Marquette Law Review

Volume 52
Issue 4 *Winter 1969*

Article 5

E. Harold Hallows Lecture Series

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Repository Citation

Paul C. Reardon, *E. Harold Hallows Lecture Series*, 52 Marq. L. Rev. 547 (1969).
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FAIR TRIAL—FREE PRESS

PAUL C. REARDON*

I am impelled to join you this evening, emerging as I do from the relative obscurity to which I have been so frequently consigned during the last five years, for a variety of reasons. The first, I suppose, stems from a sustained interest in the sainted individual whose name your University bears. I have thought for a long time that the motive and fortitude which impelled the French Jesuits to prodigies of valor and performance in opening up the West might well have their uses in these, our days of divisiveness and turmoil. There is always a need for men of character and strength and purpose, no matter what their points of view. Certainly democracy is best served when argument on such issues as that which has engrossed us finds in opposing camps sincere persons of competence who possess in large measure the qualities which so distinguished Jacques Marquette. Indeed, on what was for me the successful completion of the debates in Chicago on fair trial and free press in February of last year, I might say to him, "I was all the more delighted at this good news, because I saw my plans about to be accomplished and found myself in the happy necessity of exposing my life for the salvation of all these tribes." Although he was speaking primarily of the Illinois, he had in mind also local inhabitants, otherwise undescribed, as far north as Milwaukee.

Secondly, I am happy to be here for I speak to you in the E. Harold Hallows Lecture. For a goodly number of years now I have worked with judges and judicial groups throughout this country and abroad. In those years I have often been impressed that judicial figures, nationally known among their fellows for considerable contributions to the American judiciary and hence the people, often are not fully recognized in their own jurisdictions for what they are and what they have done. I am certain this cannot be so in Wisconsin relative to the Chief Justice. By his initiative and energy the Appellate Judges Conference was founded. That organization now has in its membership hundreds of the appellate judges of the United States and carries on programs by which those judges may find self-improvement through lectures, seminars, and the interchange of ideas and experiences. Ten years ago there was no vehicle for progress of this sort in existence. That one exists now, and that every state is able to benefit from it is due almost solely to the inspiration and effort originally provided by Chief Justice Hallows. His writings, his cooperation and interest have made him respected nationwide, and that you named this lecture after him impelled me more than any other reason to meet with you this evening.

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In "Tristam Shandy," Sterne had a comment on a curious practice of Germany's ancient Goths. "They had," he said, "all of them a wise custom of debating everything of importance to their state twice, that is, once drunk and once sober: Drunk, that their councils might not want vigour; and sober—that they might not want discretion." Since late 1964 I have been present at a plethora of conferences, meetings, forums, and what have you, in which the prime topic of attention was that to what we turn now. I assure you that none of the important ones was assisted by spiritous lubrication. I cannot vouch for those on the periphery or for the hundreds, yea thousands, where I was not privileged to be either a participant or observer.

As I look back over a year it seems to me that the debate which took place in the House of Delegates on the recommendations of that Advisory Committee on Fair Trial and Free Press was a classic in every sense of the word. Never in the history of the House had so many people been on hand. For an entire afternoon under television lights the committee presented its proposals and sought favorable action from the delegates. Appearing in opposition were representatives of all of the news media—sincere and knowledgeable men, who endeavored to make a case for delay in adoption and who contested certain statements and conclusions of the committee. The confrontation was high level in every respect. My own admiration and affection for the media representatives born of our meetings together over the preceding forty months was but increased, for notwithstanding our divergence of view in some, but not too many, respects our meetings had been frank but friendly, and in no sense marred by rancor. We both knew we were dealing with grave constitutional problems not to be resolved by aimless charge and countercharge. The delegates, as you remember, voted one hundred and seventy-six to sixty-eight to approve our recommendations and send them along to the appropriate parties.

My purpose tonight is to discuss with you the current status of the fair trial-free press question with the experience of a year behind us. What I have to say is a statement of my individual view. Our committee has been discharged for a year, and my observations are personal.

