OPE 28-21

Criminal Trials & News Coverage; Nebraska Decision, "Editorial Climate" - Rights & Interests.

CA, April 4, 1977

# Full Information Given As Base For Decision

By MICHAEL GREHL
Editor

SEVERAL criminal trials here have brought mail from readers complaining about what they regard as unnecessarily explicit and detailed news coverage. They not only express concern for the families of the victims, but for their own sensibilities.

The points are well taken.

We do not publish unsavory testimony for its own sake, whatever our critics may claim. The kind of sensational news story aimed at inflating circulation figures went out with press cards in the fedora and we are convinced our readers don't buy The Commercial Appeal to be titillated. Even if they did we'd be hard put to meet their demands, what with the offerings at most theaters and the tube with its passion for biological subjects even in the commercials.

THERE IS A MUCH more fundamental reason for full coverage.

With rare and lamentable exceptions, our courts have operated out in the open where the public can observe them and the whole process of law enforcement. It is in the courtroom where the evidence and witnesses are presented, challenged and weighed. It is where those men and women who have a part in law enforcement and justice also are on trial — or at least where they are put to a public judgment of their competence and industry.

Anyone who reads this newspaper must know that many of his neighbors are suspicious about police methods, court procedures and indeed, the efficacy of our legal system.

Free citizens want to judge for themselves if the prosecution had a case, they want to know if the proceedings were fair. They may have limited legal knowledge — and who does not in these times — but they are not limited in common sense.

Quite simply, they cannot judge their public servants and the law under which they live unless they see them in action.

ADMITTEDLY, WHAT WE publish about a specific case involves judgment calls. We are not always right in the eyes of some readers. But we are fearful of the consequences of mass ignorance that could result if we failed to do the best of which we are capable.

Who now does not wish that James Earl Ray had testified and been cross-examined?

Who now does not wish that Lee Harvey Oswald had been subjected to the rigors of a courtroom?

Prior restraint is just that no matter who imposes it or for what reasons and the Supreme Court has found consistently that it is unconstitutional.

Normally, restraint takes the form of a gag order by a judge who is determined to protect Sixth Amendment rights of an accused person whether or not his order does violence to the rest of the Bill of Rights.

A more bizarre case turned up in Washington recently when a citizens' organization sued the federal government seeking details of the manner in which the Glomar Explorer was paid for. A U.S. district judge of considerable note, Gerhard Gesell, found in favor of the government agencies but ordered his opinion sealed in deference to a claim of "national security."

Was justice done? We may never know. But we do know how the solemn invocation of "national security" has abused us in past matters of great public concern.

In a celebrated Nebraska case which came before it, the Supreme Court struck down a judge's gag order. In a concurring opinion Justice William Brennan, with Justices Potter Stewart and Thurgood Marshall joining, wrote:

" . . . As the Supreme Court of Nebraska itself admitted, however, any attempt to impose prior restraint on the reporting of information concerning the operation of the criminal justice system will inevitably involve the courts in an ad hoc evaluation of the need for the public to receive particular information that might nevertheless implicate the accused as the perpetrator of an involuntary confession or the conduct of an illegal search resulting in incriminating fruits may be the necessary predicate for movement to reform police methods, pass regulatory statutes, or remove judges who do not adequately oversee law enforcement activity; publication of facts surrounding particular plea bargain proceedings or the practice of plea bargaining generally may provoke substantial public concern as to the operations of the judiciary or the fairness of prosecutorial decisions; reporting on the details of the confession of one accused may reveal that it may implicate others as well, and the public may rightly demand to know what actions are being taken by law enforcement personnel to bring those other individuals to justice; commentary on the fact that there is strong evidence implicating a government official in criminal activity goes to the very core of matters of public concern . . . "

PERHAPS IT APPEARS somewhat labored to lean on such weighty considerations when the complaints before us are about taste and sensitivity to neighbors who live among us. But I think the principle is the same, whatever the plea for deletion of information.

The public is of many minds and many persuasions. Whatever the differences among individuals, the community is one in its need for information upon which to base its decisions and courses of actions.

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