or the prosecutor. It is the fellow who supplies the sensation to

the newspaper who is the problem," Roeser said.¹ The attorney said that he believed the publicity about the Steren case in Oakland County and later in Manistee had hurt his clients. "I believe that newspaper articles can influence a jury. I believe that the news media molds public opinion. And the law enforcement agencies consciously use this power in an attempt to get convictions," he added. The attorney was asked if the change of venue helped in the Steren case. "Not at all," he said. "I wanted to go to Wayne County, but the prosecutor wouldn't agree. Manistee was a fluke. I didn't like the choice. In the Sheppard case 13 of 71 potential jurors were excused because of prejudiced views. In our case 66 of 200 were excused for this same reason." (The actual number excused was 65.)

Roeser places most of the blame on the news sources rather than the news media and said he believes the only answer is a law, specifically the Morse Bill which makes it contempt for a government employee or defendant or attorney to make a statement to the press. The attorney said that he hoped the Congress would pass the measure and the Michigan legislature would adopt a similar law. "One of our problems is that many of our 'court officers' are ambitious men, seeking higher office, and like to get all the publicity they can." He noted the three participants in the Steren case who were seeking higher office and were mentioned in the preceding chapter. "Another problem is that the

¹Interview with Carlton Roeser, July 8, 1966.

reporter deals with the police and prosecutor every day. In a sense, the reporter needs these good contacts to do his job. Consequently he is more likely to print what the police and the prosecutor say. On the other hand, he may see the defense attorney once in his lifetime. He doesn't need him," Roeser said. He agreed that statements were made by defense attorneys, but not frequently and these statements were usually to offset something the police or prosecutor had said. When asked if Canon 20 of the Bar's code of professional ethics prohibited statements by attorneys he said it was designed to do that, but it was not enforceable and should be rewritten.

Roeser said some of the most damaging publicity about the case had to do with the alleged Mafia connection of three defendants and the size of the gambling operation, as described by Commissioner Davids. Roeser said no evidence was introduced to substantiate either of these claims, yet the people in the county were aware of these charges even before the warrants were signed.

The attorney said that the tools available to the trial judge, voir dire, continuance, change of venue and others would be adequate to insure an impartial jury if the Morse Bill was passed. "The way to stop the newspaper from printing the news is not to release it in the first place. A voluntary code won't work, someone will always violate the code. We need legislation." Roeser added that he did not believe a newspaper had a responsibility to use extra

restraint or judgment in publishing news about a pending criminal case. "The press in Oakland County is good. I don't think the newspaper should be restrained. Another solution to the problem is higher pay to get better police officers and better training for those hired. It is the police source which produces the most damaging news."

Roeser's counterpart for the people of the state of Michigan was S. Jerome Bronson, Oakland County's Democratic prosecutor. Bronson took office in the middle of the two-year case and headed up the prosecution team at Manistee. It is interesting to note that a plank in the Bronson election platform was that he would get a conviction in the Steren case.

Because of the appeal of the convictions in the Steren case, many of the persons interviewed were reluctant to talk about it as it is still a pending matter.²

Bronson was asked whether he believed a free-press--fair trial problem existed.

There may well be a collision between the interests of the public and its right to know and the right of an accused to a completely and absolutely fair trial, one untainted by juror bias. What is a fair trial? Ideally I suppose it is one in which the jurors would be completely untainted with any bias--this juror, I believe, would be a poor juror. A good juror is in tune with the times, he wants to know what is going on in his community. We know that jurors bring prejudice into the courtroom. But we are operating under a system which is substantially the same as it was when it was developed nearly 200 years ago. Look at the advances the news media have made since then.³

²See page 68.

³Interview with S. Jerome Bronson, July 14, 1966.

It was Bronson's theory that it is an American tradition, a good tradition, to want to know what was happening at the courthouse. He said it was one of the foundations of the American democratic strength. He said this wasn't bad, because prosecutors and judges were popularly elected and the people should know what their public officials are doing. "We would be setting a dangerous precedent when and if we started restricting the coverage under the guise of furnishing a completely clean trial. This is dangerous in many ways," he said. Bronson said he believed that fair comment by a newspaper about a case is needed, that it doesn't endanger the rights of the accused because it is not tantamount to a conviction or proof of guilt. "This is the right of a newspaper. It has always been a right." The prosecutor said the key to the problem was the word "fair," or lack of malice. "Is the comment fair, not only to the accused, but fair to the public as a whole?"

Bronson continually talked of the press working more with the police and prosecutor to insure justice and law enforcement. He said he believed that the press has a duty to speak out against crime and corruption.

He said that voluntary codes were needed for police, press, prosecutors, attorneys and judges and he believed that these codes would solve any problem which might arise. "Any proposed laws or an enlargement of the contempt power would be absurd." He agreed with Roeser that most of the publicity comes from the police or lawyers, but said that

the newspapers could put a great deal of pressure on an individual to make a statement. When queried about Canon 20 he replied that he believed lawyers usually exercise good judgment.

"The police and the prosecutor rely more on the press than most persons realize. We look to the press to speak out on important issues. We look to the press to exercise the public leadership that they ask public officials to exercise. But they usually offer very little leadership."

Bronson said that there was not a serious free press--fair trial problem in Oakland County, but there was a "lack of sophisticated thinking, lack of thought, deep thought and deep understanding on the part of many newspapers."

Bronson answered questions on the Steren case in general terms which did not apply specifically to the case. He did say, however, that he didn't believe that the publicity endangered the rights of the defendants because "the community was aware of the gambling problem in the area for four years prior to the raid."

Allen C. Ingle, now a Farmington attorney, was a Farmington Township justice of the peace in 1963 and presided over preliminary examination of the Steren Club raid defendants. In an interview he said he didn't think there was an excessive amount of publicity in the Steren case.⁴ Ingle said the opposing attorneys generated some publicity, but that this was the biggest and one of the only major gambling

⁴Interview with Allen C. Ingle, July 21, 1966.

cases that the county had in several years. Ingle said he thought that the request for a change of venue was silly, even with the publicity. "They could have gotten a better jury here. We have legalized gambling in this county at the (horse racing) tracks. There were bound to be some people on an Oakland County jury who weren't adverse to gambling," he said. Ingle stated that he believed the Oakland County papers, the Pontiac Press and the Daily Tribune in Royal Oak, did a good job of covering the case and were fair and accurate in their reports.

Articles in the Pontiac Press and the Tribune were fine, they were fair right down the line, they didn't try to color the news. But the Detroit papers got out of hand. The test is accuracy. I feel the press should report everything, as long as they do it accurately. But I think I see changes coming, from the Supreme Court. The Oakland County papers don't seem to print as much sensational information, even about the same crimes, as the Detroit papers do.

Ingle said he didn't believe a law to regulate the press could be passed and added that with recent Supreme Court rulings, such as the Sheppard case (see page 26), laws really weren't needed. What about Cannon 20? "Most of the bar canons were designed to keep an attorney from getting publicity or advertising, not for any other reason. Personally, I think an attorney should be able to present his views."

Ingle said that as long as the newspaper published the truth, no harm would come to the defendant. "I have faith in jurors. The average juror will decide a case on the evidence. You can see this where a defendant is all but

convicted by the press, but is acquitted by the jury."

J. Robert Sterling of Pontiac, the fourth attorney interviewed, was not a participant in the Steren case but has practiced law in Oakland County for many years, both as a prosecutor and attorney for the defense.

Sterling agreed with Bronson and Roeser that the problem has its roots in the faults of others, not the media. "Some of the news sources just like publicity and the reporter finds himself in the middle. What is he to do? He has to take the information down."⁵ The attorney said that some reporters, a few, pump too hard for news. But nevertheless, a responsible public official will stick to his guns and refuse to give out the information, he said. Sterling said a law wasn't needed, but that rules similar to those laid down by Attorney General Katzenbach for the Justice Department were good and should be adopted by all law enforcement agencies.⁶ "One simple solution to the problem is to limit the number of persons who can give out information to one or two sources, the chief prosecutor or the chief of police. Certainly there are other informed sources within these offices, but they are not necessarily responsible sources."

Sterling said he didn't believe that newspaper publicity could influence a jury, but said he used this device as a tool in the courtroom to protect his client. He said

⁵Interview with J. Robert Sterling, July 8, 1966.

