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Newspaper Interference in Judicial Proceedings

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DURING A RECENT TRIAL in a court in Cleveland, a well-known reporter for a large daily newspaper walked to the counsel table of the prosecution, took from the table and placed in his pocket an important document not yet introduced into evidence by the prosecution, and walked out of the courtroom. A short time later he was observed by an officer of the court while in the act of returning the document. When questioned about his action he told the court that he had taken the document to be photostated. In explaining his actions he said that he had not tampered with the document. He was under pressure to meet a deadline and had chosen this method to get a preview of what was expected to be extremely important evidence in the case for the prosecution.[1]

Such conduct of a seasoned reporter, in utter disregard of ethical and judicial rules of behavior, draws attention to three attitudes prevailing among the gentlemen of the Fourth Estate which have brought them into conflict with other segments of society.

First, there is an apparent attitude of determination to "get the news" *at any cost.* This is explained as the philosophy of full exposure of the truth, whatever and wherever it may be. The hot pursuit of news has led to some of the most exciting exploits in the newspaper profession. It led Stanley to Livingstone.[2] It made possible a full exposure of war in all its horror, by Richard Harding Davis.[3] It told the full story of corruption in politics, by Lincoln Steffens.[4]

Yet this same attitude has caused many responsible individuals to raise the question of the limits of responsible conduct of newsmen. It has led Pope John XXIII to request regulation of the reportedly uninhibited Italian press.[5] The address by his eminence before the Union of Catholic Jurists aroused sympathy in at least one editorial staff here in America, which wrote:[6]

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1 Facts reported in radio feature, "One Man's View," by William Jorgenson during the proceedings of the first Fratantonio trial during the week of September 8, 1960.

2 Stanley was a journalist.

3 Davis was a journalist.

4 Steffens was a journalist.

5 As reported in editorial entitled "Freedom and 'Freedom' of the Press" in 102 America 391 (Jan. 2, 1960).

6 Ibid.

> Are the giants of the press, who preach the sacredness of their mission with a sometimes nauseating hypocrisy, really in favor of taking unto their own, under the banner of freedom of the press, the greedy and unscrupulous publishers who flood the newsstands with the sordid advertising, the emphasis on sex, the cheap sensationalism and the gross invasion of privacy which aroused the protests of the Pope?

Another segment of the American scene sometimes disturbed by over-aggressive newsmen has been the court of law. When an overzealous publisher in the State of Colorado saw fit to differ publicly with the motives and conduct of the State Supreme Court in cases still pending, and lampooned the Justices in cartoons, and published articles employing outrageous language, he was cited for contempt of court. This case went to the Supreme Court of the United States, which upheld the contempt finding.[7] Justice Holmes, in his majority opinion, referred to the freedom of the press as provided in the Constitution as a freedom from the prior restraints practiced by other governments, and not as a cloak for acts contrary to the public welfare. He further contended that the administration of justice required evidence and argument in open court free from outside influence in public print.[8] In his dissenting opinion Justice Harlan said that public welfare could not override constitutional privilege. He said that a free press should not be impaired by either legislative enactment or judicial action.[9] This case was tried in 1907. The 1960 Cleveland case mentioned above hardly indicates any increased journalistic respect for the sternness of the courts.

The second attitude of an unbridled press is a belief in its privileged status with regard to the obtaining and publishing of news. To newspapermen this belief means a trust given to them by the American public. This creates in the gentlemen of the press a belief that they occupy, with respect to the sources of their news, a status akin to that of a minister, doctor or attorney in his relation to his parishioner, patient or client; and that all of the "professional" privileges should obtain. This view was dramatically illustrated by a lady columnist of a New York newspaper who served a ten day jail sentence for contempt of court rather than reveal a confidential news source.[10]

This journalist had been subpoenaed for the purposes of a deposition in a court of law during a civil suit brought by a noted actress against a national broadcasting system.[11] The information requested by the trial judge was considered essential

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[7] Patterson v. State of Colorado ex rel. Atty. Gen. of State of Colorado, 205 U. S. 454, 27 S. Ct. 556, 51 L. Ed. 879 (1907).

