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FAIR TRIAL—FREEDOM OF THE PRESS

NORMAN J. FREEDMAN*  

INTRODUCTION

The power of English and American courts to punish summarily for constructive contempt\(^1\) is derived historically from similar sources. In the United States, it springs from an undelivered judgment of Mr. Justice Wilmot in *The King v. Almon* in 1765. In England, the locus classicus is a judgment of Lord Chancellor Hardwicke in *Roach v. Garvan*.\(^2\) In practice today, however, there is a wide divergence.\(^3\)

In the United States, the power has been emasculated by statutory and constitutional limitations.\(^4\) The English courts have moved in the opposite direction, punishing as contemptuous publications calculated to interfere with the due course of justice and carrying this to excessive lengths in the view of a majority of American authors.\(^5\) The Canadian courts have steered a middle road between these routes with the ensuing result that neither the Bar nor the Press is satisfied.

The basic problem, however, remains the same and is reflected primarily in criminal cases that attract notoriety and at times arouse the curiosity of the morbid and the prurient. In order to guarantee a decision based solely on evidence presented in court, it would be necessary to completely blanket outside publicity. On the other hand, it is arguable that publicity is an essential auxiliary in administering

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\(^1\) The term is used here to describe criminal contempt by newspapers or other media out of court, tending to hinder the administration of justice or striking at the discipline and efficiency of judicial authority and thereby constituting a wrong against the State.

\(^2\) 2 Atk. 469 (Ch. 1742) at 469. "Nothing is more incumbent upon courts of justice than to preserve their proceedings from being misrepresented; nor is there anything of more pernicious consequence, than to prejudice the minds of the public against persons concerned as parties in causes, before the cause is finally heard."

\(^3\) Goodhart, 48 Harv. L. Rev. 885 at 887. The author points out that an article on contempt of court in the American Encyclopedia of the Social Sciences, 1931 Ed., hardly mentions control of the press, whereas in Halsbury's Laws of England, 1932 Ed., the same subject receives extensive consideration.

\(^4\) Notably the First and Fourteenth Amendments.

\(^5\) The approach here is that taken by Donnelly and Goldfarb, 24 Mod. L.R. 239, at 239-240. For a contrary view of the English position see B. Smith's *Public Interest and the Interests of the Accused in the Criminal Process*. 32 Tulane L.R., 349.
the criminal law because the public have a right to be informed that a charge has been laid, certain evidence has been adduced and a result has been reached involving acquittal or conviction and sentence. The problem, therefore, is essentially where to draw the true line and this necessarily depends on which of two rights is to be deemed superior when they clash; the right to a fair trial or the right to freedom of the press.

It is the purpose of this thesis to examine the views of several jurisdictions in attempting to resolve this inevitable conflict.

THE AMERICAN VIEW

General Development

It is abhorrent to Anglo-Saxon justice as applied in this country that a man, however lofty his station or venerated his vestments, should have the power of taking another man's liberty from him. Society has always permitted exceptions; a limited right of courts to punish for contempts. But that right has been grudgingly granted and has been held down uniformly to the least possible power adequate to the end proposed.6

The First Judiciary Act, 1789, gave the federal courts power to punish by fine or imprisonment all contempts of authority in any cause or hearing before them. Abuses of the contempt power resulted and it was consequently curtailed by the Federal Act of 1831, which confined the misbehaviour to the presence of the courts "or so near thereto as to obstruct the administration of justice." The Supreme Court, however, circumvented this limitation by construing the so near thereto provision in a causal rather than a geographical manner.7 This allowed a presiding judge to punish the publication summarily for contempt if it had a reasonable or inherent tendency to interfere with justice. Twenty-three years later, the court over-ruled itself8 and attributed a physical, rather than causal, context to the provision. Since most publications occurred neither in the court's presence nor near thereto geographically, the summary contempt power was severely restricted.9

THE MODERN VIEW

In Bridges v. California,10 while a motion for a new trial was pending, Bridges, a prominent labour leader, telegraphed the Secretary of Labour and protested the decision which forbade the transfer of allegiance between two labour unions. Bridges published the telegram in local newspapers and was fined for contempt.

In the Times-Mirror Case,11 the defendant newspaper editorialized on the proposed probation of two labour unionists convicted of assault-

6 Balantyne v. United States, 337 F. 2nd 657, at 667.
7 Toledo Newspaper Co. v. United States, 347 U.S. 402.
8 Nye v. United States, 313 U.S. 33.
9 I am indebted to Donnelly and Goldfarb, 24 Mod. L.R. 239, and Goldfarb, 61 Mich. L.R. 283, for much of this information.
10 314 U.S. 252.
11 Ibid.
ing non-union truck drivers. The editorial "Probation for Gorillas," referred to the men as the goon squad and sluggers for pay. The editor and publisher were subsequently fined.

The lower court judgments were reversed, in a 5-4 judgment by the Supreme Court which held that the First and Fourteenth Amendments prohibit state courts from summarily publishing publications which do not present a clear and present danger to the impartial administration of justice.

Mr. Justice Black, speaking for the majority, pointed out that the California legislature had not enacted law to the effect that publications outside the court room which comment on a pending case in a specified manner should be punishable. He stated that the clear and present danger cases resulted in the working principle that the substantive evil had to be extremely serious and the degree of imminence extremely high before utterances could be punished. It was up to the court to examine the particular statements and the circumstances of their publication to determine to what extent the evil of unfair administration of justice was likely to result.

The minority opinion, delivered by Mr. Justice Frankfurter, advocated a wider construction of the contempt power than the narrow limitation set by the majority. He pointed out that a trial is not a free trade in ideas but that it involves a right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit. Referring to the First and Fourteenth Amendments, he stated that they did not bar a state from acting to ensure that conclusions in a case would be reached only by evidence and argument in open court and not by any outside influence, whether of private talk or public print.

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12 Ibid, at 260. "Such a declaration of the State's Policy would weigh heavily in any challenge of the law as infringing constitutional limitations. But the problem is different where the judgment is based on a common law concept of the most general and undefined nature. For there the legislature of California has not appraised a particular kind of situation and found a specific danger sufficiently imminent to justify a restriction on a particular kind of utterance. The judgments below, therefore, do not come to us encased in the armour wrought by prior legislative deliberation."

13 The lower court reasoning on this point is more compelling. The test stated there was whether the publication had a reasonable tendency to interfere with the orderly administration of justice. The court felt that the telegram embarrassed and influenced the actions and decisions of the judge before whom the action was pending. Bridges v. Superior Court, 14 Cal. 2d 464, at 471:

"The published statement was not only a criticism of the decision of the court in an action then pending but was a threat that if an attempt was made to enforce the decision, the ports of the Pacific Coast would be tied up."

