THE BAR AND MR. GARRISON

Case of Pre-Trial Publicity

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We're happy to note that a committee of the American Bar Association has recommended that the Louisiana Bar investigate the conduct of New Orleans District Attorney Jim Garrison; it will be interesting to see if disciplinary action does result. It is, among other things, an excellent test of the bar's asserted ability to police pre-trial publicity.

Mr. Garrison has now had his day in court, and the jury made short work of his case that businessman Clay Shaw conspired in the assassination of President Kennedy. The upshot, indeed, has been to vindicate his opponent. The Warren report has never looked better; this long and well-financed investigation of its findings turned up nothing new. Also vindicated are such national news media as the late Saturday Evening Post, Newsweek and the National Broadcasting Co., which early in the game pegged Mr. Garrison's case as suspect at best.

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So it is with no little irony that we remember the typical picture of the press painted in the debate over pre-trial publicity. The press, it was argued, was an intruder in the judicial process, creating a vindictive atmosphere likely to convict the unjustly accused. In the Garrison episode, the truth seems more nearly the opposite. Any poisoning of the public atmosphere came from an official of the courts who indicted an innocent man for conspiring to commit the most notorious murder of our times, then repeatedly recited in public the supposed details of the conspiracy. And who spoke out against him? What he called "Eastern news agencies."

The more sophisticated students of pre-trial publicity, like the ABA's Reardon committee that recommended new restrictions on release of news, did realize that the problem was not the press but the public officials. They spoke of it as "the bar putting its own house in order."

Disciplining Mr. Garrison would be an obvious step in that direction, but such action is far from certain. A spokesman for the Louisiana Bar Association said it will consider the ABA suggestion, but added that the state association has no power to move directly against Mr. Garrison. Even if an investigation and discipline do result, for that matter, they will come rather late in the day.

While Mr. Garrison was repeating his various conspiracy theories, the bar had very little to say about their o b v i o u s prejudicial effect. This newspaper found that a spokesman for the Reardon committee said he had thought about these implications of the Garrison investigation but was unwilling to be quoted about them. Very little in the legal maneuvering, moreover, suggested that the bar and bench had much ability to put their own house in order.

In April of 1967, the trial judge, following the spirit of the Reardon report, ordered all participants not to talk about the case. But in May, Mr. Garrison was on television proclaiming, for example, "Purely and simply it's a case of former employes of the CIA, a large number of them Cubans, having a venomous reaction from the 1961 Bay of Pigs episode. Certain individuals with a fusion of interests in regaining Cuba assassinated the President."

If any direct action was taken to silence the District Attorney, we have not heard about it. However, two days after NBC broadcast its denunciation of Mr. Garrison, the judge called together newsmen to warn them about unnamed persons being "deplorable and contemptuous of the court orders." The judge refused a defense motion to prevent Mr. Garrison from going on national television to answer the NBC broadcast. Change of venue was denied. In September, Mr. Garrison again elaborated his theories in an interview with Playboy magazine.

In another notorious case, meanwhile, the attorney defending James Earl Ray in the murder of Dr. Martin Luther King was cited for contempt on the grounds of improper publicity. The offense was that one of his investigators complained to the press about the condition of Ray's imprisonment, a matter obviously irrelevant to guilt or innocence.

Is this, then, what restrictions on pre-trial publicity are to mean in practice: That a lawyer for the defense may not sneeze in public, but that a prosecutor with popular support in his home jurisdiction can take inflammatory parts of his case to such fine legal forums as Playboy?

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It may not be fair to generalize on the basis of one or two highly exceptional cases, though that is not far from what was done in making the case for new restrictions on crime news. Even so, it would seem to us that the provisional lessons of the Garrison episode are that in practice it is tremendously difficult for the courts to restrain an ambitious prosecutor, and that at least sometimes a press with sufficient access to information can perform a considerable public service. Or to put it another way, that there is after all a good deal to be said for the press' instinct that the truth will out when the marketplace of ideas is free.

Those who would not accept that lesson would still have to agree that the New Orleans trial shows that deciding precisely how to restrain publicity is a terribly difficult task, and perhaps ultimately an impossible one. But it is a task for which members of the bar have volunteered, and they should put up or shut up.