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by Marcus D. Gleisser*

A PROBLEM OF LEGAL ETHICS THAT HAS been hovering over American courts, lawyers and newspapermen for more than half a century has finally landed in open debate in recent months. It is a problem that thus far has done little more than rouse recriminations and countercharges between two forces each of which, surprisingly enough, claims it avidly seeks what is in essence the same goal—justice. The problem is that of newspaper handling of court trials and their pre-trial developments.

It should be easily apparent to anyone acquainted with the personalities and professional requirements of the fields of journalism and law that a simple, glib solution is out of the question. It would be naive to set up arbitrarily prescribed rules of conduct and believe a conclusion had been achieved. Many years of established procedures and goals have woven too heavy a pattern of conduct to be overturned with a dictum that ignores the roots of the problem. So multitudinous are the aspects of the legal-journalistic conflict that it would be presumptuous to attempt to cover them all in a comparatively small article. Let it suffice to touch on a few of the basic points and attempt to delineate some of the conflicting attitudes that stand in the path to a solution. Perhaps through this an insight can be given into the complexity of the divergent attitudes, and a perspective attained of what motivations stir them.

First, it must be realized that court proceedings have a big part in journalism today. A casual glance at any metropolitan daily newspaper will quickly convince the reader that court news plays an exceedingly important role in our daily lives and thus, necessarily, in the daily press which is supposed to reflect the unusual and interesting in society. For that reason, since it is plain that newspapers will not arbitrarily cut out so important a segment of modern society and its doings from their coverage, it would evidently be important that lawyers, newspapers and the courts must get together in an effort to build fresh standards for court coverage if it is agreed that there are flaws present which

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should be eliminated. It should be noted the phrase "must get together" has an important part in this thought, for rules set forth by either of the parties without regard for the other could hardly result in anything more than renewed resentment and further bickering.

NEWSPAPER INFLUENCE ON FAIR TRIAL.

An important phase of the overall problem is the old question of how much influence, if any, newspaper coverage wields over the chance of a defendant to receive a fair trial. Here, as throughout the whole problem, opinion is divided sharply. Making matters even more complicated is the fact that diversity appears not only between the opposing camps, but even among members of the same side.

For example, the Montreal (Que.) Star, in an editorial on August 25, 1954, said in part: "The vicious practice (of pre-trial statements) has grown up in this century of public trial of accused persons. The more sensational the case, the more sensational the pre-trial statements. These have not been confined to defence lawyers alone; prosecutors have pre-judged cases, promised sensations at trial and in other ways have prejudiced the fair trial of accused persons. The press, we are sorry to say, has too often abetted and encouraged this process."

In direct contrast, an editorial in the New York Sunday News of Sept. 5, 1954 (p. 29, Col. 1), said in part: "For one thing, we do not know of a single innocent person who was ever convicted of a crime on account of a story in a newspaper. For another, we think the chances of guilty persons to escape conviction will be greatly increased if the newspapers' freedom to dig up the facts and print them promptly is curbed. Not all prosecutors and police are honest and unreachable. Those who are not all they should be are bound to find their lives much easier with the reporters out of their hair. And those who are honest have been aided frequently, for generations, by reporters free to dig up new clues, fresh facts and possible suspects."

In all fairness, it should be emphasized that most American newspapers are pretty well united on the latter point of view. Their attitude, summed up, is that the enterprise of investigating reporters is two-pronged in that it helps to damn the guilty and it helps to protect the innocent. It may be that they are more aggressive than their Canadian cousins, or that they are less influenced by the British standards, under which newspapers are
forbidden by law to print more than the sketchiest facts about an oncoming trial, civil or criminal, under the theory that the trial will not be fair if the public learned ahead of time about such things as confessions and police records of parties to the proceedings.¹

