REPORT OF THE CRIMINAL LAW REFORM COMMITTEE

THE SUPPRESSION OF PUBLICATION OF NAME OF ACCUSED

PRESENTED TO THE MINISTER OF JUSTICE
SEPTEMBER 1972

REPORT OF THE CRIMINAL LAW REFORM COMMITTEE ON THE SUPPRESSION OF PUBLICATION OF NAME OF ACCUSED

1. When a person is accused of a crime, the mere accusation and attendant publicity usually affect his reputation adversely, and the effect can range from mild embarrassment to ostracism. The smaller the township or locality in which he lives, the worse may be his position. The cause of this attitude to an accused person probably lies in public confidence in the police - popular belief that he would only be arrested if there had been solid grounds for such an action.

2. Embarrassment may extend to other innocent persons because of their association with the accused or the circumstances of the alleged offence. The most obvious cases are those of husband, wife, parents, children. But it may extend to others such as employers, partners, fellow-workers, owners or occupiers of premises, and so on.

3. The harm which may be done is not wholly repaired when the accused is acquitted. There are two main reasons for this. First, the fact of acquittal may receive much less publicity than the charge and the prosecution's evidence, and may even be missed altogether by those who knew of the charge or saw a report of the evidence. Secondly, an acquittal will not always be regarded as establishing that the accused was innocent. There are those who will say "He got off that charge", implying that he was guilty but escaped conviction. Sometimes this may indeed be a justifiable inference; but the same inference may be drawn where the accused was in fact completely innocent.

4. Some protection is already provided. The Criminal Justice Act 1954 has empowered the Court to order suppression of publication

of the name of the accused, or of any particulars that might identify him. This power can be exercised at the discretion of the Magistrate or Judge and is widely used. Unfortunately it is not evenly used. Some Magistrates are said to be reluctant to use the power at all; others are known to be unwilling to use it for particular offences; some order suppression quite readily, at least for the first few formal appearances. It seems unfair that an accused will get suppression from one Magistrate, but not if he happens to come before another. Uniformity in the exercise of discretionary powers is no doubt unattainable; but undesirable disparities in practice will be reduced to some extent if the recommendations made in this report are adopted.

5. If innocent persons were to be given the fullest possible protection the name of a person charged but ultimately acquitted would never be published. This would mean, however, that no publication could be made of the name of an offender until the verdict, and publication of the evidence would often be difficult if all particulars relating to his identity were to be suppressed. Furthermore, to be strictly logical about the practice, publication of an accused's name might have to be suppressed until after an appeal, which could result in a re-trial or even an outright acquittal.

6. It could be argued that the public interest in the protection of the innocent justifies even this extreme measure. But the public interest goes beyond the protection of the individual from harm such as we have described. It extends to the maintenance of a system in which the risk of wrongful conviction of the innocent and acquittal of the guilty are kept to a minimum. It is of supreme importance for this reason that the administration of justice be open and public. If facts are to be suppressed at any stage of the proceedings there must be extremely strong reasons

for doing so, and the procedure adopted must be compatible with maintaining full public confidence in the fairness and impartiality of criminal proceedings.

7. One member of the Committee would go so far as to provide for a complete ban on publication of the name of an acquitted defendant, or any particulars likely to lead to his identification, unless publication was authorised at his express wish.* This would of course mean prohibiting the publication of every defendant's name until the conclusion of the trial. But for the reasons just stated, the other members of the Committee consider that a general rule demanding total suppression of publication of name and identifying particulars in the case of an ultimate acquittal is not in the public interest. Such suppression leaves it wide open to the suspicion that there has been underhand conduct of one kind or another. Moreover, to achieve this result is would be necessary to suppress publication of the proceedings against some persons who were eventually convicted. The majority of the Committee find this totally unacceptable. To permit publication of the proceedings only after a conviction has been entered would perhaps be a possibility, but we hold strongly that, in general, actual trials should not only be conducted openly and in public, but also should be reported to the public at large.

8. Taking this view of the public interest we are unable to recommend any general provision for the suppression of the publication of name of an accused person when he is standing his trial.

9. We think, however, that some further provision should be made for the protection of accused persons by restricting publication of particulars before the case is gone into, i.e.

* See attached Statement of Views by Ms P.M. Webb.

before the time at which the prosecution presents its case or the accused pleads guilty (where the charge is dealt with summarily), or before the taking of depositions at a preliminary hearing (in the case of an accused who is to be tried in the Supreme Court). When first charged with the offence the accused is usually remanded for a week or so to enable both parties to prepare for hearing. Quite often there is another remand for a further week or more after the first adjournment. It seems to the Committee that the public interest is not harmed by suppression of the name of the accused at any such preliminary appearance. All that happens on such occasions is the appearance of the accused in the dock, a policeman or a solicitor asking for an adjournment, consent indicated by the other party, and an order accordingly by the Magistrate. This whole process takes only a minute or two and is generally a formality.

