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The Suppression of Radio and Newspaper Comment on Pending Criminal Trials

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CRIMINAL LAW CASE NOTES AND COMMENTS

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The Suppression of Radio and Newspaper Comment on Pending Criminal Trials

On July 8, 1948, just as a negro handyman was about to go on trial for the murder of two eleven year old girls in the city of Baltimore, Maryland, four radio stations blandly broadcast that the accused had confessed to the crimes. On a subsequent program on July 9, further details of the confession, the previous criminal record and other conduct of the prisoner were broadcast, as well as an alleged re-enactment of the crimes. Promptly the four stations, WSID, SFBR, WITH, and WCBM, and the news editor of WITH, were cited for contempt of court. The action was consummated on January 28, 1949, in Re *Maryland Broadcasting Company*,[1] when three of the stations (WSID having been absolved) and the WITH news editor were convicted of contempt of court for violating Rule 904 of the Supreme Bench of Baltimore.[2]

The Contempt Rule

Rule 904 is an aggregate of contempt provisions devised in 1939 by the judges of the Criminal Court of Baltimore and adopted by the Supreme Bench (Baltimore courts of first instance) as an aftermath of abusive publication concerning a so-called "torso murder" case. Six separate provisions prescribe the various acts which are made punishable by contempt.[3] A detailed analysis of the Rule is impractical here;[4] however, it is worthy of note that the more important substantive pro-

1 In re Maryland Broadcasting Company (Baltimore City Criminal Court, 1949), 17 L.W. 2381.

2 Supreme Bench of Baltimore, Rule 904: Photographs, Statements for Publication, etc. "Ordered this 25th day of April, 1939, by the Criminal Court of Baltimore, that in connection with any case which may be pending in this court, or in connection with any person charged with crime and in the custody of the Police Department of Baltimore City, or other constituted authorities, upon a charge of crime over which this Court has jurisdiction, whether before or after indictment, That any of the following acts shall be subject to punishment as contempt:

(1) The making of photographs of the accused without his consent.

(2) The making of any photograph in violation of Rule 48 of the Supreme Bench of Baltimore City.

(3) The issuance by the Police Authorities, the State's Attorney, counsel for the defense, or any other person having official connection with the case, of any statement relative to the conduct of the accused, statements or admissions made by the accused, or other matter bearing upon the issues to be tried.

(4) The issuance of any statement or forecast as to the future course of action of either the prosecuting authorities or the defense relative to the conduct of the trial.

(5) The publication of any matter which may prevent a fair trial, improperly influence the court or the jury, or tending in any manner to interfere with the administration of justice.

(6) The publication of any matter obtained as a result of a violation of this rule.

3 Rule cited note 2, *supra*.

4 For a personalized analysis by the author of Rule 904, see an address by Judge Emory F. Niles, Contempt by Publication, 45 Md. Bar Ass'n. Proceedings 133 (1940).

hibitions are contained in provisions three, four and six of the Rule. These provisions state that all details and occurrences up to the time of arrest of the accused may be made public, but that from the time of arrest, no information about the conduct of or confession by the accused, or other admissions or statements bearing upon the alleged crime may be issued by any public officer, including counsel, or made the subject of public comment. Thus, once the prisoner is in the custody of the police, no statements, whether admissions, confessions, exculpatory declarations, or new evidence, should be published. Although not apparent from a reading of the Rule, additional results have been attributed to it by interpretation; that at no time may an accused's past criminal record be publicized; and that anything, including confessions, brought out at the preliminary hearing is freely publishable. This latter concession is justified on the basis that the preliminary hearing, like the trial, is a public proceeding, so that anything revealed therein may be reported.[5]

Although the power to punish by contempt is inherent in the courts and although many states have contempt statutes, research has failed to reveal any similar previous instance where trial courts have taken it upon themselves to formulate a precise, written contempt rule to govern news comment.[6] Furthermore, in the nine years during which Rule 904 has been in force, the newspapers have not seriously challenged its validity, and in the present case the Baltimore press had kept knowingly silent after the arrest. Four radio stations, however, chose to ignore the Rule, or perhaps to test it, resulting in one of the rare cases on record in which a radio station has been cited for contempt and found criminally guilty of "trial by publication."[7] The trial judge ruled that in such cases, where adverse or erroneous publicity might prejudice a defendant's right to an impartial trial, freedom of speech and the press must be and could be legally curtailed. He concluded that the broadcasts had "an effect that members of a jury panel would be bound to carry into a jury room," and that this constituted an action punishable by contempt.[8]

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5 A very detailed and comprehensive interpretation and criticism was delivered by Hon. Joseph Sherbow, Ass't Judge, Supreme Bench of Baltimore, at the 53rd Annual Meeting of the Maryland State Bar Association, June 24, 1948. Reprinted: *Baltimore Daily Record*, June 25, 1948.

