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File commence '73

Golden Gate Law School -
Commencement Address -
May 26, 1973

FREEDOM OF THE PRESS

MEMBERS OF THE GRADUATING CLASS AND MEMBERS OF
THE FACULTY OF GOLDEN GATE LAW SCHOOL, LADIES AND GENTLEMEN:

WELCOME, MEMBERS OF THE GRADUATING CLASS TO THE
LEGAL PROFESSION AND CONGRATULATIONS TO YOU UPON HAVING
COMPLETED A LONG, ARDUOUS COURSE OF STUDY.

RECENTLY, WE HAVE READ MUCH IN THE PRESS RELATING
TO THE WATERGATE MATTER AND TO TRIALS OF PUBLIC INTEREST,
SUCH AS DANIEL ELLSBERG, RUCHELL MAGEE, ANGELA DAVIS AND
JUAN CORONA.

THE PRESS PLAYS AN IMPORTANT ROLE IN OUR SOCIETY.
I SUBMIT IT WOULD BE APPROPRIATE THEREFORE TO CONSIDER,
BRIEFLY, THE ROLE OF THE PRESS IN OUR SOCIETY. WHEN I SAY
"PRESS" I REFER TO NEWSPAPERS, RADIO AND TELEVISION.

IN THE LAST FEW YEARS, MUCH CONTROVERSY HAS BEEN

GENERATED BY THE APPARENT CONFLICT BETWEEN THE FIRST AND SIXTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, — THAT IS, THE RIGHT OF THE PUBLIC TO KNOW AND THE RIGHT OF THE INDIVIDUAL TO A FAIR TRIAL. WITHIN THE RECENT PAST, SENATOR PROXMIRE COMPLAINED THAT THE PRESS IS "PRACTICING 'McCARTHYISM' AT ITS WORST," BY PRINTING "SENSATIONAL" STORIES LINKING THE CHIEF EXECUTIVE TO THE WATERGATE SCANDAL, WITHOUT PROOF. HE SAID:

"PRESIDENT NIXON IS BEING TRIED, SENTENCED AND EXECUTED BY RUMOR AND ALLEGATION."

SENATOR HUGH SCOTT, SPEAKING OF THE PRESS, SAID:

"WHEN THEY RIDE MOMENTUM AND DECIDE TO TURN A WHISPER INTO A CHARGE, A RUMOR INTO A FACT, A WRONGFUL DEED BY ONE PERSON INTO A WRONGFUL DEED BY ANOTHER * * * THAT'S DEMAGOGUERY."

ON THE OTHER HAND, JAMES RESTON WRITES:

"WOULD THIS SCANDAL HAVE REACHED THE PRESENT

POINT OF DISCLOSURE IF THE PRESS HAD NOT REPORTED
THE SECRET TESTIMONY OF WITNESSES IN THE CASE?"

AND SO THE ISSUE IS JOINED.

IN 1966 THE AMERICAN BAR ASSOCIATION IN A REPORT,
COMMONLY REFERRED TO AS THE REARDON REPORT, SOUGHT TO
ESTABLISH STANDARDS REGULATING AND HANDLING OF INFORMATION
BY THE BAR, IN CONNECTION WITH CRIMINAL PROSECUTIONS. THE
REPORT WOULD HAVE IMPOSED SEVERE LIMITATIONS ON THE DIS-
CLOSURE OF INFORMATION CONCERNING PERSONS ACCUSED OF CRIME
FROM THE TIME OF ARREST TO THE CONCLUSION OF THE TRIAL.

A REPRESENTATIVE OF THE AMERICAN NEWSPAPER PUB-
LISHERS ASSOCIATION, ED MURRAY, STATED THAT THE PRESS WAS
AS INTERESTED IN A FAIR TRIAL AS WAS THE BAR; THAT IF THE
BAR ASSOCIATION REPORT WERE IMPLEMENTED, IT WOULD IMPAIR
RELATIONS BETWEEN THE PRESS AND THE PUBLIC, ON THE ONE HAND,
AND THE BENCH, BAR AND POLICE ON THE OTHER HAND. HE SAID
THAT:

"* * * THE REPORT THREATENS FOUR BASIC RIGHTS - 'THE RIGHT OF THE CITIZEN TO BE SECURE IN HIS PERSON AND HIS PROPERTY; THE RIGHT OF THE CITIZEN TO KNOW WHAT HAS HAPPENED WHEN A CRIME HAS DISRUPTED THE ORDER OF THE SOCIETY, THEREBY THREATENING ITS MEMBERS; THE RIGHT OF THE CITIZEN TO KNOW WHAT THE LAW ENFORCEMENT OFFICERS ARE DOING TO ENFORCE THE LAW; AND THE RIGHT OF THE CITIZEN TO KNOW THAT THE POLICE HAVE ARRESTED, AND THAT THE STATE IS PROCEEDING IN AN ORDERLY AND LEGAL WAY AGAINST THE MOST LIKELY SUSPECT'" (UPI - 1-22-68).

ABOUT FIVE YEARS AGO, THE AMERICAN NEWSPAPER ASSOCIATION PUBLISHED ITS OWN COMPREHENSIVE REPORT ON THE RELATIONSHIP OF THE PRESS TO THE COURTS, AND TOOK AN APPROACH DIFFERENT FROM THE RIGID FORMULAS PROPOSED BY THE AMERICAN BAR ASSOCIATION. THE APPROACH OF THE AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION WAS SUMMED UP AS FOLLOWS:

"WE BELIEVE IN THE COOPERATIVE PRESS-BAR SOLUTION. WE THINK THE BAR AND BENCH SHOULD AGREE TO FULL DISCLOSURE, AT THE DISCRETION OF THE

EDITOR, OF ALL DETAILS CONCERNING CRIME AND THOSE ACCUSED AT THE BEGINNING STAGE: PREARREST, ARREST AND IMMEDIATE POST-ARREST. IN EXCHANGE, WE THINK THE PRESS SHOULD COOPERATE FULLY WITH THE COURTS BY WITHHOLDING POSSIBLY INADMISSIBLE FACTS, WHICH MAY OR MAY NOT HAVE BEEN PUBLISHED EARLIER, AT THE PRE-TRIAL AND TRIAL STAGE" (UPI - 1-22-68).

ON THE SURFACE, AT LEAST, THE ISSUE SEEMS TO BE CLEAR - THE INSISTENCE BY THE NEWS MEDIA, ON THE ONE HAND, TO PROTECT THE PUBLIC'S RIGHTS TO KNOW, AND THE CONCERN OF LAWYERS AND JUDGES, ON THE OTHER HAND, THAT THE RIGHT TO A FAIR TRIAL IS ASSURED TO EVERYONE.