[8] Ibid. at 205 U. S. 462, 463.

[9] Ibid. at 205 U. S. 465.

[10] As reported by the columnist in article entitled "Did I Go to Jail for Nothing?", by Marie Torre, 23 Look 62 (May 26, 1959).

[11] Garland v. Torre, 259 F. 2d 545 (C. A. 2, 1958).

to the cause of one of the parties, and was also basic to the issue between the parties. The journalist repeatedly refused to answer the question, stating that she had a constitutional right which granted her a privilege to withhold the name requested. The journalist reported a discussion she had with a noted attorney, Joseph Welch, during which he informed her that the constitutional provision did not grant her a privilege to withhold information in a judicial proceeding. In an article which she wrote while in jail, she dwelt at length on the service she felt that she had done the cause of freedom of the press.[12] Her chief contention in protecting the news source was that once revealed it would destroy the confidence others might have in coming forward with important news tips, which thus would be lost to the public.

This same attitude was dramatized on an even grander scale when a major news service raised the banner of constitutional freedom as it applied to news distribution. The by-laws of this news service provided that the availability of the service would be restricted to the then existing clients in any given area. The news service was indicted under the Sherman Anti-Trust Act as a combination and conspiracy in restraint of trade and commerce. The news service had the audacity to declare that this application of the Sherman Act was an unconstitutional abridgment of its freedom to disseminate the news. The case went to the Supreme Court of the United States, which held that the indictment of a monopolistic association of newspapers did not constitute an abridgment of the freedom of the press.[13]

Thirdly, an over-aggressive activity of newsmen reflects a lack of concern for other rights and privileges, of equal importance, with which they may interfere. That this overzealous desire to mold public opinion may even endanger the life of an individual is demonstrated by the following sequence of events which occurred about ten years ago in a Florida community.[14] A seventeen year old white girl reported that she had been raped by four Negroes at the point of a pistol. Six days later two Negroes, alleged to be among those who committed the crime, were indicted, and two months later were tried and convicted without recommendation of mercy and sentenced to death. During the trial the local newspaper published as a fact, attributing the information to the sheriff, that the defendants had confessed to the crime. Witnesses and persons called as jurors said they had read or heard of this confession. This confession was never introduced in evidence during the trial. Every detail of violent actions of mob-rule was highlighted in the newspaper. A mob gathered before the jail and demanded that the

[12] *Supra* n. 10.

[13] Associated Press v. U. S., 326 U. S. 1, 65 S. Ct. 1416, 89 L. Ed. 2013 (1944).

[14] Shepherd v. State of Florida, 341 U. S. 50, 71 S. Ct. 549, 95 L. Ed. 740 (1951).

defendants be turned over to it; a mob burned the home of the parents of one of the defendants; a Negro was removed from the community to prevent his being lynched; the National Guard was called out; and Negroes abandoned their homes and fled. Every detail was reported in the newspaper under banner headlines. A cartoon was published at the time the grand jury was sitting, picturing an electric chair and captioned "No compromise —supreme penalty." Motions made by the defense to defer the trial until the passion of the community had subsided, and for a change of venue, were denied. The Florida Supreme Court, in reviewing the evidence of guilt, saw fit to consider only the question of which set of witnesses to believe, that is, the State's witnesses or the defendants.[15]

The Supreme Court of the United States reversed the decision on the sole ground that the method of selecting the grand jury discriminated against the Negro race.[16] However, in a concurring opinion of Justices Frankfurter and Jackson, the press was singled out as having so abused its freedom as to make a fair trial impossible in the locality where the trial had been conducted. They stated that due process required that the trial be removed to a forum free from the influence of the newspaper.[17]

Limitations of Freedom of the Press

Freedom of the press was guaranteed early in the history of our nation by the adoption of the Bill of Rights. The First Amendment specifically provides for freedom of religion, speech, peaceable assembly and the press. It prohibits the Congress from enacting any law which would abridge the freedom of the press.