6 Unfettered by any Constitutional provisions for freedom of speech and press, England has prohibited abuses by publication by statutory enactments. Some of these laws restricting freedom of the press are as follows: The Criminal Justice Act, 1925, 15 and 16 Geo. V, c. 86, §41; The Judicial Proceedings Act, 1926, 16 and 17 Geo. V, c. 61, §1(1); Law of Libel Amendment Act, 1888, 51 and 52 Vict., c. 64, §3. As a result of these statutes, once a person has been charged with a crime, the English law prohibits publication of evidence that might prejudice a fair trial for the accused. It also forbids linking a suspect to crime other than the one with which he is charged. No similar legislation may be found in the United States.

7 Re Shuler, 210 Calif. 377, 292 Pac. 481 (1930); People ex rel. Supreme Court v. Albertson, 275 N.Y.S. 361 (1934) were cases not involving the radio stations but were contempt citations of individual defendants who had broadcast on the radio accusatory speeches charging misconduct and impartiality against judicial officers. In the former, conviction was upheld on the basis of the doctrine of the *Toledo Newspaper* case; the latter conviction was reversed.

8 It should be mentioned that the Court found provision five of Rule 904 unconstitutional in that it violates the First Amendment. Provision five is set out in note 2 *supra*. This 'catch-all' provision, as Judge Gray labeled it, was apparently based upon the original federal doctrine of "reasonable tendency" and is too broad under the "clear and present danger" doctrine. Toledo Newspaper Co. v. United States, 247 U.S. 402 (1918); Bridges v. California, 314 U.S. 252 (1941). Inasmuch as a repre-

Contempt by Publication

The inherent power of the court to protect its prisoners or its litigants against interference by irresponsible or perhaps interested agencies and to prevent perversion or obstruction of just proceedings in the court, particularly by abusive publication, has been recognized since Blackstone's undelivered opinion in 1765.[9] A federal statute[10] and numerous state laws[11] have also specifically conferred these powers on the courts. Heretofore, however, the actual scope of such power has been left undefined, its authority being administered on a case-to-case basis. In each case the judge must resolve the conflict between the right of free speech and press and the basic concept of an independent judiciary, as well as the right of an accused to a fair and impartial trial. After detailed consideration of the facts and circumstances surrounding the incident being tried, he must decide which of the fundamental rights are to be sacrificed.

It is on the basis of this oft-repeated procedure that the "clear and present danger" doctrine has come to be the accepted yardstick in contempt litigation. The inception of this doctrine and its application to publication contempts needs no reiteration.[12] It is only significant here that as a result of the United States Supreme Court cases of *Bridges v. California*,[13] *Pennekamp v. Florida*,[14] and *Craig v. Harney*,[15] little doubt remains that in order for an act to be punishable "the substantive evil which it creates must be extremely serious and the degree of imminence extremely high."[16]

Keeping in mind Rule 904 and the case which has provoked its investigation, it is necessary to consider momentarily the import of the "clear

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sentative of the Supreme Court Bench has recognized the separability of provision five of the rule, it would not seem that its apparent invalidity should defeat the rule or prejudice the rights of the litigants. The conviction by Judge Gray was apparently founded on a violation of provisions *three* and *six*. It is interesting to note that numerous organizations have intervened on the respective sides in this case for purposes of appeal. Supporting the conviction are: The Maryland Civil Liberties Committee, The Junior and Senior Bar Associations of Baltimore and the Maryland State Bar Association. Intervening for the appellant are: The American Society of Newspaper Editors, The American Newspaper Publishers' Association, The National Association of Broadcasters, and allegedly The American Civil Liberties Union.