⁶See Appendix A.

that jurors enter the jury box with all sorts of prejudices and biases, and told the story of a juror who, after hearing hours of testimony by a psychiatrist on the mental condition of the defendant, said that she just didn't believe in "that psychology stuff." "In addition, all the publicity sometimes makes the prosecutor work harder. If the newspapers have flooded the community with publicity about the defendant which can't be used in court, the prosecutor's case looks skimpy. He can't always prove what has been printed in the newspaper. The case looks weak to a juror who has read a lot."

Sterling said he believed it was the responsibility of a newspaper to carefully screen what is printed and suggested that perhaps better judgment could be used in some cases. When asked his opinion on the Sheppard decision in which the court placed most of the responsibility on the trial judge, Sterling said that most of the damaging publicity is released immediately following the arrest, when there is no judge assigned to the case. The attorney said he believed a newspaper should print every word of what goes on at the preliminary hearing if it wants to. "The defendant can waive this hearing if he feels the publicity will be damaging to his case," he said. Sterling said most of the trial-level tools were helpful, but voir dire, the examination of the jurors, was "hogwash." "Some jurors want to sit and will say anything to get in the jury box. Others don't and will do everything possible to get out of the jury duty."

This tool is not too effective," he added.⁷

We need more restraint on the part of the papers and the public officials. . . . I really don't believe any newspaper would intentionally try to hurt the defendant. But they will always try to outdo their competitor. And this causes problems. The biggest problem in Oakland County today, and there is a problem, is the proliferation of authority. There are 16 assistant prosecutors. In addition to the sheriff and the state police, there are some 43 other police departments. Many are not responsible. Often by the time an attorney gets to the scene the police have blown the case for him by making some foolish statement. Perhaps in this case the answer is to freeze all news releases for 24 hours until a responsible official can get into the act.

Despite the fact that all four attorneys blamed the police to some extent for releasing prejudicial information, law officers generally deny the charge. Requests were sent to both Oakland County Sheriff Frank Irons, and Pontiac Police Chief William Hanger, for information regarding their official policy on the release of information and their relationship with the press. These are official reactions. Comments and an evaluation of these remarks will be made later in the chapter.

The responses from both men, who command the two largest law enforcement agencies in the county, are similar. Both relate that the Supreme Court has all but prohibited the use of confessions as evidence in criminal cases and said that they are careful in press releases not to divulge information of this nature. "Other than the name of the individual involved and the crime he is being charged with, our hands are tied. Prior criminal record, confessions,

⁷Sterling interview.

not admissible as evidence," wrote Captain Leo Hazen, chief of detectives of the Oakland County sheriff's office.⁸

Both men also agreed that relations with the press in the county had always been good and the press had done a good job. "I have always had good working relations with the press and only upon rare occasions have inaccurate stories or information been published that would be detrimental to apprehension," Hazen said.

Michigan State Police Commissioner Frederick Davids, who was a captain in 1963 and led the raid on the Steren Assembly Club, said in an interview that the state police have always had good working relationships with the press.⁹

Davids said that no reporters were invited on the Steren raid. He said taking reporters on raids was against department policy, unless the reporter had tipped the police that the gambling operation existed. As related earlier, Davids denied that any pictures were posed for the photographers and said he was misquoted on his statement about the size of the gambling operation.

It is a policy of the state police that only a command officer can give out information, Davids said. However, the department's definition of a command officer differs considerably from the military definition. According to Davids, the man in command of the investigation is the

⁸Letter from Leo R. Hazen, Captain, Oakland County Sheriff's Department, Pontiac, Mich., June 29, 1966.

⁹Interview with Frederick Davids.

command officer. This means that a trooper, the lowest rank of uniformed officer, is the command officer if he is the only one on the case. And troopers are allowed to give out information to the press on such things as traffic accidents. "State police officers are schooled in this procedure and know better than to give out information on a pending matter," Davids said.

Davids was quoted as saying that the Steren Club was a "gambling operation" and this, of course, had to be proved in court. He was asked if this wasn't unfair. "Many persons who frequented this place were known habitual gamblers. This gave us reason to believe it was a gambling operation." When asked if he believed a statement such as this could have an effect on a jury Davids replied: "It can have an effect. But what the defense attorney says can also have an effect. . . . The defense can make prejudicial remarks and the people have no appeal. In this case Roeser said we smashed up the place. This wasn't true."

It is state police policy, Davids said, that no information regarding admissions or confessions is given to the press. Only convictions of record are released and no photographs of the defendant in a compromising situation are permitted to be taken. Frequently publicity is given out by the prosecutor, who in many instances wants the publicity, and the police get blamed for releasing the information. "Public officials like to get publicity more than police officers," Davids said.

I think the newspapers played the story (Stereon case) out of proportion to what it was. They really overplayed it. But it was really no fault of ours. We wanted them to lay off it sometimes. But the antics of the lawyers had a lot to do with keeping the publicity going. I believe that newspaper publicity can have an effect and I also believe that in many cases police departments should be more careful in what they say.

This then is the view of the police officer, who places the blame on the press and the lawyers. Where does the judge stand on the question? Three judges were interviewed. Judge Frederick C. Ziem is a former prosecutor of Oakland County and presided at the trial of the 21 defendants in the Stereon case. Judge William John Beer is also a member of the Oakland County bench and is respected as a "legal scholar" in the county. The third member of the bench interviewed was Michigan Supreme Court Justice Thomas M. Kavanagh.

Judge Ziem does not believe that newspaper publicity can have an effect on the mind of a juror to the extent that the juror cannot deliver a verdict based solely on the evidence presented in court.¹⁰ "I have faith in our jurors. And of course this is what voir dire is for; to excuse the ones who do have an opinion. But I think most can read about a case and still make up their minds only on the evidence presented in court," Ziem said. Judge Ziem was asked if he believed the defendants in the Stereon case received a fair trial and if the change of venue had the desired effect. "The change of venue did not produce the desired result. I think we could have gotten a jury quicker here. The case

¹⁰ Interview with Judge Frederick Ziem, Oakland County Circuit Court, July 21, 1966.

was heavily played up in the south end of the county (near Royal Oak), but not so heavily in the north end. Of all the jurors who were questioned in Manistee only five, I think, five had never heard of the case." Ziem did not grant the change of venue. Judge Stanton Dondero, who was scheduled to hear the case but died before the trial started, granted the change. Ziem said he couldn't comment directly on the fairness of the trial since he was scheduled to hear Roeser's motion for a new trial based on the grounds that publicity had prejudiced the jury. Ziem said it was his belief that it was up to the judge to control the amount of publicity in a case. He said before a judge is assigned to the case it is the prosecutor's responsibility to see that the defendant's rights are protected.

There have been instances when prosecutors haven't taken this responsibility, when they have shirked their duty. But it is difficult to be a prosecutor. You are bombarded by newsmen who are certain you are hiding something when you refuse comment. . . . The prosecutor must use his good judgment. . . . I wouldn't want to see a blanket rule or a law prohibiting all statements by participants. There are cases where the press goes overboard. But we haven't reached the point yet where we need a law.

Ziem said in some areas perhaps guidelines are needed to outline responsibilities, but in Oakland County they are not needed.

We do a pretty good job here. There might be minor problems in the county, but we haven't damaged a defendant's rights yet. The newspapers generally do a good job. Individually, on occasion, they sometimes go too far. But this is usually caused by competition between papers. . . . The Sheppard case is an example of the press going too far. I don't think this was true in the Steren case. . . . Most of the job of controlling the press is up to the judge. But I would hesitate to

put any restrictions on the newspapers. This could be more dangerous. We can cope with what has been done, but we couldn't cope with too many restrictions on newspapers.

Judge Beer said there was no free press--fair trial problem in Oakland County and credited good rapport between judges and reporters as the reason for the "peaceful co-existence."¹¹ The judge said he had yet to meet a reporter from a local paper who believed that his newspaper had superintending control over the bench. In return, he said, the judges on the circuit bench never forget the constitutional guarantees of freedom of the press.

I don't know of a single case when the press has prejudiced a defendant's right to a fair trial. But I don't believe that even notorious reporting during a trial can deprive a defendant of a fair trial. Jurors are mature persons. They decide a case on the evidence before them. Our present generation is highly literate, especially in this county. We don't have back woods juries who can be swayed in their judgments.

Judge Beer said reporters in Oakland County felt free to sit and talk with a judge and added that he believed this was a healthy situation. He said that the courts and the press are really trying to do the same thing, protect the American way of life. "If I wanted to become a dictator I would close all the courtrooms and shut down all the newspapers as my first two acts," he said. Judge Beer agreed with Judge Ziem that the press did step out of bounds in the Sheppard case, but said no such thing had ever happened in Oakland County. "We don't need laws. We have too many

¹¹ Interview with Judge William John Beer, Oakland County Circuit Court, July 14, 1966.

laws already. The answer is wisdom. All those involved should use wisdom. The public officials should stay out of the hippodrome. Four words would solve the entire problem. 'That can't be discussed.'