IN VIEW OF THE RECENT DISCLOSURES CONCERNING WATERGATE, ONE MIGHT ASK HOW ANYONE WHO IS INDICTED COULD RECEIVE A FAIR TRIAL, GUILTY OR NOT. ONE MIGHT ALSO ASK HOW DANIEL ELLSBERG COULD HAVE RECEIVED A FAIR TRIAL, IN VIEW OF THE ACCUSATIONS, AND COUNTER-ACCUSATIONS, MADE IN THE PRESS OVER THE MONTHS. AND ONE MUST WONDER AT THE ORDER OF THE COURT SEQUESTERING THE JURY IN THE MANSON CASE, SEPARATING THEM FROM SPOUSES AND FAMILIES AND FRIENDS, FOR

OVER NINE MONTHS.

SINCE 1959, THE UNITED STATES SUPREME COURT HAS REVERSED SIX CRIMINAL CONVICTIONS ON THE GROUND OF PREJUDICIAL PUBLICITY BY THE NEWS MEDIA.

(1) IN MARSHALL v. UNITED STATES (1959) 360 U.S. 310. [CONVICTION FOR UNLAWFULLY DISPENSING CERTAIN DRUGS REVERSED. EVIDENCE OF PRIOR CONDUCT (THAT DEFENDANT HAD PRACTICED MEDICINE WITHOUT A LICENSE)], EVIDENCE EXCLUDED BY THE TRIAL JUDGE AS "COLLATERAL" AND "PREJUDICIAL," REACHED JURORS THROUGH NEWSPAPER STORIES.

(2) IN JANKO v. UNITED STATES (1961) 366 U.S. 716. [SIX LINE PER CURIAM OPINION GRANTING CERTIORARI, AND REVERSING AND REMANDING FOR NEW TRIAL, BASED UPON EXAMINATION OF RECORD BY COURT AND CONFESSION OF ERROR BY DEPARTMENT OF JUSTICE. JUSTICE FRANKFURTER SAID IN IRVIN v. DOWD (1961) 366 U.S. 717, 630 (CONCURRING OPINION), THAT THE CONVICTION, FOR INCOME TAX EVASION, WAS REVERSED BECAUSE] THE COURT HELD THAT "PREJUDICIAL NEWSPAPER INTRUSION * * * POISONED THE OUTCOME."

(3) IN IRVIN v. DOWD (1961) 366 U.S. 717, THE COURT ORDERED RELEASED THE DEFENDANT WHO HAD BEEN FOUND GUILTY OF MURDER BECAUSE OF EXTENSIVE, INFLAMMATORY NEWSPAPER, TELEVISION AND RADIO PUBLICITY.

(4) IN RIDEAU v. LOUISIANA (1963) 373 U.S. 723, A CONVICTION FOR MURDER WAS REVERSED. THE SHERIFF COOPERATED IN MAKING A MOTION PICTURE FILM, WITH SOUND, OF DEFENDANT'S INTERROGATION, AND CONFESSION TO A BANK ROBBERY, KIDNAPPING AND MURDER. THE FILMED "INTERVIEW" WAS SHOWN SEVERAL TIMES ON LOCAL TELEVISION AND A MOTION FOR CHANGE OF VENUE HAD BEEN DENIED.

(5) IN ESTES v. TEXAS (1965) 381 U.S. 532, THE LIVE TELECASTING OF PORTIONS OF THE TRIAL PREJUDICED THE DEFENDANT'S RIGHT TO A FAIR TRIAL.

(6) IN SHEPPARD v. MAXWELL (1966) 384 U.S. 333, THE COURT ORDERED A NEW TRIAL BECAUSE OF "PERVASIVE PUBLICITY GIVEN CASE THROUGHOUT TRIAL, MUCH OF WHICH INVOLVED INCRIMINATING MATTERS NOT INTRODUCED AT TRIAL."

ACTUALLY, THE RELATIONSHIP OF NEWS MEDIA
COVERAGE TO CRIMINAL PROCEEDINGS, AND THE IMPACT OF SUCH
COVERAGE UPON JURORS AND OTHERS CONNECTED WITH SUCH
TRIALS, IS NOTHING NEW. AS FAR BACK AS 1846 ONE AUTHOR
SAID:

"OURS IS THE GREATEST NEWSPAPER READING
POPULATION IN THE WORLD; NOT A MAN AMONG US
FIT TO SERVE AS A JUROR, WHO DOES NOT READ
THE NEWSPAPERS. EVERY GREAT AND STARTLING
CRIME IS PARADED IN THEIR COLUMNS, WITH ALL
THE MINUTENESS OF DETAIL THAT AN EAGER
COMPETITOR FOR PUBLIC FAVOR CAN SUPPLY. HENCE
THE USUAL QUESTION, WHICH HAS NOW BECOME
ALMOST A NECESSARY FORM IN EMPANELING A JURY,
'HAVE YOU FORMED OR EXPRESSED AN OPINION?'
IS VIRTUALLY EQUIVALENT TO THE INQUIRY, 'DO YOU
READ THE NEWSPAPERS?' . . . IN THE CASE OF A
PARTICULARLY AUDACIOUS CRIME THAT HAS BEEN
WIDELY DISCUSSED IT IS UTTERLY IMPOSSIBLE THAT
ANY MAN OF COMMON INTELLIGENCE, AND NOT WHOLLY
SECLUDED FROM SOCIETY, SHOULD BE FOUND, WHO HAD
NOT FORMED AN OPINION" (TRIAL BY JURY IN NEW
YORK, (1846) 9 L.REP. 193, 198).

THROUGH THE YEARS, THE PUBLIC HAS GROWN ACCUSTOMED TO EXTENSIVE NEWS MEDIA COVERAGE OF NOTORIOUS CRIMINAL CASES. ONE HAS ONLY TO REFLECT A MOMENT TO RECALL THE SACCO-VANZETTI TRIAL IN THE 1920's, THE HAUPTMANN TRIAL IN THE 1930's INVOLVING THE LINDBERGH KIDNAPPING CASE, ALGER HISS' TRIAL IN THE LATE 1940's, THE JACK RUBY TRIAL IN THE 1960's.

CALIFORNIA HAS BEEN NO STRANGER TO EXTENSIVE PRE-TRIAL AND TRIAL PUBLICITY IN NOTORIOUS CRIMINAL CASES. EXAMPLES OF RECENT TIMES WOULD INCLUDE THE FINCH-TREGOFF MURDER TRIAL IN LOS ANGELES, WHERE ONE LOCAL NEWSPAPER HIRED ACTRESSES TO INTERVIEW THE WITNESSES AND THE PARTIES DURING THE COURSE OF THE TRIAL; THE FRANK SINATRA, JR. KIDNAPPING TRIAL, WHERE COURT AND PRESS FOUND THEMSELVES AT LOGGERHEADS OVER PUBLICATION OF OUT-OF-COURT INTERVIEWS; AND THE SILVERTHORNE TRIAL IN SAN FRANCISCO, INVOLVING THE SAN FRANCISCO NATIONAL BANK, WHERE A MISTRIAL WAS DECLARED BECAUSE OF STORIES PRINTED BY THE PRESS DURING THE COURSE OF THE PROCEEDINGS.