Today this freedom is generally regarded as guaranteeing to the press a freedom from prior restraint.[18] This right was established in the English struggle for common law rights, and in early colonial history. It is significant that the rights associated with this freedom were won by aggressive action of newsmen.[19] Restriction by licensing persisted in Massachusetts until about 1722, when James Franklin, a publisher of that state, deliberately satirized the government. A contempt proceeding against him failed, and the government never again attempted to invoke censorship.[20]

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[15] Shepherd v. State of Florida, 46 So. 2d 880 (Fla., 1950).

[16] *Supra* n. 14.

[17] *Supra* n. 14, 341 U. S. 50 at pp. 52-53.

[18] Joseph Burstyn, Inc. v. Wilson, N. Y., 343 U. S. 495, 72 S. Ct. 777, 96 L. Ed. 1098 (1952); Lovell v. City of Griffin, Ga., 303 U. S. 444, 58 S. Ct. 666, 82 L. Ed. 949 (1938); Near v. State of Minnesota ex rel. Olson, Minn., 283 U. S. 697, 51 S. Ct. 625, 75 L. Ed. 1357 (1930).

[19] For an excellent general discussion, see Note, Qualified Privilege to Report Legislative and Judicial Proceedings as a Guarantee of Freedom of the Press, 36 Va. L. Rev. 767 (1950).

[20] Duniway, Freedom of the Press in Massachusetts, 102 (1906).

In 1735, John Peter Zenger of New York published what were considered to be seditious articles in his paper.[21] He was held in criminal contempt in a famous trial in which he was ably defended by Andrew Hamilton, a leading lawyer of that day, who argued so capably for a press unrestrained from a threat of libel that a jury found Zenger not guilty.

In 1804, following the trial of Harry Croswell[22], editor of *The Wasp,* for criminal sedition, in which Alexander Hamilton for the defense argued for truth and good motives as defense against a libel action, the New York legislature passed a statute which made truth a valid defense if the motive for publication was good, and which gave the jury the power to determine the fact of libel.[23]

A further extension of the freedom of the press is the qualified privilege in reporting legislative, executive, and judicial proceedings. It is considered to be a qualified privilege because it removes the threat of libel if three prerequisites are met: [24]

1. The report must be of a legislative, judicial, or executive proceeding.
2. The report must be fair and accurate.
3. It must be published without malice.

American reporters as a general rule have easy access to all three types of hearings. Rules in the United States Congress, as well as those of state legislatures, generally allow newsmen access to legislative hearings. It has been a general policy of the American law to open all trials to the public. A criminal is in fact guaranteed a public trial by the United States Constitution.[25]

Libel has been, in the past, and is today, a form of after restraint upon the newspaper, and makes the newspaper accountable for injury to the reputation of the individual.[26] One has a legal right to a good reputation. Civil libel may be brought for any printed or written publication, false and unprivileged, which directly charges or imputes to a person criminal,[27] dishonest,[28] or immoral conduct,[29] or which exposes or tends to

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21 John Peter Zenger, 17 How St. Tr. 675 (1735).

22 People v. Croswell, 3 Johns. Cas. 336 (N. Y., 1804).

23 *Supra* n. 19 at pp. 772-773.

24 *Supra* n. 19 at p. 776.

25 For further discussion on press coverage of criminal trials, see Ryan, Rights and Duties of the Press in Criminal Cases, 27 Dicta 382 (1950).

26 Lassiter, Law and Press, 2 (Edwards and Broughton, Raleigh, N. C., 1956).

27 Broking v. Phoenix Newspapers, Inc., 76 Ariz. 334, 264 P. 2d 413, 39 A. L. R. 2d 1382 (1953); Muchnick v. Post Publishing Co., 332 Mass. 304, 125 N. E. 2d 137, 51 A. L. R. 2d 547 (1955).