To place them in proper focus it is necessary that I review briefly the origins of our committee, its study, and what our proposals were.

The first query is logically, "Why was there any need for a study at all?" Let us first refer to the shortened language of the two Amendments in the Bill of Rights, the interpretation of which frames the discussion. The First says, "Congress shall make no law . . . abridging the freedom of speech, or of the press." The Sixth proclaims, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and

public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . ." Now the year 1964 saw an intense preoccupation with the implications of these amendments on the part of many in the legal profession and of many outside of it, due perhaps in the main to the shambles at Dallas following the assassination of the President. Upon this disaster the Warren Commission opined, "The experience in Dallas during November 22 to 24 is a dramatic affirmation of the need of steps to bring about a proper balance between the right of the public to be kept informed and the right of the individual to a fair and impartial trial." No one moving among the trial judges of the country in recent years could fail to note their increasing engrossment with day-to-day dilemmas facing them in a multitude of other and less notorious cases. Nor was this problem lately contrived. It had been with us for decades. I shall not, as I could, provide detail on this allegation, but a mention of the Hauptmann case, the Brink's case, and the Sheppard case will recall to your mind the basis of concern. In two years between January, 1963, and March, 1965, over one hundred reported decisions dealt with the question of prejudicial publicity. These were often heavily publicized cases, where the fabric of the administration of criminal justice was placed under heavy strain. Even a superficial review of fact situations in the examination of jurors in certain cases amply demonstrated what the courts were up against in trying to procure not ignorant juries but impartial ones. Lord Coke over three centuries ago declared that as the juror approached his task he "should stand indifferent as he stands unsworne." Applying the Sixth Amendment does not require jurors with vacant minds. It seeks only that jurors may come to their duties with an impartial outlook on the issues involved and with no predispositions. This then in the briefest outline was the nub of what bothered those who were bothered by the impact of prejudicial publicity on Sixth Amendment rights. I may add that those who were gravely disturbed by such publicity were in the main sufficiently aware that in accommodating both amendments a free press was vital to the democracy and were thoroughly cognizant of why the First Amendment said what it did and how it was that its draftsmen came to create it.

And so it was that in 1964 three foundations financed a massive series of studies on the administration of criminal justice under the leadership of Chief Judge J. Edward Lumbard of the Second Circuit Court of Appeals. The Committee on Fair Trial-Free Press which I was asked to lead was added to the original group of studies dealing with sentencing, pretrial procedures, and other aspects of the criminal process as a result of a burgeoning sentiment in that year that at long last the conundrum of how to effect an accommodation between the First and Sixth amendments might be solved. Mine was a strong

committee, comprising as it did federal and state judges, teachers of the law, and men of extensive and varied experience in the prosecution and defense of criminal cases. We came together at the end of 1964 and proceeded to the first of a great number of meetings, many of which were with representatives of the news media. At our first meeting with them in Washington there was general agreement by all present that a problem did in fact exist. It appeared logical to move to isolate it and endeavor to solve it. Certainly our committee with that objective in mind endeavored to remain during the many months of our deliberations as open-minded as possible. We assembled, under the leadership of our Reporter, Professor David L. Shapiro of the Harvard Law School, a research team. We initiated inquiries among judges and prosecution and defense counsel throughout the United States, with particular reference to metropolitan areas. I doubt that there is any case in the area of fair trial-free press anywhere in the English language that was not reviewed. We subscribed to a selected but sizeable group of newspapers over lengthy periods of time. We sent investigators into certain American cities, one a single newspaper town where the paper subscribed to a press-bar code, another a city in New Jersey where *State v. Van Duyne*[1] had laid down certain guidelines, and another, San Francisco, a large city with newspapers in competition and where there were no recognized guidelines. We talked with leading police officials and law professors, and kept in touch with state and local bar associations engaged in tackling the fair trial-free press puzzle at local levels. We met with many judges, both federal and state. The series of meetings with representatives of publishers, editors, and the television and radio industries produced much suggestion which was helpful to us. We sent a research team to England and carried out studies there. Since we were charged to make recommendations relative to Canon 20 of the Canons of Legal Ethics, a canon which had never so far as the reports would indicate been enforced, it is entirely appropriate that I read it to you in the form which goes back many years: "Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the Courts and otherwise prejudice the due administration of justice. Generally they are to be condemned. If the extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously. An ex parte reference to the facts should not go beyond quotations from the records and papers on file in the Court; but even in extreme cases it is better to avoid any ex parte statement." The canon was demonstrably weak, inexact, and did not lend itself to enforcement. The recommendations which came at the end

