PANEL THREE: THE ROLES OF JURIES AND THE PRESS IN THE MODERN JUDICIAL SYSTEM

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MODERATOR: FORD ROWAN, ESQ., Rowan & Blewitt, Inc.

MR. ROWAN: The focus of this session is the role of the juries and the press in the modern judicial system and may incorporate all that we talked about earlier. Let me start with a question for Shari Diamond. From an article entitled "Blindfolding the Jury,"[1] I became interested in the idea of what information should be kept from the jury because it may be prejudicial or too complex. Could you share with us your feelings about what the jury should and should not be exposed to before, and especially during, the course of the trial?

DR. DIAMOND: What is perhaps most surprising in this area is how much the rules of the legal system assume about the behavior of juries and how little evidence exists that those assumptions are correct. We do know that jurors are active information processors. They walk into the trial with expectations about the way the evidence is going to go, how the attorneys are going to behave, and what the consequences of their decisions are likely to be. Somebody mentioned earlier about how difficult it is that the jury is bombarded with information and has to have some way of organizing it. Reid Hastie, who is in the audience, has developed the story model in which he describes the way jurors try to make sense out of the infor-

1. Casper, Ostergren & Diamond, *Blindfolding the Jury*, 54 LAW & CONTEMP. PROBS. 247 (1989).

mation presented at trial. Now, if certain information is going to affect their construction of the evidence, but will also have an overwhelming impact on the way they see the rest of the trial, then that information should not be provided.

For example, in some cases, confession evidence will be excluded because of the way it was collected. Such information, if presented, would help to convince the jury that the defendant actually committed the act, or at least at one point was willing to say that he did. If the jury learns of the confession, it is going to be very difficult to unring that bell. It is that kind of evidence that, if presented by the news media, is going to have a major potential influence on jurors familiar with that information. That is really the kind of factual information that we worry about when we try to select a jury that will not come in with these kinds of prejudices or expectations.

I wanted to say something about the structure of the information that we do not give to juries, because I think we talked about it this morning. Certain kinds of information are such that we could actually treat the jury as an active information processor, and such that we could incorporate this information into the juror's understanding of what is going on. If we do not do that, the jury will wonder and worry about it for a long time, maybe to the detriment of the way they decide the trial.

For example, in death penalty cases in Illinois, the jury called upon to reach a decision on the death penalty is only asked one question: "Is the death penalty appropriate for this person?"[2] Now, what question comes to your mind as you are thinking about how you would decide on whether this person should get the death penalty? What comes to my mind is, "What happens if I do not give the death penalty?" Jurors do ask that question. They come back and ask the judge, "What if he does not get the death penalty?" "When will he be out on parole?" The judge in Illinois must say, "Go back and deliberate." Now, that is a piece of information that we should be experimenting with to see what would happen if jurors were given accurate information.

MR. ROWAN: Interesting. I want to come back to the idea of how jurors process information and maybe I can approach it in a different way by turning to Neil Vidmar. You co-authored the book "Judging the Jury"[3] with Valerie Hans, whom we heard from earlier.

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2. People v. Fields, 135 Ill. 2d 18, 552 N.E.2d 791 (1990) (stating standard for jury in sentencing death penalty cases, in Illinois, is whether there are mitigating circumstances sufficient to preclude imposition of death sentence).

3. V. HANS & N. VIDMAR, JUDGING THE JURY (1986).

Let me ask this question about the way jurors think. Fred Graham discussed not only the changing way television primarily covers events, but also the changing way viewers of programs and potential jurors process that information. Is there any empirical data to support the idea that the way we view television has changed over the years, and therefore, that the way people come into a case predisposed might be different now than it was at the time of the *Estes* case,[4] for example?

DR. VIDMAR: Actually, I do not know if there are any data that speak specifically to that question. I think the thrust of what Fred Graham was saying is that people today want to be entertained more. I do not know if that necessarily reflects upon the way they process information. There are other indications that people tend to view the whole trial system and its process skeptically. They tend to be intelligent and not so easy to persuade.

I think you can always develop your case by anecdote, which is one of the things that Norbert Kerr and I were talking about just before this panel started. So much of what we are doing here is arguing our case by anecdote, and arguing on the basis of our own individual agendas, and that was very apparent to me this morning.

I want to come back and make an argument that I have made before—that the jury as a corporate body, or as a group of citizens, should actually file a class action suit for libel and slander against some judges, insurance companies, and academics. Now, that is a fairly strong statement, but I am struck with how little common sense and intelligence is generally attributed to the jury.

I and several of my colleagues from social science, including Shari Diamond who just spoke about it, believe that the story model is an adequate way of looking at how juries process information and make decisions. But let me suggest something to you. Evidence matters. You can have a great deal of prejudicial publicity in some instances; yet when the jurors get into the trial, the actual evidence at the trial has the effect of extinguishing what went on before. The jurors get in there and they say "Gee, this really is not the way I saw it; or it doesn't fit with my preconception of the matter." They also bring together their own individual views. I think this was overlooked in our earlier discussions today. Jurors do develop stories, but they do not all necessarily develop uniform stories. I think an underlying concern of this conference is that there is a move toward homogene-

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4. Estes v. Texas, 381 U.S. 532, 535 (1965) (holding that live television and radio broadcast of criminal trial violated right to fair trial guaranteed by fourteenth amendment's due process clause).

ous juries: Let us get rid of all these ordinary people and let us get people who are all the same, who do not listen to the news, or who do not know about Noriega, or whatever, and let us eliminate all other people. Instead, what we should strive to achieve is the selection of intelligent individuals who can come in and develop individual stories; in deliberations when they bring those stories and try to reconcile them, hopefully the truth will emerge. I think that is one of the things that we have overlooked, including some of us in social science. I have been interviewing a lot of jurors recently in medical malpractice cases and in an antitrust case. One of the things I found developing were different stories. The whole process is a deliberation process in which individual members bring together their own stories; they create and hash them out and try to arrive at a reasonable conclusion. I think that the group deliberation process was ignored this morning.

MR. ROWAN: If I can follow up on that point, is it fair to jump from what you just said to a conclusion that if someone is guaranteed a trial by an impartial jury, that it does not require impartial jurors?

DR. VIDMAR: To an extent. Now again, we have to find a middle ground. There are clearly going to be some members of any jury panel, I suspect, who do not want to serve on the jury. There may also be some jurors who are prejudiced, although this morning several people indicated that we really do not have all that many who really want to be the hanging juror. There will be some people who have their mind made up, but I do not think that we need to take the extreme remedies that some people are suggesting. I think that a more rational approach is to inquire as to the specifics of the individual juror's state of mind, a theme that has been pushed throughout this conference.

