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Michael G. Ryan

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strict construction. It follows that the utmost care must be exercised whether the plea is that of guilty or not guilty. In fact, the statute is so severe that it should be invoked with restraint and only against the hoodlum[16] who commits aggravated crime and tends to escape detection and and prosecution and is thus a social menace. In my opinion, this procedure was not intended for use against the petty offender who is readily caught and who invariably pleads guilty. If prosecutions are selected and tried with care, the convictions which follow will receive better treatment on review.

RIGHTS AND DUTIES OF THE PRESS IN CRIMINAL CASES

MICHAEL G. RYAN*

What is the duty of the press in criminal cases? Those versed in the traditions of the law would answer this question by saying that since a crime is "An act committed or omitted in violation of a public law forbidding or commanding it; a wrong which the government notices as injurious to the public, and punishes in what is called a criminal proceeding in its own name,"[1] the guilt or innocence of one accused of an offense against the state should be determined through utilization of time-tested criminal trial procedures, and the press should interfere with these procedures as little as possible.

That the press has a duty toward the public in handling news of criminal proceedings is undeniable, but this duty is a moral obligation or responsibility which always cannot be enforced by law. That some sections of the press seek to discharge this obligation with a deep sense of responsibility to their readers is one of the main reasons for the continued success of democratic society. That other sections of the press do not handle criminal cases with appropriate moderation is equally obvious.

Freedom of the press is a right secured by the Constitution of the United States and protected by state constitutions.

> Congress shall make no law . . . abridging the freedom of speech, or of the press, or the right of the people to peacefully assemble. . . .[2]
>
> No law shall be passed impairing the freedom of speech; every person shall be free to speak, write or publish whatever he will on any subject, being responsible for all abuse of that liberty; and in all suits and prosecutions for libel the truth thereof may be given in evidence, and the jury, under the direction of the court, shall determine the law and the fact.[3]

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[16] *Cf.* Routa v. People, *supra*, note 6.

* Student, University of Denver College of Law.

[1] Bouvier's Law Dictionary, unabridged, Vol. 1, p. 729.

[2] Constitution of the United States, First Amendment.

[3] Constitution of Colorado, Art. II, Sec. 10.

Under the accepted doctrine of freedom of the press there is no previous censorship or restraint on the press in handling of a criminal story on its merits according to the way the press sees it. Publication should be with good motives and for justifiable ends whether it respects government, magistracy, or individuals.[4] In *Patterson v. Colorado*,[5] the court held that the main purpose of the constitutional guarantee of freedom of the press was to prevent all such previous restraints upon publications as had been practiced by other governments, to insure immunity from previous restraints or censorship.

Freedom of the press includes not only exemption from censorship, but also security against laws enacted by the legislative branch of the government or measures resorted to by either of the other branches for the purpose of stifling just criticism or muzzling public opinion.[6] It has become firmly settled that the right of freedom of the press, guaranteed by the First Amendment to the Federal Constitution, is among the fundamental rights and liberties protected by the "due process" clause of the Fourteenth Amendment from impairment by the states.[7] Under the guarantees of freedom of the press, it is generally recognized that the public has the right to know and discuss all judicial proceedings, unless such right is expressly interdicted by constitutional provision, or unless the publication is of such nature as to obstruct or embarrass the court in its administration of the law.[8]

THE NEED FOR PUBLIC SCRUTINY

Mr. Justice Holmes elaborated on the philosophy underlying the doctrine of freedom of the press when he said:

> It is desirable that the trial of causes should take place under the public eye, not because the controversies of one citizen with another are of public concern, but because it is of the highest moment that those who administer justice should always act under the sense of public responsibility, and that every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed.[9]

This idea was expressed by the Colorado Supreme Court in *People v. News-Times Publishing Co.* [10] in the following language: "It is not a crime in this state to speak, write, or publish the truth concerning the official conduct of public officers."

It has long been realized that suppression of freedom of the press could be extended to include personal communication. Dr. Zechariah Chafee, Langdell Professor of Law at Harvard and recognized authority on civil rights in the United States, has stated that restraints on publication must be in relation to the safety of

[4] 11 Am. Jud. 1111.
[5] 205 U. S. 454, 27 S. C. 556 (1907).
[6] Note 4 *supra;* Coleman v. McLellan, 78 Kan. 711, 98 P. 281 (1908).
[7] DeJonge v. Oregon, 299 U. S. 353, 57 S. C. 255 (1937); Grosjean v. American Press Co., 299 U. S. 233, 56 S. C. 444 (1936).
[8] 11 Am. Jur. 1112.
[9] Cowley v. Pulsifer, 137 Mass. 392 (1884).
[10] 35 Colo. 253 (1906).

the state, and that restraint is not justified until the wrong of publication has been committed. Dr. Chafee has indicated that the purpose of the bar to previous restraint is to allow any person in authority, including members of the judiciary, to be brought before the just bar of public opinion.[11]