28 McCue v. Equity Co-op. Pub. Co., 39 N. D. 190, 167 N. W. 225 (1918); Bradley v. Cramer, 59 Wis. 309, 18 N. W. 268, 48 Am. Rep. 511 (1884);

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expose him to public hatred, contempt, ridicule, scorn, aversion, shame or disgrace,[30] or which injures or tends to injure or impair his name and reputation for honesty, integrity or virtue,[31] or which charges him with having an infectious and contagious disease,[32] or which injures or tends to injure or prejudice him in his trade, occupation, office, business or profession,[33] or which induces an evil opinion of him in the minds of "right thinking" persons and tends to deprive him of the benefit of public confidence and social intercourse, regardless of whether the words actually produce such results.[34]

The remedy may be defeated by proving truthfulness of the charges,[35] or under certain circumstances, showing that the publication was a privileged one made in good faith without actual malice.[36]

The only other form of after restraint is an order of contempt issued by the court. Contempt is a willful disregard of the authority of a court of justice or a legislative body or disobedience to its lawful orders.[37] Criminal contempt is the commission of an act tending to interfere with the administration of justice.[38]

(Continued from preceding page)

Kinsley v. Herald & Globe Asso., 113 Vt. 272, 34 A. 2d 99, 148 A. L. R. 1164 (1943).

[29] Harshaw v. Harshaw, 220 N. C. 145, 16 S. E. 2d 666, 136 A. L. R. 1411 (1941); Watwood v. Stone's Mercantile Agency, Inc., 90 App. D. C. 156, 194 F. 2d 160, 30 A. L. R. 2d 772 (1952), cert. den. 344 U. S. 821, 73 S. Ct. 18, 97 L. Ed. 639 (1952).

[30] Natchez Times Pub. Co. v. Dunigan, 221 Miss. 320, 72 So. 2d 681, 46 A. L. R. 2d 1280 (1954); Katapodis v. Brooklyn Spectator, 287 N. Y. 17, 38 N. E. 2d 112, 137 A. L. R. 910 (1941); Rose v. Daily Mirror, 284 N. Y. 335, 285 N. Y. 616, 31 N. E. 2d 182, 33 N. E. 2d 548, 132 A. L. R. 888 (1940).

[31] Spanel v. Pegler, 160 F. 2d 619, 171 A. L. R. 699 (C. C. A. 7, 1947); Joint Anti-Fascist Refugee Committee v. McGrath, 341 U. S. 123, 71 S. Ct. 624, 95 L. Ed. 817 (1951).

[32] Springer v. Swift, 59 S. D. 208, 239 N. W. 171, 78 A. L. R. 1171 (1931); Pollard v. Lyon, 91 U. S. 225, 23 L. Ed. 308 (1875).

[33] Yelle v. Cowles Pub. Co., 46 Wash. 2d 105, 278 P. 2d 671, 53 A. L. R. 2d 1 (1955); Myerson v. Hurlbut, 68 App. D. C. 360, 98 F. 2d 232, 118 A. L. R. 313 (1938), cert. den. 305 U. S. 610, 59 S. Ct. 69, 83 L. Ed. 388 (1938).

[34] Layne v. Tribune Co., 108 Fla. 177, 146 So. 234, 86 A. L. R. 466 (1933); Knapp v. Green, 123 Kan. 550, 124 Kan. 266, 256 P. 153, 259 P. 710, 55 A. L. R. 850 (1927).

[35] Lancour v. Herald & G. Asso., 111 Vt. 371, 17 A. 2d 253, 132 A. L. R. 486 (1941); Sidis v. F-R Pub. Corp., 113 F. 2d 806, 138 A. L. R. 15 (C. A. 2, 1940), cert. den. 311 U. S. 711, 61 S. Ct. 393, 85 L. Ed. 462 (1940); Emde v. San Joaquin County Cent. Labor Council, 23 Cal. 2d 146, 143 P. 2d 20, 150 A. L. R. 916 (1943).

[36] Bailey v. Charleston Mail Asso., 126 W. Va. 292, 27 S. E. 2d 837, 150 A. L. R. 348 (1943); Bereman v. Power Pub. Co., 93 Colo. 581, 27 P. 2d 749, 92 A. L. R. 1024 (1933).

[37] Black's Law Dictionary, 390 (4th Ed., 1951).