MR. ROWAN: Let me move to Bruce Sanford. Bruce is an attorney who has defended news organizations. You have just heard this defense of the jury system, that jurors often make good decisions. Since your clients seem to do better on appeal than they do if the case gets to jury, how do you feel when juries award very large sums in libel cases? What is your feeling about the decisions the juries make?

MR. SANFORD: No where is it written in American libel law that plaintiffs are supposed to win all libel cases. Although some of my clients disagree that the American news media is supposed to be totally immune from judgments against them.

The thing that has impressed me over the years is the fundamen-

tal common sense of juries, even those in small and medium-sized communities where there has been extensive publicity about the libel case, sometimes just before the trial, sometimes long before, and sometimes during. I do not know where the anecdotes stop and the data begins, but I have tried to systematically collect anecdotes, and I think they are approaching data. The thing that has impressed me is that you will run into what I call the "self-flagellation" experience of the news media—the news media being very tough on themselves. If the libel trial is focused on them or upon some other member of the news media in their community, the reporting about that trial is very tough. In fact, the coverage of the trial, to the exasperation of the defense counsel, tends to be very negative towards the news media. And it has to be presumed that, despite admonitions to the contrary, jurors are looking at or reading that coverage. I have tried to look at that coverage and then see how it matches the verdicts. I cannot say that I have found that jurors have been unduly prejudiced or swayed. I would like to be able to say that, but I just cannot find that. What I find is that Neil Vidmar's conclusion that jurors probably have a class action for libel and slander of their good name is correct. My experience has been that they are enormously sensible.

MR. ROWAN: Okay. A number of attorneys who practice libel law seem to prefer judges to juries. Judges do not treat them as harshly. Is that a fair and accurate characterization of the outcome of libel trials?

MR. SANFORD: I do not think that is accurate. I have had some bench trials and I think lawyers prefer bench trials to jury trials because they can talk to another lawyer. They can just talk to another lawyer up there all the time and the case becomes a little more rarified. They do not have to do some of the things that you have to do when presenting a case to a jury.

MR. ROWAN: Well, in Philadelphia recently, a jury awarded an enormous sum to a former prosecutor.[5] So I will ask the only former prosecutor here on our panel for his thoughts about the way the press covers the matters and the complications that occasionally occur.

Mike Bromwich, could you talk about the complications that occur when you are trying a very high publicity case before a jury, one where the jury may have been exposed to all manner of information

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5. *See* Hines, *Decades-Long Battle Between Paper and Ex-Official is Refought in Trial*, N.Y. Times, Apr. 19, 1990, at A20, col. 1 (final ed.) (reporting newspapers' appeal of $34 million jury verdict in libel case).

regarding the alleged offense prior to trial? I know you have been involved in a number of these episodes. Perhaps you can talk about them in the generic sense. If you could, just give us your overview and a sense about the problems of publicity impacting on juror perceptions.

MR. BROMWICH: I share the views of many people who have spoken today that juries do a very good and careful job of making decisions in the cases before them. In fact, in my observation, both through cases I have participated in here and cases that I either participated in or observed in the Southern District of New York when I was a prosecutor, the more high profile the case is, the more careful the jury is. In such cases, jurors feel more responsibility rests on their shoulders to give both the government and, particularly the defendant, a fair shake.

In the juror interviews I have seen a whole range of cases, primarily in New York, including the *Myerson* case[6] and the *GAF* case,[7] where you find jurors do a very thorough and responsible job of sifting through the evidence, and matching the evidence up against the charges that the defendant is actually charged with. My sense is that our faith in the system and the results it produces is well justified.

MR. ROWAN: To what extent does the exclusion of people who have heard about a trial or about an issue prior to trial result in ignorant juries? And does the fact that you may have found people who are very uninformed about things in general when you find people who are uninformed about the case in particular affect the outcome?

MR. BROMWICH: Well, I think special cases aside, and the *North*[8] and *Poindexter*[9] cases really are special, because they are cases where people gave immunized testimony before Congress, I do not think there is any requirement under the law, nor should there be, that jurors be utterly uninformed about all of the underlying facts of the case. I think, in a case where there is high publicity, where lots of facts or non-facts have been written in the media, it becomes an

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6. United States v. Carl A. Capasso, Bess Myerson & Hortense Gabel, 87 CR 796 (S.D.N.Y. 1988); Lubasch, *Myerson Wins Jury Acquittal on All Counts*, N.Y. Times, Dec. 23, 1988, at A1, col. 2 (city ed.).

7. United States v. James T. Stewart & GAF Corp., 88 CR 415 (S.D.N.Y. 1988); Labaton, *GAF Guilty in Carbide Stock Case*, N.Y. Times, Dec. 14, 1989, at D1, col. 6 (final ed.).

8. United States v. North, Crim. No. 88-008-02 (D.D.C. May 4, 1989) (LEXIS, Genfed library, Dist file) (reporting jury verdict), *vacated in part, rev'd in part*, 910 F.2d 843 (D.C. Cir. 1990); *see also North Guilty on 3 Counts in Iran-Contra Affair*, Wash. Post, May 5, 1989, at A1.

9. United States v. Poindexter, Crim. No. 88-0080-01-HHG (D.D.C. Apr. 7, 1990) (LEXIS, Genfed library, Dist file) (reporting jury verdict); *see also Poindexter Convicted on All Iran-Contra Counts*, Wash. Post, Apr. 8, 1990, at A1.

even greater duty on the part of the judge to conduct a careful voir dire, maybe in partnership with the lawyers in the case, to get underneath the initial layer of recognition. The voir dire should seek to discover whether jurors have heard about the case or know something about the facts, and to find out whether that knowledge is going to affect the ultimate judgment in the case. It does not have to be done with the one conclusive question: "Can you be fair?" It has to be done more systematically and more carefully, in greater detail. Probing needs to be done through voir dire, in terms of what the jurors have been exposed to and what they remember. Detailed questions of that sort, so that the judge, in conjunction with the lawyers, can decide whether the knowledge that the jurors have is going to keep them from rendering a fair and impartial verdict. I do not think there is any requirement, nor should there be, that you excuse educated citizens, because a matter has been written about in the news media, from serving on a jury. I do not think our system is well served if that becomes the prevailing rule in high publicity cases, and I do not think it is.