Turning to the attitudes of the courts on pre-trial publicity, records show that their thoughts on this matter have been conflicting in the past. For example, application for a new trial was denied, and the denial sustained in the appellate court in Missouri recently, in the case of a defendant convicted of counterfeiting. Trial had commenced on the morning of July 2, 1953, and that evening, after the government had concluded its evidence, an article in the Kansas City Star about the trial stated that: "Another indictment charging Gicento with passing counterfeit money has been returned by a federal grand jury in Denver. Earlier this year, Gicento was found not guilty by a Johnson County district court jury at Olathe (Kansas) of charges of burglary and armed robbery in a holdup last October at the home of Mr. and Mrs. Herbert O. Peet, Eighty-Third Street and Nall Avenue." Referring to the article, counsel introduced a witness who testified that on an elevator in the Federal Courts Building he heard "They want this guy in Denver when we get through with him on the same charge." When all got off the elevator, he recognized three members of the jury who were on the elevator when the statement was made. The majority opinion held that "even if the jurors read the article referred to, that alone is not ground for a new trial. The burden was upon counsel for the defendant to show that prejudice resulted and he failed to establish such prejudice." ²

A contrary opinion was seen here when one of the three judges in his dissent said: "I am unable to assume that the newspaper article about the defendant, which was being distributed in the lobby of the courthouse building where the case was being tried and was talked about in the elevator carrying jurors up to the court room, had nothing to do with the verdict. It does not seem credible to me that all of the jurors remained oblivious to

¹ At this point it is necessary to stress that the thought "aggressive reporting by American newspapers" is not meant to condone pressure tactics employed by a sensational minority of the press. Twisting facts or inflating stories far beyond their normal news values to achieve an end desired by a single editor is surely not in line with ethics established by Journalistic traditions of good editors.

the conspicuous lengthy item in their only daily paper about the particular matter they were all directly concerned with for days.”

The majority of the same court, in a case decided several years before, had said:

“The mere fact that jurors have read newspaper accounts of the trial in which they are participants is not ground for a new trial. Even in an instance where the jury saw and discussed a newspaper headline to the effect that gamblers were betting ten to one that there would be an acquittal, the action of the court in denying a motion for a new trial should be sustained.”

A contrary view was shown in another case, this time in Philadelphia, where a jury was awaiting the charge of the court in the trial of a dealer who allegedly sold oleomargarine for butter. The Philadelphia (Pa.) North American carried a story read by one juror. The headlines were read by others. The text said: “Oleo Dealer Ogden’s Boasted Pull of No Avail. Long protected man on trial in Federal Court. Protection for David S. Ogden, the Ridge Avenue oleo dealer is apparently a thing of the past. After long dodging the law, he was brought to trial yesterday in the United States District Court.” Here the District Court granted the application for a new trial after a verdict of guilty had been returned by the jury. The court said:

“The character of the comments is so clearly prejudicial to the defendant that I need spend but little time upon that proposition. It is unnecessary to say that such comments on a pending case violate the elementary rules that demand justice and fair play to a man accused of crime.

“If the printed words had been spoken to a juror or if they had been contained in a letter addressed to him, an offense punishable by fine and imprisonment would have been committed and it is little less blamable to take the not improbable chance of reaching the juror’s mind by the method of publication in a widely read journal.

“A report of the facts is one thing and due allowance should be made for the difficulties and inevitable disadvantages under which the reporters do what is often most excellent work. But after the facts have been ascertained as fully as possible and laid before the public, it is manifestly unfair to a defendant to assume that no more evidence can be produced or to draw hasty conclusions from such facts as are known without the safeguard of a public trial and careful scrutiny of the evidence.”