14 Also dissenting were the Chief Justice, Mr. Justice Roberts and Mr. Justice Byrnes.

15 Ibid. at 291. "The comment must be calculated to create an atmospheric pressure incompatible with rational, impartial adjudication. But to interfere with justice it need not succeed. As with other offences, the state should be able to prescribe attempts that fail because of the danger that attempts may succeed. . . . The purpose is to protect immediate litigants and the public from the mischievous danger of an unfree or coerced tribunal."
Two subsequent cases developed the Bridges philosophy and attempted to define the limitations of the clear and present danger test. Both followed the majority Supreme Court view, and in so doing emphasized the narrow limitation of the summary contempt power.\footnote{In Pennekamp v. Florida, 328 U.S. 331, the Supreme Court stressed that freedom of discussion should be given the widest possible range compatible with the fair administration of justice. Frankfurter, J., dissented, at 357: "Since judges, however stalwart, are human, the delicate task of administering justice ought not to be made unduly difficult by irresponsible print."}

While these judgments appeared to virtually extinguish the summary contempt power, they all related to trials before a judge sitting alone and it was felt that the Supreme Court might more readily find a clear and present danger where a jury was involved. The question arose in State v. Baltimore Radio Show\footnote{193 Md. 300.} but was side-stepped by the Supreme Court in denying certiorari from the lower court ruling.\footnote{338 U.S. 912.}

In the Baltimore case, three radio stations were cited for contempt for broadcasting a United Press news report which contained the prior criminal record and alleged confession of a negro suspect accused of two brutal murders. Counsel for the accused waived jury trial feeling that he could not risk one in the atmosphere of hostility that prevailed. The accused was tried and convicted before a court consisting of three judges. The defendant radio stations were convicted of contempt on the ground that the broadcasts constituted not merely a clear and present danger to the administration of justice, but an actual obstruction, in that they deprived the accused of his constitutional right to an impartial jury trial.

This conviction was reversed on appeal with the court dismissing the judge-jury distinction as \textit{hardly tenable} and stating jurors were capable of the same firmness and impartiality as the judiciary.\footnote{This view is extremely difficult to support. It would seem that ordinary rules of court procedure and evidence (e.g. challenging for cause, \textit{voir dire}, change of venue) are premised on the view that a judge and a jury are not equally immune from human and outside influences, and evidence admissible before a judge may be excluded from a jury because its prejudicial effect would outweigh its probative value.}

In denying certiorari, the Supreme Court did not deal with the lower court's judge-jury analysis and left the question open. Mr. Justice Frankfurter indicated that in his view the Court had yet to pass on the extent of the protection afforded publications which had injuriously affected trial by jury in criminal cases.

Final illustrations of the modern American view towards fair trial and freedom of the press are found in \textit{Strobel v. California}\footnote{343 U.S. 181.} and...
in the press coverage of Lee Oswald and Jack Ruby, prime figures in the assassination of the late President Kennedy.

In Strobel, a case involving the sex murder of a young girl, newspapers, on his arrest, printed excerpts from his confession, the details of which were released by the District Attorney. Shortly after, Los Angeles papers reported the full text of the confession as it was read into the record at the preliminary hearing. The accused was described in headlines as a fiend and sex-mad killer and the District Attorney told the press that in his opinion, Strobel was guilty and sane.

The Supreme Court refused to quash the conviction stating that the publicity had not aroused such prejudice in the community as to necessarily prevent a fair trial. Mr. Justice Frankfurter dissented on the basis that a conviction would involve an affirmation that newspaper participation instigated by the prosecutor was part of the American concept of fair trial practice.

One could compile a lengthy book on the data, background, and various information about Lee Oswald that was made available to the public. The widespread publicizing of Oswald’s alleged guilt, involving official statements and public disclosure of evidentiary matters was combined with breathless details of the accused’s unhappy childhood, his navy record, his application for Russian citizenship and his involvement with Fair Play for Cuba. While some of this information may have been admissible at trial, it was all grossly prejudicial and could conceivably have prevented any lawful trial of Oswald due to the difficulty of finding jurors who had not been prejudiced.

Much the same coverage was accorded Jack Ruby. “I did it for Jackie,” one newspaper headlined but the majority of the press abhorred Ruby’s act of violence and linked it with his Chicago gangster background. It appears that Ruby’s defence of insanity, was seriously hindered, if not abrogated completely, by this prejudicial evidence concerning his background and character. No longer was it Jack Ruby, the grief stricken citizen removing a blot on humanity; instead it was Jack Ruby, a Chicago gangster, a man of violence, that stood before the jury. It would appear on the authority of the judgments from Bridges to the present that Ruby would have no chance of reversing his conviction on the basis of unfair prejudicial publicity in the press and other media of communication.

Practical Problems and Alternatives

In the United States, the press as representatives of the people are entitled to discuss pre-trial and trial proceedings freely. This right, however, has been flagrantly abused. Newspaper coverage of a case begins well before trial with details of the crime and names of

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21 Robert Fitton was similarly described by a Toronto newspaper in the sex slaying of Linda Lampkin. See discussion under Canadian View.

22 Supra, footnote 16 at 374. "A trial is a public event, what transpires in the courtroom is public property."
suspects. When a suspect is arrested and charged, the press report comments of the accused, the police and material witnesses. Efforts are made to fit the accused into a stereotyped category familiar to the public. Purported statements or confessions are considered conclusive of guilt.

At the trial itself, reports are similarly coloured, inflammatory and emotional. A circus atmosphere frequently exists. Nowhere was this more apparent than at the Jack Ruby trial which had all the decor and dignity of a Spanish carnival. The entire performance ranging from flamboyant, red-vested Melvin Belli to sick, pathetic Jack Ruby, had an air of unreality—something beyond normal courtroom experiences even in the United States. To protect the dignity of the court, an advertising agency was recruited. During the hearings for a change of venue, Ruby held impromptu press conferences and was photographed and quizzed for radio and television. He was, as one person described it, “more a celebrity than a man fighting for his life.” Before the trial, a syndicated service peddled a series allegedly written by Ruby entitled: “I killed Lee Oswald.”

The trial itself was equally amazing: seven men staged a televised jailbreak, the judge chewed tobacco, the district attorney chewed cigars and the defence chewed gum. As for Jack Ruby, he was merely convicted and sentenced to the electric chair.