From the fact that a public trial is guaranteed to all those charged with crimes, it follows that the doors of the courtroom should be kept open to the public. Restrictions which might be imposed upon admission of the general public to a trial do not offer sufficient justification for a court's refusel to allow publication of accounts of trials.[12] The public has a right to know and to discuss all judicial proceedings. The press and other delineators of mass information are the most appropriate vehicles for enabling the public to know what goes on in the courts. It is well established that a court cannot keep from the newspapers information contained in public records.[13]

PROTECTION FROM ABUSES OF FREEDOM OF THE PRESS

Freedom of the press, like freedom of speech, is not a perfect or absolute right. It is subject to reasonable restrictions in the public interest. The fact that freedom of the press may be abused the fact that freedom of the press may be abused by miscreant purveyors of scandal does not make any less necessary the immunity from previous restraint in dealing with official misconduct.[14] Some degree of abuse is inseparable from the proper use of any right. Freedom of the press might be rendered a mockery and a delusion if, while every many was at liberty to publish what he pleased, the public authorities might nevertheless punish him for utterly harmless publications.

There has never been unlimited police power to suppress news accounts of criminal trials. Such police power growing out of statutory authorization has to bear a tangible relation to the health, comfort, morals, welfare or safety of the public. The public has an inherent right to know how its courts are functioning. If the public is not adequately informed, the way is open for unlicensed invasions of the rights of those charged with crime, without the restraining influence of an alert public opinion. Suppression of information regarding a criminal trial is tantamount to denial of freedom of thought and expression.

Although the great blessings of freedom of the press are recognized and universally protected in this country, abuse of that liberty is a great evil against which the people are entitled to be protected.[15] The full power of the state to protect the administration of justice by its courts has never been fully tested. It can

[11] "Free Speech in the United States," Harvard University Press, 1941.
[12] In re Shortridge, 99 Cal. 256, 34 P. 227 (1893).
[13] Bend Publishing Co. v. Haner, 244 P. 868 (1926).
[14] Near v. Minnesota, 283 U. S. 697, 51 S. C. 625 (1931).
[15] People v. Stapleton, 18 Colo. 568 (1893).

be assumed, however, that such power is great and is open to statutory extension and improvement.

It must always be determined whether a provocative publication regarding a criminal case is made with a view toward influencing the results of a trial. This presents an almost insurmountable evidentiary problem. In the final analysis, when there has been a clear abuse by a newspaper of its hard-won and time-honored privilege of freedom, the question is whether the privilege of free discussion outweighs the interests of both the state and the defendant in a fair trial. This becomes the inevitable question, and only responsible handling of crime and allied news can obviate the necessity for asking it.

It has been said that freedom of the press is not interfered with except by suppression of newspaper accounts before publication.[16] Holding the press to rules of reporting in criminal trials by means of laying down conditions under which a trial could be reported would be unconstitutional as a prior restraint on the press. Previous restraint on the press is a more serious breach of the First Amendment than would be subsequent punishment of a newspaper for abuse of its freedom.[17]

When freedom of the press is used in such a way as to become license, what are the constitutional protections of the state or the individuals concerned? Answering the question of the relative desirability of having causes tried by the courts or by the newspapers, a Colorado court once observed, "Parties have a constitutional right to have their causes tried fairly in court, by an impartial tribunal, uninfluenced by newspaper dictation or popular clamor."[18]

In *State v. Pioneer Press Co.*[19] a Minnesota supreme court held that there is ". . . no restraint upon the power of the legislature to punish for publication of matter which is injurious to society according to the standard of the common law," and that the state is not deprived, by the doctrine of freedom of the press, of its primary right of self-preservation. Freedom of the press has been held subordinate to judicial independence.[20]

In 1893 the Colorado Supreme Court was none to gentle with the press of that day when it said in *People v. Stapleton*:

> Thoughtful citizens know very well that there is far more danger to our institutions, and far more danger to the rights of the people, and especially to the rights of litigants, to be apprehended from the power of the press over the courts, than from the power of the courts over the press.[21]

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[16] Gitlow v. Kiely, 44 F. (2d) 227 (1930).
[17] Near v. Minnesota, 283 U. S. 697, 51 S. C. 625 (1931).
[18] Cooper v. People, 13 Colo. 337 (1889).
[19] 110 N. W. 867 (1907).
[20] In re Independent Publishing Co., 240 F. 849 (9th Cir. 1917).
[21] 18 Colo. 568 (1893).

ACTIONS DEEMED TO BE INTERFERENCE WITH JUSTICE

The following actions are considered a substantial interference with the administration of justice: polling the public during a trial regarding the guilt or innocence of accused; partisan presentation; innuendos of jury-fixing by one side; threatening a judge with defeat in succeeding election; publishing suggestions regarding impeachment of judge.

