



Committee on Professional Ethics

Opinion #298 -- 6/25/73 (24-73) Topic: Press Conference; Trial
Publicity

Digest: Prosecuting attorney is
limited in statements made
to press.

Code: EC 7-13;
DR 7-107

QUESTION

May a prosecuting attorney call a press conference to announce the filing of indictments by a grand jury?

OPINION

Provided, a prosecuting attorney complies with the provisions of DR 7-107, it is not improper for him to call a press conference at which he announces the filing of an indictment or furnishes information permitted by DR 7-107(B).

Because the duty of a public prosecutor is to seek justice, not merely to convict, EC 7-13, he must use extreme caution in his relations with the press to insure that the accused is not deprived of a fair trial.

The balance between a fair trial and a free press is a delicate one. In Sheppard v. Maxwell, 384 U.S. 333, 362-363 (1966) the Court held:

"From the cases coming here we note that unfair and prejudicial news comment on pending trials has become increasingly prevalent. Due process requires that the accused receive a trial by an impartial jury free from outside influence Where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue the case until the threat abates, or transfer it to another county not so permeated with publicity Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation, but is highly censurable and worthy of disciplinary measures."

DR 7-107 incorporates the fair trial-free press standards recommended by the Fair Trial and Free Press Advisory Committee of the ABA Special Committee on Minimum Standards for the Administration of Criminal Justice. It provides in full:

DR 7-107 TRIAL PUBLICITY.

(A) A lawyer participating in or associated with the investigation of a criminal matter shall not make or participate

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in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:

- (1) Information contained in a public record.
 - (2) That the investigation is in progress.
 - (3) The general scope of the investigation including a description of the offense and, if permitted by law, the identity of the victim.
 - (4) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto.
 - (5) A warning to the public of any dangers.
- (B) A lawyer or law firm associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant, or arrest until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to:
- (1) The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused.
 - (2) The possibility of a plea of guilty to the offense charged or to a lesser offense.
 - (3) The existence or contents of any confession, admission, or statement given by the accused or his refusal or failure to make a statement.
 - (4) The performance or results of any examination or tests or the refusal or failure of the accused to submit to examinations or tests.
 - (5) The identity, testimony, or credibility of a prospective witness.
 - (6) Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.
- (C) DR 7-107(B) does not preclude a lawyer during such period from announcing:
- (1) The name, age, residence, occupation, and family status of the accused.

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- (2) If the accused has not been apprehended, any information necessary to aid in his apprehension or to warn the public of any dangers he may present.
 - (3) A request for assistance in obtaining evidence.
 - (4) The identity of the victim of the crime.
 - (5) The fact, time, and place of arrest, resistance, pursuit, and use of weapons.
 - (6) The identity of investigating and arresting officers or agencies and the length of the investigation.
 - (7) At the time of seizure, a description of the physical evidence seized, other than a confession, admission, or statement.
 - (8) The nature, substance, or text of the charge.
 - (9) Quotations from or references to public records of the court in the case.
 - (10) The scheduling or result of any step in the judicial proceedings.
 - (11) That the accused denies the charges made against him.
- (D) During the selection of a jury or the trial of a criminal matter, a lawyer or law firm associated with the prosecution or defense of a criminal matter shall not make or participate in making an extra-judicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to the trial, parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that he may quote from or refer without comment to public records of the court in the case. . . .

Nevertheless, it is improper for an attorney (defense and prosecution) to solicit any coverage for his causes by the news media with a view toward gaining some benefit, such as advertisement or advancement of his professional activities or influence of public opinion. ABA Inf. 854 (1965); ABA Inf. 479 (1961); N.Y. State 272 (1972).