Any publication, even if true and reliable, may improperly influence the honest and rational exercise of judgment by both triers of fact and law. In reviewing American press conduct, however, as reflected in the leading cases, one can only conclude that the press is motivated solely by a desire to increase circulation with its resultant adverse effects. Surveys taken indicate a high correlation between the amount of crime news on the front page and the circulation and advertising revenue of the paper. Thus, motivated by the competitive pressures of economic existence, the warped sensationalism of a large section of the public and the constitutional limitations combined with judicial reluctance, the press have obtained a licence of injurious publication and comment which will likely impair a fair trial and yet be beyond reprehension.

American authors have suggested possible reforms and alternatives, but while sound in theory, they are difficult to implement in practice. A brief summation would include:

(a) Voluntary Action by Press and Radio.

The American Society of Newspaper Editors and the American Bar Association have been unable to formulate a joint programme of

23 The Finch-Tregoff case is a good example.
24 Mr. Arnold Agnew, managing editor of the Toronto Telegram considers that this is not necessarily true in Canada. He points out that the Montreal Star has more advertising lines than any other paper in Canada but has less crime news. The Star, however, is the only English speaking newspaper published in Montreal in the afternoon. Therefore advertisers that want to reach the English speaking population have little choice.
self imposed restraints. Newspapers whose sales depend on crime and scandal news will not agree to regulations and any programme which did not include the entire press would be nullified by competitive pressures.

(b) *Change of Venue.*

This alternative is beset by both practical and legal problems. A change often involves delay, expense and inconvenience and its utility is limited by state-wide newspaper and radio coverage. The legal requirements are stringent and vary with each state. Generally, the accused must show prejudicial publicity combined with resulting hostility sufficiently strong to impair a fair trial. Most courts will not reject a potential juror simply because he has read the publication so long as he expresses an ability to decide the case solely on the evidence presented in court. Also defence counsel in questioning jurors about press reports risks reviving their memories of the past publicity or emphasizing its magnitude.

(c) *Exclusion of Press from Trials.*

In the United States, instances in which the press have been excluded from criminal trials are rare. Historically, the press have generally been admitted to trials, often where the general public have been excluded. It would seem that this settled practice when combined with the fear of secret trials and closed door proceedings would vitiate the use of this restraint by the courts.

(d) *New Trial*

Here, the accused must demonstrate that a different verdict would have been reached in the absence of outside influence but the courts disagree on the quantum of proof required to show probable influence on the verdict. Some courts will infer prejudice if the article was calculated to prejudice the jury while others require that the jury be guilty of gross misconduct and clearly appear to have injured the accused. Also, a new trial encompasses all the practical objectives involved in change of venue and has the added disadvantage of possible unfairness to the party who won at the first trial.

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25 In some states, this is so even where the prospective juror admits having formed an opinion as to the defendant's guilt or innocence, on the basis of the pre-trial publicity.

26 In *People v. Jelke*, 308 N.Y. 761, the trial judge excluded the press from a criminal trial due to the sordid and sensational nature of the expected testimony and the fact that the case had been over publicized. The paper applied for a restraining order based on a New York Statute guaranteeing the accused in a criminal trial the right to a public trial. The application was refused on the ground that the right to a public trial is personal to the accused and only he can assert or waive it. Outsiders including the press have no standing to raise it. *United Press Association v. Valente*, 308 N.Y. 71. This decision aroused a storm of protest in the press and considerable comment by American writers, most of it disagreeing with the judgment. Carl Krueger in 52 Mich. L.R. 128, expressed the general feeling by distinguishing between granting the jurist a measure of discretion and elevating him to the status of censor of the public press.
(e) Expansion of the Contempt Power.

While the Supreme Court and the Constitution would appear to have strictly limited the operation of constructive contempt, it may be that the contempt power is not as limited as first appears. Firstly, Mr. Justice Black emphasized in *Bridges* that a different result might be reached if the State Legislature itself enacts legislation indicating the specific danger involved and preventive measures to be taken. Secondly, Mr. Justice Frankfurter indicated in *Strobel* that the Court might more readily find a "clear and present danger" if a jury rather than a judge sitting alone were involved. The Court also indicated that part of its objection to the application of the contempt power was based on the summary method and the indefiniteness of the Common Law offence.

Thus the way seems to be open for specific substantive definition and statutory reform in this area. To be effective, a statute would have to cover both pre-trial and trial periods and end with final acquittal or conviction. Broad or general terms would be ineffective because they might infringe the First and Fourteenth Amendments or might be construed as re-enacting the Common Law contempt power. Specific evils threatening a fair trial should be mentioned and procedural safeguards included such as trial before a different judge or limitation on fine or imprisonment. The Administration of Justice Act of 1960 in England, would be an excellent starting point, particularly section 11.

It is respectfully submitted that there is a present definite need for statutory reform and judicial guidance in the fair trial-press freedom area in the United States. Let us hope that such reform is not long in coming.

**THE ENGLISH VIEW**

The majority of American authors and members of the judiciary feel that the English courts have carried control and censorship of the press to great extremes. A closer examination of the English position, however, reveals that while press control is stricter than in the United States, it is not as stringent as the Americans maintain and indeed suffers from a glaring inadequacy that hampers a fair trial in England.

The basis of this latter deficiency is found in the *Law of Libel Amendments Act of 1881*. The courts have construed this as giving implied permission to the press to publish pre-trial proceedings. Wide publicity is often given to the evidence led against the accused at the pre-trial hearing including evidence of alleged confessions. Generally, only the evidence for the prosecution is heard at the proceedings

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27 See supra, footnote 12.
28 8 & 9 Eliz. 2, c. 65. See discussion under English View.
29 "A fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged."
for committal and the resultant publicity of only one side of the case seriously hampers a fair trial.

In R. v. Rouse,30 highly prejudicial evidence was given in police court to the effect that the accused was leading an immoral life with several women. The Lord Chief Justice pointed out that in his view, it was unfortunate that character evidence could be given at open hearings and subsequently published, yet not be admissible at trial. An appeal was dismissed on the ground that such publications were permitted by law. Thus the English courts appear to have taken the position that evidence introduced at preliminary hearings, usually of prosecution witnesses only, can be published even though it was not and could not have been later produced at the trial itself.

Fortunately, the English courts have clamped down on publications other than those referring to preliminary hearings and have discouraged the press from extending their activities. They have adopted the view that in contempt cases, all that need be shown is that the article was calculated to, or had a tendency to, pervert justice; it is not necessary that justice be actually perverted.

In R. v. Evening Standard,31 the defendant employed special investigators and published their reports of information and evidence obtained at the scene of the crime. The paper also interviewed a potential witness previously warned by the police not to make a statement. The editor was fined substantially and warned that similar future conduct would lead to imprisonment.