3 Bratcher v. United States, 149 Fed. 2d 742 (1945).
4 United States v. Ogden, 105 Fed. 371 (1900).
In a much more recent case, the presiding judge dismissed a protest against newspaper coverage of Phenix City ( Ala.) vice trials on Nov. 18, 1954, with a firm declaration that "freedom and liberty of the press cannot be destroyed by court rulings." In a written order refusing to postpone one of the trials, special Judge Walter B. Jones defended the widespread publicity of the rackets investigation as "legitimate items of news, of general public interest, reciting a part of the history of the times." Defense lawyers had contended that public opinion was prejudiced against the vice defendants because of what they called "distorted" and "slanted" newspaper writing. Judge Jones ruled that there was no evidence of bias or prejudice in the news stories and editorials submitted by the defense as exhibits. "The court has carefully read each of the press accounts . . . and is of the opinion that the reading of them on the dates they were published and circulated does not in any way now prejudice the defendant and prevent him from receiving a fair trial," the judge wrote. He pointed out that no libel suit for criminal actions had been filed for any of the news stories or editorials and that the record did not show any defendant had even asked for a retraction.  

It is apparent from the foregoing that many complications lurk in the publication of information concerning a trial in progress. What answers are available to ease these complications? One suggestion, somewhat extreme, was proposed by United States District Judge George H. Boldt of Tacoma, Wash., in an address at the Pacific Northwest regional meeting of the American Bar Association last summer. In Judge Boldt's opinion, there should be no newspaper publicity of trials until all of the evidence has been submitted and the jury has given a verdict. He asserted that there was nothing in the constitutional language indicating that any individual other than the accused in a criminal trial, and those of service to his defense, has either a right to attend the trial or to publicity emanating from the trial. He further suggested that rather than enlarge and extend publicity arising from trials, jurists ought to consider further restricting it.  

What the response from the press to such an attitude would be is obvious. It is accepted that the business of newspapers is to inform the public of crimes that affect not only criminals but the public as well. Judge Boldt's attitude, in effect, is a censorship of what may be written. An unfair judge, a scheming lawyer or an obviously influenced district attorney could thus keep out

5 The Cleveland Plain Dealer, Nov. 19, 1954, p. 9, Col. 1.
information detrimental to themselves or to their causes, and newspapers would be reduced to being nothing more than mouthpieces for those who have been placed in positions of power or influence and who have control over what may be released to newspapers and what may be held back under some legal pretext.

Another point of view on this matter is that of Louis Waldman, chairman of the New York State Bar Association's Committee on Civil Rights, who, in a speech May 8, 1954, at the semiannual dinner of the Silurians in the New York Athletic Club, emphasized that lawyers did not want to limit the press, but wanted only to maintain the presumption of a man's innocence until his trial by unpoisoned jurors. He said:

"Pre-trial statements that may not be introduced into the trial should not be used for political exploitation by police or prosecutors. The press may print confessions when they are properly admitted in court. Hundreds of confessions are not permitted in court and appellate courts have thrown out cases over illegal confessions, obtained without due process of law. If widely publicized, every prospective juror knows about a confession although it may be illegal and never introduced into court."

A danger cited by Mr. Waldman was the point that when a prosecutor holds a press conference and outlines his case, everything goes—gossip, hearsay—there is no judge and no defense attorney to object. Newspapers then sometimes paint the accused man as a rogue, villain or guilty criminal.

In a similar vein, the annual meeting of the Association of the Bar of the City of New York on May 11, 1954, condemned as unprofessional any press releases or public statements by lawyers that interfere with fair trial or the administration of justice. In its resolution, asking a change in the canons of the state and national associations of lawyers, the group seeks a ban, except when brought into open court, on all items in these categories:

1. Any criminal record of the accused;
2. Any alleged confession or admission of fact bearing upon the guilt of the accused;
3. Any statement of personal opinion as to the guilt of the accused;
4. Any statement that a witness will testify to certain facts;
5. Any comment upon evidence already introduced;
6. Any comment as to the credibility of any witness at a trial; and
7. Any statement of a matter which has been excluded from evidence by the court at the trial.
As a result of these recommendations, the United States Department of Justice undertook an investigation of the role of newspapers in the trial of legal actions. In his conclusion at the end of the fact-gathering phase, Attorney General Herbert Brownell blended words of praise for the press with cautions to lawyers to keep clearly in sight the line that runs between the right of a free trial and the right of a free press. Brownell pointed out in his statement, reported in Editor & Publisher (Oct. 2, 1954, p. 13, Cols. 1-4), that “Our free press brings to light corruption, injustice, dishonesty, wrongs of every kind and description in all corners of the world. It is a bar to Star Chamber proceedings. It enables the people to know whether our system of justice is being administered honorably and impartially, as it must if it is to retain respect and beget obedience.