Justice Kavanagh said he believes a newspaper article is designed to influence a community and if it doesn't do that the newspaper is failing in its job.¹² "Whether the people are affected to the extent that they can't change their minds or can't be open-minded in a court of law is another question. The amount and nature of the publicity has a direct bearing on this. Usually, though, what is said in the newspaper will stay in the back of a person's mind," he said.

Justice Kavanagh said he believed that the trial-level protections which a judge has are powerful tools if the judge will use them, and crack down on statements by lawyers, police and prosecutors.

The newspapers must assume a more responsible position when it comes to running pretrial information. There could only be one reason a newspaper would want to run a defendant's criminal record which would not be admitted in court, and that is to influence the people. And I don't agree that trial by newspaper isn't a serious problem because it happens so infrequently. This is like saying a woman is a little pregnant or it is all-right to violate the rights of an individual because it only happens once in a while.

The Justice said that he didn't believe that a law such as the Morse Bill would meet the constitutional test of the First Amendment. "The answer to the problem now is

¹²Interview with Chief Justice Thomas C. Kavanagh, Michigan Supreme Court, July 6, 1966.

individual restraint by all parties concerned and strong action at the trial-level by judges. I really don't think responsible newspaper people or lawyers want to hurt anyone. But they will have to take greater pains. This is a matter of individual responsibility."

The last interviews to be discussed are those with the managing editors of the four daily newspapers which circulate in Oakland County. The managing editors were interviewed rather than editors or publishers because the man in this post, while in the top echelon of the newspaper hierarchy, still deals directly with the collection of news. At all four newspapers the managing editor's desk was in the newsroom or in an office adjacent to it. It is also important to note that of all the groups interviewed, newspapermen seemed to have the greatest awareness of the free press--fair trial problem and generally were the most vocal.

Of the four editors, Grant Howell of the Daily Tribune in Royal Oak was most aggressive in his defense of the press.¹³ He said that there was no proof that the First and Sixth Amendments were on a collision course and there was no proof that pretrial publicity prejudices juries. "I believe that jurors can make a decision on the basis of the facts presented at the trial no matter what has gone on in the past. We have gotten along for 175 years under this system. We cannot adopt a cynical viewpoint toward our jurors. They

¹³Interview with Grant Howell, managing editor, the Daily Tribune, Royal Oak, Michigan, June 7, 1966.

do a remarkable job. . . . If we become cynical toward jurors, then before you know it lawyers will insist that only judges should sit, that juries are incompetent to administer justice," he said. Howell said the conduct of law has always been the private domain of lawyers and added that the lawyers would love to shut out the press so the public wouldn't know what was going on. "Lawyers say we can write about the trial after the verdict is reached. But we live in an immediate society. For example, when a legislator is arrested for drunk driving, it is important for people to know immediately that he was arrested for the same offense two weeks ago."

Howell admitted that mistakes are made. "But that is what appeals are for. To be convicted today a man must lose at least two out of three falls." Howell said he didn't believe that his newspaper publicized the Steren case too much. "I wish we could have written more. I wish we could have written interpretively, but we were held back by the rules of objective reporting," he said. He added that conspiracy was a difficult charge to prove and that the press had a job to help people understand what was going on.

Howell said that if the press was shut off, people would never know of the miscarriages of justice which occur, how many times a defense attorney and a prosecutor arrange to "cop a plea."¹⁴ "Look at Mississippi. If the papers

¹⁴To "cop a plea" is a slang reference to a procedure by which the defendant in a criminal case agrees to plead guilty to a lesser crime than the one to which he has entered a plea of not guilty.

were shut off, what kind of justice would prevail?"

The editor said that a law was not the answer, but a law would be better than voluntary controls agreed to by members of the press.

I do not feel I have the right to bargain away rights and responsibility afforded the press for the protection of the people by agreeing to a code of self-imposed rules. . . . At least with a law the people would be voicing their opinion in the matter.

Howell said he believed the trial-level controls were adequate and that the contempt power, statutory rather than summary, might serve a useful purpose. He said it was silly for lawyers to complain about the press because they didn't enforce their own rules, namely Canon 20.

We are willing to be responsible for our acts, but cannot tolerate prior control. We are approaching an anonymous society with this matter or that matter being closed off by groups x or y or z. We are not solving the problems by hiding them in a drawer. One day the drawer will overflow and then the problems will be too big to cope with. . . . We have no problem of free press--fair trial in Oakland County. We have a policy at this paper that we will not do things just because other papers in the area do. But you must remember that this is a highly competitive business. . . . Law and administration of justice belong to the people. A lawyer has the special privilege of being an officer of the court. But citizens are judges of the court--and I think that is a greater responsibility and a greater privilege. . . . The people do have a right to know what is going on.

Frank Angelo, managing editor of the Detroit Free Press, agreed, in essence, with Howell's ideas. He said he believed that many lawyers carried the free press--fair trial argument to ridiculous extremes.¹⁵ "The Steren case was a

¹⁵Interview with Frank Angelo, managing editor, Detroit Free Press, June 14, 1966.

good example. Newspapers didn't distort or over-dramatize the situation. I am critical of our coverage because I think we should have done more. We should have attempted to find out why a situation like that was allowed to exist so long." Angelo said the change of venue to Manistee, a small town, was silly as the trial turned out to be the biggest thing to ever hit the town.

The editor said he didn't believe it was possible for a newspaper to prejudice a jury, that it has never been absolutely proven. He said he believed it was possible to put together a jury that can make a decision on just the evidence presented in court. Angelo said that individual editors should make each decision in regard to prejudicial material, that codes would not work. "There are enough codes. And after all, if there was a code an editor would still be responsible for interpreting it." Angelo was also against the Morse Bill or any law, but said he thought that the Katzenbach plan to limit the release of certain information was a good idea.

Actually there are only a minute number of cases which are appealed and finally overturned because of publicity. The record shows we have been fair and reasonable. We cover dozens of cases each year, yet people usually only notice the ones in which we err. Also, the newspapers work like hell to find someone who has been treated unfairly. . . . It seems to me that the legal profession would be on a much sounder ground if through its ethics committee it had taken stringent steps against some of the more blatant things done by lawyers.

Angelo said the press had to interpret what the public need was and suggested that common sense was the best guide. He said that if the police and the prosecutor are silenced

the press will get its information from other sources until the public clamor becomes such that the official sources will have to open up again. The editor said that it was imperative for someone to fight for the freedom of the press because more and more people were fighting for sterility. He said the press had a duty to do something about the preservation of justice even though occasional mistakes would be made. Angelo stressed that any critic who charged that the newspapers needed sensational stories to keep up circulation was way off base. "Crime news is not important today," he said.

The press should be criticized for its lack of intensive interest in the administration of justice. Newspapers have generally done a poor job in insisting upon the proper administration of the courts. Take the Sheppard case as an example. The thrust of the decision was against the judge. It doesn't excuse the press for what it did. Not enough papers were critical of how the situation was handled down there.

John O'Brien, managing editor of the Detroit News, was the only newsman interviewed who said he believed publicity could prejudice a jury. He also said he was in favor of a law, the Morse Bill, as long as the law did not attempt to regulate newspapers.¹⁶ "I am not in favor of anything that will weaken the First Amendment. I think the courts have enough trial-level devices to protect the defendant." He said it was the job of the bar and the bench as well as the press to work for the protection of the defendant. "Take, for example, the trick of some lawyers who make a statement

¹⁶Interview with John O'Brien, managing editor, the Detroit News, June 15, 1966.

which they know will be stricken from the record. To ask the jury to disregard this and believe they will is legal fiction. This certainly has an effect on a fair trial."

O'Brien said he also liked the Katzenbach pronouncement of Justice Department policy. He said this clearly spelled out what information could be released. "There is a danger when a court tells attorneys and police to use good judgment in what they give to the press. Usually it means they will shut up completely and suppress everything."

O'Brien was asked if he believed it was possible to have freedom of the press if access to information was restricted, a probable result of the Morse Bill. "I don't see the two as inseparable. The latter is not necessarily implied in the former. If it was it would be carried to extremes, such as to private mail." The editor said he was soundly against the code idea. "No one can alter or dilute the First Amendment. We cannot even do it voluntarily. This is not our amendment to fool around with. This means no laws or codes or anything."

