

Joseph Kraft

WXPost

FEB 21 1974

A New Look at Pre-Trial Publicity

The kidnappings in San Francisco and Atlanta give dramatic emphasis to a point that has been emerging dimly from the Watergate cases. The point is that modern communications have made criminals and their lawyers self-conscious, and even sophisticated, about shaping news.

Since the wrong-doers deliberately make their own publicity, the old rules about pre-trial publicity no longer work. While the prosecution and the press still have undoubted obligations, there is a need for the courts to hand down new, more realistic, guidelines.

The old standards are summed up in the case of the Cleveland dentist, Sam Sheppard, who was convicted of the murder of his wife. The Supreme Court overruled the conviction in 1966 because, as the majority opinion asserted, "of the trial judge's failure to protect Sheppard sufficiently from the massive, pervasive and prejudicial publicity that attended his prosecution."

In writing the opinion, Justice Tom Clark stipulated that juries should render their opinions free from outside influence. He cited an opinion from Justice Holmes that court decisions should be made without "any outside influence, whether of private talk or public print."

The extreme difficulty in abiding by that standard is manifest in both the kidnapping and the Watergate cases. Patricia Hearst, for example, was not kidnapped because she happened to be the daughter of any millionaire. She was taken because she was the daughter of a newspaper publisher who would give wide publicity to the demands of the Symbionese Liberation Army.

That Reg Murphy is editor of the Atlanta Constitution also played a part in his seizure. As his moving account of the event makes plain, the kidnapper was almost as much interested in being

on the television news shows as in collecting the ransom.

Various Watergate defendants are only slightly less involved in news management. Consider, for example, the case of Ed Reinecke, the lieutenant governor of California who has a marginal connection with one of the Watergate cases.

Mr. Reinecke has been running for the Republican nomination as governor of California, and to build up his campaign, he has been circulating various stories about his role in the Watergate

*"There is deliberate
manipulation of news by
defense as well as
prosecution."*

investigation. At one point he put it out that he was going to be a star government witness testifying against former Attorney General John Mitchell — an obvious effort to cast himself as a hero of Watergate.

John Ehrlichman, the former Presidential aide who has already been indicted for his part in the burglary of Daniel Ellsberg's psychiatrist by the White House plumbers, has been playing similar games. He has built his defense on the argument that the burglary was based on national security grounds, and to fortify that claim he has been intimating to reporters that various of-

ficials, including Henry Kissinger, gave him the impression Ellsberg was a Communist spy.

Charles Colson, another White House aide implicated in the crimes of the plumbers and other wrongdoing, is also basing his defense on the national security plea. He and his lawyers have been pushing out a lot of stories which are somehow supposed to build up the idea that national security considerations justified his actions.

One of these stories has to do with the Pentagon "spy ring" which took documents from Henry Kissinger's office at the National Security Council. Another has to do with some tapes supposedly destroyed by Richard Helms, the former Director of the CIA, which are supposed, somehow, to bear on Watergate.

All these stories, and many more, found their way into the papers and the television news shows. Inevitably so. For the very nature of the crimes I am discussing is that they are notorious, and involve notable people.

This does not mean that there should be no standards for pre-trial publicity. A public prosecutor has special obligations to be fair, and so do those of us in the news field.

But communications have been vastly expanded since Henry II introduced the jury system in the 12th century. There are such things as notorious crimes by notable people. There is deliberate manipulation of news by defense as well as prosecution.

So there should be no pretense that in such cases juries can be virginally innocent. The need is to go forward with trials, and it ought to be recognized, especially by the Special Watergate Prosecutor Leon Jaworski, that the old rules are going to have to come up for review and adjustment.

© 1974, Field Enterprises Inc.