

Fair Press or Trial Prejudice?: Perceptions of Criminal Defendants

While most inmates felt their trials had been unfair, media coverage was cited infrequently as the reason.

► "Free press/fair trial" evokes controversy on both philosophical and empirical grounds. The traditional argument revolves on potential interference of the press in the fair administration of justice, and more precisely, the prejudicial influence and effects of the press as a factor in criminal trials.¹

The discussion has focused on the disparate interests served by the press and the courts, with the press characteristically representing forces of public disclosure while courts protect the individual against prejudicial disclosure.

However, it seems more sensible to regard freedom of the press *and* the rights of criminal defendants not as competing

but coexisting to serve the individual *and* societal interests of the public in trials.

Background

Our judicial system operates with certain legal and moral assumptions based in part on our commitment to democracy and our respect for individual freedom. As a society we embrace the idea that an individual is innocent until *proven* guilty and we place considerable trust in the integrity of our fellow citizens to be fair on juries. We believe that trials are best conducted in the open — under full public scrutiny. That increases the jury's burden in insuring fairness and maintaining the theoretical objectivity of our judicial system.

This concept of fairness in criminal adjudication is based on the presumed impartiality of individual jurors, questioned before they are impaneled. The press has been criticized for its role as a corruptible influence on the impartiality of jurors. The presumption that news coverage of criminal trials can generate bias against the defendant forms the premise upon which the "prejudicial publicity" argument is based.²

There has been some research on the effects of pretrial news coverage. Hough analyzed the content of the Detroit *Free Press* between November 1, 1966 and April 30, 1967 regarding the disposition of felony cases under one municipal jurisdiction in Detroit, Michigan.³ Only six cases involved jury trials⁴ and five of these trials resulted in conviction and one in acquittal. Hough's study suggests that

¹ References to the "press" here and in subsequent contexts pertain to both print and broadcast news media.

² For example, see: American Society of Newspaper Editors and the American Newspaper Publishers Association Foundation, *Free Press & Fair Trial*, 1982; C. R. Bartol, *Psychology and American Law* (Belmont, California: Wadsworth Publishing Co., 1983); John J. Bonsignore, Ethan Katsh, Peter d'Errico, Ronald M. Pipkin and Stephen Arons, eds., *Before the Law* (Boston: Houghton Mifflin Company, 1974); J. H. Davis, R. M. Bray and R. W. Holt, eds., *Law, Justice and the Individual in Society: Psychological and Legal Issues* (New York: Holt, Rinehart and Winston, 1977).

³ George Hough, III, "Felonies, Jury Trial and News Reports," *The Press and Fair Trial: Some Dimensions of the Problem*. (Athens: University of Georgia Press, 1970).

⁴ These data are consistent with U.S. Supreme Court Justice Blackmun's observation in his dissenting opinion in *Gannett v. DePasquale*, 443 U.S. 368, 1979, that in the city of New York alone, approximately 90% of all criminal cases are terminated either by dismissal or by a plea of guilty.

► Regina Ganelle Sherard is an assistant professor of journalism at the University of North Carolina.

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