NEEDLESS TO SAY, THE NEWS MEDIA HAS BEEN DEEPLY CONCERNED WITH THE EFFECT OF SUCH PUBLICITY UPON THE RIGHT OF AN ACCUSED TO A FAIR TRIAL.

AFTER THE SHEPPARD TRIAL IN OHIO, JOHN M. HARRISON, ASSOCIATE EDITOR FOR THE TOLEDO BLADE, WRITING IN THE SATURDAY REVIEW, COMMENTED:

"WHAT OF THIS KIND OF SITUATION, IN WHICH IT IS ALLEGED THAT THE PRESS - BY FACT AND MANNER OF TRIAL AND PRE-TRIAL REPORTING AND EDITORIAL COMMENT - SERIOUSLY JEOPARDIZES THE RIGHT OF A DEFENDANT TO FAIR TRIAL? ARE COURTS AND LEGISLATURES LIKELY TO PUT NEW LIMITS ON PRESS FREEDOMS IF SUCH DAMAGE TO THE RIGHTS OF INDIVIDUALS IS ESTABLISHED?

"SUCH ACTION IS NOT AT ALL IMPOSSIBLE UNLESS NEWSPAPERS DISPLAY MORE CONCERN TO CONTROL THEMSELVES. SOME KIND OF STATUTORY REMEDY ALMOST CERTAINLY WILL BE DEMANDED IF THERE ARE MANY MORE PERFORMANCES LIKE THAT OF CLEVELAND NEWSPAPERS IN THE SHEPPARD CASE LAST YEAR" (THE SATURDAY REVIEW, OCTOBER 15, 1955, pp. 10-11).

AS THE YEARS HAVE PASSED, THE COURTS HAVE BECOME INCREASINGLY CONCERNED WITH THE DEGREE OF PUBLICITY

SURROUNDING INVESTIGATIONS AND CRIMINAL PROCEEDINGS.

IN 1961, IN A CONCURRING OPINION IN IRVIN v. DOWD (1961) 366 U.S. 717, JUSTICE FRANKFURTER SAID:

"NOT A TERM PASSES WITHOUT THIS COURT BEING IMPORTUNED TO REVIEW CONVICTIONS, HAD IN STATES THROUGHOUT THE COUNTRY, IN WHICH SUBSTANTIAL CLAIMS ARE MADE THAT A JURY TRIAL HAS BEEN DISTORTED BECAUSE OF INFLAMMATORY NEWSPAPER ACCOUNTS * * * EXERTING PRESSURES UPON POTENTIAL JURORS BEFORE TRIAL * * * THEREBY MAKING IT EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO SECURE A JURY CAPABLE OF TAKING IN, FREE OF PREPOSSESSIONS, EVIDENCE SUBMITTED IN OPEN COURT. SEE MARYLAND v. BALTIMORE RADIO SHOW 338 U.S. 912, 915" (IRVIN v. DOWD (1961) 717, 730).

AT THE END OF HIS OPINION, JUSTICE FRANKFURTER SOUNDED A WARNING:

"THIS COURT HAS NOT YET DECIDED THAT THE FAIR ADMINISTRATION OF CRIMINAL JUSTICE MUST BE SUBORDINATED TO ANOTHER SAFEGUARD OF OUR CONSTITUTIONAL SYSTEM - FREEDOM OF THE PRESS, PROPERLY CONCEIVED. THE COURT HAS NOT YET

DECIDED THAT, WHILE CONVICTIONS MUST BE REVERSED AND MISCARRIAGES OF JUSTICE RESULT BECAUSE THE MINDS OF JURORS OR POTENTIAL JURORS WERE POISONED THE POISONER IS CONSTITUTIONALLY PROTECTED IN PLYING HIS TRADE" (IRVIN v. DOWD (1961) 366 U.S. 717, 730).

STRONG WORDS, INDEED.

IN 1964, THE WARREN REPORT WAS SHARPLY CRITICAL OF THE MANNER IN WHICH THE MEMBERS OF THE DALLAS POLICE DEPARTMENT, AT ALL LEVELS, THE DALLAS PROSECUTING AUTHORITIES AND THE NEWS MEDIA HAD BEHAVED IN DISSEMINATING INFORMATION CONCERNING LEE HARVEY OSWALD. IT BEGAN WITH A RECOGNITION OF THE DUTY OF THE PRESS:

"THE COMMISSION RECOGNIZES THAT THE PEOPLE OF THE UNITED STATES, AND INDEED THE WORLD, HAD A DEEP-FELT INTEREST IN LEARNING OF THE EVENTS SURROUNDING THE DEATH OF PRESIDENT KENNEDY, INCLUDING THE DEVELOPMENT OF THE INVESTIGATION IN DALLAS. AN INFORMED PUBLIC PROVIDED THE ULTIMATE GUARANTEE THAT ADEQUATE

STEPS WOULD BE TAKEN TO APPREHEND THOSE RESPONSIBLE FOR THE ASSASSINATION AND THAT ALL NECESSARY PRECAUTIONS WOULD BE TAKEN TO PROTECT THE NATIONAL SECURITY. IT WAS THEREFORE PROPER AND DESIRABLE THAT THE PUBLIC KNOW WHICH AGENCIES WERE PARTICIPATING IN THE INVESTIGATION AND THE RATE AT WHICH THEIR WORK WAS PROGRESSING" (THE PRESIDENT'S COMMISSION ON THE ASSASSINATION OF PRESIDENT KENNEDY, pp. 239-242).

BUT IT ADDED:

"HOWEVER, NEITHER THE PRESS NOR THE PUBLIC HAD A RIGHT TO BE CONTEMPORANEOUSLY INFORMED BY THE POLICE OR PROSECUTING AUTHORITIES OF THE DETAILS OF THE EVIDENCE BEING ACCUMULATED AGAINST OSWALD. UNDOUBTEDLY THE PUBLIC WAS INTERESTED IN THESE DISCLOSURES, BUT ITS CURIOSITY SHOULD NOT HAVE BEEN SATISFIED AT THE EXPENSE OF THE ACCUSED'S RIGHT TO A TRIAL BY AN IMPARTIAL JURY. THE COURTROOM, NOT THE NEWSPAPER OR TELEVISION SCREEN, IS THE APPROPRIATE FORUM IN OUR SYSTEM FOR THE TRIAL OF A MAN ACCUSED OF A CRIME" (THE PRESIDENT'S COMMISSION ON THE ASSASSINATION OF PRESIDENT KENNEDY, pp. 239-242).