[1] 43 N.J. 369, 204 A.2d 841 (1964).

of our studies and which were ultimately adopted in Chicago were most importantly directed to a revision of that canon.

Prior to considering the recommendations, I wish to comment on our relationships with the media during the many months of study. I reiterate that the discussions which we had with them which we carried on in a number of cities were held on the friendliest of terms and in the spirit which had been in the mind of the Warren Commission when it urged study. It was my belief over a long period of time that with some statesmanship among all parties it would be possible to establish guidelines to which all would agree, and I bent every effort for over two years to the end that a joint declaration of policy might be made. Our study demonstrated that the points of difference between the media and the bar are comparatively few but it was unfortunately impossible to come together on such a joint statement, and this fact became extremely clear when on October 2, 1966, we released our recommendations.

The results of our work were contained in a report which with accompanying commentary and the product of certain studies comprised 265 pages, but the standards themselves are comparatively brief. They were directed to lawyers and to law enforcement agencies primarily. I shall review them with you.

Relative to lawyers, and it is in this field that we have recommended a revision of Canon 20, we stated that the duty of the lawyer is not to release information or opinion if there is a reasonable likelihood that such dissemination "will interfere with a fair trial or otherwise prejudice the due administration of justice." We asked the lawyers to refrain with respect to grand jury or other pending investigations from making any extrajudicial statement that goes beyond the public record or that is not necessary to indicate the fact of an investigation or to obtain assistance in the apprehension of a suspect. We asked that from the time of arrest, the issuance of a warrant, or the filing of a complaint or information or indictment, until the commencement of trial or disposition without trial, a lawyer, whether he be with the prosecution or defense, not release details on the accused's prior criminal record, the existence or content of any confession, the refusal of the accused to make a statement, the performance of any examination or tests, the identity or credibility of prospective witnesses, the possibility of a plea of guilty to the charge, or any opinion on the accused's guilt or innocence. The foregoing is the nub of the proposed new canon. We recognized, however, that the lawyer is free to announce an arrest and certain circumstances surrounding the arrest; to describe certain physical evidence other than the confession, admission or statement, which is limited to a description of the evidence seized and the nature of the charge, and is free also to comment on certain other factors. We sug-

gested that all of this be wrapped up in a rule of court, as well as adopted, as it will be now in the new code of professional responsibilities on which work has gone forward for four and a half years. We further recommended that violations of the standards which I have described in broad terms should be grounds for reprimand, suspension, or, in extreme cases, disbarment. All of this constituted Part I of the recommendations.

Part II recommended the adoption in each jurisdiction by law enforcement agencies of internal regulations paralleling those which we recommended for lawyers. We were of the opinion that where this was not done within a reasonable time the standards for such agencies should be made effective by rules of court or by legislative action. As the result of certain information reaching us we also recommended the imposition on judges of the duty to refrain from any conduct or the making of any statement with respect to a pending criminal case that might tend to interfere with a fair trial.

Additionally, we recommended in Part III that with respect to pre-trial hearings the defendant might move that all or part of the hearings be held in chambers or otherwise closed to the public, including the news media, on the ground that evidence or agreement adduced at the hearing might disclose matters inadmissible at the trial. We left the closure of such hearings within the discretion of the trial judge, with the provision that a complete record of the preliminary trial hearing should be kept and made public after the trial or disposition of the case without trial.

