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THE NEW YORK FAIR TRIAL FREE PRESS CONFERENCE

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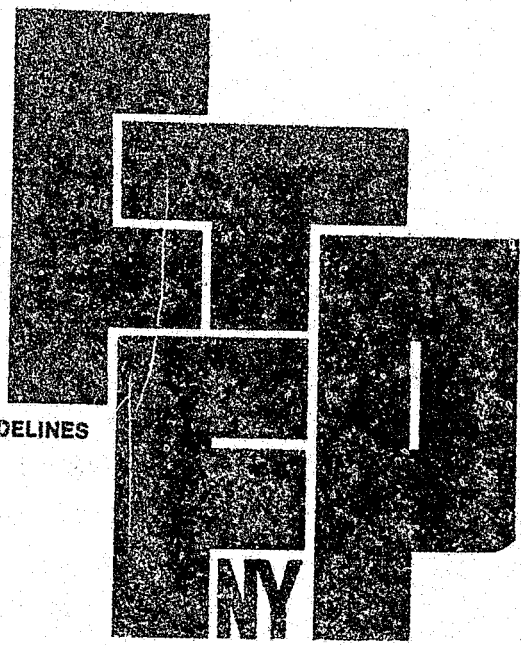
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PRINCIPLES AND GUIDELINES

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Copies of the full guidelines of the Conference and other
educational material may be obtained from:

Jay B. Wright, Executive Director
The New York Fair Trial Free Press Conference
Newhouse Communications Center
Syracuse University, Syracuse, N.Y. 13210

FAIR TRIAL FREE PRESS PRINCIPLES AND GUIDELINES FOR THE STATE OF NEW YORK

PRINCIPLES

Freedom of the press is guaranteed by the First Amendment of the Constitution of the United States.

The right to a speedy and public trial by an impartial jury is guaranteed in criminal cases by the Sixth Amendment.

The New York State bar, bench, law enforcement agencies and news media, as represented by the organizations that have signed this document, recognize and uphold these guarantees and grant them equal validity.

They also recognize the right of the public in a democratic society to be informed about crime, law enforcement and the administration of justice, and the right, in general, to have trials openly conducted.

While the news media recognize the responsibility of the judge to preserve order in the court and seek the ends of justice by all those means available to him, decisions about handling the news rest with the editors, who, in the exercise of news judgments, should remember that:

- (a) An accused person is presumed innocent until proven guilty.
- (b) Accused persons and civil litigants are entitled to be judged in an atmosphere free from passion, prejudice and sensationalism.
- (c) Readers, listeners and viewers are potential jurors.
- (d) No one's reputation should be injured needlessly.

GUIDELINES IN CRIMINAL CASES

The proper administration of justice is the concern of the judiciary, bar, the prosecution, law enforcement personnel, news media and the public. None should relinquish its share in that concern. None should condone injustices on the ground that they are infrequent.

1. When and after an arrest is made, the following information should be made available for publication:

- (a) The accused's name, age, residence, employment, marital status and similar background information.
- (b) The substance or text of the charge such as a complaint, indictment, information and, where appropriate, the identity of the complainant.

- (c) The identity of the investigating and arresting agency and length of the investigation.
- (d) The circumstances immediately surrounding the arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons and a description of items seized at the time of arrest.

2. The release of certain types of information by law enforcement personnel, the bench and bar* and the publication of this information by news media may tend to create dangers of prejudice without serving a significant law enforcement or public interest function. Therefore, all concerned should be aware of the dangers of prejudice in making pretrial disclosure of the following:

- (a) Statements as to the character or reputation of an accused person or a prospective witness.
- (b) Admissions, confessions or the contents of a statement or alibi attributable to an accused person.
- (c) The performance or results of tests or the refusal of the accused to take a test.
- (d) Statements concerning the credibility or anticipated testimony of prospective witnesses.
- (e) The possibility of a plea of guilty to the offense charged or to a lesser offense, or other disposition.
- (f) Opinions concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used at trial.

3. Prior criminal charges and convictions are matters of public record and are available to the news media. Police, corrections and other law enforcement agencies should make such information available to the news media on request. The public disclosure of this information by the news media may be highly prejudicial without any significant addition to the public's need to be informed. The publication of such information should be carefully considered by the news media.

**The Code of Professional Responsibility for members of the bar, which became effective in New York State on Jan. 1, 1970, contains specific provisions relating to pre-trial publicity in criminal cases which generally follow these guidelines. It should be noted, however, that lawyers are explicitly prohibited from disclosing the prior criminal record of an accused under Disciplinary Rule 7-107 (B).*

4. Law enforcement and court personnel should not prevent the photographing of defendants when they are in public places outside the courtroom. They should neither encourage nor discourage pictures or televising but they should not pose the accused.*

5. Photographs of a suspect may be released by law enforcement personnel provided a valid law enforcement function is served thereby. It is proper to disclose such information as may be necessary to enlist public assistance in apprehending fugitives from justice. Such disclosure may include photographs as well as records of prior arrests and convictions.

6. Pre-trial hearings and trials are presumed to be open to the public, including the press. Particular care should be taken not to disseminate prejudicial information, whether admissible or not, when a trial is approaching or is underway and the information is likely to be seen or heard by potential or seated jurors.