THE PRESS ITSELF WAS DISTURBED ABOUT THE IMPACT OF ITS
COVERAGE. AS STATED IN THE WARREN REPORT:

"AT ITS ANNUAL MEETING IN WASHINGTON IN
APRIL 1964, THE AMERICAN SOCIETY OF NEWSPAPER
EDITORS DISCUSSED THE ROLE OF THE PRESS IN
DALLAS IMMEDIATELY AFTER PRESIDENT KENNEDY'S
ASSASSINATION. THE DISCUSSION REVEALED THE
STRONG MISGIVINGS AMONG THE EDITORS THEMSELVES
ABOUT THE ROLE THAT THE PRESS HAD PLAYED AND
THEIR DESIRE THAT THE PRESS DISPLAY MORE SELF-
DISCIPLINE AND ADHERE TO HIGHER STANDARDS OF
CONDUCT IN THE FUTURE. TO PREVENT A RECURRENCE
OF THE UNFORTUNATE EVENTS WHICH FOLLOWED THE
ASSASSINATION, HOWEVER, MORE THAN GENERAL CONCERN
WILL BE NEEDED. THE PROMULGATION OF A CODE OF
PROFESSIONAL CONDUCT GOVERNING REPRESENTATIVES
OF ALL NEWS MEDIA WOULD BE WELCOME EVIDENCE THAT
THE PRESS HAD PROFITED BY THE LESSON OF DALLAS"
(THE PRESIDENT'S COMMISSION ON THE ASSASSINATION
OF PRESIDENT KENNEDY, pp. 239-242).

ON JANUARY 6, 1965, SENATOR WAYNE MORSE INTRODUCED
A BILL "TO PROTECT THE INTEGRITY OF THE COURT AND JURY

FUNCTION IN [FEDERAL] CRIMINAL CASES" (S. 290, 89TH CONG.,
1ST SESS. (1965)). THE BILL WAS COSPONSORED BY 15 SENATORS
AND ENDORSED BY THE JUDICIAL CONFERENCE OF THE UNITED
STATES - [JUDICIAL CONFERENCE OF THE UNITED STATES, REPORT
OF PROCEEDINGS (March 18-19, 1965, p. 21).]

IT PROVIDED:

"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 PUB-
LICATION INFORMATION NOT ALREADY PROPERLY
FILED WITH THE COURT WHICH MIGHT AFFECT THE
OUTCOME OF ANY PENDING CRIMINAL LITIGATION,
EXCEPT EVIDENCE WHICH HAS ALREADY BEEN ADMITTED
AT THE TRIAL."

IT PUNISHED CONTEMPT BY A FINE NOT EXCEEDING
\$1,000.

THE MORSE PROPOSAL LATER DIED IN CONGRESS.

THEN, IN OCTOBER, 1966, THE ABA COMMITTEE PUBLISHED

ITS TENTATIVE DRAFT OF STANDARDS RELATING TO FAIR TRIAL AND
FREE PRESS.

THE REACTION OF THE PRESS WAS IMMEDIATE, AND, IN
MANY CASES, OF ALARM:

"WE REGARD THE A.B.A. PROPOSALS AS INIMICAL TO
PUBLIC SAFETY AND A DENIAL OF THE PUBLIC'S RIGHT
TO KNOW. WE SOMETIMES WISH THAT COMMITTEES OF
BUSYBODIES SEEKING TO INFRINGE ON THE FREEDOM
OF THE PRESS WOULD READ THE 1ST AMENDMENT
BEFORE THEY LEAP INTO ACTION" (CHICAGO TRIBUNE,
OCTOBER 3, 1966 (EDITORIAL)).

NICK WILLIAMS, THE EDITOR OF THE LOS ANGELES TIMES,
STATED:

"THE OVER-ALL EFFECT OF THE REARDON COMMITTEE'S
PROPOSALS WOULD BE TO CREATE A TIME OF SILENCE --
A TIME OF POTENTIALLY DANGEROUS SECRECY FOR LAW
ENFORCEMENT PEOPLE, WHO DO NOT WANT IT. THE PRO-
POSALS DESTROY, OR TEND TO DESTROY, EXACTLY THE
SAFEGUARD THAT WAS WRITTEN INTO THE CONSTITUTION
BY THOSE WHO HAD KNOWN, BITTERLY, THE OPPRESSIVE-
NESS OF OFFICIAL SECRECY.

"THE ULTIMATE DECISION ON THIS RESTS
NEITHER WITH THE BAR NOR WITH THE PRESS. IT
RESTS WITH THE PUBLIC. BUT IT DOES SEEM TRAGIC
TO ME THAT THE BAR SHOULD MOVE AGAINST THE
PRESS -- WHICH IT EXPECTS TO HELP DEFEND THE
ENTIRE SYSTEM OF AMERICAN JUSTICE, INCLUDING
THE COURTS THEMSELVES -- AT A TIME WHEN ALL OUR
CONSTITUTIONAL SAFEGUARDS ARE UNDER SUCH RE-
LENTLESS ATTACK.

"TRAGIC, HOWEVER NOBLE THE PURPOSE" (LOS
ANGELES TIMES, OCTOBER 9, 1966).

LET ME SAY RIGHT NOW THAT I AGREE WITH NICK WILLIAMS
-- IT IS TRAGIC WHEN THE NEWS MEDIA FINDS ITSELF AT ODDS WITH
THE BAR.

ALL OF US WANT THE SAME GOAL - A FREE SOCIETY,
WHERE THE PUBLIC IS KEPT INFORMED BY AN ALERT, RESPONSIVE AND
VIGOROUS PRESS. WE ALSO WANT TO BE AS CERTAIN THAT THOSE
WHO ARE BROUGHT TO TRIAL ARE TRIED IN THE COURTROOM, NOT
OUTSIDE THE COURTROOM.

I THINK WE ALL CAN AGREE ON CERTAIN PRINCIPLES.

FIRST, THAT THE KIND OF JUSTICE AVAILABLE IN OUR COURTS IS A MEASURE OF CIVILIZATION, AND OF OUR MATURITY AS A NATION.

SECOND, NO RIGHT-THINKING PERSON IN THIS COUNTRY WOULD EVER SUGGEST THAT AN ACCUSED SHOULD NOT BE GUARANTEED A FAIR TRIAL.

MINIMAL STANDARDS INCLUDE THE RIGHT TO AN IMPARTIAL TRIBUNAL, WHETHER JUDGE OR JURY; THE RIGHT TO CONFRONT AND CROSS EXAMINE WITNESSES; THE RIGHT TO HAVE THE TRIBUNAL REACH A DECISION SOLELY ON THE BASIS OF THE EVIDENCE PRESENTED IN THE COURTROOM; THE RIGHT TO BE INFORMED OF THE CHARGE AND TO THE EFFECTIVE ASSISTANCE OF COUNSEL; AND THE RIGHT TO A SPEEDY AND PUBLIC TRIAL.

THIRD, THE OBJECT OF A TRIAL IS JUSTICE, AND THE SECURITY THAT SOCIETY EXPERIENCES IN KNOWING THAT THOSE INNOCENT OF CRIME WILL BE PROTECTED BY ITS LAWS, AND THAT THOSE WHO ARE GUILTY WILL BE PUNISHED.