Certain other recommendations in Part III dealing with court procedures which I shall not describe in detail followed in general the suggestions contained in the Sheppard case, although they had been roughed out in committee discussions prior to the time that that case came down. These had to do with change of venue or continuance, standards for granting motions relative thereto, standards of acceptability of jurors, and conduct of the trial, including use of the courtroom, sequestration of the jury, and the cautioning of witnesses, parties and jurors. With these recommendations there has been little debate and I judge that they were generally acceptable.

Finally, we urged a limited use of the contempt power against a person who disseminates for publication an extra-judicial statement relating to the defendant or the issues in the case that is willfully designed to affect the outcome of the trial and that seriously threatens to have such an effect; or against a person who knowingly violates a judicial order not to disseminate until completion of the trial specified information referred to in a hearing closed to the public. I emphasize that this is a very narrow application, indeed, of the inherent power of contempt which has always been considered to reside in the courts. I

emphasize, too, that without it the courts would in effect be powerless to afford an accused the fair trial which he is entitled to receive. The provisions for contempt which really are peripheral to the main thrust of our report created great consternation among the media. I suggest a careful reading of these provisions should offend no one.

These were the recommendations. It is important that they be understood for what they are. It is equally important that they be understood for what they are not. In view of the barrage of adverse editorial comment which followed upon the promulgation first, and the adoption second, of the recommendations, I should like to tell you what they are not and what they do not do.

1. They place no restriction on the news media to inhibit publication of essential information about crime and criminal investigations or the administration of the courts.

2. They do not restrict in any sense full coverage of trials or close any court records. While prior criminal records of the accused would not be officially released by prosecutors or law enforcement agencies, the news media could, if they chose to, publish what their own files contained.

3. They do not impinge in any way on the freedom of the press to expose corruption in the administration of public affairs or to criticize the courts on law enforcement.

4. They do not extend the contempt power of the courts but, on the contrary, narrowly define the areas in which that power is to be employed.

5. They do not seek to supplant voluntary codes of fair practice in crime news coverage developed by press-bar groups in a number of states, but rather serve to complement such codes by clear definition of the types of potentially prejudicial information which should not be released between arrest and trial.

6. They are not to be interpreted as providing a cloak of secrecy for lawyers and law enforcement officials relative to information about arrests and other steps in the judicial process which should be made public.

7. They do not restrict in any sense the exercise by the press in its investigative or "watch dog" roles or its freedom to publish findings developed through its own initiative.

I have referred to the meetings that we had with representatives of national organizations of the news media. It is possible now to designate at least fourteen changes that were made in our recommendations arising from suggestions made at these conferences. We had, for instance, originally provided that in case of a mistrial stemming from an extrajudicial statement held to be in contempt of court the court might require all or part of the proceeds of any fine to be em-

ployed to reimburse the defendant for additional legal fees or other expenses fairly attributable to the order that the case be tried in a different venue or tried again in the same venue. We excised this recommendation in the interest of coming as close as possible to the position on this point which the media representatives held. It is possible to cite other similar examples. We made changes where the media's suggestions seemed sound and because we strove mightily to approach the point of view of the American press as closely as possible. It is to be emphasized that we did this freely and subject to no pressures whatever.

If the chorus of editorial condemnation was ample and fortissimo upon the release of our original draft recommendations in October, 1966, it swelled to even greater heights in February of 1968. I reviewed several thousand news clips in the days following the action of the House, and were I not possessed of a naturally sunny and cheerful disposition I should have been rendered extremely morose indeed. A typical comment was that in the Milwaukee Journal: "Now that it [the American Bar Association] has come down with fair trial fever it seeks to obstruct the free flow of public information that is constitutionally proclaimed vital to a working democracy. The canons have been in growing disrepute anyway for their obsoleteness, unreality, arbitrariness and ineffectiveness. These gravely misguided new ones should not be allowed to take root. They are not the holy gospel of the subject." I ask you to make your own judgment of this comment which to me bordered on the bilious but which I must say in all fairness was quite representative. Yet there were not a few editorial writers, and some very good ones, who, while they might have questions on this or that recommendation, were sympathetic to the point of agreement in the main with what we had proposed and what had been adopted.