MR. ROWAN: Let me turn to Jane Kirtley, who is with the Reporters Committee for Freedom of the Press. It has been said that a democracy works best that knows most. And one of the defenses of a free press is that it informs its citizenry so that it can do the right thing in a democratic sense in the legislative and electoral process. However, when it comes to court cases, we seem to have taken a different thrust very often. While Mr. Bromwich may be right that in every case you do not have to excuse everyone from a jury that has heard something, the more someone has heard, the less likely he or she is to survive voir dire and make it on to the jury. Primarily it is because people believe that the information the press presents will prejudice the case. Is truthful information by its nature prejudicial?

MS. KIRTLEY: I do not know what you mean by prejudicial. If you mean, does that give them a pool of knowledge that someone who has not read it does not have, then I suppose in that sense it is prejudicial. But I do not buy that definition of prejudicial. I think that an intelligent person reading conflicting accounts will draw his or her own conclusions. Intelligent persons sitting in a courtroom and hearing cases presented by the defense and prosecution will draw their own conclusions. I have never bought the idea that a news story, in and of itself, is inherently something that causes prejudice. Hopefully, educating the public is what news stories are supposed to do.

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MR. ROWAN: We have heard varying critiques today of the news media and of the impact of news coverage on perceptions. I am glad we saved until last the working reporters who are here today to ask them about their feelings concerning this. Let me start with Steve Wermiel and just ask you to address the question of whether in your coverage of trials and the judicial system you believe that jurors are prejudiced, or if you think they render fair decisions?

MR. WERMIEL: I have never been convinced that the news media plays that kind of prejudicing role, that we have that kind of effect on trials. I guess I hate to sound redundant, but I think most of the panelists have felt that the jury system works pretty well. And I think that is the case. I am not convinced that what we ought to be striving for is a neutralized jury that has no knowledge, that is in a vacuum, or that that would somehow give us a jury that would produce the best results. I think the media has a role to play. We play it sometimes with questionable judgment, people think often with questionable judgment, but I think we play it vigorously and actively. It is not clear to me that that role ought to be balanced, when you are talking about the first amendment,[10] against other constraints in the Bill of Rights. I think we are really talking about separate interests, and I would hate to see people starting to shoot the messenger, because we had some perception that the media was influencing trials.

I do not mean to turn the conversation to this now, but I might throw it out as a thought to come back to later; when we talk about picking fair, impartial juries, and representative juries, why do we not suggest doing away with peremptory challenges? Once the judge has certified that this jury is, from a voir dire standpoint, basically qualified to sit, why let the lawyers on both sides simply decide that reporters are probably too liberal, so they should be struck by the prosecutor, or businessmen are too conservative and they ought to be struck by the defense lawyer. Doesn't that prejudice the system just as much?

MR. ROWAN: That question is on my list. I have fourteen pages of questions and I have made it through about a page and a half. And so, since I do not want to forget this one, let me ask Mike Bromwich and Bruce Sanford if they want to address the question of strikes.

MR. BROMWICH: I think it is important for the confidence of the participants in the system to have some opportunity to exercise challenges against people for reasons they do not want to or cannot de-

10. U.S. CONST. amend. I.

scribe. I think you find in many cases that lawyers, because of their experience in courtrooms, see and hear jurors, and they just have a gut instinct that those jurors are going to be inclined in the other direction. It is not sufficient to justify a challenge for cause, but it is a matter of the lawyer feeling distinctly uncomfortable having that person or having the potential for that person to be on the jury. I think allowing lawyers on both sides of the case to give some range to those sorts of instinctive judgments, and make some peremptory challenges, is a luxury our system can afford.

MR. ROWAN: Before I let Bruce Sanford have a chance at this, let me ask Shari Diamond, because sometimes a decision to strike is not gut instinct, sometimes it is based on some social science research designed to discover which subgroups and individuals are less likely to be favorable to your case. I know you have written on the subject of jury selection and the use of social scientists to do this kind of research. What is your feeling about strikes and about the quality of jury selection?

DR. DIAMOND: The best evidence we have suggests that lawyers, without the help of social scientists, do somewhat better than chance at eliminating unfriendly jurors. I thought that the name of this conference was a little misconceived because we really do not select impartial juries. That notion is obviously from constitutional language, and that is fine language for the conference, but what we are really doing is "de-selecting" people who we think are not impartial. That is, if you picture a normal or even a skewed distribution of bias in the potential juror population, from pro-plaintiff or pro-prosecution bias at one end, to pro-defendant bias at the other, the expected outcome of jury selection is to take off the ends of the distribution and leave the jurors who are closer to a neutral point, the point of impartiality. According to the available data, attorneys do not do it very well, although they do better than chance. The cottage industry of scientific jury selectors claim they do it very well, but I edit a journal and I try to encourage them to publish their results. Somehow they are unwilling to subject it to the review process. What evidence we have from academic research suggests that their claims far exceed their skill. We know jurors differ in their reaction to the same evidence. We know that most first ballots are not unanimous. People who sat through the same case have different reactions to it. But we are not very accurate at predicting which jurors are going to do what.

MR. ROWAN: Mr. Sanford, I see you want to make a quick comment.

MR. SANFORD: I think Steve Wermiel is right. I am for simplifying trials and simplifying the administration of justice. I think the peremptory challenge is simply overused. I think the case has been made for it very well, and I will not repeat it, but peremptory challenges ought to be limited.

DR. VIDMAR: I have spent a lot of time in Canada, where detailed questioning of jurors occurs only in rare cases. The legal presumption is that a juror is impartial unless proven otherwise. I have, in fact, worked as a jury consultant to try to convince a judge in some high-profile criminal cases that potential jurors did need to be questioned in detail. But what I would raise here is the fact that it is not the peremptory challenges that one ought to be concerned about, but rather the challenges arising out of a too extensive voir dire in many ordinary cases. You do not have the voir dire system in Canada, except in the usual case, and that system works pretty well. Of course, the English jury system, from which our system arose, also restricts questioning.

MR. ROWAN: Let me ask Nina Tottenberg a question. We have been talking about the effect that the news coverage may have on the way people perceive the facts or a bias about the case before they go to trial. A lot of people are saying, it is not a National Public Radio that is the problem or even the Wall Street Journal, but it is what springs from the tabloids. We heard earlier today about the kind of coverage that you get from the television set, not just on the evening news, but on shows like *America's Most Wanted* or *911*, or now the blurring of the line between fiction and fact and programs like *L.A. Law* that could prejudice people. Do you find that this is a problem, or do you think from your perspective as a journalist that this is overworked and exaggerated?