SOCIETY IS THE LOSER WHEN A GUILTY MAN GOES FREE,
BECAUSE OF DEFECTS IN SOCIETY'S JUDICIAL MACHINERY.

SOCIETY IS THE LOSER WHERE IT CREATES AN ATMOSPHERE,
WHETHER BY MOB ACTION OR OTHERWISE, IN WHICH IT DISABLES THE
COURTS FROM ASCERTAINING GUILT OR INNOCENCE.

WHERE A PERSON IS RETRIED TWELVE YEARS AFTER A
FORMER CONVICTION, SUCH AS IN THE SHEPPARD CASE, SOCIETY
WILL NEVER KNOW WHETHER A JUST RESULT HAS BEEN REACHED,
BECAUSE IT CAN NEVER BE SURE HOW MUCH THE PASSAGE OF TIME
HAS DIMMED RECOLLECTIONS, OR INDUCED PREJUDICES, OR CREATED
A FEELING OF SYMPATHY FOR AN ACCUSED WHICH RESULTS IN AN
EMOTIONAL, RATHER THAN AN ANALYTICAL APPRAISAL OF THE
EVIDENCE PRODUCED AT THE SECOND TRIAL.

THE INDIVIDUAL, TOO, HAS A RIGHT TO BE FREE FROM
SUCCESSIVE AND TAINTED TRIALS, AND A RIGHT TO DEMAND OF
SOCIETY THAT IT REQUIRE HIM TO UNDERGO THE ORDEAL OF TRIAL
BUT ONCE.

PARTICULARLY IS THIS SO WHERE PREJUDICE IS INDUCED
IN THE TRIAL BY OUTSIDE ELEMENTS, ACTING BEYOND HIS CONTROL.

ON THE OTHER HAND, I THINK WE WOULD ALL AGREE THAT
JUSTICE HIDDEN FROM THE SCRUTINY OF THE NEWS MEDIA IS SUSPECT
ON ITS FACE, AND IS AN OPEN INVITATION TO CORRUPTION.

JUSTICE IS A PUBLIC AFFAIR. IT IS THE BUSINESS OF
THE PEOPLE.

THE PEOPLE, IN ESTABLISHING COURTS AS THEIR SERVANTS,
DID NOT GIVE JUDGES OR LAWYERS THE RIGHT TO DECIDE WHAT IS
GOOD FOR THE PEOPLE TO KNOW.

MR. JUSTICE HOLMES EXPRESSED IT WELL WHEN HE WROTE:

"IT IS DESIRABLE THAT THE TRIAL OF CAUSES
SHOULD TAKE PLACE UNDER THE PUBLIC EYE * * *
BECAUSE IT IS OF THE HIGHEST MOMENT THAT THOSE
WHO ADMINISTER JUSTICE SHOULD 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 WHICH PUBLIC DUTY
IS PERFORMED" (CROWLEY v. PULSIFER (1884) 137
Mass. 392, 394).

THIS MEANS THAT THE NEWS MEDIA HAS A RIGHT TO GET
AND PUBLISH THE NEWS, AS IT HAPPENS.

ALMOST THIRTY YEARS AGO, JUSTICE BLACK, WRITING
FOR THE SUPREME COURT IN BRIDGES v. CALIFORNIA (1941) 314
U.S. 252, A CASE IN WHICH THE TRIAL JUDGE HELD THE PRESS IN
CONTEMPT, BECAUSE OF REPORTS MADE DURING THE PENDENCY OF A
CASE, MADE THE FOLLOWING OBSERVATIONS:

"IT MUST BE RECOGNIZED THAT PUBLIC INTEREST IS
MUCH MORE LIKELY TO BE KINDLED BY A CONTROVERSIAL
EVENT OF THE DAY THAN BY A GENERALIZATION * * *
IT IS THEREFORE THE CONTROVERSIES THAT COMMAND
MOST INTEREST THAT THE DECISIONS BELOW WOULD
REMOVE FROM THE ARENA OF PUBLIC DISCUSSION.

"NO SUGGESTION CAN BE FOUND IN THE CONSTI-
TUTION THAT THE FREEDOM THERE GUARANTEED FOR
SPEECH AND THE PRESS BEARS AN INVERSE RATIO TO
THE TIMELINESS AND IMPORTANCE OF THE IDEAS
SEEKING EXPRESSION. YET, IT WOULD FOLLOW AS A
PRACTICAL RESULT OF THE DECISIONS BELOW THAT
ANYONE WHO MIGHT WISH TO GIVE PUBLIC EXPRESSION
TO HIS VIEWS ON A PENDING CASE INVOLVING NO

MATTER WHAT PROBLEM OF PUBLIC INTEREST, JUST AT THE TIME HIS AUDIENCE WOULD BE MOST RE-CEPTIVE, WOULD BE AS EFFECITVELY DISCOURAGED AS IF A DELIBERATE STATUTORY SCHEME OF CENSORSHIP HAD BEEN ADOPTED" (BRIDGES v. CALIFORNIA (1941) 314 U.S. 252, 268-269).

ALSO, A FREE PRESS ENCOMPASSES THE RIGHT TO BE CRITICAL, AND EVEN TO MAKE MISTAKES.

LISTEN TO WHAT THOMAS JEFFERSON SAID:

"I DEPLORE * * * THE PUTRID STATE INTO WHICH OUR NEWSPAPERS HAVE PASSED AND THE MALIGNITY, THE VULGARITY AND THE MENDACIOUS SPIRIT OF THOSE WHO WRITE THEM * * *. THESE ORDURES ARE RAPIDLY DEPRAVING THE PUBLIC TASTE.

"IT IS, HOWEVER, AN EVIL FOR WHICH THERE IS NO REMEDY. OUR LIBERTY DEPENDS ON THE FREEDOM OF THE PRESS, AND THAT CANNOT BE LIMITED WITHOUT BEING LOST."

AND THE SUPREME COURT, IN THE BRIDGES CASE:

"[I]T IS A PRIZED AMERICAN PRIVILEGE TO SPEAK ONE'S MIND, ALTHOUGH NOT ALWAYS WITH PERFECT GOOD TASTE, ON ALL PUBLIC INSTITUTIONS. AND AN ENFORCED SILENCE, HOWEVER LIMITED, SOLELY IN THE NAME OF PRESERVING THE DIGNITY OF THE BENCH, WOULD PROBABLY ENGENDER RESENTMENT, SUSPICION, AND CONTEMPT MUCH MORE THAN IT WOULD ENHANCE RESPECT.

"THE OTHER EVIL FEARED, DISORDERLY AND UNFAIR ADMINISTRATION OF JUSTICE, IS MORE PLAUSIBLY ASSOCIATED WITH RESTRICTING PUBLICATIONS WHICH TOUCH UPON PENDING LITIGATION * * * LEGAL TRIALS ARE NOT LIKE ELECTIONS, TO BE WON THROUGH THE USE OF THE MEETING-HALL, THE RADIO, AND THE NEWSPAPER" (BRIDGES v. CALIFORNIA (1941) 314 U.S. 252, 270-271).