Have our proposals taken root, and what has been their fate? Have they gone down the drain in the torrent of adverse reaction from the media? Were the months of labor which produced them all in vain? These are questions which I should like to explore now.

First off, I wish to touch upon the performance of the media in this sensitive field in the last year. It is my impression that the press of the nation has been taking a hard look at its policies and a great deal more care in general in what it writes on information in its possession or obtainable in the crucial time span between the commission of a crime and that point when a defendant charged with the crime goes on trial. The efforts of the bar to clean up its own house are being matched, if not exceeded, by efforts on the part of many responsible publishers. In one instance, rather amusing to me, a certain newspaper has persistently belabored our report and yet issued house instructions to its personnel setting down guidelines on what and what not to print

which are possibly more restrictive than we should have written for the paper in question had we been asked. Corporate agencies of the media are joining in the search for voluntary guidelines for press and bar to which I shall refer again presently. Certain breaches in good judgment and surrenders of responsibility seem to me to have occurred in certain publications relative to certain cases, breaches which have greatly complicated the task of the trial judges and juries on those cases. Size and financial strength possessed by certain media do not in themselves convey a carte blanche, and I subscribe to the quaint notion that they do not combine to relieve those in charge of such media from all restraint, either that imposed by sweet reason, or, here's the rub, the law. Of course, it is a possibility, and some are willing to hazard it as a constitutional fact, that no sanctions at all exist to check those who wrap themselves in the cloak of the First Amendment and defy others who try to make the Sixth Amendment work. I doubt it, and the day such doubts are authoritatively extinguished will be a sad day in the administration of criminal justice in this country. And yet, as I have indicated, such extinction does not follow as night the day from what has gone before. Certainly a responsible and reasonable attitude on the part of the media, and I reemphasize that there is plenty of present evidence of this, will aid immeasurably in the accommodation between the two amendments which exists and needs only to be nurtured a bit to grow to satisfactory strength. Given good will on all sides there is no necessity for any Armageddon.

Secondly, of great importance was the approval by the Judicial Conference of the United States last September of the report of a distinguished committee of federal judges led by Judge Irving Kaufman of the Second Circuit. The New York Times hailed the report as a "notable contribution to establishing a more secure balance between the constitutional guarantees of fair trial and free press," and referred to the hope of the Judicial Conference that the news media "by their self-restraint will obviate the necessity of imposition by the courts of direct controls." No one can fault those sentiments. There were editorial writers and others who sought to drive a wedge between the recommendations of our committee and that of Judge Kaufman, but, as he himself pointed out in a letter to the Times when his committee report was first issued, he wished to state in fairness to the ABA recommendations that his work was "directed at the free press-fair trial dilemma as manifested in the Federal Courts," and that, as his report had attempted to make clear, the problem in a state court context to which our reportt also addressed itself was "of a somewhat different nature." Since one by one the federal courts are now putting in effect the procedures of the Kaufman Report approved by the Judicial Conference, and this has nationwide effect in those courts, it is

important to understand the striking similarity between them. The new federal court standards as they apply to lawyers and court personnel have incorporated the ABA standards in identical language. By its approval the Judicial Conference has paralleled the ABA recommendations on (a) the release of prejudicial information by attorneys on penalty of disciplinary action, (b) the release of such information by bailiffs, clerks, marshals, and court reporters, and (c) the regulation of the conduct of trials so as to "insulate the proceedings from prejudicial influences." While the federal report did not enter the field of closure of preliminary hearings, it pointed out the difference in practice and experience between state and federal courts in those fields, and stated that it was desirable to accumulate more experience in the matter before a formal rule was adopted. Reference was made to "the established practice in many districts for bench conferences and conferences in chambers out of the hearing of all persons except the participants." In this respect the federal practice might be said to be more restrictive than what we recommended since, while we advocated occasional closure when imperative, we did so on the basis of the taking of a complete transcript of such hearings, with release of all material there considered at a time when no prejudice might ensue. One distinction made in the federal report lies in the fact that it "does not at this time recommend judicially-imposed restrictions on the release of information by federal law enforcement agencies." However, as the report makes clear, the federal courts are not under quite the same necessities as those of the states. The so-called "Katzenbach rules," issued for the Department of Justice in April, 1965, laid down a code of conduct which is extremely close to the ABA recommendations, with the sole exception that criminal records might be made available upon specific inquiry. In an address at about the time the Department policy was announced, Mr. Katzenbach stated that there was a body of opinion in the Department which was adverse to such releases, and reconsideration of this position might become necessary at some time. In short, therefore, it can be said that the federal and ABA reports are on the same wave length and that the state and federal courts are able to move forward together on the most important recommendations in each report. This concurrence has not received general attention but one has only to compare standing orders entered in some of the federal courts and special orders entered in certain famous cases in the last year in the state courts to conclude that there is no real divergence in the objective and practice in each.

