CRIMINAL JUSTICE

Trial by Newspaper

The New Jersey Supreme Court was not particularly impressed by the claims of Murderer Louis Van Duyne. Convicted of what the court called "the patently vicious crime" of beating his wife to death with his fists, Van Duyne had appealed on the ground that among others Paterson newspapers inflamed the jury against him by saying that he had been "arrested at least ten times," had once "threatened to kill a cop," was now "accused of brutally beating his wife," and had allegedly told police, "You've got me for murder. I don't desire to tell you anything."

The court found no prejudice, and it upheld Van Duyne's conviction. But

ALFRED STATLER

JUDGE FRANCIS
Prejudging v. the right to report.

Judge John J. Francis took the opportunity to issue a dictum banning all potentially prejudicial statements by police, prosecutors and defense lawyers throughout New Jersey.

Hard Balance. Despite the Jersey denial of Van Duyne's plea, "trial by newspaper" has caused U.S. appellate courts to reverse more and more convictions. Harvard's Law Dean Erwin N. Griswold, for example, was convinced that "Lee Harvey Oswald could not have received a fair trial anywhere in the U.S. and the Supreme Court would have so held." Nothing like the Oswald case, said the Warren Commission, has so dramatized "the need for steps to bring about a proper balance between the right of the public to be kept informed and the right of the individual to a fair and impartial trial."

But the bar, as well as the press, has much to answer for. "Inflammatory" news stories that prejudice juries are "too often" published "with the prosecutor's collaboration," said Justice Felix Frankfurter in 1961, when the Supreme Court vacated an Indiana murder conviction on just such grounds.

The New Jersey Supreme Court felt it had power to impose its ban on lawyers as "officers of the court" under the bar's canons of ethics. As the court read it, Canon 20 covers prosecution chatter "as to alleged confessions or inculpatory admissions by the accused, or to the effect that the case is 'open and shut' against the defendant, and the like, or with reference to the defendant's prior criminal record." As for defense counsel, "the right of the state to a fair trial cannot be impeded or diluted by out-of-court assertions by him to news media on the subject of his client's innocence."

New Problem. The New Jersey court apparently does not go along with Harvard's Dean Griswold and others who favor use of the contempt power to shut up talkative policemen. Superior officers should deal with improper statements that "constitute conduct unbecoming a police officer," said the court. As for inquisitive newsmen, the court added that nothing in its order "proscribes the reporting of the evidence as it is introduced before the jury by the state and the defendant during the course of the trial."

All this stirred outgoing President Sam Ragan of the Associated Press Managing Editors Association to warn that "we are hearing again the ancient cry that the free press is the enemy of fair trial." Ragan, who is executive editor of the Raleigh, N.C., News and Observer-Times, invoked the free press as the last bulwark before "the Star Chamber and ultimately secret arrest and secret trial." The Jersey court had not suggested Star Chamber courtrooms with no press present, but other critics found cause to wonder if the ban might not tend to overprotect lazy, incompetent or corrupt public officials. At any rate, the court's ruling was bound to provoke thoughtful debate and quite possibly a constitutional test.

A Dreyfus of Drunks

When he is able to work, DeWitt Easter, 59, is a skilled plasterer who can earn $175 a week in Washington, D.C. But Easter is seldom out of jail and sober. An alcoholic whose father was an alcoholic, he has been arrested 70 times for public intoxication—a "crime" for which Washington arrests 44,000 people a year. While such police work tidies up the streets, the fact that 70% of the arrests involve repeaters like Easter suggests that Washington's anti-drunk laws are more punitive than preventive. And it is just this premise that has spurred some highly sober Washington lawyers to make Easter's latest conviction a national test case aimed at finding alternatives to the present practice of treating alcoholics like criminals.

Futile Sanctions. So-called public intoxication accounts for almost 50% of criminal arrests in U.S. urban areas—or roughly 1,000,000 arrests a year—and for more than 50% of the inmates in U.S. county jails. These statistics do not include arrests for drunken driving or assaults caused by drinking. Arrests for plain public drunkenness total about 26,000 a year in San Francisco, 66,000 in Chicago, 80,000 in Los Angeles—while chronic drunks travel an endless circuit from gutter to cell to gutter before their final trip to the morgue. "It is hard to imagine a drearier example of the futile use of penal sanctions," says New York's Chief City Magistrate John M. Murtagh. In New York, at least, the courts demand proof of actual disorderly conduct and the police thus arrest only about 15,000 drunks a year.

The glaring lack in nearly every U.S. city is effective medical treatment.

WALTER BENNETT

DEFENDANT EASTER
Guilty of being sick.

Washington's judges have the option of hospitalizing chronic drunks. Yet no such referral has occurred since 1962, for the simple reason that the law requires "adequate treatment facilities"—something Congress has not provided. The city's rehabilitation clinic has facilities only for out-patients; the city's general hospital has beds for only 30 acute alcoholics. As a result, Washington spends $2,000,000 a year tossing drunks in the workhouse along with thieves and gamblers; the money might better be used for a treatment center. The setup "stinks," fumes Washington Corrections Department Director Donald Clemmer. "The real alcoholic is not a criminal and should not bear the stigma of imprisonment."

Hopeful Strategy. With the backing of the American Civil Liberties Union, a young member of Dean Acheson's law firm named Peter Hutt is determined to find an escape from this maze by getting an appellate court to rule (as the Supreme Court did in 1962 regard-