9 Wilmot, Notes and Opinions of Judgments (1765). For extensive material on the courts' general and specific powers of contempt, "contempt by publication," and "trial by newspaper," *see* Sir John Fox, The History of Contempt of Court (1927); Sullivan, Contempts by Publication (2d ed. 1940); Radin, Freedom of Speech and Contempt of Court (1941) 36 Ill. L. Rev. 599; Nelles and King, Contempt by Publication in the United States (1928) 28 Col. L. Rev. 401; Nye v. United States, 313 U.S. 33 (1941); Craig v. Hecht, 263 U.S. 255 (1923); 159 A.L.R. 1379 (1945).

10 The original 1831 statute is now recognized in two separate sections. U. S. Code (1926), §385 (Jud.) and U. S. Code, §241 (Crim.).

11 Pa. Laws, 1808-09, c. 78, P. 146; N.Y. Rev. Stat. (1829) Part 3, c. 3, t. 2, Art. I, §10.

12 Mr. Justice Holmes created the clear and present danger doctrine in Schenck v. United States, 249 U.S. 47 (1919), a case involving the circulation of seditious literature. In Bridges v. California, 314 U.S. 252 (1941) it was adopted by the court as the yardstick in prosecutions for contempt by publication, superseding the "reasonable tendency" test of Toledo Newspaper Co. v. United States, 247 U.S. 402 (1918).

13 314 U.S. 252 (1941).

14 328 U.S. 331 (1946).

15 331 U.S. 367 (1947).

16 Bridges v. California, 314 U.S. 252, 263 (1941). For further explanation and discussion of the "clear and present danger" doctrine *see* Notes: (1947) 32 Cornell L.Q. 413; (1947) 27 Neb. L. Rev. 92; (1942) 15 So. Calif. L. Rev. 367.

and present danger" rule as reflected by the decisions of the Supreme Court. Neither a definition of the doctrine nor a prescription of its precise limitations can be extracted from the cases.[17] On the contrary, the Supreme Court Justices have expressed the positive belief that neither definition nor boundaries are desirable; that the working principles must be flexible; and that a test is only valuable when it can be moulded to the particular facts of the particular case.[18] In his concurring opinion in the *Pennekamp* case, Mr. Justice Frankfurter specifically decried the use of "formulas embodying vague and uncritical generalizations" because they "offer tempting opportunities to evade the need for continuous thought."[19]

A reading of the *Bridges, Pennekamp,* and *Harney* cases reveals also that a case need not be pending, in the technical sense of the word (*lis pendens*), in order for the court to find that an abusive publication has created a "clear and present danger" to its fair administration.[20] The Court looks upon "pending" as a relative term and has specifically explained that any substantial limitation as to time or space must, of necessity, be an arbitrary one. Again, all related circumstances must be considered before a positive determination as to the imminence of the danger can be resolved.[21]

17 After setting out the "clear and present danger" rule, Bridges v. California, 314 U.S. 252, 261 (1941), Mr. Justice Black continued: "We recognize that this statement, however helpful, does not comprehend the whole problem. As Mr. Justice Brandeis said in his concurring opinion in Whitney v. California, 274 U.S. 357, 374: 'This Court has not yet fixed the standard by which to determine when a danger shall be deemed clear; how remote the danger may be and yet be deemed present.' "

18 Mr. Justice Frankfurter, concurring in the *Pennekamp* case, at page 367, stated: "Since at the core of our problem is a proper balance between two basic conditions of our constitutional democracy—freedom of utterance and impartial justice—we cannot escape the exercise of judgment on the particular circumstances of the particular case." In *Craig v. Harney,* at 391, it is further pointed out that ". . . in every case coming here from a State court this Court might make an independent examination of the facts, because every right claimed under the Constitution is a fundamental right." In the *Bridges* case, at 261, Mr. Justice Black, drawing from the *Gitlow* case stated: "It must necessarily be found, as an original question, that the specified publications involved created 'such likelihood of bringing about the substantive evil as to deprive (them) of the constitutional protection.' How much 'likelihood' is another question, a question of proximity and degree 'that cannot be completely captured in a formula'."

19 328 U.S. 331, 351. Mr. Justice Frankfurter further reiterated: "Such formulas are most beguiling and most mischievous when contending claims are those not of right and wrong but of two rights, each highly important to the well-being of society. Seldom is there available a pat formula that adequately analyzes such a problem, least of all solves it. Certainly no such formula furnishes a ready answer to the question now here for decision or even exposes its true elements." Mr. Justice Rutledge, concurring at 371, explained: ". . . any standard which would require strict accuracy in reporting legal events factually or in commenting upon them in the press would be an impossible one. Unless the courts and judges are to be put above criticism, no such rule can obtain. There must be some room for misstatement of fact, as well as for misjudgment, if the press and others are to function as critical agencies in our democracy . . :"

20 328 U.S. 331, 369. "Where the power to punish for contempt is asserted, it is not important that the case is technically in court or that further proceedings, such as the possibility of a rehearing, are available. When a case is pending is not a technical lawyer's problem, but is to be determined by the substantial realities of the specific situation." *Cf.* Ex Parte Craig, 282 F. 138, 159, 160 (1922).

