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Editorials

The Defendant And the Press

IN ITS REPORT last fall on the assassination of John F. Kennedy, the Warren Commission described in detail and with some dismay the activities of the press and television in covering the arrest of Lee Oswald. It pronounced the results prejudicial to his right to a fair trial—had he lived to enjoy one—and proposed that the press draw up a professional code of conduct to live by.

Ever since, philosophers of the press and the bar have been busy with the issue.

For the press, the American Society of Newspaper Editors issued a report last week saying that while the Warren Commission held that Oswald could probably not have obtained a fair trial, to have concealed the facts about Oswald at the time of national crisis "would have been a course fraught with the greatest dangers." We do not see how this can be disputed.

THE PRESS FOUND Oswald guilty while he was alive. That, presumably, so set the people's minds against him that he could not have been acquitted had he been tried. But the Warren Commission, by finding him the assassin, inferentially found that he should not have been acquitted. Would a trial that reached the same result as the Warren Commission then have been unfair? These are the kinds of questions that theorists can debate forever without solving the problem.

Yet the problem is a real one. It is to balance two opposed rights, the duty of the press, functioning under the guarantees of the First Amendment, to satisfy the public's concern to know what is going on, and the rights of the defendant under the Fifth and Sixth Amendments to due process and a "speedy and public" trial by a judge and jury uninfluenced by clamorous publications of newspapers or television.

To suppress information from the moment of arrest until the trial would "withdraw the essential safeguard of public awareness and scrutiny from the processes of justice," said the ASNE report. That leaves the question of what is essential to public awareness.

To answer the question, Attorney General Nicholas Katzenbach appeared before the newspaper editors. He announced a new code of rules to govern the Federal release of crime news, and the merit of it is that it sets up certain categorical restraints on U. S. marshals, FBI agents and Federal prosecutors to protect the defendant.

The Attorney General has ordered officials of the Department of Justice, in effect, not to try accused persons in the newspapers by giving out statements, admissions, confessions, or alibis by the defendant, or other evidence, arguments and judgments about him. True, these are pretty much the rules that the FBI now observes toward the press (except when its public-relations policy calls for opening up the information flow in the interest of getting the agency more space, attention, praise and appropriations).

THE ATTORNEY GENERAL was wise not to try laying down rules for the press to follow, for such rules probably could never be enforced. Essentially, the protection of the defendant should come from the self-restraint of prosecutors—and of defense lawyers, for even these, in the interest of self-advertisement, are not incapable of prejudicing their client's cause.

Finally, the thought should not be overlooked that sometimes it is to the advantage of a defendant to have a channel of access to the press. In taking moral stands to protect him, let the prosecutors and the bar beware of closing him off from the potential salvation of publicity.