MS. TOTENBERG: I think it is enormously overworked and exaggerated. I have covered a lot of trials, and what is really striking is that most jurors, like me, have amazingly short memories. They really do not remember very much of what they have seen. In fact, you learn a lot about a society when you go to a voir dire and you find out that most people do not read much news, and they do not even watch much news. Most people have it on for background music while they go through the mail. Even when they do pay some attention they very often remember no details. In the *Poindexter* case,[11] for example, most people recognized Poindexter from having seen him walk in or out of the courtroom on television, but knew

11. *See* United States v. Poindexter, Crim. No. 88-0080-01-HHG (D.D.C. Apr. 7, 1990) (LEXIS, Genfed library, Dist file).

almost nothing else. In the *North* case,[12] people knew more, but not a lot more. And interestingly enough, at the insistence of the defense, every potential juror was struck who had even looked at the hearings for a few minutes, whether or not they had seen Colonel North testify. It resulted, in part, in a jury that was remarkably ignorant, generically ignorant of public affairs. What really struck me in the *Poindexter* case, in contrast, was that just by the luck of the draw, there were far better educated jurors. It had nothing to do with anything except the luck of the draw. The jury pool was a better educated group of people, period. It had nothing to do with who was picked from that pool, because the people I saw come up and answer the voir dire questions were just a different cut of people.

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Now if you have good sense operating, it is fine not to have peremptory challenges. But if you have a juror who is clearly intemperate who is sitting on a jury, I think lawyers ought to have a chance for no good reason or no stated reason to simply get rid of the juror.

MR. ROWAN: Tom Crone talked about the English system earlier today. Most of the people in the press here in the United States do not like the way the press is gagged over there, in fact just that choice of words would give you an idea about my own feeling, but no one has suggested that the British system is not a democracy and that it does not run pretty well in some respects.

Ms. KIRTLEY: Well, some people say that totalitarian systems run pretty well. I mean I never have thought that simply because a system may appear to be successful it necessarily deserves replication. I think that is part of the reason that we broke away 200 years ago.

MR. ROWAN: It is hard to fight patriotism and the waving of the flag.

Ms. KIRTLEY: I am not waving the flag, I am trying to suggest what I think Mr. Crone perhaps inadvertently missed by saying we elevated certain rights to a constitutional level—suggesting that perhaps they did not deserve that elevation. It is a very fundamental part of what makes America different and what makes it unique. I think that the tension between the free press rights and the sixth amendment[13] rights of the criminal defendant are an inherent part of that system. Does that mean that there are going to be problems? Yes, it does. But I think that the checks and balances that were envi-

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12. *See* United States v. North, Crim. No. 88-008-02 (D.D.C. May 4, 1989) (LEXIS, Genfed library, Dist file), *vacated in part, rev'd in part*, 910 F.2d 843 (D.C. Cir. 1990).

13. U.S. CONST. amend. VI.

sioned and crafted by the drafters of the Constitution were intended to keep everybody honest most of the time. And I would much prefer to have the virtually untrammeled press that we have than to sign away those rights simply on the grounds of some, in my view, highly speculative thought about the prejudicial powers of the press.

MR. BROMWICH: I think there is an interesting relationship between investigations done by prosecutors and the press. I think we are misled if we only look at what happens to a case once it is in the judicial system, and then try to figure out whether the influence and the impact of a press coverage might affect a fair trial. I think the press plays a very important role in this country in investigating and bringing matters to the attention, for the first time frequently, of prosecutive agencies. I would be concerned that to the extent any limitations might be imposed on the way the press can go about covering what lawyers do, that you might cut into that tremendously vital function that the press plays. And that really is an aid to our judicial system, not a hindrance.

MS. TOTENBERG: And anyway, evildoers are not always just the accused, they can be prosecutors, too.

MR. ROWAN: Let me turn that around and ask: do not prosecutors occasionally make decisions on cases that they want to push because there is a great deal of attention to them—decisions that will further their own personal political ambitions and play right to the press?

MR. BROMWICH: Absolutely. There is no question about that.

MR. ROWAN: What can be done about that?

MR. BROMWICH: Well, I am not sure, other than to make sure that you draw into public service those people who will exercise good judgment and who will not use public office to serve their own ambitions. I mean it is an easy thing to say and a hard thing to devise prescriptions for.

MR. SANFORD: Could I just say that I think that that is not a complete enough answer, that you just get people who are dedicated to public service. Increasingly in the last few years, we have seen examples of prosecutorial excess. I worry about what is going to happen along this line in the 1990s. The Felix Bloch episode,[14] for instance, has got to be a low point for the American news media. The press was made to look like howling puppy dogs trailing this man around the streets of Washington and Mr. Bloch did an effective job, whether intentionally or not, in making them look ludicrous. It is clear to me that the media was well used by people

14. *Suspected Spy Felix Bloch Leads G-Men and the Press on a Wild Spook Chase*, TIME, Aug. 14, 1989, at 42.

leaking information about the Bloch investigation. But I think you can go beyond the Bloch investigation, to people actually indicted, and I think the media in this country has to look to the mother tongue and take a look at some of the traditions, if not necessarily the laws, in the United Kingdom. Maybe there is something to a different approach, a more self-restrained approach, in some types of reporting about the administration of justice. I think that that is something that the media ought to be doing now rather than simply asserting its rights.

MS. TOTENBERG: I do not see how that accomplishes the goal that you are seeking at all. Let us fantasize a corrupt prosecutor with a corrupt motive of self-aggrandizement and self-promotion who picks on somebody to prosecute for drug abuse in order to make a name for himself. Let us also say that the defendant is politically unpopular and, therefore, it becomes an even more delightful case for our mythical District Attorney. I do not know what there is to stop him except a vigilant press who will be reporting outside of what he wants you to report, and the British system would not prevent that.

MR. SANFORD: I am not suggesting we impose the British system here, but what I am suggesting is that the press does not bite, as it is now doing at times, hook, line and sinker, in a rather undiscriminating way, upon some of the leaks that are being given them by prosecutors. I would prefer, in your example, that somebody expose that corrupt and excessively ambitious prosecutor and to make that the focus of the story, but that is not what is happening in this country.

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MR. WERMIEL: Tom Crone said one thing this morning which struck me as interesting and may be worth pursuing. He talked about the length of time between the bringing of charges and the trial in the British system and how they view that as something of a cure to whatever problem might have been created by pre-trial publicity. We have an interesting custom in the news media, particularly when we are talking about the big trial, of the "curtain raiser." Even if it is the maximum amount of time allowed under the Speedy Trial Act,[15] on the eve of the trial, the morning that the jurors are going to show up for voir dire, we have a front page piece in the paper or a spot on National Public Radio or on the Sunday night news, rehashing the entire case. I wonder if, to go back to the Potter Stewart

15. 18 U.S.C. § 3161 (1989).

thought,[16] I would argue that we have the right to do it, but maybe if we were going to talk about the propriety of things, maybe that is a place that we could make a difference. Maybe that curtain raiser ought not to be something that goes through detail by detail the prosecutor's case and the defense's rebuttal on the eve of the trial.