The courts have convicted publications for contempt where they commented on a case after the charge but before committal for trial,32 published a picture of an accused when identity was in issue,33 or expressed an opinion on a pending case by suggesting that a person may soon be taking a leave of absence for a considerable length of time. Comment in the form of a cartoon is also punishable.34

In the contempt cases, the newspaper has generally defended by asserting the truth of the matter stated or by alleging a lack of intention or mens rea. The former defence has been held to be no defence. The purpose of punishment for contempt is to prevent a case from being tried in the newspapers before it is tried in the courts and here information, although true, may not be admissible at trial, thus causing irreparable damage to the accused’s defence. The defence of innocent dissemination (of no mens rea) however, involves more difficult problems.

30 The Times, Feb. 24, 1931 at 5 K.B.D.
31 40 T.L.R. 833.
34 R. v. Editor of the Evening News, The Times, Oct. 27, 1925 at 5 K.B.D.
In *R. v. Odham's Press Ltd.*,\(^{35}\) the publisher, editor and reporter of a newspaper were fined for contempt for publishing an article attacking a person against whom criminal proceedings had been instituted. Evidence disclosed that the defendants did not know of the proceedings at the time of publication but this was held to go only to penalty and not liability. The test stated was whether the publication was calculated to interfere with the course of justice.

In *R. v. Griffiths*,\(^{36}\) the English distributors of a magazine compiled and edited in the United States and containing material prejudicial to the fair trial of a murder charge, then in the process of being tried, were convicted of contempt. The distributors, who had sold the magazines on their newstands, claimed that they were not aware that the publication contained the offending material and had no reason to suppose that it would. The court held that lack of knowledge of the contents of the article was no defence, nor was lack of intention. The offence lay in the publication and distribution and the defence of innocent dissemination was not available to those who in the course of their business circulated the objectionable matter.

These two decisions were criticized as being unduly severe. In the *Griffiths* case, it was arguable that the defendant's liability meant that every small newspaper or street seller who sold the publication would also be liable although the court indicated that this was not so. It was felt that there should be a re-examination of the law of contempt in the innocent dissemination area.

Such a re-examination was reflected in section 11 of the *Administration of Justice Act of 1960*,\(^{37}\) which seems to balance effectively the proper administration of justice with the legitimate demands of the press. By sec. 11(1), the publisher of material calculated to prejudice pending proceedings is granted an opportunity to show that he had no knowledge or suspicion that proceedings were pending and that he took reasonable care to discover the true position. Section 11(2) accords the distributor a similar opportunity. By sec. 11(3), the onus of proof in each case is placed on the publisher or distributor. This section establishes the defence of innocent dissemination in contempt proceedings and overrules the *Odham's Press* and *Griffiths* cases although liability would perhaps have attached in *Odham's* because of the negligence of the defendant distributor.

Thus, with the exception of the reporting of pre-trial hearings, it appears that the English law of constructive contempt of court has been reasonably successful in preventing attempts to prejudice the hearing of criminal cases. The trial itself is open to the public and can be fully reported. This abrogates the fear of secret courts and makes it appear that justice is being done. Whether or not this is


\(^{36}\) [1957] 2 All E.R. 379.

\(^{37}\) *Supra*, footnote 28. See American View.
true in fact constitutes another question, but at least in the press-fair trial area in England today, an affirmative answer seems reasonably secure.

THE CANADIAN VIEW

Everyone is entitled, when he comes before a court of justice, to have the decision founded on the evidence adduced at the trial and properly admitted and on the law applicable to the issues, unimpeded and unprejudiced by any other outside influence.\(^{38}\)

While this statement illustrates the underlying theory of the Canadian view, a review of press conduct in Canada in the twentieth century seems to indicate that theory and practice are far apart.

(a) Preliminary Hearings.

In Canada, as in England, publication of evidence given on the preliminary inquiry or at a coroner's inquest, is privileged in regard to defamation. There is serious doubt whether this is in accordance with the proper administration of justice for it may easily prevent a juror from approaching the actual trial with an open mind, relying only on evidence produced before him.

The grave dangers inherent in this system were clearly revealed in the press coverage of two recent preliminary hearings.

Harold Banks, President of the Seafarers' International Union of Canada, was charged, along with Eldon (Jack) Richardson and Paul Carsh, with conspiracy to assault Captain Henry Walsh, a rival labour leader, in 1957. The preliminary hearing was held December 18th, 1963, and was given wide publicity.

On December 19th, the following report was published in the Toronto Globe and Mail:

Two engineers, Richard Greaves and John Wood, told a preliminary hearing that they heard Banks say he would deal with Captain Walsh. A third witness, Michael Sheehan, testified with great reluctance, that he heard Banks say that he straightened that monkey out.

Greaves said he was sitting in the S.I.U. leader's office when Banks said: 'That... Walsh, he's been around here eating my meals. He asked me to get his son a job. Now he is up there calling me all kinds of a gangster and thug. It's time we did something about him. I think I will.'

Greaves added that he sat there while Banks called Kaspar, Richardson and Carsh individually into his office.

'I've got a job for you to do,' Greaves quoted Banks as saying. 'There's a man running off at the mouth. I think I'll send Richardson with you.'

Wood, a Verdun engineer, told the hearing that in conversations with Banks, the S.I.U. leader told him that he had sent three men to the lakes and that they had done a good job on Walsh.

The most reluctant witness was Sheehan who said 'I'm sick of the whole bloody mess. He's no worse than the rest of them.'

Sheehan said he heard about the beating about a week after it happened and said he thought he was told about it by Richardson. Later he testified that he was in Banks' office when Kaspar was given a cheque for $1,000.

On December 20th, a graver charge was substituted against Banks and the other two defendants. They were ordered to stand trial on a charge of conspiracy to commit an assault to wound, maim or disfigure Walsh. Conviction here carries a maximum sentence of fourteen years as opposed to two years under the original charge. The trial is set for March 24th, 1964.

There can be little doubt that the right of Hal Banks to an impartial jury trial based entirely on evidence produced at trial has been irreparably damaged by the Globe's reporting of the preliminary hearing and other reports similar to it. Nor can this press irresponsibility be justified in the public interest as concerning a story of national importance. Harold Banks is entitled to a fair trial and the protection of the courts like any other citizen. There is no reason for applying a different standard to him than one would to a common thief, merely because a matter of national interest is involved.

A second flagrant abuse of coverage of a preliminary hearing occurred in the Victoria Times, February 20th, 1964. The paper, in reporting the opening day of a preliminary hearing on a rape charge, headlined in big, bold type:

"SAID HE DIDN'T KNOW WHY, CO-ED STATES IN RAPE TRIAL"

The body of the article read:

An 18 year old college girl told a closed court how she was choked, blindfolded and raped in a lonely spot near Arbutus Road, on January 20th.

