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Katzenbach Defines Standards For Information on Defendants

Tells What Will and Will Not Be Disclosed Before Trial in U.S. Criminal Cases

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WASHINGTON, April 16 — Attorney General Nicholas deB. Katzenbach told the nation's newspaper editors today what information the Justice Department would, and would not, supply in Federal criminal proceedings.

Mr. Katzenbach's appearance before the American Society of Newspaper Editors coincided with the publication of guidelines for Justice Department personnel in dealing with the problem of balancing a defendant's right to a fair trial and the right of a free press to print the news.

The Attorney General said the policies announced today were generally the same as those governing the Justice Department's practice in the past. However, he said, they were being formalized now to make certain that the department's standards were "fair, consistent and uniform" throughout the country.

The "free press-fair trial" issue, long debated by the legal and journalistic professions, took on a new urgency with the Warren Commission's criticism of press treatment of the assassination of President Kennedy by Lee Harvey Oswald.

Two days ago, the directors of the A.S.N.E. approved a report by its special Free Press-Fair Trial Committee rejecting either legal curbs of a voluntary code of conduct proposed by the Warren Commission. The committee thought both impractical and potentially dangerous, but recommended that every newspaper concentrate on reporting criminal cases with restraint and regard for defendants' rights.

The controversy centers on what kind of pretrial information should be printed. The problem involves more than the responsibility of the press; it involves also the propriety of information supplied the press by police officials and prosecuting attorneys.

On these related questions, Mr. Katzenbach said today his department would supply the following:

¶The defendant's name, age, residence, employment, marital status and "other general background information."

¶The substance or text of the charge, such as complaint, indictment or information.

¶The identity of the investigative and arresting agency, and the length of investigation preceding arrest.

¶The circumstances immediately surrounding the arrest —time, place, resistance, pursuit, possession and use of weapons and items seized at time of arrest.

The Attorney General said that the limitations should not apply to information needed to enlist public aid in apprehending fugitives.

He said the Justice Department would make photographs of the accused available if "a valid law-enforcement function is thereby served." It will not try to prevent the taking of photographs of defendants in public places, he continued; but neither will it encourage such picture taking or pose prisoners.

The greatest jeopardy to a fair trial, the bench and bar have contended, lies in the publication of a defendant's prior criminal record and confession.

Mr. Katzenbach said that the Government should be as circumspect as possible in the disclosure of a criminal record, and that it would not volunteer such information. It will, however, disclose convictions but supply records of these only for Federal offenses, he said.

On the question of confessions, Mr. Katzenbach took a firm stand. They are so prejudicial, he said, that "no such confessions—or even that a fact that a confession has been made —should be provided by the Justice Department."

Finally, he said, the Justice Department should not give out information on such investigative procedures as fingerprints, polygraphs, and ballistic and laboratory tests, because disclosure of such matters "can be deeply prejudicial without any significant addition to the public's right to know."

The policy statement was issued after a six-month study by 92 United States Attorneys and various units of the Justice Department, including the Federal Bureau of Investigation.

Mr. Katzenbach said it was not the function of the Justice Department to regulate the conduct or content of the press. "For us to try to impose our judgment on yours," he said, "denies your share" in the responsibility that belongs to press and public officials alike.

The editors received the speech with hearty applause. Alfred Friendly, managing editor of The Washington Post, who is chairman of the special committee, said the Attorney General's policy statement "conforms about 1000 per cent with the ideas we tried to put forth in our report."

The editors particularly approved Mr. Katzenbach's strictures—as sharp as those in the committee's report — against the police and the prosecutors who use the newspapers to try cases.

After the speech the issue was worked over by a panel of four—Clifton Daniel, managing editor of The New York Times; Judge J. Skelly Wright of the United States Court of Appeals for the District of Columbia; Edward W. Brooke, Attorney General of Massachusetts, and Felix McKnight, managing editor of The Dallas Times Herald.

Mr. Daniel began by conceding that the press sometimes—"inadvertently" but "deplorably," did violence to the rights of defendants. Reporters, he continued, do not always have impeccable manners; the press at times has "swarmed" over a story and become a participant in the news. There is need for reform, he said.

In a discussion that went beyond the issue of pretrial publication raised by Mr. Katzenbach, Mr. Daniel declared that the press would not submit to censorship, hand over control "to political-minded" prosecutors and judges, surrender its freedom to publish anything that is done or said in public or in open court, or abstain from exposing or criticizing the acts of public officials —"including prosecutors and judges."

Mr. Brooke said he doubted the constitutionality of statutory controls over the press, but he urged the industry to adopt a voluntary code.

The bench and bar has primary responsibility to insure against prejudicial advance publicity, he said, but have been lax in discharging it. However, he added, the press had also failed to exercise a responsibility commensurate with the freedom it so zealously guarded.

"The right to know," Mr. Brooke said, "will not be seriously impaired by a requirement that it be deferred until after the trial."