21 The undesirability of confinement in applying the "clear and present danger" test is expressed by Mr. Justice Black, in his majority opinion in Bridges v. California, 314 U.S. 252, 271: "Legal trials are not like elections, to be won through the use of the meeting hall, the radio and the newspaper. But we cannot start with the assumption that publications of the kind here involved actually do threaten to change

Another conclusion of the "clear and present danger" cases is significant. Where it is asserted that a defendant has been deprived by a state court of a fundamental right secured by the Federal Constitution, an independent examination of the facts may be made by the Supreme Court.[22] Every case of summary punishment for contempt by publication will be considered on its merits, regardless of the reasonableness of state statutes or the conclusions of state courts.[23] Since the holding in *Gitlow v. New York*,[24] the Supreme Court has recognized in the Fourteenth Amendment the application to the states of the same standards of freedom of expression as, under the First Amendment, are applicable to the federal government.[25]

A cursory analysis of the majority opinions in the *Bridges, Pennekamp* and *Harney* cases would seem to indicate that a set of facts which would warrant a finding of "clear and present danger" is hardly conceivable.[26] However, such a conclusion does not reflect a complete consideration of the Court's position. In the three cases so far litigated, the Court has made it clear that convictions were foreclosed upon the factual situations, and upon those alone. The very nature of the "clear and present danger" doctrine itself reveals a recognition that valid circumstances could exist to justify a conviction under the "test." Publications criticizing a judge or attempting to influence him have been the only cases considered. Until litigation involving variations of facts and circumstances has run the gamut, the characteristic of absolutism should not be attributed to the doctrine.

Conviction Based on an Inflexible Rule

In view of the adverse attitude of the Supreme Court toward the imposition of dogmatic rules or formulas to resolve these contempt prob-

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the nature of legal trials, and that to preserve judicial impartiality, it is necessary for judges to have a contempt power by which they can close all channels of public expression to all matters which touch upon pending cases. We must therefore turn to the particular utterances here in question and the circumstances of their publication to determine to what extent the substantive evil of unfair administration of justice was a likely consequence, and whether the degree of likelihood was sufficient to justify summary punishment."

22 Craig v. Harney, 331 U.S. 367, 373 (1947); Norris v. Alabama, 294 U.S. 587, 590 (1935); Abrams v. United States, 250 U.S. 616 (1919); Nye v. United States, 313 U.S. 33 (1941).

23 "When the other attributes of democracy are threatened by speech, the Constitution does not deny power to the States to curb it. Therefore, every time a situation like the present one comes here, the precise problem before us is to determine whether the State Court went beyond the allowable limits of judgment in holding that conduct which has been punished as contempt was reasonably calculated to endanger a State's duty to administer impartial justice in a pending controversy." Mr. Justice Frankfurter concurring in Pennekamp v. Florida, 328 U.S. 331, 353, 354 (1946). Note (1946) 95 U. of Pa. L. Rev. 222.

24 268 U.S. 652 (1925).

25 In declaring the Court's position, Mr. Justice Reed points out, in his majority opinion in *Pennekamp v. Florida* at 336, that in the *Bridges* case "there was unanimous recognition that California's power to punish for contempt was limited by this Court's interpretation of the extent of protection afforded by the First Amendment." In analyzing the history of contempt by publication, Mr. Justice Black explained that the state powers in that field had not been tested in the Supreme Court for over a hundred years. Since the *Gitlow* case, however, no doubt has existed as to the applicability of the federal principles of the First Amendment to the states. Bridges v. California, 314 U.S. 252, 260 (1941).