“The free press may also be helpful to an accused in dispelling false, distorted or wild charges that would otherwise provoke hasty and irresponsible vigilante action. It may arouse public sympathy and help to nullify a ‘Scottsboro’ verdict. It may provide information by which law enforcement agencies may track down and apprehend criminals. Most important, when the press is free from censorship and suppression, it tends to assure the telling of the truth—an eternal bulwark against tyranny and dictatorship. Where the press is not free, you may expect merely a mockery of a trial.”

The attorney general rightfully emphasized that courts have guarded freedom of the press, invited constructive criticism and inquiry into the ethics of legal practitioners’ conduct while enforcing the rule: “The press may not impair or subvert the process of impartial and orderly decision by court or jury. It may not influence or intimidate court or jury before they have reached their own independent judgment. It may not divest the court of control of the proceedings. So far as possible, guilt or innocence of the accused must be determined on the basis of the facts testified to in court—not by opinion, rumor, insinuation, suspicion and hearsay outside the court which the accused has no chance to rebut or deny; or which a trial or appellate court has no chance to consider.”

In comparing the British methods of policing its press on court proceedings with those of the United States, he said: “Our courts have shown far greater indulgence to those few irresponsible publishers and radio broadcasters who have been charged with attempting to pervert the fair administration of justice.”
From the point of view of any worthwhile professional newspaperman, the restrictions sought by the New York association would seem incredibly naive. Their aim would apparently be to drop a protective curtain around persons who, by their previous activities and by present information, have erected for themselves an evident reputation which is now sought to be sheltered artificially from public gaze and appraisal. Even the greenest cub reporter would soon become adept at circumventing these restrictions and bringing to his city desk reliable information he knows will be demanded by his editor and by the reading public. It is easily conceivable that this information, obtained from sources other than responsible lawyers, could be more damaging to the cause of justice than the open information of today.

A far more reasonable attitude on this particular matter would be to realize that these superficial bans are unworkable and would arouse only continuing opposition from the press as a measure of censorship prohibited by the Constitution. Would it not be wiser to seek co-operation from the press in adopting a voluntary code of ethics? It would not seem far-fetched to believe that bans described above, if generally adopted, might become the opening wedge by which public trials and a valued amount of freedom of the press may be lost.⁶

The argument for hiding news from the public seemingly is based on the reasoning that since the prosecuting attorney is an arm of the court, he must therefore protect the rights of the defendant and, since publication of confessions and other allied data sometimes appears to result in violation of due process, it is his duty to cover up this information.

While this reasoning may sound highly idealistic, the desire to protect the innocent can easily turn into an unfair protection of the guilty unless the whole story can be told. This concept of due process undertakes to assume a great deal. It indicates that all prosecutors everywhere are diligent, honest, objective, unfettered and strongly ambitious in their job of ascertaining the truth whether it helps or hinders the defendant. Unfortunately, that would seem to be an academic assumption that is much more applicable to the ivory tower of the legal classroom than to the routine of some of the nation's police stations and criminal

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⁶ An aside question that may well be raised in this connection is that of whether or not arraignment papers are public documents and, as such, should be given to the press. Many jurists feel that once a man is arraigned, the information becomes public and there is no legal right to withhold it.
courts. To those experienced in these activities, it is often clear that there are a great many forces at work and that a single prosecutor, no matter how able or honest, can hardly be relied upon as sole judge of what should be withheld from the public about a particular case.