THE SAME APPROACH HAS RECENTLY BEEN ECHOED BY AN EMINENT MEMBER OF THE FEDERAL BENCH (JUDGE FRANK W. WILSON OF THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF TENNESSEE), WHO OBSERVED:

"HISTORY HAS TAUGHT US THAT IF THE PUBLIC IS TO KNOW, THE PRESS MUST BE FREE TO REPORT. IF IT IS TO BE FREE, IT MUST BE FREE TO FAIL AS WELL AS TO SUCCEED, TO ERR AS WELL AS TO BE CORRECT" (42 NOTRE DAME LAWYER 890).

IN RECENT YEARS, THE BAR, AND PUBLIC CITIZENS, ARE WITNESSING AN ATTEMPT TO EXCLUDE THE NEWS MEDIA FROM TRIALS, TO PREVENT PUBLICIZING THE COURSE OF THE PROCEEDINGS. YET IT IS VITAL THAT THE NEWS MEDIA HAVE ACCESS TO TRIALS. AS STATED BY JUSTICE CLARK IN THE SHEPPARD CASE:

"A RESPONSIBLE PRESS HAS ALWAYS BEEN REGARDED AS THE HANDMAIDEN OF EFFECTIVE JUDICIAL ADMINISTRATION * * * ITS FUNCTION IN THIS REGARD IS DOCUMENTED BY AN IMPRESSIVE RECORD OF SERVICE OF SEVERAL CENTURIES. THE PRESS DOES NOT SIMPLY PUBLISH INFORMATION ABOUT TRIALS, BUT GUARDS AGAINST THE MISCARRIAGE OF JUSTICE BY SUBJECTING THE POLICE, PROSECUTORS, AND JUDICIAL PROCESSES TO EXTENSIVE PUBLIC SCRUTINY AND CRITICISM. THIS COURT HAS, THEREFORE, BEEN UNWILLING TO PLACE ANY DIRECT

LIMITATION ON THE FREEDOM TRADITIONALLY
EXERCISED BY THE NEWS MEDIA FOR '[W]HAT
TRANSPIRES IS PUBLIC PROPERTY' * * *."

WHEN THERE HAS BEEN UNDUE PUBLICITY, THE BAR AND
THE COURTS, TO BE SURE, HAVE NOT BEEN BLAMELESS. IT IS
NO SECRET, THAT THE BAR INCLUDES AMONG ITS NUMBERS SOME
WHOSE FIRST THOUGHTS HAVE BEEN TO GENERATE AS MUCH PUB-
LICITY ABOUT A PENDING TRIAL AS THEY CAN, TO PROMOTE SOME
SELFISH END, WHO HAVE HOPED TO PROFIT BY RELEASING INFOR-
MATION WHICH THEY THOUGHT WOULD HELP THEM WIN THEIR CASE,
OR PERHAPS SERVE SOME OTHER PURPOSE.

OCCASIONALLY THE NEWS MEDIA AND THE COURTS HAVE
NOT SHIELDED THE ACCUSED FROM UNFAIR PUBLICITY, OR TAKEN THE
OTHER STEPS EXPECTED OF THEM TO ACCOMMODATE THE INTERESTS
OF THE NEWS MEDIA WITH THE REQUIREMENT OF A JUST TRIAL.

I SUGGEST TO YOU THAT THOSE NEWSMEN WHO WOULD ABUSE THE RIGHT OF FREE PRESS, AND THOSE LAWYERS AND JUDGES WHO, FOR PERSONAL OR OTHER REASONS, WOULD KNOWINGLY CREATE AN ATMOSPHERE WHERE THE ACCUSED COULD NOT RECEIVE A FAIR TRIAL, ARE NOT REPRESENTATIVE OF OUR RESPECTIVE PROFESSIONS, OR OF THE SENSE OF HONOR AND DIGNITY THAT MOST NEWSMEN, LAWYERS AND JUDGES ALIKE, STRIVE TO BRING TO THEIR DAILY WORK.

I SUGGEST THAT THESE PERSONS ARE FEW IN NUMBER AND LIE AT THE FAR END OF THE SPECTRUM.

|| FULL AND FREE REPORTING OF CRIMINAL INVESTIGATIONS, AND OF CRIMINAL PROCEEDINGS, HAS EXPOSED MANY IRREGULARITIES AND INJUSTICES THAT MIGHT OTHERWISE HAVE GONE UNNOTICED.

THE NEWS MEDIA HAVE HELPED KEEP THE POLICE IN CHECK, AND THE RECOGNITION BY THE POLICE TODAY OF THE RIGHTS OF INDIVIDUALS IS IN NO SMALL PART DUE TO THE PUBLICITY WHICH THE NEWS MEDIA GIVE TO ABUSES. ||

THE FACT IS THAT ON OCCASION, PUBLICITY SERVES THE ENDS OF JUSTICE - INSTEAD OF DAMAGING THE CAUSE OF AN INNOCENT DEFENDANT, IT INSURES FAIR TREATMENT. FOR EXAMPLE, CIVIL RIGHTS WORKERS HAVE BEEN ARRESTED AND TRIED ON TRUMPED-UP CHARGES. WHAT WOULD BE GAINED IF THE PRESS COULD NOT POINT OUT THAT THEIR REAL "OFFENSE" WAS AN ASSERTION OF CONSTITUTIONAL RIGHTS WHICH THE LOCAL AUTHORITIES DISREGARDED?

ACTUALLY, WHAT WE ARE TALKING ABOUT IS AN ACCOMMODATION OF THE GREAT FREEDOMS AND RIGHTS EMBODIED IN OUR FEDERAL CONSTITUTION - A BALANCING OF INTERESTS, OF THE NEWS MEDIA, SOCIETY, AND OF THE ACCUSED, THAT IS, A BALANCING OF THE FIRST AND SIXTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

UNDER THE BRITISH SYSTEM, WHEN A SUSPECT IS ARRESTED, ALMOST NOTHING CAN BE PUBLISHED EXCEPT HIS NAME, AGE, ADDRESS, OCCUPATION AND THE CHARGE AGAINST HIM. THERE CAN BE NO REFERENCES TO HIS ADMISSIONS TO THE POLICE, NOR

CAN THE PRESS INDICATE HOW HE IS SUPPOSED TO HAVE COMMITTED
THE CRIME.

