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Book Review: The Press in the Jury Box, by Howard Felsher and Michael Rosen

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THE PRESS IN THE JURY BOX. HOWARD FELSHER AND MICHAEL ROSEN. MacMillan, New York: 1966. pp. 239. ($7.25)

A rather compelling argument for some type of legal regulation of criminal news reporting is presented by the authors. Michael Rosen, a lawyer, has done a vast amount of research and Howard Felsher has organized the material in such a way that it is difficult for the reader to disagree with the conclusions reached in the book.

The book, throughout its entirety, continues to hammer home the thesis that the present techniques being employed in criminal reporting severely prejudice an accused's case, the result of which is to deny him "full protection of due process of law". The reader is continually reminded that a crime is not solved until after the defendant is convicted by a jury, but that newspapers, television and radio persist in referring to a crime as having been solved after a suspect has been arrested and charged. The authors cite a California case where eight of twelve jurors openly admitted that they believed that the defendant was guilty as a result of reading newspaper reports of the case prior to trial. Mr. Felsher then states that although some flagrant instances of convictions as a result of pre-trial publicity have been overturned by courts of appeal, there is no guarantee that this will occur in every case.

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The book particularly attacks editorial comment in well known and influential newspapers which attempt to influence public opinion against a suspect. A good example of this type of reporting is the *Sheppard case*, where the authors have printed a series of editorials directed specifically at Dr. Samuel Sheppard over a period of months, before and after his arrest. Another area to which a whole chapter is devoted, is what the authors refer to as "leaks" by the police and the prosecution of vital evidence and information about a case to the press in order to influence public opinion. To emphasize the extent to which this technique is used, the authors cite the case where Earl Warren (now Chief Justice of The United States Supreme Court) in his capacity as district attorney in California used the press to prod a grand jury to bring down indictments against a number of private citizens and public officials in a construction scandal. The authors charge that Warren first used the press to acquire the indictments and then employed the grand jury's evidence to strengthen his case at trial by leaking the evidence to the press.

The newspapers are allowed to defend their position throughout the book, especially on their stand for non legal interference with their right to report and what they refer to as the "public's right to know". However, this position is presented in a rather unimaginative manner as compared to the authors' criticisms and the defences presented by the press are always strategically placed after describing a particularly egregious violation of a defendant's rights as the result of over zealous reporting. The position of the press is probably best described by F. R. McKnight, a former president of the American Society Of Newspaper Editors, where he indicates that "trial by newspaper" and sensationalism as a basis for increasing circulation is "irresponsible journalism", but that newspapers should be self-policing and therefore he objects to any form of legal regulation of newspapers. The authors substantiate their arguments that newspapers are incapable of self-regulation by citing numerous examples throughout the book, of instances where the press has disregarded court instructions as to the type of reporting to be allowed and the prohibition of photographs.

One chapter of the book is devoted to a fairly detailed examination of the traditional safeguards available to a defendant to counteract the effect of prejudicial publicity, all of which the authors conclude are grossly inadequate. Another chapter is dedicated to an examination of the British legal system and the length to which it goes to ensure a defendant's fair trial. Suggested American reforms are also discussed in detail along with attempted voluntary sanctioning in Massachusetts and the merits of a code drawn up by the Philadelphia Bar Association in 1964. The authors conclude that the only realistic approach is to pass legislation which would prevent the press from publishing "prejudicial information until such time as that information could no longer prejudice"

It is difficult to disagree with this conclusion although the methods used to arrive at this conclusion are fertile grounds for disagreement.

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