MS. TOTENBERG: Well, let's get real. That is not going to happen. And when your boss hears my piece in the morning he is going to be aggravated if you did not have one too.

MR. BROMWICH: Nor do I think it has much impact on juries for a couple of reasons.

MR. ROWAN: You don't think it has an impact?

MR. BROMWICH: No, because judges usually realize it is going to happen and we are talking about a situation, not usually on the first day of jury selection, but on the first day of opening arguments, when the first evidence is going to be presented. By that time the judge has his flock, his jury, in hand and he can make a decision either to sequester the jury or at the very least to give them an instruction, which I do believe jurors follow, that they are not to follow media reports of the case.

MR. WERMIEL: I do not think the timing is that clear, that it happens on the opening day of evidence rather than—

MS. TOTENBERG: No, it is not. This is where it would help for judges to learn something about the news media in their judge-training classes. For example, Judge Gesell almost had a seizure at our curtain-raisers in the *North* trial[17] because they all contained immunized testimony. He, however, was smart enough to tell Judge Greene about his seizure over those curtain-raisers, so that Judge Greene told his jury panel when they were asked to come and report, not to look at anything on the television or listen to anything or read anything about the *Poindexter* case.[18] So they were already told before they were ever selected do not watch, do not listen, do not read. And Judge Gesell could have done that if he had known anything about what I do for a living, but this was a complete surprise for him.

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MR. ROWAN: Let me ask about another aspect of this that interests

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16. Warren, *"Trash TV" Kingpins Take the Punches*, Chi. Trib., Apr. 14, 1989, at Tempo, p.1 (final ed.) (quoting Fred Friendly's paraphrase of Potter Stewart; problem is that news media must distinguish between what it has right to do and what is right thing to do).

17. *See* United States v. North, Crim. No. 88-008-02 (D.D.C. May 4, 1989) (LEXIS, Genfed library, Dist file), *vacated in part, rev'd in part*, 910 F.2d 843 (D.C. Cir. 1990).

18. *See* United States v. Poindexter, Crim. No. 88-0080-01-HHG (D.D.C. Apr. 7, 1990) (LEXIS, Genfed library, Dist file).

me. It has often been said, by people who support a free and vigorous press, that they ought not to have any shackles at all on the kind of coverage that they do. One area where the press has gotten into some trouble is the scramble to line up interviews with jurors after the trial. Ms. Kirtley, let me ask you this, do you agree that the prohibition on reporters and producers contacting the jurors in advance of the verdict is a good prohibition or not?

MS. KIRTLEY: In advance of a verdict?

MR. ROWAN: Yes, trying to line them up for later, "I want to talk to you after the trial about why you decided to convict this guy." "Come on our television show or will you sit down and talk to me afterwards."

MS. KIRTLEY: Well, I can only say, based upon the experience here in Washington not too many weeks ago of the Washington Post[19] allegedly doing just that, it certainly is not advisable from a public relations standpoint or as far as media relations with the judge are concerned. Execution at dawn is too good for them in some judges' view. There is always the practical risk that you are going to be accused of jury tampering or something along those lines. So from a purely practical standpoint, I think it is probably ill advised. But if you are asking if it should it be prohibited, I am not going to say it should be prohibited.

MR. ROWAN: Let me make it more egregious conduct perhaps. Suppose the reporter calls and says, "How are things going in your deliberations, and I want to interview you right now on the phone."

MS. KIRTLEY: I hope that the judge at the outset —

MR. ROWAN: First of all, do you think that that is tampering if someone were to ask?

MS. KIRTLEY: Yes, I think it probably is. I think asking something like that probably is.

MR. ROWAN: So the spokesman for the Reporters Committee for Freedom of the Press is willing to say that reporters ought to be prohibited from contacting jurors in the midst of the trial and asking them how the deliberations are going?

MS. KIRTLEY: I think that it certainly is incumbent upon the judge to so instruct the jury, and I am going to keep coming back to that; the judge is the one who instructs the jury, and the jury takes their marching orders from the judge. If the judge is concerned about something like that, he needs to say to the jurors, as I think hap-

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19. Johnson, *Iran-Contra Judge Orders Jurors Sequestered After Press Contacts*, N.Y. Times, Apr. 4, 1990, at A20, col. 5 (final ed.).

pened in the instance here, that they do not need to talk to anybody and they should not talk to anybody from the press during and possibly after their deliberations. I think that is perfectly appropriate, but you are certainly not going to get me to say I am going to hang a generation of journalists who decide they would like to ask a juror a question.

MR. ROWAN: I did not think you would. Nina Totenberg, what did you want to say?

MS. TOTENBERG: I just want to say that I am sure there are exceptions to what I am talking about, but I do not know of anybody who covers courts regularly who will contact a juror for any reason. If you wanted to talk to a juror in most courthouses, it is pretty easy to do. You ride the elevators with them, you see them buying food at lunch. The idea is to protect them and to protect yourself. In fact, I have been in elevators with lawyers for one side or the other where they start to ask you a question, and I say, "Not now, I think we have a juror present." And the juror will nod her head up and down. But what always happens when a jury is not sequestered, or even when they are sometimes, is some idiot on some news desk somewhere who does not know the rules, decides that there is enormous pressure to get jurors and that he should contact them.

After all, this is the way they do other things. They contact people normally and ask for interviews when something comes to fruition. If there is going to be a big vote on the floor of the Senate, you call people ahead of time and ask if they will be available to do an interview that evening. They do not understand the difference. And then you end up sitting in the courtroom with some judge who is foaming at the mouth in rage over this terrible thing that has happened. And you are sitting there thinking, oh, please, God, let it not be one of my reporters, please. And invariably it is someone who has had no idea.

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MS. KIRTLEY: I would like to raise one thing because it has become a concern to a lot of judges—whether a jury can remain impartial during the course of a trial if the jury itself is subjected to press coverage during voir dire. If, for example, stories are run profiling the jury, telling people all about them, printing their names and addresses. The major arguments you hear in support of impaneling anonymous juries, of course, is generally for the jurors' safety, in an organized crime or similar case. Lately a lot of judges have been persuaded by an amorphous idea that jurors have privacy rights that have to be protected. I think that a subsidiary angle that will be

explored, if it has not already been explored, is whether a juror is going to be so angry about the coverage of his service on the jury that it will in some way prejudice his ability to act as an impartial juror. I do not think that is true, but I would suggest that that is a logical corollary to this question.