O'Brien said that he believed the adversary system in the American jurisprudence allowed too much freedom both inside and outside the courtroom. This freedom breeds publicity, he said. The editor was asked if the News followed any guidelines in the use of potentially prejudicial information.

At the News the only ground rule we have is we won't use the legal word confession until the defendant's statement is admitted into evidence. We call it an admission. But what about the defendant who confesses in

front of a reporter? And as far as the police record goes, the defendant's wife will probably tell the reporter that her husband, the 'bum,' has been in and out of Jackson [Southern Michigan State Prison at Jackson] four or five times. This is where the theoretical solutions break down.

O'Brien was quite aggressive in his comments about persons who claim that newspapers need sensational crime stories to sell papers. It isn't true, he said, and anyone who says it is doesn't know much about the newspaper business. "The police reporter used to be the most important man on a paper. Now he sometimes has a day when he can't get a story into the paper. Crime news is not very important anymore." O'Brien said that the News publishes a paper for home delivery and consequently doesn't need big headlines or sensational stories on the front page to catch the eye. Of 700,000 papers printed each day all but 40,000 are home delivered. "And this 40,000 are sold on street corners around Detroit's financial district to men who want to get the closing stock market reports."

Another factor today is competition. Sometimes a reporter may have a twinge of conscience about using an item in a story--but he can't stand back and let the competition get it and use it. If he does he will get bawled out by me. . . . What it all comes down to is each editor and each newsman must be responsible. I think all this talk recently has been good for us. We are now much more aware of the problem and I am certain we are a good deal more careful in what we say.

O'Brien defended the News coverage of the Steren case, describing it as balanced and fair. "We have a responsibility both to the reader and to the defendant. I'm certain most editors are responsible. The irresponsible press can't survive today. Competition is too great."

Pontiac Press managing editor Harry Reed said that it was possible for a newspaper to prejudice a jury, but not very likely.¹⁷ "The only way to get a completely impartial jury is to have them come from a sealed vacuum or have them too ignorant to read. It is up to the judge and the lawyers to find out whether they have preconceived opinions about the case," he said. Reed pointed out that the Steren Club raid was out of the Pontiac circulation area and consequently his newspaper didn't give the story much coverage. He said he believed the biggest source of prejudicial news was the attorneys and the prosecutors. Would a local agreement or code between the press and these groups help? "No, it wouldn't work because the bar won't police its own members. They would rather shift the blame to newspapers. Not all attorneys are like this, but many just bend Canon 20 when it suits their pleasure and the newspaper ends up with eggs on its face."

I think the newspaper should show restraint and we do. Recently, for example, the wire services both called an accused man "the killer" in their stories. This was before the trial. We changed "killer" to "suspect". . . . We try not to mention a suspect's statement unless it is going to be admitted as evidence. We don't use the words confession or admission. We try not to use prior criminal records, but sometimes they are important to a story. What if the suspect is an escapee? We can't very well tell readers he is an escapee from prison without telling them why he was sent there in the first place. The Supreme Court decisions of the past few years have changed our rules in many respects.

Reed said he didn't believe there was a free press--

¹⁷Interview with Harry Reed, managing editor, the Pontiac Press, July 21, 1966.

fair trial problem in Oakland County. He said there were individual instances occasionally but these could be minimized if the lawyers would be quiet and the newspapers would use good judgment. He said one reason why the problem was kept at a minimum was the good relations the press had with the Oakland County Circuit Court. "We understand their problems and they understand ours."

Reed didn't like the idea of a law or a code. "Any set of rules has the built-in danger that we will be shut out completely," he said. Nor did he like the idea of all news releases coming from either the top police officer in the department or the prosecutor. "You would get distortion. What if it is election time and the sheriff likes to get on camera. And when the deputy passes the information to the chief and then he passes it to you there is one more chance for errors to occur." Reed said that often the top man isn't available when the newspaper needs the story and added that the top man should be too busy running the department to handle the public relations too. "The statement should come from the man in charge of the case. If he has the brains to run the case, he should have the brains to do the PR work."

Reed hesitated to call the police the chief culprit. "They help us a lot and I hate to put the finger on them. Of course a good police reporter has the confidence of the police officer and can get a great deal of information. In fact, he usually knows much more than we can print." Reed

also disagreed with critics who tried to use the argument that sensational news sells papers.

Sensational news isn't important anymore. We are 96 percent home-delivered. We don't select our news on the basis of street sales. We give our readers general news coverage and this is why they buy our paper. People who use this argument are living in another newspaper era. . . . In fact, we don't even get calls for the gory stuff. The most frequent comment heard is, "Isn't there any good news?" Occasionally we play light news way out of proportion just to brighten up the paper.

Reed said that a newspaper would not knowingly jeopardize a defendant's rights. But he added that a newspaper does have the responsibility to the public to print all the news that is important.

There is perhaps one other avenue which should be explored before drawing conclusions from the evidence which has been presented. This is an examination of the role of the police reporter, the direct link between the source and the publication.

Every newspaper generally has at least one police reporter. The police stations, hospital emergency rooms, prosecutor's office and occasionally even the courthouse are this man's beat. For years the police beat was the starting point for a novice reporter, the initial assignment at the daily newspaper. The police beat is one of the few remaining newspaper assignments on which the reporter has to scratch day after day for a story. Consequently, it is good training for any novice. But assigning a freshman to the beat creates the problem of constant shift in personnel. No sooner than the police reporter has built up a good set of

contacts, he is given a new job and another novice is assigned to the beat. Many newspapers, consequently, have made the beat a permanent assignment and police reporters for many newspapers are old hands at their jobs.

With the exception of his pencil and paper, the most valuable tool the police reporter has is an affable personality. The secret of the success of a good police reporter is contacts within the department who tip him off when a story breaks or fill him in on information which other reporters can't get. Consequently the police reporter buys a lot of coffee at the police station and spends many fruitless hours just lurking around the detective division.

By describing how the police reporter gets his news from the Oakland County Sheriff's Department, a reader will get a basic picture of how all police departments in Oakland County handle news distribution. There are minor differences within the various police operations, but generally all law enforcement agencies follow a similar pattern.

For every arrest, complaint, auto accident or disturbance which is investigated the sheriff's department makes a written record. Initially, these investigations and arrests are listed in the order of their occurrence on what is commonly referred to as the "daily." Copies of the daily are run off on a duplicating machine and one set of copies is set aside for each reporter who visits the sheriff's department each morning. After scanning the daily a reporter has a good picture of departmental activity during the

preceding day and night. In addition to the daily, investigating officers make out an initial report for each complaint investigated or arrest made. The complaints range from minor theft to mass murder. The initial reports are numbered to correspond to listings on the daily. The reporter is given the opportunity to read every initial report in which he is interested. Frequently the undersheriff points out what he believes to be a good story. Infrequently the sheriff pulls an initial report from the file if it is embarrassing to his department, such as an accident involving a police car or an escaped prisoner. But a cross-check of the daily with the reports reveals the missing report and if he requests it the reporter is allowed to see it. Consequently the reporter has complete access to the initial records of every crime. Sometimes these reports are sketchy, but in a major crime, such as a murder, they usually include statements from witnesses, description of the body and type of weapon used, circumstances surrounding the apprehension and description of a suspect, location, time and circumstances of the crime and occasionally a statement made at the scene by the suspect.

It might be noted here that much of the bias or prejudicial information which arises against the defendant could be generated from the point when the reporter reads the initial report. These reports contain raw data, much of which will never and could never be introduced as evidence. In addition, the first report is not always necessarily

correct. But errors are not noticed until a thorough investigation has been completed, long after the reporter has seen the initial report.

Secondary information must be obtained from the officers investigating the case or the chief of the detective division. A complete file of every person incarcerated in the Oakland County Jail is kept in the record department. These records include dates of arrest and trial, sentence, crime, and the department which made the arrest. A reporter may check these records upon request.

Information concerning confessions or statements made by suspects can come from one of two sources, the officers investigating the case or the assistant prosecutor assigned to the case. Recently both sources have been "officially" more close-mouthed about confessions, but will usually inform the reporter on an "off the record" basis.