The University of Victoria co-ed said Larry Kanester told her he was sorry after he raped her. 'He kept saying ... he didn't know why he did it.'

She said Kanester offered her a lift while she was on her way to classes in the morning. They drove some distance down a dirt road and he stopped the car, got out and went into the back seat as if he was searching for something.

Then, she said, he 'grabbed me and jumped into the front seat.' She testified that she screamed and then 'he choked me some more.'

The girl said Kanester made her lie face down on the front seat while he tied her hands and then he pushed her over the front seat into the back. He then blindfolded her.

The witness said she kept pleading with him to untie her hands and take off the blindfold and he did. All the while this was going on he told the girl he did not want to hurt her.

After the rape, Kanester took her to college. She testified she didn't resist Kanester because 'I was scared.' Medical evidence given at the hearing was to the effect that she had red marks on both sides of her neck.

The student said she picked Kanester out of a line-up as the man who attacked her. She said another university friend also picked Kanester out of the line up.

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39 Clark Davey, Managing Editor of the Globe and Mail, admitted that the paper's coverage of the Banks' preliminary hearing fell below the standard of reporting that he feels the Globe generally maintains.

40 Kanester's name appears seven times in this report. This could not help but have a definite adverse effect on a potential juror.
This article is a shocking example of press coverage. The only purpose of a preliminary hearing is to decide whether there is sufficient evidence to warrant a trial. The accused, Kanester, must now go before a jury whose minds have been, at the least, prejudiced, and at most, inflamed, against him. The article leaves nothing to the imagination. It discloses important evidentiary matters possibly not admissible at trial. It spells out the details of the identification, and, most outrageous of all, it pre-judges the vital question of consent by assuming the validity of the charge as illustrated by the words After the rape.

Such abuses and their resultant injustices are inevitable as long as the press are allowed to report evidence led at preliminary hearings.

(b) Coroners' Inquests.

In R. v. Thibodeau, a coroner’s inquest, held before the accused was charged with murder, delivered a verdict in open court that the accused fired the gun in question and killed the deceased. The text of the verdict was published in the press. At the preliminary hearing, a confession made by the accused was ruled admissible and was read into the record. The confession was reported in several newspapers having a circulation where the accused was to stand trial.

At trial, counsel for the accused moved to cite the offending newspapers for contempt on the ground that the publications, although containing accurate reports of the events in the coroner’s and magistrate’s courts, were calculated to interfere with the fair trial of the accused, and had possibly prejudiced the minds of potential jurors. The citation was refused on the ground that such reporting was permissible by law.

In dismissing the contempt proceedings, the court pointed out that it is indisputable that reports of evidence of doubtful admissibility may cause potential jurors to form definite opinions as to the guilt or innocence of the accused. Chief Justice Michaud stated that the function of the inquest is merely to determine the manner of the deceased’s death and not the criminal liability of the accused. At preliminary hearings, the magistrate does not rule on the admissibility of confessions, this being a matter for the trial judge. Yet, section 455 of the Criminal Code as it stood at the time stated that the prosecutor could give in evidence any confession or statement made previously by the accused which by law is admissible against him. The difficulty is that the admissibility could only be determined at the trial itself and meanwhile reports of the statement would be published by the newspapers. The Chief Justice suggested that where a written statement is tendered by the prosecution, it should be noted in the record and made a part of it but should not be published in the papers. A similar restriction was to apply to verbal statements.

\[41 (1956) 23 C.R. 285.\]
This recommendation was adopted in an amendment to section 455 which now makes it unlawful to publish in any form a report that an admission or confession was tendered in evidence at a preliminary inquiry or a report of the nature of the statement involved unless the accused has been discharged or the trial has ended.\textsuperscript{42} While this is an important amendment and aids in eliminating prejudice to the accused, in only restricting the publication of statements, admissions, or confessions, the legislature has not gone far enough but should extend the restriction to all evidence brought out at preliminary hearings.\textsuperscript{43}

(c) \textit{Publication of Comments during a Trial.}

While it is generally accepted in Canada that the trial may be accurately reported, publication of comments during a trial is not permitted. The theory seems to be that such publication would tend to undermine the court function of deciding the guilt or innocence of the accused based on the evidence led in court. The fact that the jury may not let their minds be prejudiced is no answer.\textsuperscript{44}

Even if there is no intention to prejudice a fair trial, the publication may still be convicted of contempt if it tends or is \textit{calculated} to prejudice the trial or reduce the court to impotence so far as the effectual elimination of prejudice is concerned. Each case is decided on its own factual merits with the surrounding circumstances also being considered.

\textsuperscript{42} Maclean’s Magazine, a widely read publication in Canada, featured in the September 21st 1963 edition, a story by Robert Fulford entitled “Tragedy of a Sex Criminal.” The article discussed the case of Léopold Dion, convicted killer of four young boys. Fulford primarily directed his attack at the parole system and authorities who granted parole to Dion even though he had a known history of sex deviation. The author then described the proceedings at the coroner’s inquest:

“A huge man sobbing in the witness box, handcuffed on either side to a policeman, Dion told the Quebec city coroner’s jury how he had picked up the four boys—one on April 20, two of them together on May 5, another on May 26—in a car, taken them to isolated places in the country, and strangled them when they resisted his attempts to use them sexually. The first time, Dion said, he killed out of fear: ‘I didn’t want him to tell anybody because I would have to go back to the penitentiary.’ The remaining three boys he\textit{ apparently expected to kill}, for he seems to have made some preparations.

After he told his story, the jury judged Dion criminally responsible, and the following day he was charged with murder. Dion is now in the hands of an institution, the prison at Quebec. For him this is not unusual; of his forty-three years, he has already spent more than thirty in various institutions.”

It would seem that this article was not only highly prejudicial to the accused who was awaiting trial at the time and was subsequently convicted and sentenced to death, but also renders Maclean’s Magazine liable under Section 455 for contempt of court. The author here has reported a direct confession made at a coroner’s inquest and even the Canadian legislature prohibits this. Yet further research has uncovered no criminal proceedings against the editor and owner of the magazine.

\textsuperscript{43} For fuller discussion of this, see conclusion.