[38] Walling v. Crane, 158 F. 2d 80 (C. A. 5, 1946); Kienle v. Jewel Tea Co., 222 F. 2d 98 (C. A. 7, 1955).

It is an act of contempt to interfere with the functioning of the business not only of the judge[39] but also of any of the officers of the court,[40] and persons such as attorneys,[41] jurors[42] and witnesses,[43] who in the line of their duty are assisting the court in the dispatch of its business.

In considering the effect of contempt as a check upon the press, it is to be emphasized that newsmen have a qualified privilege to report judicial proceedings as indicated above. However, it has on occasion brought into relief a sharp conflict between the two rights—freedom of the press and the right to a fair trial.

Judicial Interpretation of Newspaper Interference

The Supreme Court of the United States, exercising judicial restraint, has allowed to the newspapers wide latitude in the reporting of judicial proceedings. Also, in decisions where the Supreme Court has subordinated the action of the press to fair administration of justice, the dissenting opinions have reflected recognition of the importance of freedom of expression.

To illustrate the degree to which even the Supreme Court will allow outside influence upon the judicial proceedings, even where public feeling has been aroused, consider the following California proceeding:[44] A man was convicted in that state of a heinous sex crime. He appealed the conviction on grounds that his conviction was based in part on a coerced confession, that a fair trial was impossible because of inflammatory newspaper reports inspired by the District Attorney, that he was in effect deprived of counsel in the course of his sanity hearing, that there was an unwarranted delay in his arraignment, and that the prosecuting officers unjustifiably refused to permit an attorney to see the petitioner shortly after petitioner's arrest.

The United States Supreme Court upheld the conviction, and held that the petitioner had been defended by a vigorous

[39] People v. Gholson, 412 Ill. 294, 106 N. E. 2d 333 (1952); State v. Dominguez, 228 La. 284, 82 So. 2d 12 (1955).

[40] Buck v. Raymor Ballroom Co., 28 F. Supp. 119 (D. C. Mass., 1939), affd. 110 F. 2d 207 (C. A. 1, 1940); U. S. v. Murray, 61 F. Supp. 415 (D. C. Mo., 1945).

[41] McCann v. New York Stock Exchange, 80 F. 2d 211 (C. A. 2, 1935), cert. den., McCann v. Leibell, 299 U. S. 603, 57 S. Ct. 233, 81 L. Ed. 44 (1936).

[42] Hawkins v. U. S., 190 F. 2d 782 (C. A. 4, 1951); State ex rel. Franks v. Clark, 46 So. 2d 488 (Fla. 1950); Summers v. State ex rel. Boykin, 66 Ga. App. 648, 19 S. E. 2d 28 (1942); Dolan v. Commonwealth, 304 Mass. 325, 23 N. E. 2d 904 (1939).

[43] Houston & North Texas Motor Freight Lines v. Local No. 745, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, 27 F. Supp 262 (D. C. Tex., 1939); Dodd v. State, 110 So. 2d 22 (Fla. App., 1959); La Grange v. State, 153 N. E. 2d 593 (Ind., 1958); Butterfield v. State, 144 Neb. 388, 13 N. W. 2d 572, 151 A. L. R. 745 (1943).

[44] Stroble v. People of State of California, 343 U. S. 181, 72 S. Ct. 599, 96 L. Ed. 872 (1952).

defense, which however had not availed itself of the opportunity under California law to remove the case to another county free of outside influence. It found further that no affidavit had been offered to show that any juror had been prejudiced by newspaper stories, and that all jurors had been examined so far as the defense had desired as to any knowledge they might have about the case. It observed also that the confession reported to the press by the prosecutor had been read into the record at the preliminary hearing at the municipal court. The confession would thus have become available to the press at that time as public property.

Precedent for this consideration for the press has been established in a long series of decisions of the Supreme Court. Over a period of time these cases have defined the limits of journalistic expression. In *Schenck v. United States*[45], Justice Holmes in the majority opinion stated the "clear and present danger" rule which prevails to date. He stated: [46]

> The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.

In *Craig v. Hecht,*[47] Justice Holmes in the dissenting opinion[48] stressed the importance in the judge of restraint, immunity to criticism, and ability to arrive at a wise and impartial decision in spite of petty disturbances.