Police cooperation is the key to good police coverage. Consequently, the police cooperate. On breaking stories which occur during the night the police reporter is usually notified by the police within minutes after the crime is discovered. On occasion a police department has even dispatched a patrolman in a car to find a reporter and inform him of the event. The police officer is usually very frank with the reporter in telling him the whole story and relying on his good judgment to include only the "proper" items. In a case where there is more than one reporter at the scene this becomes a problem. The reporter may believe in good

conscience that he should exclude some details, but is afraid that the competition will use it. In this case the reporter usually will recall what his editor has told him, a statement similar to that made by News managing editor John O'Brien. "Sometimes a reporter may have a twinge of conscience about using an item in a story--but he can't stand back and let the competition get it and use it. If he does he will get bawled out by me. . . ."18

The Oakland County Sheriff's Department has a general policy that no pictures may be taken in the jail. But most officers accommodate photographers by announcing when they plan to take a defendant out of jail for arraignment. They also usually exit in a highly conspicuous manner to allow plenty of time for pictures. In other words, the sheriff's department, and most police departments, go out of their way to cooperate with the press. Most of the time it is up to the police reporter to use his judgment in the use of a particular detail. There are, of course, exceptions and occasionally the police won't talk. But even in these cases, a good contact in the police department usually reveals the information desired as long as the reporter is discreet in his attribution. It should also be noted that the police reporter usually makes decisions on what to use without consultation with his editors. He merely writes the story including in it all facts he believes are pertinent.

Some of what was said here is in direct contradiction

¹⁸O'Brien interview, supra note 16.

to information presented earlier in this section by police officers from Oakland County. But it was noted at that time that their information represented official policy. The police reporter and the news dissemination agent for the police department are usually close friends. Seldom does official policy enter this relationship. Police have felt the squeeze of the free press--fair trial argument more than most persons realize. The prosecutor, on one hand, wants them to be more discreet or let him make all the newsworthy statements. The press, on the other hand, wants the news; and, moreover, friendships are involved. In some cases police have resolved this problem by keeping quiet. In Oakland County most departments have constructed more informal channels for release of the news, channels which supply the same amount and type of news, but which are less conspicuous.

CHAPTER V

PROPOSED SOLUTIONS AND CONCLUSIONS

It was demonstrated in Chapter III that the change of venue granted before the Steren Assembly Club trial did not have the desired effect. The presiding judge, Frederick Ziem, agreed with this conclusion in an interview.¹ The publicity about the case tended to precede the shift of the trial to Manistee. And it was also noted that the trial did not lose any of its news value merely by moving it 300 miles west. What had been a state story of minimal interest to readers in Manistee became an important local story when the change of venue was announced.

It could be asked at this time, would any of the remedies outlined in Chapter I have worked better in the Steren case than did the change of venue? The desired result in this particular case is the trial of the 21 defendants by an impartial jury. This assumes, of course, that the publicity of the case did have an effect on the impartiality of the jury. This is an assumption which cannot be made fairly. It was pointed out in Chapter I that there is a distinct lack of scientific data on this problem and conflicting views exist. Eight of the 12 persons interviewed for this

¹Ziem interview, supra note 10, Chapter IV.

study said they did not believe publicity had an irreparable effect on the jury. Included were attorneys Bronson, Sterling and Ingle; judges Beer and Ziem, and newsmen Howell, Angelo and Reed.

Therefore the problem will be stated in this manner: could any of the remedies suggested in Chapter I reduce the amount of publicity or stop that type of publicity which is considered prejudicial under standards set forth on pages 3 and 64?

At the end of Chapter III, certain published statements which met the "prejudicial" criteria were selected to test the effect of the change of venue.² They included:

1. The statement repeated frequently that Eddie Guarrella, Joseph Brooklier and Tony Randazzo were reputed leaders in the Detroit Mafia.

2. The statement attributed to State Police Commissioner Davids in which he called the Steren Club "the biggest gambling operation this side of Las Vegas."

3. David's statement that the Steren Club operation was "part of the over-all crime conspiracy in Detroit."

4. Statements and pictures concerning evidence found at the club--cards, poker chips, dice wrappers, pool tables with sponges in the pocket and the look-out chair.

5. General statements made by the lawyers, police and even Justice Ingle which reflected a personal opinion about the case, an opinion which would not have been permitted in court as unsubstantiated evidence.

With this publicity in mind, the possible remedies can be considered next. Those listed in Chapter I included:

1. Trial-level remedies (such as a change of venue, continuance, and blue ribbon jury).

²See page 64.

2. The Morse Bill.
3. The Justice Department policy statement.
4. Voluntary code.

5. Stronger actions by the trial judge, such as was suggested in the Sheppard and Van Dyne decisions. (This is actually a trial-level remedy, but will be considered separately because it is designed to stop the publicity at its source, not to neutralize the effects of information already publicized.)

TRIAL-LEVEL REMEDIES Chapter III proved that the change of venue didn't work in the Steren case. It is doubtful whether a continuance would have produced any better results. The proceedings in the case lasted for nearly two years and there were several lengthy periods when publicity on the case did die down, only to begin again when newsworthy events began to occur. A continuance would have likely done little to change the publicity factor in this case. Also, as noted earlier, the 21 defendants would have had to agree to waive their Constitutional right to a speedy trial in order to take advantage of the continuance. It should be pointed out that the trial-level remedies really do not provide an answer for the basic question posed in this brief exploration: how to reduce the amount of the allegedly prejudicial material published. The trial-level remedies are aimed at neutralizing the effects of prior publicity. Consequently, until social scientists can produce more evidence on the nature of the effects of publicity on a potential juror, an evaluation of an instrument designed to neutralize this effect is actually a stab in the dark.

Before concluding the discussion of the trial-level

remedies, a comment on the blue ribbon jury idea seems appropriate.³ Judge Beer, in his interview, made the point that Oakland County jurors were above average in intelligence and maturity.⁴ If this is true, then there is a question whether a blue ribbon panel would be a great deal more qualified than the typical or average Oakland County jury.

THE MORSE BILL The Morse Bill, Senate bill 290, is designed to stop much of the publicity at the source, the trial participants. The measure clearly states

it shall constitute a contempt of court for any employee of the United States or for any defendant or his attorney or the agent of either to furnish or make available for publication information not already properly filed with the court which might affect the outcome of any pending criminal litigation. . . .⁵

Passage of the Morse Bill would have had no effect in the Steren case because the measure would only apply to cases in federal courts. But if the state of Michigan had adopted a similar provision before the Steren raid was held, most of the publicity on the case would have been stopped. As this author interprets the language of the bill, statements in the last four of the five groups listed on page 105 would have constituted a contempt of court. Statements regarding the alleged link between the Mafia and three defendants would not have been prohibited since this connection

³See page 15 for an explanation of the blue ribbon panel.

⁴Beer interview, supra note 11, Chapter IV.

⁵U. S. Congress, Senate, Bill 290, 89th Cong., 1st Sess., 1965.

was made by the press, and not by a trial participant. At a cursory glance, it would seem that the Morse Bill would provide an excellent tool for the prevention of pretrial publicity if the measure was passed and if it stood the test of constitutionality. But several of the persons interviewed, including Justice Kavanagh, believe the measure to be unconstitutional on the grounds that it prohibits the defendant from speaking out in his own behalf. Other spokesmen have made the same point, including Fred W. Vinson, Jr., Assistant Attorney General of the United States in charge of the criminal division of the Justice Department. Vinson said he doubted if any law which prohibited the defendant from publicly stating his defense, to make his alibi public, would meet the Supreme Court's standard of the first amendment's guarantee of right of free speech.⁶

There appear to be other problems inherent in the bill as well.

Frank Stanton, president of the Columbia Broadcasting System, pointed out that the Morse Bill would impose upon judges "the explosive job of sitting in virtually continuous judgment of the press."⁷ Judge Skelly Wright of the U. S. Court of Appeals, District of Columbia, told a bar association meeting in Chicago that the Morse Bill would close off important public offices to press inspection.

⁶Senate Subcommittee on Constitutional Rights, Free Press and Fair Trial Hearings on S. 290, 1965, p. 43.

⁷Frank Stanton, remarks at the Conference of New York State Trial Judges, Albany, N. Y., June 24, 1964.