MR. ROWAN: Okay, fine. Comments from our group? Yes?

DR. HANS: I actually am glad you raised that issue because I wanted to ask the panelists what they thought about this practice of impaneling anonymous juries. In my home state of Delaware, there was an instance involving a serial killer where the jury was made anonymous. And this was not to protect the jury's physical integrity, rather, it was the judge's reaction to a prior trial in which unflattering descriptions of the jurors had been printed in the local press. That particular decision was upheld by the Delaware Supreme Court.[20] It may be on appeal at this point.

MR. WERMIEL: The Supreme Court just refused to hear it two weeks ago.[21]

DR. HANS: I would be very interested in getting people's reactions to that. As a jury researcher, I find most troubling the case where jurors are told they are going to be anonymous and the reason is because of concerns about physical danger to them. I worry under those circumstances that juries might pre-judge guilt. But I do not have any firm opinion about anonymity and what impact it might have in these more amorphous cases that you talk about.

MR. BROMWICH: I think it is a very, very difficult problem. I have practiced for a number of years in the Southern District of New York, which is really the home of anonymous jury cases. They have had a lot of anonymous juries in high-profile mob and narcotics cases because of either concerns about or a history among the defendants charged in the case of directly tampering with the jury or trying to affect the judicial process itself. In many of those cases, unfortunately, judges have, in effect, lied to the jury. This was done to protect the rights of defendants and to prevent any fears from seeping into the jurors' minds that it was these defendants who had threatened them. The judges told them that the reason they were being selected anonymously was to protect them from intrusions from the press, which just was not so.

There was a recent case out of the Third Circuit involving yet another mob case, the *Scarfo* case,[22] in which a judge was very dis-

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20. State v. Pennell, 565 A.2d 895 (Del. 1989).
21. Gannett Co. v. State, 567 A.2d 423 (Del. 1989), *cert. denied*, 110 S. Ct. 1947 (1990).
22. United States v. Scarfo, 850 F.2d 1015, 1025 (3d Cir. 1988) (observing that trial

turbed about what he saw as the practice of essentially lying to jurors. The judge tried an instruction which essentially said, "I have not heard the evidence, you have not heard the evidence, but the evidence if proved might raise concerns for your safety or the safety of your family; it is less a matter of the defendants having this in their minds, but somebody acting on their behalf that they might not even know about." I just read this a few days ago, and I was taken with how unsatisfying an explanation that must have been to the defendants and their counsel. As much as the judge was trying not to alarm the jury and was trying to protect against prejudice to the defendants, that seemed to me to be the inevitable result of that kind of instruction.

DR. HANS: As Shari Diamond said, jurors are active information processors and they are going to make inferences when they are anonymous. Even in a case where you are concerned for more amorphous reasons or concerned about jurors' privacy rights, they make the direct inference that this defendant is dangerous and may be more likely to convict.

MR. BROMWICH: It is a real problem, because you obviously do not want to have jurors subjected to those sorts of contacts that could either affect their life or their safety. Judge Richey, in the *Edmond* case,[23] tried it a little differently. He did not try to give a reason. He simply said, "It is becoming more and more common to not take your names and addresses in cases in this court. That is the procedure we are going to follow here. Fill out your name and address on the top two lines. It is going to be deposited with the court clerk. But I am not going to know it and the lawyers are not going to know it. I just wanted to let you know that." Now what kind of idea that plants in the jury's mind when they know that standard practice is to give names and addresses, I do not know.

MS. TOTENBERG: Well the other question is, in a city the size of Washington, whether it did any good whatsoever. I would argue most strongly to you that most, if not all of the jurors in the *Edmond* case[24] were well known to their neighbors. Folks in the neighborhood knew that their neighbor was sitting on this most celebrated case in Washington, a case involving many in the community and that that is what a jury of one's peers is supposed to mean. And I must say, it does make me a little queasy, the thought of having

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judge "was correct in his decision to be frank with the jury" regarding need for juror anonymity).

23. United States v. Edmond, Crim. No. 89-162 (D.D.C. Dec. 6, 1989); *see also Edmond Convicted on All Counts in Drug Conspiracy Case*, Wash. Post, Dec. 7, 1990, at A1.

24. *Id.*

completely unaccountable and unnamed, anonymous jurors. At the same time, I can conceive of a Columbian cartel case where jurors would, in fact, be in great danger and there would be a good reason to have an anonymous jury. You would certainly be telling the jury that you thought that the defendant was probably guilty if you told them why their names were not being disclosed. And then lastly, of course, there's the question of the jury system itself. We have seen in the last few weeks a very serious and important jury story in the District of Columbia about a black jury that refused to convict an accused murderer because he was black.[25] Some of the jurors became so conscience-stricken by this, or upset by it, that one of them finally wrote to the judge. Reporters then went out and interviewed the jurors and there were very interesting stories about that.[26]

I have since come to find that there are possibly other situations like this in the District of Columbia. This may turn out to be a very serious problem. If we had anonymous juries, we certainly would not know about it.

DR. LOFTUS: I have a couple of comments. First, I just wanted to mention that a few years ago I published a study that tried to examine the question of how often juries violate the prohibition against discussing the case before they go into their deliberations and how many read newspaper articles about it.[27] Using some fairly sophisticated techniques for extracting very sensitive information from people, techniques you use when you want to find out about drug use and criminal activity, we estimated that somewhere around eleven to twelve percent of jurors who sat in a short, not particularly high-publicity, trial violated this prohibition. Now I do not know if that means that they talked to their spouse, read the newspaper, or watched something on television, but approximately eleven to twelve percent violated this prohibition. This suggests to me that in a longer trial, or a particularly juicy trial, the figure could be much higher. I do agree with Shari Diamond that the prohibition probably does accomplish at least one goal, jurors do not discuss it among one another. And as Shari Diamond put it, it limits the damage. That is my first comment.

I will go on to a second comment and just remind all of us that in

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25. Gellman, *Letter Stirs Debate After Acquittal; Writer Says Jurors Bowed to Racial Issue in D.C. Murder Case*, Wash. Post, Apr. 22, 1990, at A1 (final ed.).

26. *Id.* (stating that letter from anonymous juror said most jurors believed defendant was guilty but did not want to send any more young black men to jail).