In *Harry Bridges v. State of California,*[49] Justice Black in the majority opinion gave the widest latitude to newspaper expression. He stated that an impairment of the constitutional right of freedom of speech and press could be justified only if the evils were extremely serious and the degree of imminence extremely high. He further stated that the possibility of engendering disrespect for the judiciary as a result of the published criticism of a judge is not such a substantive evil as would justify impairment of the constitutional right of freedom of speech and press.

Again, in *Craig v. Harney,*[50] Justice Douglas in the majority opinion said: [51]

> The history of the power to punish for contempt . . . and the unequivocal command of the First Amendment serve as constant reminders that freedom of speech and of the press should not be impaired through the exercise of that

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[45] 249 U. S. 47, 39 S. Ct. 247, 63 L. Ed. 470 (1919).

[46] Ibid. at 249 U. S. 52, 63 L. Ed. 473.

[47] 263 U. S. 255, 44 S. Ct. 103, 68 L. Ed. 293 (1923).

[48] Ibid. at 263 U. S. 280, 44 S. Ct. 107.

[49] 314 U. S. 252, 62 S. Ct. 190, 86 L. Ed. 192 (1941).

[50] 331 U. S. 367, 67 S. Ct. 1249, 91 L. Ed. 1546 (1947).

[51] Ibid. at 331 U. S. 373, 67 S. Ct. 1253.

> power, unless there is no doubt that the utterances in question are a serious and imminent threat to the administration of justice.

Even where the utterances made are on the borderline of interference with judicial proceedings the Supreme Court has said:[52]

> Courts must have power to protect the interests of prisoners and litigants before them from unseemly efforts to pervert judicial action. In the borderline instances where it is difficult to say upon which side the alleged offense falls, we think the specific freedom of public comment should weigh heavily against a possible tendency to influence pending cases. Freedom of discussion should be given the widest range compatible with the essential requirement of the fair and orderly administration of justice.

Such acknowledgment, by the highest court of the land, of the qualified privilege of the press when questioned due to possible interference with the administration of justice, should make quite clear the high priority allowed the press. This qualified privilege as regards the courts explains in part the usual absence of legal action by individuals for interference by over-aggressive reporting of individual affairs.

Individual Rights As Opposed to Freedom of the Press

It has been obvious in the reporting of news that there have been many instances of publication which, though not libelous, have by sensational emphasis of the spectacular or dramatic aspects of human activity impinged upon the private rights of individuals and organizations.

Front page coverage of such dramatic events as divorce proceedings, a particularly sordid murder, or any event which has appeal as news solely by reason of details which are shocking, at least should be confined to straight news reporting. Certainly, the only purpose in featuring so-called *human interest* details, under prominent banner headlines, is to whet the public appetite for further titillation. When, in the Cleveland area, a doctor was indicted and convicted of the murder of his wife, the press not only focused upon the immediate parties in the proceedings, but their entire families, and other innocent people associated through business or social connections were placed under public scrutiny and comment.[53]

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[52] Pennekamp v. State of Florida, 328 U. S. 331, 347, 66 S. Ct. 1029, 1037, 90 L. Ed. 1295 (1946).

[53] This case aroused considerable public notice. Sheppard v. State of Ohio, 352 U. S. 910, 77 S. Ct. 118, 1 L. Ed. 2d 119 (1956), affg. 165 Ohio St. 293, 135 N. E. 2d 340 (1956). The father of the defendant died and the mother committed suicide.

Although there have been many cases where a newspaper has been held liable for invasion of privacy,[54] there have been no cases found where a legal remedy has been sought by an individual against a newspaper for the above indicated type of interference with the right to fair trial. A United States Court of Appeals did uphold a court enforcement of a rule forbidding photographs in court rooms or the vicinity of court rooms.[55] In the opinion given by Judge Goodrich, upholding the court order, vigorous construction was given this right of privacy.[56]

A state supreme court saw fit to overrule a contempt charge against an aggressive broadcaster for sensational comments during a period when a community was aroused by the commission of two particularly horrible crimes.[57] Two little girls had been brutally killed within a relatively short time. After the second killing, a man, subsequently charged and convicted, was apprehended. The temper of the community at this time was at fever pitch. Parents were fearful of allowing their children out to play. The broadcaster came on the air and announced, "Stand by for a sensation!" He then proceeded to give an account of how the man had been apprehended and charged with murder, and went on to say that he had confessed, that he had a long criminal record, and that he had accompanied the officers to the scene and had reenacted the crime.