An interesting commentary on the conflict between the free press guarantee and the right to a free trial was made by the late Carl L. Becker, professor emeritus of history at Cornell University, when he noted that the right to a jury trial "was established in England at a time when it was thought that the neighbors of a man accused of crime would know more about the circumstances of the crime and the persons involved in it than anyone else, and could therefore render a more just judgment. Today the prime qualification for service on a jury is complete ignorance of the circumstances of the crime and of the persons involved in it. Jury trial in criminal cases has become a carefully staged combat between two sets of skilled attorneys, each set primarily concerned, not with establishing the truth about the crime, but with limiting and distorting the evidence in the way best calculated, on the one side to convince the jury that the defendant is guilty, on the other to convince the jury that he is innocent. The function of the judge is to see that the rules of law are observed. The function of the jury is supposed to be to determine the facts, but it is obvious that the ordinary jury is quite incapable of determining the relevant facts elicited in a long and complicated trial, even if they had the full record before them and sufficient time to examine it thoroughly. This is so well understood that in some states judges are now permitted, by their comments on evidence, to relieve the jury of an impossible task.

"Not that any particular blame attaches to attorneys. No more than other people do they really wish to convict an innocent or discharge a guilty defendant. They are prisoners of the system. Better than anyone they know that juries are incapable of performing the function assigned to them. In many states the right to be tried by a jury may now be waived by the defendant, and is rather often so waived. If jury trial works even tolerably well in states where it is compulsory, the chief reason is that by and large the legal profession is composed of men of intelligence and integrity who do the best they can, within the limitations of the system, to prevent a mis-carriage of justice. It is the system that is defective; and its fundamental defect is that it proceeds on the assumption that if, within the rules of evidence, the facts
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are distorted twice but in opposite directions, the truth will emerge and justice will be done." 7

A good summation of journalism's attitude on this phase of the problem was made before the Conference of Chief Justices at the Chicago Bar Association on Aug. 12, 1954, by A. T. Burch, associate editor of the Chicago Daily News and a former Cleveland newspaperman. He emphasized that fulfillment of the journalistic duty to track down criminals and see that justice is meted to them does not tread upon the sacred principle of fair trial. Thus, he pointed out, it was every citizen's duty to raise a hue and cry when a burglary or murder was committed before his eyes. Mr. Burch said: "The noblest services of American newspapers to their readers have been their exposures of public corruption and politically protected crime."

It is to be concluded that the real question about pre-trial reporting is the possible effect, not on judges, but on juries. Here it should be pointed out that the problem of public opinion would exist in some degree, however, even if there were no newspapers. With all the sensationalism that may be charged to the press, it almost never equals the virulence of word-of-mouth gossip, uncorrected by any printed record. Such a record always represents some degree of responsibility. It is open to libel suits. Even a false record is a challenge to correction. Gossip affords no fixed target for the truth.

REACTION TO CANON 35.

Another point of abrasion between the newspapers and courts is that raised by the controversial Canon 35 of the American Bar Association. This canon, dealing with the taking of photographs in court, reads: "Proceedings in court shall be conducted with fitting dignity and decorum. The taking of photographs in the courtroom, during sessions of the court or recess between sessions, and the broadcasting of court proceedings are calculated to detract from the essential dignity of the proceedings, degrade the court and create misconceptions with respect thereto in the mind of the public, and should not be permitted."

Strange though it may seem in reflection of the fire built up under this idea, most ethical newspapermen would find little quarrel with the thought that proceedings in court should be conducted with fitting dignity and decorum. Their opposition comes

largely from their feeling that the canon is interpreted in a manner that is too dogmatic, too sweeping and too narrow. Newspapermen feel that the problem of taking pictures can vary with different sets of circumstances. Differences are obvious if the case in question takes place in a large city or in a remote, back-woods county seat; also important to consider is the number of competing newspapers involved or the number of photographers and reporters. An arbitrary ruling, thus, would seem to indicate a lack of faith in the ability of judges to exercise what should be left to proper discretionary determination. In other words, a judge could grant permission for the taking of pictures during recesses or before court convenes without greatly endangering dignity and decorum.