27. Loftus & Leber, *Do Jurors Talk?*, 22 TRIAL 59, Jan. 1986, at 59.

the *Haldeman-Erlichman* Watergate trial,[28] a survey was done in an attempt to get a change of venue. When you do these surveys, you not only ask "Have you heard about this case," which many people did, but also question, "Based upon what you know, do you feel that they are probably guilty, or are you sure they are guilty?" The defendants in that case did try to move the trial to some other jurisdiction where there might have been knowledge, even a high level of knowledge, but there was not such a great predisposition to believe in guilt. So my question for everyone would be: if Mayor Barry did such a survey in this area and he were to show that not only is there a high degree of knowledge, but X percent of the people polled believed strongly that he was guilty, would he then have a more fair trial if he moved somewhere else?

MR. ROWAN: Mike Bromwich, how do you feel about that?

MR. BROMWICH: Do I believe he would have a better chance of getting a more fair trial somewhere else? Maybe, but I think there really is a value in having somebody tried in the community in which they are charged and in which the alleged crimes took place. And I think you need to ask one additional question; not only do they acknowledge, based on what they've heard, that the guy probably did it, but—and this is the hard one to determine the honesty of the answers you're getting—can they lay whatever preconceptions or information they have aside and render a decision based exclusively on what they hear in the courtroom?

I think even with a high percentage of people having some view shading towards guilt, whether it is in the *Barry* case[29] or some other case, you nonetheless would be able to find a jury that would in fact be able to decide the case based on the evidence rather than on any preconceptions they had going into the case.

MR. ROWAN: Are there any other comments?

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DR. KERR: Let me just make a quick comment. In listening to some of today's discussion, I am reminded of some commentary I saw concerning the Supreme Court's use of social science data. Professor Morris Cohen said when it comes to conflict between strongly-held theories and facts, it is much easier to dismiss the facts

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28. *See* United States v. Mitchell, 377 F. Supp. 1312 (D.D.C. 1974), *aff'd sub nom.* United States v. Haldeman, 559 F.2d 31 (D.C. Cir. 1976), *cert. denied*, 431 U.S. 933 (1977).

29. United States v. Barry, Mag. Crim. No. 90-0041M (D.D.C. Feb. 1, 1990) (LEXIS, Genfed library, Dist file); *see also* Wash. Post, Jan. 19, 1990, at A1 (reporting arrest of Mayor Barry on charges of cocaine possession).

than well-ingrained theories.[30]

I think almost everybody doing research in this area subscribes to the theory that jurors are conscientious, sincere, are doing the best they can, and more times than not, do a superb job. But I do not think that this theory should lead us to dismiss the growing body of facts (or at least as close to facts as we in social science can provide now at this time), that jurors often react to publicity and that the existing remedies do not always work, or may work inadequately.

For example, in our most recent research,[31] we are finding approximately forty percent increases in conviction rates when the only thing that differs between two conditions is juries exposure to some publicity two weeks in advance of the trial. In our rush to give the jury its just due, I think it is important that we not lose sight of such facts.

DR. VIDMAR: I was simply going to comment that I would argue that the remedy of change of venue should perhaps be given more consideration than it is in some instances. Indeed, I have worked in cases where I am convinced it was important to move the trial. I have been involved in a couple of child killing cases and there was no way the defendants in those cases could get fair trials in their communities. Often the shocking nature of the crime gets the whole community network going. It produces legally inadmissible information, and more important, misinformation—they put the child in a washing machine, the mother is schizophrenic—when in fact, none of that is true. Furthermore, the way the information about the case is communicated through social networks and mass media tells people how to think about the case. And so, I think in response to Professor Kerr's comments, I am in agreement that, in some instances, we should not just gloss over the problem of pre-trial prejudice.

MR. ROWAN: Let me ask Professor Kerr this question. I heard Mike Bromwich suggest that if a public official is charged with a crime, he ought to be tried in the jurisdiction where —

MR. BROMWICH: Not just a public official. Anybody.

MR. ROWAN: Do you believe that change of venue is a good remedy in cases like that?

DR. KERR: I think that is a remedy that is not used enough. The cases that concern us most are those where the publicity is so intense and widespread that it is not going to do a lot of good to have

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30. Cohen, *The Process of Judicial Legislation*, 48 AM. L. REV. 161, 164 (1914) (quoted in A.T. MASON, BRANDEIS AND THE MODERN STATE 146 (1936)).

31. Kramer, Kerr & Carroll, *Pretrial Publicity, Judicial Remedies, and Jury Bias*, 14 LAW & HUM. BEHAV. 409 (1990).

a change of venue. However, there are a lot of cases where the publicity does tend to be more local but still intense and prejudicial, where change of venue could be made better use of. But it is the expense and the rarity of its use that discourages granting motions for the change of venue.

MR. ROWAN: We have talked mostly about criminal cases today. Would any of our panelists or people in the audience like to differentiate or distinguish civil cases? Is there a similar problem in civil litigation, especially high profile cases involving environmental catastrophes or something like that? Is there anybody who would wish to venture any comments on that subject?

MS. TOTENBERG: It is a criminal case, but who would have thought that our Exxon captain could have gotten a near acquittal in the middle of Alaska?[32] This, I think, sort of disproves the change-of-venue theories. I am for change of venue, like you are, Neil Vidmar, in those very small communities or circumstances where you cannot see any way other than suffocation. I have also been persuaded on occasion that it might have been better to move a trial like the *Edmond* trial.[33] But then I went to that trial for a few days, and it is impossible for me to know, or for anyone to ever know, whether it would have ever made a difference because the evidence was so overwhelming that I cannot see any way he could have been acquitted. In those kinds of cases, you have no control essentially to even wonder about it.

DR. VIDMAR: I think there could be some instances where large corporate entities, in particular, gain such a reputation in a community that they really are seen as the bad guy. The employer, for example, that closed down the factory and polluted the mills may be viewed that way. In fact, I know of a case out in California several years ago that never came to trial, but indeed, I was convinced there could not have been a fair trial in that particular community. And so I guess my short answer to this is: indeed there are instances where these kinds of problems arise in civil trials.

MR. BROMWICH: I agree. I think there is a distinction, but it is not so much a civil/criminal distinction as it is an individual defendant/corporate organizational defendant problem. Most juries, whether it is a civil or a criminal case, can judge a person as fairly as they would want to be judged by them or by other prospective jurors.