PUBLICATION OF ANY EVIDENCE IS FORBIDDEN, AS IS
THE PRIOR CRIMINAL RECORD OR ANY EXPRESSION OF BELIEF OF
HIS GUILT OR INNOCENCE. EVEN THE DEFENDANT'S PHOTOGRAPH
CANNOT BE PRINTED IF THERE IS ANY LIKELIHOOD THAT THE
QUESTION OF IDENTIFICATION WILL BE A RELEVANT POINT AT THE
TRIAL. THESE RESTRICTIONS ARE ENFORCED BY THE CONTEMPT
POWERS OF THE BRITISH COURTS. VIOLATIONS RESULT IN FINES
AND EVEN JAIL SENTENCES IMPOSED ON THE OFFENDING JOURNALISTS.

THE CONTEMPT POWER, OBVIOUSLY, IS A FEARSOME ONE.

IN CRAIG v. HARNEY (1947) 331 U.S. 367, THE PUB-
LISHER AND CERTAIN MEMBERS OF THE STAFF OF A CORPUS CHRISTI,

TEXAS, NEWSPAPER WERE FOUND GUILTY OF CONTEMPT IN PUBLISHING AN EDITORIAL AND NEWS STORIES CONCERNING THE JUDGE'S SUPPOSEDLY IMPROPER HANDLING OF A PARTICULAR CASE. THE NEWSPAPER CALLED THE JUDGE'S ACTION "ARBITRARY" AND A "TRAVESTY ON JUSTICE" AND WAS QUITE POINTED IN ITS CRITICISM.

THE SUPREME COURT, IN REVERSING THE CONVICTION, SAID:

"* * * [T]HE NEWS ARTICLES WERE BY ANY STANDARD AN UNFAIR REPORT OF WHAT TRANSPIRED. BUT INACCURACIES IN REPORTING ARE COMMONPLACE. CERTAINLY A REPORTER COULD NOT BE LAID OUT 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."

SOME COURTS HAVE GONE IN THE OTHER DIRECTION, AND HAVE HELD THAT THE NEWS MEDIA HAS NO RIGHT TO DEMAND ACCESS TO CRIMINAL PROCEEDINGS.

THE NEW YORK COURT OF APPEALS, IN UNITED PRESS

ASSOCIATIONS v. VALENTE (1954) 123 N.E.2d 777, SAID THAT THE PRESS HAD NO RIGHT TO BE PRESENT AT A CRIMINAL TRIAL, OVER THE OBJECTION OF THE ACCUSED.

THE COURT SAID THAT THE RIGHT OF A PUBLIC TRIAL BELONGED TO THE ACCUSED, AND COULD BE WAIVED BY HIM IF HE SO DESIRED.

THE UNITED STATES SUPREME COURT, WHILE NEVER RULING DIRECTLY ON THE WAIVER OF A PUBLIC TRIAL, HAS SAID, UNEQUIVOCALLY:

"A TRIAL IS A PUBLIC EVENT. WHAT TRANSPIRED IN THE COURT ROOM IS PUBLIC PROPERTY. * * * THERE IS NO SPECIAL PERQUISITE 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" (CRAIG v. HARNEY (1947) 331 U.S. 367, 374).

SECRET TRIALS ARE CONDEMNED BY OUR CONSTITUTION. MR. JUSTICE BLACK, SPEAKING FOR THE SUPREME COURT IN IN RE OLIVER (1948) 333 U.S. 257, POINTED OUT THAT PUBLIC TRIALS

HAVE DEEP ROOTS IN OUR AMERICAN JURISPRUDENCE:

"COUNSEL HAVE NOT CITED AND WE HAVE BEEN UNABLE TO FIND A SINGLE INSTANCE OF A CRIMINAL TRIAL CONDUCTED IN CAMERA IN ANY FEDERAL, STATE, OR MUNICIPAL COURT DURING THE HISTORY OF THIS COUNTRY. NOR HAVE WE FOUND ANY RECORD OF EVEN ONE SUCH SECRET CRIMINAL TRIAL IN ENGLAND SINCE ABOLITION OF THE COURT OF STAR CHAMBER IN 1641, AND WHETHER THAT COURT EVER CONVICTED PEOPLE SECRETLY IS IN DISPUTE.

* * * * *

"THE TRADITIONAL ANGLO-AMERICAN DISTRUST FOR SECRET TRIALS HAS BEEN VARIOUSLY ASCRIBED TO THE NOTORIOUS USE OF THIS PRACTICE BY THE SPANISH INQUISITION, TO THE EXCESSES OF THE ENGLISH COURT OF STAR CHAMBER, AND TO THE FRENCH MONARCHY'S ABUSE OF THE LETTRE DE CACHET. ALL OF THESE INSTITUTIONS OBVIOUSLY SYMBOLIZED A MENACE TO LIBERTY.

HE ADDED:

"WHATEVER OTHER BENEFITS THE GUARANTEE TO AN ACCUSED THAT HIS TRIAL BE CONDUCTED IN PUBLIC MAY CONFER UPON OUR SOCIETY, THE GUARANTEE HAS ALWAYS BEEN RECOGNIZED AS A SAFEGUARD AGAINST

ANY ATTEMPT TO EMPLOY OUR COURTS AS INSTRUMENTS OF PERSECUTION. THE KNOWLEDGE THAT EVERY CRIMINAL TRIAL IS SUBJECT TO CONTEMPORANEOUS REVIEW IN THE FORUM OF PUBLIC OPINION IS AN EFFECTIVE RESTRAINT ON POSSIBLE ABUSE OF JUDICIAL POWER" (IN RE OLIVER (1948) 333 U.S. 257, 266-270).

BALANCED AGAINST THIS RIGHT OF PUBLIC TRIAL IS THE RIGHT OF THE ACCUSED TO A TRIAL FREE FROM OUTSIDE INFLUENCE. AS JUSTICE JACKSON ONCE POINTED OUT:

"THE RIGHT OF THE PEOPLE TO HAVE A FREE PRESS IS A VITAL ONE, BUT SO IS THE RIGHT TO HAVE A CALM AND FAIR TRIAL FREE FROM OUTSIDE PRESSURES AND INFLUENCES. EVERY OTHER RIGHT, INCLUDING THE RIGHT OF A FREE PRESS ITSELF, MAY DEPEND UPON THE ABILITY TO GET A JUDICIAL HEARING AS DISPASSIONATE AND IMPARTIAL AS THE WEAKNESS INHERENT IN MEN WILL PERMIT" (CRAIG v. HARNEY (1947) 331 U.S. 367, 394-395 (DISSENTING OPINION)).

IN 1892, CHIEF JUSTICE FULLER, SPEAKING FOR A UNANIMOUS COURT, WAS EQUALLY AS POSITIVE IN HIS APPROACH:

"IT IS VITAL * * * THAT THE JURY SHOULD PASS UPON THE CASE FREE FROM EXTERNAL CAUSES TENDING TO DISTURB THE EXERCISE OF DELIBERATE AND UNBIASED JUDGMENT. NOR CAN ANY GROUND OF SUSPICION THAT THE ADMINISTRATION OF JUSTICE HAS BEEN INTERFERED WITH BE TOLERATED" (MATTOX v. UNITED STATES (1892) 146 U.S. 140, 149).