To place the police stations and the DA's offices of this country off-limits to the press would, in my judgement, be a massive disservice to the course of criminal justice. In addition to being unconstitutional, external controls on the press are very wrong politically, socially and historically. Public officials, including judges, prosecutors, and the police, function best in a goldfish bowl.⁸

While the Morse Bill is designed to stop publicity at the source, it seems clear that some authorities recognize its indirect aim, the external restraint of the press, and condemn it. Many authorities also realize that the freedom to print a blank page is not really freedom of the press at all--there must be access to the news. As one legal scholar points out, "We say recklessly that readers or listeners have a 'right to know;' yet it is a right which they are helpless to claim if they do not know that they have the right to know what as yet they do not know."⁹

JUSTICE DEPARTMENT POLICY The Katzenbach plan, as it is referred to, applies only to officers of the Justice Department.¹⁰ But for purposes of this study, it will be assumed that such a policy had been adopted by both the Michigan State Police and the Oakland County Prosecutor's office.

Statements in category one, the Mafia link, would not

⁸ Skelly Wright, remarks at the Annual Meeting of the Bar Association of the Seventh Federal Circuit, Chicago, Ill., May 11, 1965.

⁹ Professor Hocking, quoted by Louis H. Mayo, "Comments Concerning the 1st Amendment and the People's Right to Know," Communications Media Legal and Policy Problems (Ann Arbor: University of Michigan Law School, 1954), p. 7.

¹⁰ See Appendix A for the complete Justice Department policy.

be affected. Again, the press and not the police made the connection between the testimony of George Edwards and the defendants in the Steren case.

Statements such as those listed in category two and three, which were made by the police, could not have been made under a policy such as this. Section four of the Justice Department policy explicitly states, "Disclosures (to the press) should include only incontrovertible, factual matters, and should not include subjective observations."¹¹

Statements, and pictures, concerning the evidence confiscated at the Steren Club (category four) would also have been prohibited under section six of the Justice Department policy which states that "personnel of the Department should refrain from making available . . . statements concerning evidence . . . in the case, whether or not it is anticipated that such evidence . . . will be used at trial."¹²

A personal opinion on the case by either the police or the prosecutor, as outlined in category five, would also have been prohibited under the "subjective observations" restriction noted previously. However, published opinions of the defense attorney, judge or witnesses would not have violated this policy.

This policy seems to get to the heart of the matter as viewed by the Oakland County interviewees. Each of them, in varying degrees, said they believed most of the allegedly

¹¹Appendix A, page 131

¹²Appendix A, page 132

prejudicial publicity is given to the press by the police. In addition, two of the four newsmen interviewed, Frank Angelo of the Free Press and John O'Brien of the News, said they favored the Katzenbach plan. The other two editors, Harry Reed of the Pontiac Press and Grant Howell of the Daily Tribune expressed a fear that any policy of this sort might lead to the press being shut out completely.

VOLUNTARY CODE The Massachusetts Guide for the Bar and the News Media is a good example of a voluntary code adopted by the legal and press associations within a state.¹³

If a code similar to the one in use in Massachusetts had been adopted in Michigan, the press should have voluntarily refrained from linking three defendants to the Mafia in the Steren case. The code states that the press should avoid "publication of the criminal record or discreditable acts of the accused. . . . The defendant is being tried on the charge for which he is accused and not his record."¹⁴

There is no law that states that membership in the Mafia is a crime. However, the deeds commonly associated with the organization are certainly discreditable. In the publicity about the Mafia at the time of the raid, constant references to the group as a "crime conspiracy" and George Edwards' remarks to the Detroit Chapter of Sigma Delta Chi October 23, 1963,¹⁵ 12 days after the raid, put a definite

¹³See Appendix B.

¹⁴Ibid., page 136

¹⁵See page 52 for this report.

stigma on the group. It is similar to the reference, "Politicians are crooks. John is a politician."

Commissioner Davids could certainly have made statements such as those in category two and three. The code would not apply to police. But the press, under the guideline "news stories of crime should contain only a factual statement of the arrest and attending circumstances"¹⁶ and the pronouncement "The publication of any . . . conclusions as to the innocence or guilt, implied or expressed, by the police. . . ." should be avoided,¹⁷ would be obligated to weigh the objectivity of these statements and discard them if they didn't meet the prescribed standards.

This author does not interpret any part of the code as prohibiting pictures or factual statements concerning evidence similar to that listed in category four.

Personal opinions by all might be excluded under the provision which suggests that publication of "locks, statements or conclusions as to the innocence or guilt, implied or expressed, by the police or prosecuting attorney or defense counsel" be avoided.¹⁸ However, this would be a questionable application in a situation in which a prosecutor offered an opinion that he believed the publicity of the case had been fair. An interpretation of the code would be needed to clarify any specific occurrences.

¹⁶See Appendix, page 135

¹⁷Ibid., page 136

¹⁸Ibid.

It should be pointed out that codes only provide suggested modes of behavior for the press and the bar. Violation of the code can result in only a sanction by the group and little more. For this reason, many persons don't believe a code will work. Telford Taylor, eminent legal scholar, pointed out

the press is not an entity. It has not a collective conscience for the evaluation of moral standards. It is not organized as a profession like the law, medicine or the military, from which individuals may be expelled for the departure from accepted and enforced standards of conduct. A loose amalgamation of all types with the widest possible range of tastes and standards and catering to very different audiences, there is a sharp competition for both news and readers within the media. Gresham's law operates with a vengeance; the exercise of commendable restraint in refraining from a particular publication may mean only that one's nearest competitor gets a scoop.¹⁹

Frank Angelo, managing editor of the Free Press, said that even a code is subject to the interpretation of the individual editor and really provides no firm guidelines.²⁰ This was noted earlier in the attempt to apply the guidelines to a specific case.

Daily Tribune managing editor Grant Howell said that he didn't believe he had the right to "bargain away" the rights of a free press, which belong to the people, by agreeing to a code.²¹

STRONGER ACTION BY THE BENCH The New Jersey Supreme

¹⁹Telford Taylor, "Crime Reporting and Publicity of Criminal Proceedings," Columbia Law Review, Vol. 66 (January, 1966), p. 54.

²⁰Angelo interview, supra note 15, Chapter IV.

²¹Howell interview, supra note 13, Chapter IV.

Court in the State v. Van Dwyne²² and the U. S. Supreme Court in the Sam Sheppard case both urged the trial judge to take a firmer hand in controlling the publicity in criminal cases. In the Sheppard decision Justice Thomas Clark spoke for the court when he said

the court should have made some effort to control the release of leads, information and gossip to the press by police officers, witnesses and the counsel for both sides. . . . And it is obvious that the judge should have further sought to alleviate this problem by imposing control over the statements made to the news media by counsel, witnesses and especially the coroner and police officers. . . .²³

Assuming the Supreme Court doctrine had been a well-defined policy of the Oakland County bench at the time of the raid, how effective would this remedy have been in stopping the release of information?

It would not have affected the statements in category one regarding the Mafia. The press originated this statement. The court doctrine could have only controlled its release to the press by the police or prosecutor.

The information and statements in categories two, three and four would also have not been affected by policy. These statements were all made the night the raid occurred. A judge hadn't been appointed to preside in the case. A circuit court judge wasn't appointed until nearly 15 months later. There was no judge to "impose control over the statements made to the news media."

²²43 N. J. 369, 204 A.2d 841 (1964).

²³New York Times, June 7, 1966.

The principle can be applied as well to the personal opinion statements of category five. Statements made before a judge was assigned to the case could not have been prohibited under this policy. It is true that Justice Ingle could have exercised discretion in the matter, but even he did not preside at the arraignment until October 21, ten days after the raid.

Attorney Robert Sterling said in an interview that the first 24 hours is the most crucial period for a defendant.²⁴ Sterling said most information about the crime and the suspect is released in this period.

Consequently, while the court policy offers flexibility not found in a set of written procedures, it would have little effect during the most crucial period. Judge Ziem suggested that the prosecutor administer the policy until a judge is assigned.²⁵ This might prove effective, but would necessitate a set of rules of some sort to insure the impartiality of the prosecutor.

Among other things, this study has proven that there is no simple solution to the problems being raised in the current free press--fair trial controversy. There is not even agreement on the nature of the problem or that there is a problem.

Adopting the unproven assumption that some kinds of publicity are prejudicial, it was shown that it was very

²⁴ Sterling interview, supra note 7, Chapter IV.

²⁵ Ziem interview.

difficult to control this type of publicity, at least in one specific case. And the results of testing the publicity against the remedies in the Steren case can probably with some degree of accuracy be generalized to other similar cases.

It is interesting to note that the interviewees generally blamed the news source rather than the press for the publication of allegedly prejudicial material. It is also interesting that the one proposed remedy which appeared to work best with regard to the Steren case, the Justice Department policy, received the approval of most of the interviewees, including two newsmen.