7. Once a trial has begun, the news media may report anything done or said in open court, provided that any statement or matter excluded from evidence is described as having been so excluded. When matter or statements are excluded from evidence outside of the presence of the jury, disclosure may be highly prejudicial without any significant addition to the public's need to be informed. The publication of such information should be carefully considered by the news media.

8. No one should make, publish or broadcast a statement designed to influence, forecast or prejudice the outcome of a trial. Accused persons, however, should have the privilege of issuing denials of allegations made against them.

These guidelines are intended to protect the right to a speedy and public trial by an impartial jury, not to prevent the press from inquiring into and reporting on the integrity, fairness, efficiency and effectiveness of law enforcement and the administration of justice.

**Rule 35.3 of the Administrative Board of the Judicial Conference incorporates this paragraph with the added statement that:*

"The foregoing is not to be construed as a limitation upon the responsibility and authority of . . . the administrative judges to formulate and effectuate such reasonable rules as may be necessary and proper to ensure that the coverage permitted shall respect the dignity, decorum and safety of the Court-house and the proper conduct of court business therein."

GUIDELINES ON THE REPORTING OF JUVENILE AND YOUTHFUL OFFENDER PROCEEDINGS

1. The term juvenile should be construed to include those persons under the age of sixteen charged with acts relating to a person in need of supervision as such terms are defined by the Family Court Act. Juveniles also include those persons who are objects of proceedings involving matters of support, neglect, custody, adoption, paternity and family offenses. The term juvenile should not here be construed to include persons under sixteen years of age charged with violent crimes while they are under the jurisdiction of an adult criminal court, but it should be construed to include those of this group whose cases have been transferred from an adult criminal court to Family Court.

2. The basic principles of fairness and cooperation between the Family Court and the news media should apply in the handling of juvenile matters, maintaining due regard for the scope and nature of such proceedings and the central purposes of guidance and rehabilitation to which such proceedings are directed.

3. The disclosure of information by law enforcement agencies concerning juvenile matters shall be governed by appropriate provisions of the Family Court Act.

4. The news media are free to publish information concerning or involving juveniles secured from independent sources prior to the institution of juvenile court proceedings, exercising due discretion and good taste and having due regard for the views of the parties or agencies involved. The disclosure of the identity of any juvenile should be made only when permitted by statute and when a clear public purpose would be served by such disclosure. Greater latitude should be permitted where the involvement of the juvenile is merely collateral to an adult proceeding.

5. In reporting juvenile court proceedings the names and identifying data of juvenile respondents should be published only with the concurrence and permission of the judge presiding. Records of any such proceeding shall be open to public inspection only with the court's consent and as permitted by statute.

6. Confidential reports, including probation reports, social and clinical evaluations and reports of other auxiliary services prepared for the court's use shall not be open for public inspection except with the express consent of the court.

7. Following the disposition of a juvenile proceeding, the news media shall be entitled to information thereof, without naming or identifying the juvenile involved. Recitation, however, of the circumstances surrounding the proceeding, identity of the law enforcement agency involved and the length and nature of the investigation, together with the ultimate charge shall be permitted.

8. The principles of fairness and cooperation between the courts and the news media should also apply in the case of the arrest of youths who might later be eligible for Youthful Offender treatment.

The information noted in paragraph #1 of the Guidelines in Criminal Cases should also be made available at the time of the arrest of youths. However, special attention should be paid by the media to the fact that the distribution of this information would tend to undermine the purpose of the Youthful Offender designation, which is to protect a young person from being branded for life by an unthinking, ill-conceived action.

GUIDELINES ON THE REPORTING OF CIVIL PROCEEDINGS

Coverage of civil cases before and during trial involve the same risk to the administration of justice as the reporting of criminal cases. Parties in civil cases, including cases having special news value because of public interest in the subject matter, are as much entitled to a fair trial by an unbiased jury as are the parties to a criminal proceeding. Jurors summoned to decide questions of civil liability or damages should be free from public clamor and special influences.

Coverage of civil cases should be balanced so that both sides of the case are reported. It is unfair to report only a portion of the facts of the case as though they were the only facts. All steps in civil litigation proceed without regard to deadline and, accordingly, reporting of only an aspect of a case to meet a deadline may give the public a distorted view.

A fair and balanced coverage requires that media follow up in a subsequent report with the other side of the story. Media should be wary of contrived information the effect of which would be to influence potential jurors as to liability or amount of damages.

In order that civil litigation, as well as other matters in the public interest, be fully reported, it is of paramount importance that there be free access to public records, and it is the responsibility of the bench, the bar and the press to see that such records are clearly open to the public.

GUIDELINES ON ACCESSIBILITY OF PUBLIC RECORDS

Except where confidentiality is specifically provided for in statutes, all records which must be maintained by law are clearly open to the public. Any effort by an individual or group to suppress or conceal a public record should be resisted and exposed by the bench, bar and press.

USE OF GUIDELINES

These guidelines have been adopted in an effort to ameliorate differences concerning reportage of matters relating to law enforcement at its various levels. They have no binding force whether as an admission by any member of the Conference or otherwise, and are not intended by the Conference to be enforced in any judicial proceeding, or by arbitration, or otherwise than by discussion before the appropriate committee of the Conference or the Conference membership.