It should be underscored, however, that the argument against Canon 35 does not approve of sneak shots inside courtrooms. Pictures should be made with the agreement of the judge. Taking pictures in blank defiance of a judge's order, of course, carries little excuse. Making that defiance brazen with publication of the picture should carry with it harsh judicial censure. Feeling on this score runs high among newspapermen because such sneak actions bring recriminations on the entire field and not only on the specific newspaper performing the misdeed. It can be regarded as an affront to Journalistic ethics and good judgment.

It must be made clear, however, that a too-rigid imposition of Canon 35 can also become somewhat ridiculous. For example, a small city judge in Ohio recently banned photos of naturalization proceedings in his courtroom, saying if he permitted the pictures it would be a violation of the canon. He added that he believed that all proceedings were essentially judicial in character, as otherwise they would be conducted in chambers, where he usually attended to his administrative and other non-formal duties. The chief justice of the state's supreme court asserted that the high court's rule prohibiting pictures in the courtrooms was not intended to include the pictures of a naturalization class.

It should be pointed out that most newspapermen are not insensitive to the effects of their activities in the courtroom on its proceedings. Their performance, therefore, unless prompted by a sophomoric sense of showmanship, is usually modified with this thought in mind. As one veteran Cleveland reporter put it: "Maybe taking pictures in court will be all right when they perfect new cameras to the point where photographs can be taken without a flash. But the way it is now, the average witness has
never been in a courtroom before and when they flash a bulb in his face, he's just nervous enough to get thoroughly confused in his testimony.” The reporter added that he found it apparent that jurors sometimes were influenced even by the actions of a reporter in court. When the jury notices a sudden commotion among the reporters, a lifting of pencils or a shuffling of papers, it will pay more attention to the testimony being given at that point. As an aside, he pointed out that even judges sometimes act differently when they become aware that reporters or photographers are in the courtroom, which, in its own subtle way, probably has an effect on the jury.

Raising the question of Canon 35 necessarily brings up the even more complicated question of its interpretation. The point came up, for example, in the “Turnpike Phantom” trial of John W. Wable in Greensburg, Pa. Here, Westmoreland County Judge Edward G. Bauer is reported to have banned the taking of pictures “in the courtroom, courthouse, jail or anywhere the defendant may be.” After protests from the Pennsylvania Society of Newspaper Editors, the ban was relaxed to the point where the photographers could take pictures on the courthouse steps, but nothing inside the building. Judge Bauer said a picture of the defendant taken in the hall of the courthouse might influence the jury. While picture taking has long been prohibited in courtrooms during trials in Pennsylvania, Judge Bauer’s ruling was believed to be the first to extend the ban to a jail and courthouse corridors and anterooms.

In Judge Bauer’s outlook is hardly to be found a trace of the reasonable attitude, expounded by some jurists, that, while newspapers ought to co-operate with orderly judicial process, at the same time, the courts ought to see that newspapers are given all the information and rights essential to truthful and accurate coverage of the case involved. Indeed, you have here an attitude to arouse resentment and a desire to find some way to evade the court’s order. This is hardly the path of a healthy relationship of mutual respect.

There are some jurists who may wish to block the taking of legitimate pictures with the thought that the issue is one of invasion of privacy. Their theory is that a man’s features are his property and nobody can reproduce them without his consent. Such an attitude can arouse nothing but hoots of derision in any worthwhile newsroom. Stopping to request permission graciously of a hot suspect who has just been captured after a blaz-
ing gun battle—while a fast-coming deadline lies heavy on a photographer's shoulders and the competition breathes heatedly on his neck—would bring protests from any newsman. Yet such a situation can be seen in this suggestion by these jurists not fully aware of the fury of tight journalistic competition. It is but another example of the failure of these two professions to look at each other's problems with anything vaguely approaching realism.