SO WE ASK OURSELVES, CITIZENS, MEMBERS OF THE BAR, AND THE NEWS MEDIA, WHAT IS THE SOLUTION?

DO WE CLOSE OFF VIRTUALLY ALL COMMENT ON INVESTIGATION OF CHARGES OF WRONGDOING AS SOME SUGGEST?

DOES THE COURT PROHIBIT THE NEWS MEDIA FROM REVEALING THAT A CONFESSION HAS BEEN MADE, OR FROM REPORTING INNUENDO, HALF-FACT AND HALF-TRUTH?

DO WE PROHIBIT EDITORIAL OPINION DURING THE COURSE OF AN INVESTIGATION OR TRIAL?

I SAY NO.

SUCH PROHIBITIONS ARE LIKE USING A BULLDOZER TO WEED YOUR FLOWER BED. WHILE A BULLDOZER WILL DO A GOOD JOB

ON THE WEEDS, IT CERTAINLY WILL NOT DO MUCH FOR THE FLOWERS.

WHAT IS NEEDED IS MORE AND BETTER REPORTING, NOT
LESS OF IT.

I BELIEVE THAT IN CALIFORNIA THE BENCH, THE BAR
AND THE NEWS MEDIA HAVE TAKEN THE RIGHT APPROACH. IN 1968
THERE WAS FORMED A COMMITTEE OF REPRESENTATIVES OF THE BENCH,
THE BAR AND THE NEWS MEDIA TO STUDY THE PROBLEMS WHICH
ARISE BECAUSE OF THE APPARENT CONFLICT BETWEEN THE FIRST
AND SIXTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.
AT MEETINGS OF THE COMMITTEE, REPRESENTATIVES OF THE NEWS
MEDIA, JUDGES AND LAWYERS, FREELY AND FRANKLY DISCUSSED THE
APPARENT CONFLICT AND POSSIBLE SOLUTIONS. AFTER MANY MEETINGS
AND MUCH DISCUSSION OVER A TWO-YEAR PERIOD A JOINT DECLARATION
REGARDING NEWS COVERAGE OF CRIMINAL PROCEEDINGS IN CALIFORNIA
WAS AGREED UPON. THIS JOINT DECLARATION CONTAINED A STATEMENT
OF PRINCIPLES AND A STATEMENT OF POLICY. I WILL NOT BORE YOU
WITH THE DETAILS OF EITHER STATEMENT. SUFFICE IT TO SAY THAT

IN THE STATEMENT OF PRINCIPLES THE NEWS MEDIA ON THE ONE HAND, AND THE BENCH AND THE BAR ON THE OTHER, RECOGNIZED THE NECESSITY THAT COURT PROCEEDINGS BE CONDUCTED IN SUCH A MANNER AS WILL SERVE THE ENDS OF JUSTICE. IN THIS RESPECT THE NEWS MEDIA ACKNOWLEDGED CERTAIN PRINCIPLES SUCH AS: AN ACCUSED PERSON IS PRESUMED INNOCENT UNTIL PROVED GUILTY: THAT READERS, LISTENERS AND VIEWERS ARE POTENTIAL JURORS OR WITNESSES: THAT NO PERSON'S REPUTATION SHOULD BE INJURED NEEDLESSLY: THAT NO LAWYER SHOULD USE PUBLICITY TO PROMOTE HIS VERSION OF A PENDING CASE, AND THAT, ABOVE ALL, THE PUBLIC IS ENTITLED TO KNOW HOW JUSTICE IS BEING ADMINISTERED. THE STATEMENT OF POLICY RECOGNIZED THAT YOU DON'T CALL A PERSON BROUGHT IN AS A SUSPECT A CRIMINAL - THAT YOU DON'T CALL A SLAYING "MURDER" UNTIL THERE IS A FORMAL CHARGE - THAT YOU DON'T SAY THAT THERE HAS BEEN A SOLUTION TO A CRIME WHEN IT IS JUST A POLICE ACCUSATION OR

THEORY - THAT YOU DON'T LET LAWYERS USE THE NEWS MEDIA AS
A SOUNDING BOARD FOR PUBLIC OPINION OR PERSONAL PUBLICITY.
THE JUDICIAL COUNCIL OF CALIFORNIA, THE RULE-MAKING BODY
FOR OUR COURTS, APPROVED THESE STATEMENTS AND ENDORSED THE
RECOMMENDATION OF THE COMMITTEE THAT AT THE LOCAL LEVEL
JUDGES MEET WITH MEMBERS OF THE BAR AND NEWS MEDIA TO REVIEW
LOCAL PROBLEMS AND TO PROMOTE UNDERSTANDING OF FAIR TRIAL
AND FREE PRESS. IN A NUMBER OF COUNTIES IN THIS STATE -
LOS ANGELES, RIVERSIDE, SAN MATEO, SAN FRANCISCO AND MARIN,
FOR EXAMPLE - LOCAL COMMITTEES OF THE BENCH, BAR AND NEWS
MEDIA HAVE BEEN FORMED. THE MEMBERS OF THESE LOCAL COM-
MITTEES HAVE SAT ACROSS FROM ONE ANOTHER AT A TABLE. THEY
HAVE EACH COME TO REALIZE THAT THE OTHERS DID NOT HAVE HORNS
AND ARE REASONABLE MEN. THEY HAVE DISCUSSED PROBLEMS WHICH
APPEARED TO HAVE ARISEN AS A RESULT OF THE APPARENT CONFLICT
BETWEEN THE FIRST AND SIXTH AMENDMENTS. MUCH CAN BE
ACCOMPLISHED IN THESE MEETINGS THROUGH DISCUSSIONS AND

EDUCATION AND WE WILL HAVE MUTUAL UNDERSTANDING, MUTUAL RESPECT AND MUTUAL CONFIDENCE.

WHERE DOES THIS LEAVE US? IT LEAVES SOCIETY, THE GENERAL PUBLIC, YOU AND ME, WITH GRATITUDE FOR THE WORK DONE BY THE NEWS MEDIA IN BRINGING TO LIGHT FACTS WHICH MIGHT NOT OTHERWISE HAVE BEEN EXPOSED; AT THE SAME TIME IT LEAVES US WITH THE FEELING THAT EVERY MAN WILL HAVE A FAIR DAY IN COURT. AS STATED BY DeTOCQUEVILLE WRITING ON OUR DEMOCRACY OVER SOME 130 YEARS AGO:

"THE GREAT PRIVILEGE OF THE AMERICANS DOES NOT SIMPLY INSIST ON THEIR BEING MORE ENLIGHTENED THAN OTHER NATIONS, BUT IN THEIR BEING ABLE TO REPAIR THE FAULTS THEY MAY COMMIT" (DeTOCQUEVILLE, DEMOCRACY IN AMERICA, VOL. 1, p. 234).

JOHN A. SUTRO