The remedies for such activities appear to be voluntary self-discipline by the press; action by aggrieved against newspaper; change of venue; more careful screening of jury; lock-up of jury to protect from undue influence; working agreement on handling of criminal cases and news involving similar problems through understanding between bar associations and newspaper editors.[22]

A new trial may be granted when the trial court estimates that the damage by press influence has been serious to the cause of the losing party. Actual influence does not have to be shown, only that the press tone was calculated to influence, and that the jury was subjected to this influence by having an opportunity to read articles, or that it was in a position to be so influenced due to separation for the night.

Punishing a publication for contempt, for harrassing the courts and judicial officials thereof, has been resorted to frequently in England, but such practice is virtually non-existent in this country. In England, use of the contempt power is resorted to in punishing publications for interference with impartial decisions of cases pending, that is, from the time the accused is brought before a migistrate before indictment. Mention of a purported confession and publication of prior criminal record of accused are severely dealt with by English courts.[23] Constructive contempt power is limited by statutes in the United States, and contempt has seldom been found except in cases occurring "in presence of court" or where tactics have been openly obstructionist to the administration of justice. Interference with judicial process has been found where the jury, as well as the judge, has been subjected to pressure.

HARDY JUDGES NEEDED TO RESIST PRESS INFLUENCE

It can be argued that newspaper influence on criminal decisions is negligible where the judicial officer is endowed with wisdom and strength of character as well he should be in essaying to fulfill judicial responsibility. Mr. Justice Douglas is among those who feel we are over-tender in our zeal to protect the judiciary:

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[22] The Part Newspapers Play in the Administration of Justice, 8 J. Am. Jud. Soc. 133 (1924).

[23] Arthur L. Goodhart, "Newspapers and Contempt of Court in English Law," 48 Harv. L. R. 855 (1935).

> . . . the law of contempt is not made for the protection of judges who may be sensitive to the winds of public opinion. Judges are supposed to be men of fortitude, able to thrive in a hardy climate.[24]

The judge, as an educated, trained, and impartial individual, must rise above the verbiage of legal battle in the courtroom to determine the rulings of law applicable. He must also rise above all exterior clamor to protect the accused from oppressive verdicts. His judicious spirit should be the dominant influence in spite of the din of press or public for a certain decision.

An example of a newspaper's policy regarding coverage of crime with which the author is familiar is that of the *Denver Post.* Managing Editor Edmund J. Dooley states: "We . . . handle crime stories as objectively as we know how, and display them in the paper on their merits." Offensiveness in crime is avoided. "Objectivity," crux of any fair policy on crime coverage, might be defined as grasping and representing facts as they are, unbiased by prejudice or temperament, or apart from the author's or newspaper's own personality.

It is established *Denver Post* policy, as it is with other responsible sections of the press, not to use the names of youths and children under 18 years of age in connection with criminal cases. Exception is made in major murder cases wherein the court may determine permission because of public knowledge. Courts may allow identification of youths and children where public knowledge is already an accomplished fact, and where it is felt that such identification may serve as a deterrent to others.

The press looks upon crime as a fact, something which, unfortunately, is here to stay. Because it is such a prevalent fact of everyday life, it should be treated objectively. This is a fair attitude, and if universally adhered to, would lead to no harrassment of judicial officials, nor would there be that type of coverage which might tend to exert an indirect influence over criminal decisions. The verdict in a criminal case should never be, primarily, the general verdict of the political community as interpreted by the press.

INVENTORY CONTROL REGULATION ISSUED BY NPA

Acting under the Defense Production Act of 1950, the National Production Authority of the U. S. Department of Commerce issued Regulation No. 1, governing inventory control, on September 18. Copies of the regulation are available to interested parties at the regional office of the department, 210 Boston Bldg., Denver. This office serves as field representative of the NPA, and through its director, Charles E. Brokaw, has extended an invitation to supply such information as is available on questions in connection with operations under the Defense Production Act.

[24] Craig v. Harney, 331 U. S. 367, (1947).

Who Gets The Welfare In A "Welfare State"?

That's easy. There's a formula. You've seen it. Be sure you recognize it next time. Here's how it goes:

Somebody promises to give you something (a subsidy, or a wage increase without a production increase), if you'll give him a little something in return—just a little something—a vote, perhaps.

So, you give and you get. Or you think you do. Maybe what you get increases the national debt or decreases corporation profits. What do you care? Let's see:

National debt? That's mortgaging your child's future. Let the rich pay it? That's silly. Take every penny every one of them has, and you wouldn't make more than a dent in the national debt. Every dollar added to it by the giveaway bureaucrats has to be paid back by you and your children and your grandchildren.

Take it out of corporation profits? If all the profits of all the corporations were taken, you would pay only a tiny fraction of the national debt.

The plain truth is that no one is giving you anything. Last year it was reported that the federal government "gave" to the states five and a half billion dollars. That money, of course, first came from the states. But we are informed $625,000,000 of it never got back to the states—that was the cost of taking it away from you, and giving part of it back.

When anyone promises you something for nothing, you can be sure he gets a lot of the something, and you get a lot of the nothing.

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