26 Note (1948) Wis. L. Rev. 125; Note (1948) 21 Temple L.Q. 272.

lems,[27] Rule 904 appears very likely to be unconstitutional as an arbitrary restriction of the rights guaranteed by the First Amendment. In that the Rule prescribes specific temporal and spacial limits within which an action must fall to be punishable, it lacks the elasticity and flexibility required in the "clear and present danger" approach to these contempt cases.[28] The commission of any act provided in 904 calls for an automatic citation and punishment, regardless of justification or consideration of the circumstances of the case. In each of the leading cases the Supreme Court has emphasized the necessity of trying each case on its merits.[29] To reserve in advance an arbitrary area within which a case is pending, or within which publication is contemptuous, does violence to this basic philosophy. Justice Douglas reiterated in the *Harney* case that publications must be appraised in a setting of the public comment which preceded and succeeded them, as well as in the light of community environment which prevailed at that time. He concluded that the "compulsion of the First Amendment made applicable to the States by the Fourteenth Amendment forbids punishment by contempt for comment on pending cases in the absence of showing that utterances create 'a clear and present danger' to the administration of justice."[30] The very character of the "clear and present danger" doctrine, its purpose and the reason for its formulation oppose the validity of Rule 904. Thus, the constitutionality of 904 seems doubtful, to say the least.

If Rule 904 is unconstitutional, the contempt conviction based upon the Rule is also invalid. Were it not predicated on the rule, however, it is possible that there exists in the instant case a set of facts which might well warrant an affirmation of the conviction under the "clear and present danger" test. Shortly before the trial, the radio stations broadcast that the prisoner had confessed. Not satisfied with that disclosure, the next day's program announced the details of the confession, revealed that the accused had a past criminal record, and consummated the broadcast by a brief re-enactment of the crimes. It is difficult to conceive of acts better calculated to incite public wrath and prejudice or with the more imminent probability of preventing or interfering with impartial administration of justice. It must be kept in mind that this was a jury trial, that the twelve jurors, who were about to go into the court room, could hardly have escaped being exposed to broadcasts by three different local radio stations, although it is not indicated that the jurors had actually heard the broadcast. In contrast, the public comment in the *Bridges, Pennekamp* and *Harney* cases were criticisms directed solely toward the judges and the judicial process. The greater potential threats to justice in the former situation where prejudice of the jury is the primary effect was recognized by Mr. Justice Frankfurter, concurring in *Pennekamp v. Florida*.[31] While discussing the problems attending "trial by newspaper," he pointed out that the administration of justice is much more frequently and seriously affected in those criminal cases which are given great public notoriety in the newspapers than it is in cases where actions of the courts are criticised in public print. For the latter, the libel laws provide a remedy in deserving cases, but for the former, there is no remedy other than the contempt process, and the courts have been re-

27 *Supra* note 19.
28 *Supra* notes 19, 20 and 21.
29 *Supra* note 18. See Note (1947) 26 N. Car. L. Rev. 183.
30 Craig v. Harney, 331 U.S. 367, 372 (1947).
31 328 U.S. 331 (1946).

luctant to use it to invade the exalted dominion of freedom of speech and press.[32] Journalistic sensationalism and irresponsible publication make it impossible to impanel an impartial jury and increase the burden of even the most fair-minded judge to provide a fair trial. In fact, the most austere judge may, at times, find it difficult to escape the compulsion of emotional influence resulting from the publication of the extremely revolting and savage details of a case. Even greater is the improbability that prospective jurors could be without prejudice or emotion under such circumstances.

Unrestricted Publication vs. Impartial Trial

Freedom of speech and of the press must, of necessity, be jealously guarded, but not to the point of destroying the cornerstone of our judicial system—the right to a fair and impartial trial. The radio and the newspaper are invaluable and indispensable elements in the development of public enlightenment. But there is little to be gained, and a great deal of damage to be inflicted, by an unrestricted publication which serves to arouse public indignation and unqualified prejudice against an accused.[33] It is evident, therefore, that some type of retrictive measure should be effectuated. It would be unfortunate if the "clear and present danger" doctrine were carried to the extent of requiring an actual showing that a jury had been prejudiced or that a judge had been influenced in his determinations. Such a requirement would impose an almost impossible burden of proof on the prosecution. The doctrine would be left without practical value; the accused would enjoy but little guarantee of an impartial trial.

Some publications themselves have recognized the need for restrictive measures,[34] and many responsible newspapers have refused to

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32 Pennekamp v. Florida, 328 U.S. 331, 356-368 (1946). For similar comment *see* Note (1947) 41 Ill. L. Rev. 690.