A further observation might be that publicity which is allegedly prejudicial is not necessarily inevitable. Judicious behavior by the police the night of the raid, a greater caution on the part of the attorneys when expressing their opinions on matters relating to the case, and perhaps even greater prudence by the press in relation to the continual reference to the Mafia when writing about the Steren Assembly Club raid would have eliminated much of the publicity which attorney Carlton Roeser believed was so damaging.

The puzzle which is encountered when researchers attempt to formulate a solution to the problems created by news coverage of a crime before the trial, has led many lawyers and judges to suggest the easy way out--to put controls on the press rather than on the news source. This is a danger of which all journalists must be aware.

A law, such as the Morse Bill, which on its face controls only news sources, inherently closes doors through which the press has previously had free access. Perhaps this is but a minor curb on the free press, removal of only the first brick in the wall mentioned at the beginning of this report. But when the first brick is taken away the second one comes out more easily. And soon many bricks are gone, and the wall begins to crumble.

CHAPTER VI

EPILOGUE

During the eight-month period that research for this paper was conducted this author was continually faced with the inescapable conclusion that the press on occasion does not exercise proper judgment or perspective in use of pretrial material. While inescapable, this conclusion is not readily provable. Hence, it has been isolated from the body of this report and is offered as an "educated opinion" rather than a proven thesis. There are some who undoubtedly would argue that the lack of substantiation should automatically disqualify use of the idea. However, this author would suggest that this topic should be explored before it is proven, for when it is proven, it might be too late.

To preface this discussion a brief outline of press theory is needed. There are two basic theories of the free press currently accepted and in use: the libertarian theory and the social-responsibility theory. Both are fully discussed in Four Theories of the Press.¹

A thumbnail sketch of the libertarian theory begins in 17th century England. The theory was in concert with

¹Fred S. Siebert, Theodore Peterson and Wilbur Schramm, Four Theories of the Press (Urbana, Ill.: University of Illinois Press, 1956).

the general philosophy of enlightenment which had as its aim to free man from all "outside restrictions on his capacity to use his reason for solving religious, political and social problems."² Man was considered a rational being and as such had the right to pursue truth. Several basic assumptions are inherent to the libertarian theory. The late Professor Carl Becker has stated these assumptions succinctly:

Men desire to know the truth and will be disposed to be guided by it . . . the sole method of arriving at the truth in the long run is by the free competition of opinion in the open market . . . since men will invariably differ in their opinions each man must be permitted to urge, freely and even strenuously, his own opinion, provided he accords the same rights to others . . . from this mutual toleration and consideration of diverse opinions the one that seems the most rational will emerge and be generally accepted.³

The libertarian theory is a free-wheeling idea. It prescribes few responsibilities or restraints for participants. Under this concept the functions of the mass media are to inform, entertain and provide a basis of economic support to assure financial independence. An essential characteristic of the concept is freedom from government control or domination. The theory holds that the multiplicity of voices, many promulgating unsound and false information, would be heard by the people who would ultimately accept what was true and reject what was false. While the libertarian accepts some checks, such as the protection of an individual reputation, he considers the extralegal check on

²Ibid., p. 43.

³Ibid., p. 44.

government the most important function of the press.

But a change in the intellectual climate of a nation, dramatic changes in technology and press economics, and developing criticism of the press wrought a new theory: the concept of social responsibility. This theory of the press has its roots deep in the libertarian theory, but was formulated by men who questioned the inherent rationality of man; who noted the change in the "free enterprise system" which brought the ownership of the press into a relatively few hands; who attacked the right of the individual to jeopardize the majority. The formal inception of the theory occurred following World War II when the Commission on the Freedom of the Press, a private group, met to study the press. The conclusions reached by the group and individual members differed from the libertarian concept. A new theory emerged, a theory which had as its major premise:

Freedom carries concomitant obligations; and the press, which enjoys a privileged position under our government, is responsible to society for carrying out certain essential functions of mass communication in contemporary society. To the extent that the press recognizes its responsibilities and makes them the basis of operational policies, the libertarian system will satisfy the needs of society. To the extent that the press does not assume its responsibilities, some other agency must see that the essential functions of mass communications are carried out.⁴

The "other agency" referred to in the preceding quote is presumably the government. The Commission on Freedom of the Press listed five things which society requires of its press. One of the requirements was that the press provide

⁴Ibid., p. 74.

"a truthful, comprehensive, and intelligent account of the day's events in a context which gives them meaning."⁵ The Commission went even further in an amplification of this requirement. "It is no longer enough to report the fact truthfully. It is now necessary to report the truth about the fact."⁶ Basically, then, the social responsibility theory implies a recognition by the press that they must perform a public service to warrant their existence.

It is the opinion of this author that the philosophy of contemporary American press is somewhere between the two theories, leaning away from the libertarian theory, but not yet fully embracing the social responsibility theory. The idea of government control, in fact, is repugnant to most editors. But repugnant or not, the threat of indirect or direct government control is real. The Morse Bill, for example, would be a strong indirect government control of the press.

This author believes that in many cases the press has failed to recognize this threat and in some cases, through irresponsibility, is encouraging government interference.

While it was shown in the preceding chapters that the police and attorneys were the source for most of the publicity in the Steren case, this author believes that the press revealed a lack of good judgment in news selection on occasion, and failed to provide a "truthful, comprehensive, and

⁵Ibid., p. 87.

⁶Ibid., p. 88.

intelligent account of the day's events in a context which gives them meaning." The press published the news as it occurred seemingly without question. Commissioner Davids' statement that the Steren Club was "the largest gambling operation this side of Las Vegas" was never asked to stand the test of proof. It would seem in this case the press would have a responsibility to seek the truth behind this alleged fact. The same can be said for the Davids' assertion that the club was "part of the over-all crime conspiracy in Detroit."

It is a personal opinion that the press lacked good judgment in the continual use of the alleged Mafia connection with two defendants. The editors interviewed contended this statement was important to warn the local public that organized crime had infiltrated into the suburb. And this is true. But how many times is it necessary to repeat this warning? Eight times, as the Tribune and the News each did; in stories published 20 months after the raid, as both papers did?

And what about editors like John O'Brien of the News who insist that crime news isn't important to build circulation, and that his paper makes an independent judgment on the use of news--but then admits that newspapering is a highly competitive business and that if his reporter stands back and lets the competition get a fact because he doesn't believe it should be used, "he will get bawled out by me." Does this reflect the presentation of an "intelligent

account" of the day's events?

As stated earlier, this author can offer no concrete proof that the press is courting trouble through some of its actions. But anyone who studies a single press problem for an extended period of time will likely get the same impression that this author did.

Government regulation of a press that does not assume its responsibilities could become a reality. A dissatisfied public could limit the freedom extended in the first amendment through the repeal power. More likely, however, the dissatisfaction of an unhappy public could be reflected in a change of the current liberal climate of the Supreme Court in interpretation of the first amendment.

Government restriction of the press has occurred before in this country. In 1798 the Alien and Sedition Laws won easy approval in Congress and were in force for two years before they expired. In his book Freedom of Information, Herbert Brucker commented: "All this is simply a reflection of the fact that throughout our national history we have never hesitated to restrict the freedom of expression when something else has seemed to matter more."⁷ The moral seems to be that today, perhaps more than ever before, the right to a free press must be earned.

⁷ Herbert Brucker, Freedom of Information, (New York: The MacMillan Company, 1949), p. 38.

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APPENDIX A

Office of the Attorney General
Washington, D. C.

Statement of Policy Concerning the Release of Information by Personnel of the Department of Justice Relating to Criminal Proceedings

[28 C.F.R. & 50.2 (1965)]

The availability to news media of information in criminal cases is a matter which has become increasingly a subject of concern in the administration of criminal justice. The purpose of this statement is to formulate specific guidelines for the release of such information by personnel of the Department of Justice.

1. These guidelines shall apply to the release of information to news media from the time a person is arrested or is charged with a criminal offense until the proceeding has been terminated by trial or otherwise.

2. At no time shall personnel of the Department of Justice furnish any statement or information for the purpose of influencing the outcome of a defendant's trial.

3. Personnel of the Department of Justice, subject to specific limitations imposed by law or court rule or order, may make public the following information:

(A) The defendant's name, age, residence, employment, marital status, and similar background information.

(B) The substance or text of the charge, such as a complaint, indictment, or information.

(C) The identity of the investigating and arresting agency and the length of the investigation.

(D) The circumstances immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons, and a description of items seized at the time of arrest.