Thirdly, another highly important happening has been the recent submission to the House of Delegates of the ABA of the Code of Professional Responsibility submitted by the Special Committee on Evaluation of Ethical Standards which commenced its work in August,

1964, on a replacement of the Canons of Ethics which so badly needed a completely new look. This report is up for final adoption at the annual meeting of the Association in Dallas in August. It incorporates, in accordance with the instructing vote of the House of Delegates in Chicago in February, 1968, the new standard to replace Canon 20, in the terms in which the standard was drafted by our committee with certain minor and inconsequential changes in wording to conform it to the general plan of the new code. When this code is adopted finally, as it undoubtedly will be, additional muscle will be given to the guidelines for counsel in the fair trial-free press area. The significance of these steps is very great.

A fourth step in the march to better days can be found in the growing body of case law. While no comprehensive review of the reported cases in the last year has to my knowledge been made, there have been a number of decisions in appellate courts which mirror new approaches to the resolution of fair trial-free press problems based at least in part on what was recommended. I pause to outline one of these.

Maine & Braun v. The People[2] was a California case where a change of venue was sought by mandamus in a case involving "crimes of the gravest consequence," alleged assaults by two outsiders upon a popular young couple in the northern California community of Ukiah. The court found that certain authorities had talked far too freely about the crimes, to the extent that the existence of a confession became common knowledge in the community. The court ordered a change of venue on the standard elaborated in our report, which it held was authoritative. The opinion was dealt with harshly by leading California newspapers, not so much because of the result, but because it had invoked the ABA report. Nonetheless, it states the law of California.

In my own state, two decisions came down last spring dealing with contempt proceedings brought against newspapers or their agents. The language in each of these, in which, incidentally, the defendants were absolved, should be of general interest.

I have mentioned the issuance of general and special orders of the federal and state courts on conduct of counsel. A very good sample of these is that which was promulgated on October 1, 1968, by the United States District Court in the Eastern Division of the Northern District of Illinois and which follows literally the language recommended by the federal report as well as by ours. It is safe to say that even in instances where trial courts are not employing the exact language of the several reports, these are nonetheless having a heavy effect on the type of order which is issued. Certainly the reports contain much to assist the beleaguered trial judge facing at once an unusu-

[2] 68 Cal. 2d 375, 438 P.2d 372 (1968).

ally troublesome trial, a desire to impanel a jury as impartial as possible, and a heavy interest on the part of the media in all proceedings. Thus, the lengthy studies and the source materials which they made available would, it seems to me, have justified themselves by focusing attention on helpful techniques even had there been no further affirmative action by the American Bar Association or the Judicial Conference of the United States. As Norman Isaacs said in the last issue of the Harvard Law Review, "The [ABA] report has served very well indeed the cause of justice in criminal cases by providing the incentive of reform."