Attacking the invasion-of-privacy angle from its legal approach, it can be argued that the so-called right of privacy is not in the Constitution. Newspapers can say that they have a constitutional privilege to go into a public place and take a picture of a newsworthy subject. When a man enters a public proceeding, he usually becomes newsworthy. It can also be added that any limitations of court photographs beyond Canon 35 prohibiting taking of photos in courtrooms while the court is in session or during recesses is an infringement of the right to a public trial. And here the question may also be raised over whether a man who goes into a public place does not waive his right to privacy, or the jurisdiction of a court over participants in a trial in their homes, on the streets or in the courthouse so long as the judicial processes are not interfered with.

In marked contrast with these conflicts is an incident that occurred in Spokane, Wash., showing that a measure of amicability may be achieved between courts and newspapers to the benefit of each. Through a special arrangement with Federal Judge Sam M. Driver, the Spokesman-Review published pictures set up to acquaint the public with the processes of justice. The case was an action in which a woman sued the federal government for $72,236 for injuries which she claimed were suffered in an automobile collision. The first two pictures published showed the judge behind the bench and the court reporter and court clerk, in one, and a deputy United States marshal administering the oath to a witness in the other.

In an editorial expressing its appreciation, the newspaper commented, in part: "As a federal official, Judge Driver is not bound by the same rules governing state judges. He has interpreted the bar association canon as a statement of the judge's duty to regulate court room photography so as not to permit it to lower the dignity of the court. It is to be hoped that the same interpretation may in time be applied to the other courts in the state."
SECRECY IN JUVENILE CASES.

With a new upsurge of concern over the problem of juvenile delinquency now becoming evident throughout the nation, the question of how newspapers should handle stories of these youthful offenders is again being raised. It is a problem that has not gained attention for many years because of an unwritten understanding among most newspapers that names of youngsters in trouble would not be mentioned except in unusual cases such as that of a particularly far-reaching crime, or that of a chronic offender whose reputation no longer needed protection. And often names are not mentioned even then. It is highly questionable whether the practice of secrecy will be lifted now, but, since agitation is being heard in that direction, it should have a part in an outline of court-newspaper relationships. Also, more important, it serves to emphasize that newspapers and courts can reach a solution to a common problem without great dissidence or loss of face to either side.

A Washington (D. C.) newspaperman, J. R. Wiggins, managing editor of the Washington Post and Times Herald, in a discussion with the Juvenile Court Advisory Committee of the District of Columbia, laid part of the blame of an increase in serious crimes among the young at the cry for secrecy. He asserted that secrecy:

"Has deprived the citizens of this community . . . of that ready knowledge of conditions that is the forerunner to community action. This prevailing secrecy has kept from those who deal with the problems of youth in crime an adequate knowledge or understanding of the efforts and the problems of others at work in the field.

"Secrecy has inflicted another and an even more serious calamity upon the community. It has swept this whole problem of youth in crime under the community rug. The city's notorious lack of interest in and attention to this problem is reflected in the inadequacy of the steps it has taken to meet it. The case-load of the social workers attached to the juvenile court is about twice that of social workers throughout the nation."

He questioned whether lawyers, judges, social workers and newspaper people had accepted too readily the argument that secrecy shelters the wayward youth from the retribution of society and thus furthered his rehabilitation. He concluded that "the secrecy with which we have surrounded the administration of our juvenile courts and our care of youth in crime, I think, has shielded youngsters from public notice of their offense. We have
also shielded them from public interest, understanding, compassion, support.