\textsuperscript{44} Wills, J.—\textit{R. v. Balfour} (1895) 11 T.L.R. 492 at 493.
In the *King v. Sullivan*, the Ottawa Journal, during the course of a murder trial, published the headline, “Mrs. Sullivan to Tell Own Story,” accompanied by a statement that the accused would unlock the mystery to her husband’s death and take the stand in her own behalf. The court, in convicting the paper and two reporters of contempt, pointed out the serious nature of the report and its prejudicial effect on the accused who was entitled to be tried on evidence given in court and to remain out of the witness box without comment. It was clear that the offending article had a tendency to interfere with the course of justice even though the newspaper had an excellent reputation and it was not doubted that they had no intention to cause the harm that ensued.

(d) *Comments after the Trial but before an Appeal.*

J. C. McRuer C.J.H.C. in his informative article on criminal contempt of court procedure criticises the publishing of news or editorial comment after the verdict is given but before an appeal. The case is still pending until the time for appeal has passed or until the appeal has been heard and judgment rendered and Mr. Justice McRuer feels that neither judge nor potential juror (in Canada, there is a wide right to grant a new trial), should be pressured into making a decision based on matters other than those produced at trial or on appeal. Beland Honderich, Editor-in-Chief of the Toronto Star stated, however, that where a case was before the Supreme Court of Canada, newspaper comment was unlikely to have much effect on the decision and here the paper might comment and risk a possible contempt conviction if it thought it was in the public interest to do so. Mr. Honderich felt that it was primarily a question of balancing the interests involved and here the public interest, in his opinion, outweighed any potential unfairness to the accused.

(e) *General Conduct of Canadian Newspapers.*

On January 19th, 1956, in connection with the murder of thirteen year old Linda Lampkin, the Toronto Telegram headlined:

“Quiz Father of Two Ten hours in Slaying”

Sub-headlines included:

“Linda, the Baby of Dancing Class,” “$7,000 Reward for Capture of Fiend” and “His Wife Calm, Trusting”.

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45 Feb. 13, 1951, unreported.
46 30 Can. Bar Rev. 225. Headings (c) and (d) are taken from Mr. Justice McRuer’s article.
47 This raises an interesting question as to whether a comment in a law review which discusses a decision before final judgment has been delivered is objectionable. It would appear that the better view is no. A law review does not have the wide circulation of a newspaper and the danger, therefore, of potential jurors reading it is lessened. Also, the discussion usually deals with a substantive point of law which is not a consideration for a juror. The possibility of an appellate judge reading the article is greater but it is unlikely that this would be his only source of material or that he would be influenced to change his opinion as a result of what he read.
In the body of the paper, were reports to the effect that police said Fitton knew the girl and she had been in his truck before, a chemical analysis of his clothing showed minute blood traces on his uniform and police were satisfied that Fitton was in the area around the time the victim was last seen. The paper also featured a pathetic picture of detectives looking at the crumpled body with the caption, "This Guy We've Got to Get."

The next day, the Telegram matching the standard of coverage of the previous day, featured a speech of an M.P. under the headline:

"M.P. wants perverts locked up till cured."

The main headline read:

"Linda 'Statement' Signed."

This was followed by an article which began: "It was 5.30 p.m. when Robert Fitton, a father of two, shrugged his shoulders, looked at detectives and signed a statement. Minutes later he was charged with the rape-murder of Linda Lampkin."

Other articles included vital information to the effect that schoolmates were to act as Linda's pallbearers, Linda was a sweet kid who sang in the choir, and Mrs. Lampkin would now be able to sleep.

On January 21st, a statement was published to the effect that a Don Jail official described the accused's attitude as indifferent. There were also pictures of police officers commended by the chief for the quick arrest and solving of the case.

Finally, on January 23rd, the newspaper headlined:

"The Life Story of Linda Lampkin."

This was accompanied by such pertinent questions as "What kind of a girl was Linda? Was she wild? Did she run around with boys? Were her actions responsible for her death?"

In this atmosphere of serenity and impartiality the accused was convicted of murder and hanged.

One year later, four year old Carol Voyee was taken under a viaduct, assaulted, and murdered by a youth who wore glasses and rode a bicycle.

The Telegram featured a smiling picture of the victim accompanied by the caption,

"Carol Voyee, Lovely, So Shy."

Pictures of the crumpled body were spiced with emotional comments from the dead girl's parents.48

48 "I've lost Carol forever"—Mom. "Hunt till I die, but I'll find him"—Dad.
An intensive search of schools in the Toronto area was immediately begun for a youth answering the description. The next day, while identification was indisputably still in issue, the Telegram published a front page photo of Peter Woodcock, accompanied by an article concerning the youth with the headline “Illness Warped Emotions”. Further abuses and emotional appeals followed in later issues of the Toronto newspapers.

In their coverage of these two cases, the Toronto papers were guilty of the most flagrant abuses of press conduct imaginable rivalling the best effects of California newspapers in publishing inflammatory, emotional and grossly prejudicial material.

At the Fitton trial, the issue was eventually reduced to whether the statement which he made to police and which contained only an admission of manslaughter, was true or false. The Telegram, however, had already assisted the jury in deciding this by the thoughtful publication of the fact that Fitton had “made a statement to the police after being charged with murder.” To the average layman, as indeed with the more astute observer, this can connote only confession and guilt. Mr. Justice Treleaven urged the jury to forget everything they had heard or read outside the courtroom and base their decision solely on the evidence as presented at trial. The jury were out for four and one half hours apparently trying to sort out their pre-trial and trial impressions of the accused. Eventually, they voted guilty and Fitton was hanged. Not content with the damage already done, the papers photographed the ghoulish crowd gathered outside the prison for the hanging and published the last letter Fitton wrote to his parents. Thus another complete and accurate coverage of a Canadian criminal case in the press was concluded.

A more recent case shows that the general sensationalism practised by many of our Canadian newspapers is continuing to poison our system of justice.

In *R. v. Thomson Newspapers*, the editors and publishers of two northern Ontario newspapers were cited for contempt for their coverage of the Owen Feener murder case.

Feener was charged on October 9th, 1960, with the murder of Kay Chouinor, by the Timmins police. On October 11th, the Timmins Daily Press began its impartial coverage of this pending case with the headline:

“Missing Pretty Redhead is Murder Victim”.

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49 The Telegram later admitted this mistake and apologized for it after Woodcock was convicted.

50 “It is an outrage to the principle of fair trial that it should be necessary for a judge to warn the jury to put out of their minds what they had read in the papers.” Wright—17 Can. Bar Rev. 191

The article talked about the girl being killed and Feener being charged and then discussed what Feener told the police followed by this statement:

We knew he was lying right then, said Chief Beacock. Up till that point we weren’t too worried about the girl. We thought she was either with him or had left the area. Those words changed the whole situation.