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32. State v. Hazelwood, No. 3-ANS-89-7217, -7218 Crim. (Alaska Sup. Ct. 1990); *see also Hazelwood Acquitted on 3 Charges; Guilty on 1*, L.A. Times, Mar. 23, 1990, at A1, col. 2. Captain Hazelwood was captain of the Exxon *Valdez*, an oil tanker that ran aground in Prince William Sound, Alaska, on March 24, 1989, spilling 11 million gallons of crude oil into the Sound. *Id.*

33. United States v. Edmond, Crim. No. 89-162 (D.D.C. Dec. 6, 1989).

The same mentality, I do not think, takes hold in a case where a corporation, let us say Exxon, is on trial. In such a case, the normal juror just does not identify with the corporation. So I think it is very hard for organizations, whether in a civil or a criminal context, to get a fair shake.

MS. TOTENBERG: But would that differ with change of venue?

MR. BROMWICH: No, I do not think it would.

DR. VIDMAR: In the instance I am talking about, it would have because it was a local history. Sometimes reputation and history could work for the corporation, as say, when it is a big employer in the state. But each case has to be evaluated on its own merits.

MR. ROWAN: We are running short on time. Do you have a comment?

VOICE: It seems to me, whether the judicial remedy is a change of venue or dismissing a juror, that the problem still comes back to the same question we have been directed to think about today. And that is, what is the triggering mechanism by which you allow the change of venue or you allow the dismissal of the jury? Is it merely that the jurors had read news stories? Is it something beyond that they read news stories and are conviction prone? Is it something even beyond that, which is, can jurors still be impartial even if they are conviction prone if we can detect that they are willing to judge the evidence fairly? And it is that third standard, I think, that this discussion has led to at least make us push for how to determine that, whether the result is a change of venue or dismissing an individual juror?

DR. VIDMAR: I have conducted public opinion surveys, as I know other people have. In one criminal case, someone had sat on a policeman's head and pushed a gun in his mouth the day before Christmas, and ultimately shot the policeman in the head. Fortunately, it was a 22-caliber bullet and it bounced off the bone and did not kill the policeman. The point is that I was sure that this defendant could not get a fair trial, given the community publicity at the time of the event. Over a year later, when the case was coming to trial, I ran a survey for the defense lawyer and, lo and behold, people did not remember much about the case, and this defendant had a horrible record and everything else.

What you can do in these special cases is careful, systematic, empirical research. It does not have to be expensive and run into hundreds of thousands of dollars. You can put the results in front of a judge and let the judge weigh the evidence. That is part of my response. But we are talking about exceptional cases, not the run-of-the-mill case.

MR. ROWAN: Shari Diamond, do you have an answer to that?

DR. DIAMOND: It is a wonderful question. I think your third example is obviously the one we are trying to do. And I think people have been skirting that in a way because we do not really know how to do it. There has been a lot of reference to asking the juror, and if the juror says that, despite seeing all these things, "I can be impartial," then what do you do? Do you take them at their word about that? That is clearly not enough in most cases.

In the *Mitchell-Stans* case,[34] one juror was substantially responsible for persuading his fellow jurors to quit after an initial ballot on which eight of the twelve favored conviction. On the voir dire he had admitted that he had extensive exposure to Watergate-related material. But he said he could be fair. But we do not even know the extent to which self-exposure and the extent to which controlled, experimental kind of exposure is at issue here. In the real world, you have to deal with both of those. The only reasonable approach to this problem is a very extended individual questioning about the content of that person's knowledge. We cannot simply rely on their promise to put that knowledge aside, but need to explore with the potential juror how that knowledge affects their belief. And that is about as close as you can come.

MR. BROMWICH: I think Judge Sporkin gave us a very honest answer this morning when I asked him what do you do if you find out that a juror says initially that they cannot be fair. Do you accept it and excuse them or do you probe deeper to find out whether that is really the case. And he said, "It depends on how needy I am for a juror, whether it is the end of the day and I need one or two more jurors to round out the pool." I think it was a remarkably honest answer. That is the way a lot of judges, in fact, select juries.

I think there are real world, practical remedies for dealing with the kinds of problems we have been talking about. One is to increase the size of the jury panel so you have enough jurors in reserve to ensure a better chance of getting a fair and impartial jury. And second, increase the number of peremptory challenges in a small number of high-profile cases that will allow lawyers for both sides an opportunity to weed out jurors who they have reason to doubt will give a fair and impartial verdict.

MR. ROWAN: If my notes are right, he said he only excluded potential jurors wholesale in one instance. I would like to see, in the

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34. United States v. Mitchell, 372 F. Supp. 1239 (S.D.N.Y.), *appealed dismissed sub nom.*, Stans v. Gagliardi, 485 F.2d 1290 (2d Cir. 1973); *see also* Zeisel & Diamond, *The Jury Selection in the Mitchell-Stans Conspiracy Trial*, 1 AMER. B. FOUND. RES. J. 151 (1976).

experience of our group, how widespread is the wholesale exclusion of persons from juries who have heard anything about a case. Is that a widespread phenomenon or is it a fairly uncommon experience?

MS. TOTENBERG: Completely uncommon, except possibly the *North* case.[35] I think that is the state of the law, too. The lawyers can correct me, but I do not think you have to be ignorant to serve on a jury, you just have to be fair.

MR. ROWAN: Any further comments?

MR. BROMWICH: Jurors can even have preconceived opinions as long as they say, and the judge accepts, that they can put those aside and judge the case based on the evidence.

MR. ROWAN: On that point, I think we will call on Fred Cate to deliver the final words of wisdom.

MR. CATE: That is an introduction I could have lived without. All I really want to do is take this opportunity to once again thank each of the panelists from this afternoon, from the two sessions this morning, and each of you who participated from the audience. You have generated a lively and productive discussion. The Annenberg Program is always interested in not letting issues of importance die where there is still important work that can be done, and we would be very interested in suggestions that any of you might care to offer after the meeting or at anytime in the future for what future work, particularly in this area, we ought to be considering.

I also want to take this time to acknowledge people who were very influential in the planning process for this. The Annenberg Program prides itself on being a bridge and bringing people together. We do not always contribute all of the substantive knowledge, and this is certainly one of those cases. And I would like, at this time, to thank Rob MacCoun, Shari Diamond, Jonathan Casper, who could not be with us today, Judge Mikva, and Peter Blanck, who very early on in the process were very generous with their time and with their help. And finally I would like to thank the staff of the Annenberg Washington Program because you have really done a terrific job. And I would like to particularly note Oren Rosenthal, who is program's first and only intern and is well aware of that now, and also the associate director.

So thank you all very much.

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35. United States v. North, Crim. No. 88-008-02 (D.D.C . May 4, 1989) (LEXIS, Genfed library, Dist file), *vacated in part, rev'd in part*, 910 F.2d 843 (D.C. Cir. 1990).