33 It is doubtful that anyone would claim that the subject of the broadcasts in *Re Maryland Broadcasting Co.* had even the slightest news value or was the type of information necessary to enlighten the public. The use of the free speech and free press prerogatives for injurious practices has not been wholly without judicial or legislative censure. The most recent case of both legislative and judicial approval of the restriction of freedom of speech was in *Kovacs v. Cooper*, ___ U.S. ___, 69 S. Ct. 448 (1949) in which the Supreme Court upheld a Trenton, New Jersey, ordinance which prohibited the use of "loud and raucous" sound trucks on the public streets. Mr. Justice Reed, speaking for the majority, explained: "The preferred position of freedom of speech in a society that cherished liberty for all does not require legislators to be insensible to claims by citizens to comfort and convenience."

34 See Mr. Justice Frankfurter concurring in Pennekamp v. Florida, 328 U.S. 331, 364, footnote 12, in which he quoted from an editorial from the Chicago *Tribune* as follows: "The Tribune advocates and will accept drastic restriction of this preliminary publicity. The penetration of the police system and the courts by journalists must stop. With such a law there would be no motivation for it. Though such a law will be revolutionary in American journalism, though it is not financially advisable for newspapers, it still is necessary. Restrictions must come." And quoting Le Viness, Law and the Press, *The Daily Record*, Baltimore, March 11, 1932, on the need for restriction of the press: "This puts the problem, as far as Court and police news goes, squarely back where it belongs: in the lap of the judiciary. The Courts must set standards; the better journals will follow joyously and the gumchewers' sheets must be whipped into line. The solution is fearless jurists, not afraid of the double-edged sword of contempt process; intelligent jurists, able to exercise this power in the best, enlightened public interest."

The Chairman of the Committee on Freedom of Information—American Society of Newspaper Editors, on the other hand, has stated that the majority of newspaper editors today would oppose any restrictions or inroads on the right of the press to publish freely and without qualification.

indulge in scandalizing and sensational publication. Unfortunately, however, most newspapers have been reluctant to brave the competition and possible loss of circulation which might result from a curtailment of their reportorial activities. Effective restrictions, therefore, must come from some source other than the disseminators of the news.

It would appear from an analysis of the previously discussed *Bridges, Pennekamp* and *Harney* cases that an inflexible rule, formula or statute, as a basis of a contempt conviction, would not withstand the scrutiny of the Supreme Court of the United States. Although the Supreme Court will ordinarily give greater weight to legislative regulations than other types of state restrictions, and although "the courts are inclined to adopt that reasonable interpretation of a statute which removes it farthest from possible constitutional infirmity,"[35] statutes or ordinances tending to curtail civil liberties will be strictly construed. Because legislation in this constitutional field must escape the violative elements of being so obscure, vague, and indefinite as to be impossible of reasonably accurate interpretation,[36] or, at the opposite extreme, of being so specific and confined as to be arbitrary, it is felt that any attempts to impose restriction on publications by means of legislation would be unsatisfactory. In what way, then, may there be any satisfactory control of "trial by publication"?

It is suggested that the leadership in seeking a solution to this perplexing problem should be assumed within the judicial system. The action of the Supreme Bench of Baltimore was an advance in the desired direction. The courts in each state (preferably the supreme court, with the goal of uniformity in mind) should make *declarations of policy* which could be used by the radios and newspapers as guides or standards for the permissible limits of publication. It is not proposed that the state courts could prescribe the precise boundaries of contumacious actions; but that area within which there is a likelihood of serious interference with justice and within which the courts will exercise diligent watchfulness could be laid out with sufficient clarity to put the publishers on notice. It should be understood that all convictions would be founded on the inherent powers of the courts to punish for contempt and would not be predicated upon a violation of the policies as penal measures. This precaution should exonerate the policies from the condemnation of basing a conviction on an arbitrary rule, the element which seems detrimental to the courts' action in the present Maryland case. It is submitted that the enunciation of such policies would aid immeasurably in eliminating from radio and newspaper publications those injurious elements of publicity which threaten justice and fairness in the judicial process.

CLIFFORD E. SIMON, JR.

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35 Mr. Justice Reed, speaking for the majority in Kovacs v. Cooper, ___ U.S. ___, 69 S. Ct. 448, 452 (1949).

36 Kovacs v. Cooper, ___ U.S. ___, 69 S. Ct. 448 (1949); Saia v. New York, 334 U.S. 558 (1948); Winters v. New York, 333 U.S. 507 (1948).