The article then described the body, stated Feener had dated the girl before and on the night in question, and that the girl was a gem of virtue. It then referred to the fact that a mounted police sergeant from New Brunswick was in Timmins and was questioning Feener concerning the death of one Kathy Essers. The further morbid description of the body followed under the sub-heading:

“Pools of Blood”

All the wounds were the result of stabs... the body’s broken hip is believed to have been caused by being dropped on the ground beside the road. The pool of blood in this spot could have come from her head. There were marks of the body having been dragged into the bush and it is thought the powerfully built Feener carried her to her final resting place. This would account for the blood-stained shirt and pants found near the scene.

The blood-stained pants were also the subject of another article which stated that Chief Beacock told the papers that he believed the pants belonged to Owen Feener.

Another article on the front page referred to Feener’s wife and infant daughter and stated that in July he started for Nova Scotia with them but left them in Montreal, thus raising an inference of desertion and attacking his character.

A final article appeared on the front page under the headline:

“Accused is object of search of many police departments”

Thus, to sum up the opening day coverage of this capital murder case by the Timmins Daily Press, we have on one page, either by direct statement or clear implication, references to the accused being a liar, murderer, wife and child deserter, and a wanted man and renegade.

The following day, the front page article stated that Feener had a three day beard and was wearing cowboy boots. It also said that there was evidence that a woman’s watch and birthstone ring found on Feener at the time of his arrest belonged to the deceased.

Another article stated that a Salvation Army captain who knew Feener described him as an exceptionally smooth talker. It went on to the fact that the Halifax police department and the New York state trooper detachment along with the Kirkland Lake police department had requested Chief Beacock to question Feener about a number

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52 The clear implication is that Feener was linked up with two crimes.
53 This is grossly prejudicial, a direct implication of guilt.
of people missing in their areas. A statement was also made that the car Feener was driving when arrested had been identified as belonging to Kathy Essers, the murdered girl in New Brunswick.

Any ordinary person reading this could not help but have imprinted on his mind the suggestion that the accused was of the character of a man who killed women and that he was responsible for unsolved murders both in Canada and the United States.

On the front page of the second section, there was a prominent picture of six young lads carrying a coffin with the caption:

Brothers Pall Bearers for Murder Victim.

This was followed by a macabre account of the funeral and the sermon which referred to the deceased as a victim of depravity, a regular church goer, a father to her fatherless brothers, followed immediately by a statement that one of her brothers said he hoped he never got his hands on Feener. The article then reiterated the previous day’s desertion statement and stated that Feener was remembered in the area for his habit of walking around the streets with his shirt open to the waist regardless of the weather.

Thus in one article there were references to the details of the funeral, the character of the deceased, the sermon, the brother’s statement about the accused, and the description of the accused as a man who deserts his wife and goes around with his shirt open to the waist. There is not much more that could have been said about the accused that the Daily Press had not already said.

Apparently, the editor and publisher felt otherwise, for the next day on the front page there appeared a defiant looking picture of Feener, sleeves of his shirt rolled up displaying his big arms with the caption:

Brave Front on Murder Suspect.

Another picture on page one showed the deceased’s Younger brother being restrained by the police chief with the description:

I’ll Kill You, shouts Roderick Chouinor. Police Chief Beacock restrains 20 year old brother of Murdered Girl.

The article on page one described the remand proceedings and then stated:

Roderick Chouinor, 20, one of the dead girl’s six brothers, yelled as the prisoner appeared: ‘You dirty lousy rat. What did you do to my sister. I’ll kill you.’

54 This mixture of solicitude about the girl and the mention of Feener in the article is highly inflammatory; the adulation of the girl set over against what followed about the accused.
The coverage in the other newspaper, the Northern Daily News, was similar in nature.55

The Thomson chain was convicted of contempt and fined $2,500. The editors were not personally fined. Owen Feener was convicted and hanged.

We seem to have strayed a long way from the ideals of Lord Chancellor Hardwick66 in the area of fair trial in Canada.

CONCLUSION

The press can play a great part in the administration of justice by providing the public with a fair, accurate, unbiased, and unemotional account of what has transpired in the courts and by fairly and firmly criticizing those events where criticism is warranted. Public interest can not be satisfied just by full and accurate report of court proceedings; a prime function of the press is to interpret the news and offer constructive criticism.

What are the main areas of difficulty? It is submitted that in Canada, there are primarily two; preliminary hearings and general sensationalism.

Dean Wright of University of Toronto Law School, feels that the press have confused the trial itself with the preliminary inquiry into an indictable offence.57 He feels that a trial should be public and accurately reported as this provides an excellent safeguard for fair treatment of accused persons. Preliminary hearings, however, are not trials but only inquiries directed to ascertain whether there is sufficient evidence for trial. The discharge of the accused does not end the matter for he may be brought before the justice again if further evidence is later discovered.

Those who argue in favour of published reports of preliminary hearings base their argument primarily on the grounds that if the press were not allowed to report the proceedings, possible unfairness and injustices might occur behind closed doors which would not be made known to the public. Beland Honderich, Editor-in-Chief of the

55 In general, the articles tell in a highly inflammatory and prejudicial manner the whole story with little left out so that a prospective juror who had read them would have little doubt about the case.

56 In prejudicing the accused’s case, the articles interfere with the entrenched principle that the courts of justice, and the courts of justice only, try people charged with offences; and anyone doing anything to interfere with that must be punished so that the court can exercise its duty and protect those entrusted to its care.

57 A change of venue was applied for by counsel for the accused but was refused by the Chief Justice. He did, however, exclude all jurors from the Timmins area and commented that the necessity for this action was an outrage to the judicial system.


56 Supra, footnote 2. Introduction.

Toronto Star, while agreeing that it is arguable that preliminary hearings should not be reported, feels that it is an imperative duty of a newspaper to guard against Star Chamber methods. A little light is good! Although a fair trial may be prejudiced, the greater good is the check by newspapers of possible abuses. Mr. Honderich also points out, and admittedly his view is shared by others, that the public have a right to know that a community member is being questioned about certain events and certain evidence has been alleged by the prosecution. Crime is part of daily life and the public has a right to be informed. The greater good of an informed public outweighs any possible embarrassment or prejudice that the accused may suffer.

With the greatest respect, I am unable to agree with this view. The purpose of the preliminary inquiry is to determine if there is sufficient evidence on the part of the prosecution to warrant a trial. The defence need not introduce any evidence and indeed rarely does. Counsel may be unable to discover the evidence at the hearing. He may have evidence available but does not risk introducing it for fear of informing the prosecution as to the basis of his defence. Also, certain evidence if introduced at the preliminary hearing may restrict defence counsel’s tactics at trial and force him into adopting a less favourable mode of defence. Since primarily prosecution evidence is produced at the hearing, reports of it in the papers are naturally slanted in favour of the prosecution. This makes it virtually impossible in a well publicized case to select jurors who have not already obtained a one sided view of the evidence from press reports of the preliminary hearing or the coroner’s inquest. The Hal Banks, Larry Kanester and Léopold Dion cases are striking examples of the unfairness inherent in this system and drive home with resounding force the urgent necessity for legislative restriction in this area.