The last year has also produced a fifth movement which is the growing trend to the adoption of voluntary press bar codes. In April, 1965, the Society of American Newspaper Editors was saying, "We are persuaded that no set of specific rules can be written into a code of press conduct that will not do more harm than good. We are convinced that the solution to whatever problems of free press-fair trial may exist will not be solved by such codes." It would appear that the editors no longer stand on this position. This is a good augury for the future. Massachusetts had a code in being as early as 1963. However, a number of the large metropolitan newspapers have yet to subscribe to it. Washington and Colorado have drafted codes and in Washington, particularly, there seems to be general satisfaction with what has been done. At the moment at least fourteen states and a number of large cities have put voluntary agreements into effect. Following upon the adoption of our report and the discharge of our committee a year ago in Chicago, implementation of the approved recommendations was placed in the hands of a Legal Advisory Committee on Fair Trial and Free Press. This successor committee has since been led by Chief Judge Edward Devitt of the District of Minnesota. When the debates on our report were being waged, we made it plain that the report which we had produced was designed to complement and not to supplant codes, and we urged that every possible effort be made to extend them. The search for solutions through press-bar cooperation has marked the work of Judge Devitt's committee since its inception. In an initial statement in April, 1968, Judge Devitt emphasized for the committee the high desirability of continuing consultation between press and bar. He further emphasized that the effectiveness of the codes will turn on the measure of support which they command from all parties. I arrive in Wisconsin immediately following the publication in the Wisconsin Bar Bulletin for February, 1969, of the Proposed Statement of Principles of the Wisconsin Bar and News Media. The principles elaborated appear to coincide in general with similar statements which have been issued elsewhere, and they are to be commended. Construed with the ethical guidelines which should apply to

counsel in these matters, they should go far to put at rest those obstacles to a fair trial which have been so bothersome. It is of no great importance that there may be reasonable differences of opinion on certain matters of detail. What is important is that the essence of a fair trial can be preserved provided all parties abide by what they have agreed to establish as principles. It is useless to engage in conference and drafting exercises unless those so committed leave the end result with the firm intention of seeing to it that the product is made to work. Assuming multilateral adoption of the principles, I suggest the real test might come when you experience your next notorious crime. Then there will be put up to the bench and bar and the media of this state the very real launching pad on which you will either abide by what you have written or will not so abide. If any of those who have the duty which the Wisconsin principles lay upon them to bring on a trial unsullied by prejudicial pre-trial publicity commence corner-cutting, then the statement of the principles will emerge as a statement and nothing more. This is not that for which we all have been striving, and I need say no more about it.

A sixth and final item which I wish to note is the manual now in the stages of final preparation and about to be released on a broad scale throughout the country which has been compiled by Judge Devitt's committee and which is a complete, and yet not overlong, treatment of the issues we have been considering. This manual is intended to acquaint all concerned with the intent and limitations of the ABA standards, to clarify for lawyers, law enforcement officers and news media representatives the types of information which should be released officially, and also those types which the courts have held to be inherently prejudicial, and to assist bar-media committees in their joint consideration of voluntary codes of fair practice. The manual is directed also to exercises in teaching programs in law schools and schools of journalism concerned with fair trial and free press. It is, in short, a companion piece for the several reports and the voluntary codes. It has been carefully constructed and I recommend it to you all.

As you may have gathered, I have talked with you about a delicate and complex subject. Yet the future appears bright to me. The entire answer to the problem I have discussed can be found in the phrase, "the exercise of responsibility." If the lawyers and the media continue their mutual education, if they continue to talk together, if they extend and abide by voluntary codes, if the exceptional case receives careful treatment from all hands, if the trial courts adopt appropriate rules without endeavoring to impose unreasonable restraints, if the law enforcement agencies strive at once not to make improper prejudicial material available nor, alternatively, to hide behind standards in a failure to release material which is properly publishable,

then the progress we have been seeking is with us. I suggest we have come a long way in this field in the last five years. More remains to be accomplished and will be given the healthy motive and the responsible approach. I return to what our committee said in its first report: "There need be no basic incompatibility in the application of the First and Sixth Amendments separately or in tandem." It remains for all concerned to make a sincere effort to prove that fact—an effort which will require sustained cooperation and interchange. For that price all our rights and liberties can be made the more secure.