In August, 1954, however, when President Eisenhower signed the bill which requires the police of the District of Columbia to keep arrest books open to public inspection, he called upon the press to continue to co-operate in shielding the identity of children. In his statement, the President said that "publication of the identity of individual children who are in trouble is likely to defeat or make more difficult the rehabilitation of the child and tends to undermine the confidentiality of juvenile court records." He signed the bill, he said, with full confidence that the press and all interested members of the community, because of their interest in the protection of children, would continue to co-operate.

Unless an especially heavy wave of juvenile crime sweeps the country, it is exceedingly doubtful that most newspapers will revert from their custom of not using the names of young persons. Here is a concrete example that newspapers possess a social conscience that can be influenced by reason rather than dictum. It may show the way to solution of other problems.

CONCLUSION.

From the foregoing it can be seen that the American Bar Association's new moves to clarify its viewpoint in the lawyers' code of professional ethics by making it more specific that the issuance of press releases by lawyers in civil and criminal cases constituted unprofessional conduct would do little more than rouse resentment to an even higher pitch among newspapers, bring about evasive measures and do little to resolve the fundamentals of the problem. It would be like camouflaging the blotches of measles to cure the patient. It would encourage newspapers into greater ingenuity in seeking material they feel their readers should have and it could, unfortunately, make lawyers seek roundabout ways of publicizing their clients' position in the highly competitive war of winning decisions.

Assume briefly, for the sake of argument, however, that these moves to silence the press turn out to be completely successful. A point that should well bear consideration is the question of what these new secretive standards would do to the reputation of lawyers with the general public. An objective observer today would have to admit that lawyers often are not highly popular in American society. Complex legal red tape, rarely understood by
the lay public, has long given rise to unfounded criticism of "shyster lawyers" who seem to be bargaining away personal ethics in some mysterious double-talk manner. Now, take that situation and drop an additional misunderstood blinder in the way of the public, and one can practically hear the shoutings against back-room politicking.

What, for example, would an oft-repeated phrase in news stories reading "further inquiry into the matter was blocked by the lawyers" do to enhance faith in the profession? Or would it only increase the attitude reflected in the words of Carl Sandburg in "The Lawyers Know Too Much":

"Why is there always a secret singing
When a lawyer cashes in?
Why does the hearse horse snicker
Hauling a lawyer away?"

Widely publicized secrecy is hardly the way to confidence-winning public relations. And the lawyers may rest well assured that this particular shield of secrecy would carry with it a great deal of publicity from the various communications media.

Considering all these blocks to achieving some sort of legal-journalistic unity, what paths are then available toward the desired goal? The one that would appear to be the most fundamental is also the most difficult and time-consuming. It lies in educating the practitioners in both fields to the responsibilities they shoulder. It must make them aware that discretion in certain circumstances is as much a part of their professions as shouting and exposing is in others. It is, in other words, a problem of training the individual lawyers and journalists in good taste and confident co-operation. That this is not nearly as impractical as its idealistic ring would seem to indicate can be seen in the words of United States Commissioner Edward E. Fay, who sits in the Eastern District of New York:

"I have sat in these cases for more than 23 years, and I do not know of a single case in which a newspaperman has violated a trust. I do know of hundreds of cases when newspapermen have held up information which might have hindered an investigation had it been made public. They have always co-operated."

Of course, there will always be a few newsmen, overwhelmed at movie versions of their profession, who will be renegades for a short time, even as there are some lawyers who willingly betray themselves for a few dollars. But a mutual spirit of confidence
and trust can go a long way towards cutting this difficult knot and bringing about better relations. Or, if it should prove necessary to set up a code on the press, which could better be called a "code of co-operation" for lawyers and newsmen, it should be planned with the thought that there is room for improvement in both professions—a need for mutual fence mending—which can be brought about only by co-operation from both fields. Thus, it would be basic that the move include leaders from journalism as well as the bar if a workable solution is to be found.

A large slice of reasonableness, garnished with a hefty touch of realism, can go far in solving this problem that is of the highest importance not only to the two professions, but to a great segment of our American society as well.