Our entire court structure, including trial practice, rules of evidence, and right of appeal, is directed solely at protecting the accused and affording him every opportunity to vindicate himself before a jury of his fellow citizens. In balancing the scales of justice and public policy, the overriding consideration must be the protection of the accused and not the prevention of Star Chamber methods by informing the public as to every aspect of a case from beginning to end. Clark Davey, managing editor of the Toronto Globe and Mail asserts that more harm than good is accomplished by the reporting of preliminary hearings and he would not complain if the law was changed. He feels, however, that it is a matter for the legislature and not the newspaper to decide. As long as such reporting is allowed, economic competition dictates that it will continue.

The argument against guarding against Star Chamber methods raises the essential question of whether we trust our judges. There seems to be a great uneasiness in the press and public concerning the judiciary and the possible abuses that could result if we had closed proceedings. This was reflected in conversations with Mr. Agnew, Mr. Davey and Mr. Honderich and indeed the law relating to the independent taking of a view by a judge in a jury trial indicates that the courts are also worried about granting a trial judge more power than is absolutely necessary to understand the evidence.

[footnote continued on page 73]
Furthermore, the press have an unfavourable record in this area. Men have been charged with serious offences with the charges subsequently being dropped. The press, while giving the charge and preliminary inquiry wide coverage, have not equally publicised the subsequent removal of the charges by the prosecution or the fact that there is insufficient evidence to warrant a trial. Often this information is completely unreported. Thus a man, although judged innocent and released by the courts, may suffer extreme embarrassment in the press and have a stigma attached to his name which he may never be able to remove.

The criminal code should be amended so as to prevent all newspaper publication of substantive evidence taken on a preliminary inquiry or coroner's inquest. Only general information relating to the name of the accused, the charge and the plea should be published along with other matters which the "court" feels is in the interest of the public to know. Equal publicity should be given immediately in the newspapers if the accused is discharged accompanied by an accurate report of the entire inquiry. Such a policy would prevent a potential jury from receiving a distorted view of the evidence which the accused has not refuted either because of lack of opportunity or personal choice. It would also enable a released citizen to return to his place as a productive member of society untarnished by the stigma of adverse publicity. Finally, it would inform the public that a member of the community was questioned and then released thus satisfying them that justice appeared to be done.

An informative press is essential to the administration of justice. The paper, however, in emphasizing the human element and in making emotional appeals to the viewpoint of the majority, prejudice a rational decision of the cogent material presented at trial. In no place was this more evident than in the Fitton, Woodcock and Feener cases.

Admittedly, some constructive good resulted from the public being aroused by the press. After Woodcock, there was a movement by the public to lock up all known sex deviates. The Star sponsored a meeting at Massey Hall at which eminent American Psychiatrists testified that the fact that a man had committed a sexual offence in the past did not necessarily mean that he would do so in the future and statistics and decide the case. My own view is that the majority of these fears are unfounded and we would far better serve the causes of justice by removing the shackles from the trial judge and placing our trust in his intelligence and good judgment. If he errs, as all humans will on occasion, there are procedures available to remedy the mistake. Regardless, the fear of possible abuse would have little application to preliminary hearings or coroners' inquests, but would be directed primarily to the trial itself.


A distinction should be drawn between the reporting of actual evidence led by the prosecution and the reporting of procedural abuses which occurred in the police investigation or at the hearing itself. The inclusion of the latter and omission of the former in newspaper reports may provide a means of striking a proper balance in this area.
disclosed that the majority of sex offenders were not repeaters. It became apparent to the public that there were no treatment facilities for these people in Ontario. Jail was the only alternative. The meeting and the resultant pressure placed on the government, generated by an informed public opinion, led to the establishment of the first Forensic Clinic for the treatment of sex offenders.

Of course, the Toronto Star readily admits that this does not justify what they did in the Woodcock case, but it does indicate a vital role that the newspaper can play in informing the public and urging them to do something constructive.

The courts are not infallible and another imperative function of the press is to draw attention to their mistakes. In the Lucas case, a coloured American gangster was convicted of murder on purely circumstantial evidence, and was executed. The Toronto Globe and Mail, in investigating the decision, has raised serious doubts as to its validity and as to the quality of the defence received by the accused. By informing the public, the Law Society and the legal aid as to the deficiencies in the handling of this case, it has generated reaction and possible reform, thereby preventing future repetition.

Arnold Agnew, managing editor of the Telegram, points out that often the accused has no money and an inadequate lawyer and therefore cannot or does not appeal an unjust judgment. If it appears that there is an inequity, the very reporting of the facts may bring justice to the accused, as illustrated in the Robin Roberts case.

There can be no doubt that Mr. Agnew is correct when he states that the press have a vital duty to keep the public informed at all times. There is no doubt that Mr. Honderich is correct when he states that a paper should publicize crime news because crime is part of the community and a newspaper should reflect the community around it. As well, it is in the public benefit to learn about law administration in the courts where some will act as parties, witnesses, or jurors. As stated at the beginning of this thesis, the question, therefore, resolves itself into where to draw a true line between balancing the interests of the accused and according him a fair trial and upholding the public right to be informed as to the daily events taking place in society.

It is respectfully submitted that legislation should be enacted to the effect that after an accused has been arrested, the press may only publish the bare facts of arrest and charge, along with any procedural abuses which they may discover. No evidentiary matters introduced at the coroner's inquest or preliminary hearing should be published unless the justice feels that it is in the public interest to publish it. It is for the court, not the press, to decide, at this stage of the proceedings, what is in the public interest. At trial, the press should be able

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62 Both the Star and Telegram felt that their coverage of crime news prior to 1957 left a great deal to be desired. Both felt that it had substantially improved since that time.
to accurately report the trial but without comment on the merits till after the verdict. Any attempt to influence the public, and thereby indirectly the jury, as by unduly publicizing crimes of a despicable nature, as in the Fitton, Woodcock and Feener cases, should be punished because it constitutes an interference with justice.

The public interest in a fair and impartial trial must prevail over the public interest in comment on matters of topical importance. The press is an important partner in law enforcement. Its job is to fairly report the proceedings of our courts and constructively criticize where criticism is warranted but not to attempt to influence the judicial process or undermine the faith of those who live under its protection.
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