Disclosures should include only incontrovertible, factual matters, and should not include subjective observations. In addition, where background information relating to the circumstances of an arrest would be highly prejudicial and where the release thereof would serve no law enforcement function, such information should not be made public.

4. Personnel of the Department shall not volunteer for publication any information concerning a defendant's prior criminal record. However, this is not intended to alter the Department's present policy that, since federal criminal conviction records are matters of public record permanently maintained in the Department, this information may be made available upon specific inquiry.

5. Because of the particular danger of prejudice resulting from statements in the period approaching and during trial, they ought strenuously to be avoided during that period. Any such statement or release shall be made only on the infrequent occasion when circumstances absolutely demand a disclosure of information and shall include only information

which is clearly not prejudicial.

6. The release of certain types of information generally tends to create dangers of prejudice without serving a significant law enforcement function. Therefore, personnel of the Department should refrain from making available the following:

(A) Observations about a defendant's character.

(B) Statements, admissions, confessions, or alibis attributable to a defendant.

(C) References to investigative procedures, such as fingerprints, polygraph examinations, ballistic tests, or laboratory tests.

(D) Statements concerning the identity, credibility, or testimony of prospective witnesses.

(E) Statements concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used at trial.

7. Personnel of the Department of Justice should take no action to encourage or assist news media in photographing or televising a defendant or accused person being held or transported in federal custody. Departmental representatives should not make available photographs of a defendant unless a law enforcement function is served thereby.

8. This statement of policy is not intended to restrict the release of information concerning a defendant who is a fugitive from justice.

9. Since the purpose of this statement is to set forth

generally applicable guidelines, there will, of course, be situations in which it will limit release of information which would not be prejudicial under the particular circumstances. If a representative of the Department believes that in the interest of the fair administration of justice and the law enforcement process information beyond these guidelines should be released in a particular case, he shall request the permission of the Attorney General or the Deputy Attorney General to do so.

Nicholas deB. Katzenbach
Attorney General

Date: April 16, 1965

APPENDIX B

Massachusetts Guide For the Bar and News Media

1. Guide for Press

Preamble

1. To promote closer understanding between the bar and the press, especially in their efforts to reconcile the constitutional guarantee of freedom of the press and the right to a fair, impartial trial, the following mutual and voluntary statement of principles is recommended to all members of both professions.
2. Both professions, recognizing that freedom of the press is one of the fundamental liberties guaranteed by the First Amendment to the United States Constitution, agree that this fundamental freedom must be zealously preserved and responsibly exercised subject only to those restrictions designed to safeguard equally fundamental rights of the individual.
3. It is likewise agreed that both the press and the bar are obliged to preserve the principle of the presumption of innocence for those accused of wrongdoing pending a finding of guilty.
4. The press and the bar concur on the importance of the natural right of the members of an organized society to acquire and impart information about their common

interests.

5. It is further agreed, however, that the inherent right of society's members to impart and acquire information should be exercised with discretion at those times when public disclosures would jeopardize the ends of justice, public security and other rights of individuals.
6. The press and the bar recognize that there may arise circumstances in which disclosures of names of individuals involved in matters coming to the attention of the general public would result in personal danger, harm to the reputation of a person or persons or notoriety to an innocent third party.
7. Consistent with the principles of this preamble, it is the responsibility of the bar, no less than that of the press, to support the free flow of information.

For the Press

Newspapers in publishing accounts of crimes should keep in mind that the accused may be tried in a court of law.

To preserve the individual's rights to a fair trial, news stories of crime should contain only a factual statement of the arrest and attending circumstances.

The following should be avoided:

1. Publication of interviews with subpoenaed witnesses after an indictment is returned.
2. Publication of the criminal record or discreditable acts of the accused after an indictment is returned or during the trial unless made part of the evidence in the court

record. The defendant is being tried on the charge for which he is accused and not on his record. (Publication of a criminal record could be grounds for a libel suit.)

3. Publication of confessions after an indictment is returned unless made a part of the evidence in the court record.
4. Publication of testimony stricken by the court, unless reported as having been stricken.
5. Editorial comment preceding or during trial, tending to influence judge or jury.
6. Publication of names of juveniles involved in juvenile proceedings unless the names are released by the judge.
7. The publication of any "leaks," statements or conclusions as to the innocence or guilt, implied or expressed, by the police or prosecuting authorities or defense counsel.

2. Guide for Broadcasting Industry

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The "Guide" for the "broadcast news media" incorporates in nearly identical language the principles proposed to govern the conduct of the "press."

3. Guide for the Bar

To preserve the individual's rights to a fair trial in a court of law the following guidelines are prescribed for the Bar.

1. A factual statement of the arrest and circumstances and incidents thereof of a person charged with a crime is permissible, but the following should be avoided:
 - (A) Statements or conclusions as to the innocence or guilt, implied or expressed, by the prosecuting authorities or defense counsel.
 - (B) Out-of-court statements by prosecutors or defense attorneys to news media in advance of or during trial, stating what they expect to prove, whom they propose to call as witnesses or public criticism of either judge or jury.
 - (C) Issuance by the prosecuting authorities, counsel for the defense or any person having official connection with the case of any statements relative to the conduct of the accused, statements, "confessions" or admissions made by the accused or other matters bearing on the issue to be tried.
 - (D) Any other statement or press release to the news media in which the source of the statement remains undisclosed.
2. At the same time, in the interest of fair and accurate reporting, news media have a right to expect the cooperation of the authorities in facilitating adequate coverage of the law enforcement process.

APPENDIX C

STATEMENT OF PRINCIPLES OF THE BENCH-BAR-PRESS OF THE STATE OF WASHINGTON

Preamble

The Bench, Bar and Press (comprising all media of mass communications) of Washington:

(a) Recognize that freedom of news media is one of the fundamental liberties guaranteed by the First Amendment of the Constitution of the United States and that this basic freedom must be seriously preserved and responsibly exercised.

(b) Are obliged to preserve the principle of the presumption of innocence for those accused of a crime until there has been a finding of guilt in an appropriate court of justice.

(c) Believe members of an organized society have the right to acquire and impart information about their mutual interests. The right to disseminate information should be exercised with discretion when public disclosures might jeopardize the ends of justice.

(d) Have the responsibility to support the free flow of information, consistent with the principles of the Constitution and this Preamble.

To promote a better understanding between the Bench and Bar of Washington and the Washington News Media,

particularly in their efforts to reconcile the constitutional guarantee of freedom of the press and the right to a fair, impartial trial, the following statement of principles, mutually drawn and submitted for voluntary compliance, is recommended to all members of these professions in Washington.

Principles

1. The News Media have the right and responsibility to print the truth. A free and responsible news media enhances the administration of justice. Members of the Bench and Bar should, within their respective canons of Legal ethics, cooperate with the news media in the reporting of the administration of justice.

2. Parties to litigation have the right to have their causes tried fairly by an impartial tribunal. Defendants in criminal cases are guaranteed this right by the Constitutions of the United States and the various states.

3. No trial should be influenced by the pressure of publicity from news media nor from public clamor, and lawyers and journalists share the responsibility to prevent the creation of such pressures.

4. All news media should strive for objectivity and accuracy. The public has a right to be informed. The accused has a right to be judged in an atmosphere free from undue prejudice.

5. The news media recognizes the responsibility of the judge to preserve order in the court and to seek the ends of justice by all those means available to him.

6. Decisions about handling the news rest with editors, but in the exercise of news judgments the editor should remember that:

(a) An accused person is presumed innocent until proven guilty.

(b) Readers and listeners and viewers are potential jurors.

(c) No person's reputation should be injured needlessly.

7. The public is entitled to know how justice is being administered. However, no lawyer should exploit any medium of public information to enhance his side of a pending case. It follows that the public prosecutor should avoid taking unfair advantage of his position as an important source of news; this shall not be construed to limit his obligation to make available information to which the public is entitled.

8. Proper journalistic and legal training should include instruction in the meaning of constitutional rights to a fair trial, freedom of press, and the role of both journalist and lawyer in guarding these rights.

ADOPTED March 26, 1966, in general session, by a joint committee representing the following groups:

Washington State Supreme Court; Superior Court Judges' Association; Washington State Magistrates' Assn.; Washington State Bar Association; Washington Assn. of Sheriffs & Chiefs of Police; Washington State Prosecuting Attorneys' Association; Allied Daily Newspapers of Washington; Washington Newspaper Publishers Assn.; Washington State Assn. of Broadcasters; The Associated Press; United Press-International; School of Communications, University of Washington.

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