When the criminal court of the city found the broadcasting station guilty of contempt, and fined the station for broadcasting a matter relating to the man at a time when he was in custody on a charge of murder, the state appeals court overruled the contempt charge, sustaining the contention that the power to punish for contempt is limited by the First and Fourteenth Amendments, and that the facts in the case could not support the judgment as construed by the Supreme Court.

In refusing certiorari, the Supreme Court of the United States[58] in the opinion by Justice Frankfurter, stressed that the refusal did not necessarily imply that the Supreme Court agreed with the opinion of the state court. Justice Frankfurter said that in his own opinion the problems of a democratic society required both freedom of the press and safeguards for the fair administration of criminal justice.

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[54] Pavesich v. New England Mut. L. Ins. Co., 122 Ga. 190, 50 S. E. 68, 69, L. R. A. 101, 106 Am. St. Rep. 104, 2 Ann. Cas. 561 (1909); Barber v. Time, Inc., 348 Mo. 1199, 159 S. W. 2d 291 (1942); Ex parte Sturm, 152 Md. 114, 136 A. 312, 51 A. L. R. 356 (1927).

[55] Tribune Review Publishing Co. v. Thomas, 254 F. 2d 883 (C. A., 1958), affg. 153 F. Supp. 486 (D. C. Pa., 1957).

[56] Ibid. at 254 F. 2d 885.

[57] State of Maryland v. Baltimore Radio Show, 193 Md. 300, 67 A. 2d 497 (1949).

[58] State of Maryland v. Baltimore Radio Show, 338 U. S. 912, 70 S. Ct. 252, 94 L. Ed. 562 (1950).

Justice Frankfurter's commentary on the interrelation of the two rights is particularly noteworthy: [59]

> One of the demands of a democratic society is that the public should know what goes on in courts by being told by the press what happens there, to the end that the public may judge whether our system of criminal justice is fair and right. On the other hand our society has set apart court and jury as the tribunal for determining guilt or innocence on the basis of evidence adduced in court, so far as it is humanly possible.

Justice Frankfurter may have also forecast a future consideration of the infringement on the right to a fair trial under the Fourteenth Amendment as follows: [60]

> Reference is made to this body of experience merely for the purpose of indicating the kind of questions that would have to be faced were we called upon to pass on the limits that the Fourteenth Amendment places upon the power of States to safeguard the fair administration of criminal justice by jury trial from mutilation or distortion by extraneous influences. These are issues that this Court has not yet adjudicated. It is not to be supposed that by implication it means to adjudicate them by refusing to adjudicate.

Conclusion

Emphasis has been put on situations which appear to indicate that the press has been, at the very least, over-aggressive in its operations. As has been shown, considerable leeway is accorded the press in its activity, even where it conflicts with the fair administration of justice. Although the courts will enforce penalties for clear violation of the fair administration of justice, the facts must spell out a clear and imminent danger.

As to the individual, there does not presently appear to be any clear provision of legal remedy for newspaper interference with individual rights, except in the civil or criminal libel action, which does not protect individual rights against sensationalism or over-aggressive exposure of private affairs. The invasion of the right of privacy is an analogous but separate matter.

There appears to be a need for higher standards of ethics and greater self restraint in the profession of journalism. Furthermore, there should be greater emphasis on individual rights, which are certainly of importance equal to the qualified privilege accorded to the press. And there should be a right to damages from the press when individual rights are unlawfully invaded by over aggressive journalism.

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[59] Ibid. at 338 U. S. 920, 70 S. Ct. 255-256.

[60] Ibid.