10. The Committee therefore recommends that legislation be passed requiring suppression of publication of the name of the accused and of any particulars that might identify him until the case is gone into, subject to two conditions.

The first of these is that there will be cases from time to time when suppression of name should not be ordered. For instance a particularly notorious crime may be committed which gives rise to public alarm or anxiety. In such cases the Court should have a discretion to allow publication, not because the accused will suffer no harm, but because others may suffer through ill-founded rumour if the facts are not made known. This can happen in a community when a person is arrested, his identity is not known, but some particular resident is known to be absent from his home. For the ordinary crime, the arrest of one person is not likely to be linked with the absence of another, but in the case of notorious crime, the arrest will be a topic of conversation, and speculation as to identity of the accused almost inevitable. In such

circumstances rumour can do damage by linking disconnected facts, and the interests of the accused should be subordinated to those of the community in general. To meet such circumstances the Court should have a discretion to authorise publication of the name of the accused if it considers publication to be desirable in the public interest.

The second condition is linked with the first. Members of the Committee have had experience where publication of name has led to witnesses coming forward to give helpful evidence. There may be other cases where the accused wants it to be known that he has been accused. There seems no reason why suppression should be ordered if the accused does not want the privacy it affords, and the Committee therefore recommends that at the request of the accused the Court should make an order permitting publication of his name.

11. The Committee's recommendations do not purport to afford any permanent protection to persons who are brought to trial and are later acquitted. All that is proposed is a short-lived protection, the benefit of which is terminated when the case is gone into. Nevertheless, the Committee commends it as affording some alleviation of the present situation by delaying the effect of harmful publicity. It is not suggested that any of the discretionary powers of the Court to order suppression of either name or particulars should be affected by these proposals.

12. The Committee emphasises that what is proposed is interim suppression of publication of name only. It does not recommend that there should be suppression of the fact of the trial, of the evidence given, of the identity of witnesses or any other relevant matters. The Court's present power to hear cases in camera, or to order suppression of the name of a complainant in sexual cases, should remain to be exercised as occasion requires, as has been the case for many years past. The idea that "justice should not

only be done, but should manifestly and undoubtedly be seen to be done" is a cornerstone of our system of criminal justice, and a principle that the Committee has been careful to keep in its mind while discussing this whole topic.

13. Two special cases remain to be mentioned. Where the charge is one of incest, the Committee thinks that there should be permanent suppression of the name of the offender, whether convicted or acquitted, unless the Court considers publication to be desirable in the public interest. The reason for this view is that publication of the offender's name will almost certainly lead to identification of the complainant. Usually the complainant is a child, sometimes an adult of immature or feeble mind. In either event and to protect the identity and reputation of the complainant, the Committee recommends that publication of the name of the offender or any particulars that might identify him should not be permitted except with the authority of the Court.

14. The second special case is similar to the first and relates to sexual intercourse with a girl in the care or protection of the accused. For similar reasons, the Committee makes the same recommendation as to suppression of the name of the offender or any particulars that might identify him.

SUMMARY:

15. The Committee recommends:

(i) That when a person is accused of an offence publication of his name or any particulars that might identify him should be prohibited until the case is gone into by the Court, unless the accused does not want his name suppressed or the Court considers publication to be desirable in the public interest and orders accordingly.

(ii) That when a person is accused of incest publication of his name or any particulars that might identify him should be prohibited, unless the Court considers publication to be desirable in the public interest or in the interests of the accused.

(iii) That when a person is accused of the crime of having intercourse with a girl in the care and protection of the accused, publication of his name or any particulars that might identify him should be prohibited, whether he is convicted or acquitted, unless the Court considers publication to be desirable in the public interest or in the interests of the accused and orders accordingly.

For and on behalf of the Committee

Chairman

MEMBERS:

Mr R.C. Savage Q.C. (Chairman)

Associate Professor B.J. Brown
Professor I.D. Campbell
Chief Superintendent G.A. Dallow
Mr W.V. Gazley
Mr P.G.S. Penlington
Mr K.L. Sandford
Mr P.B. Temm Q.C.
Mr D.A.S. Ward
Ms P.M. Webb

Mr C. Anastasiou (Secretary)

STATEMENT OF VIEWS BY MS PATRICIA WEBB

I disagree with the majority report because in my view it does not go nearly far enough to protect the interests of any person charged with a criminal offence of which he is innocent. It is no reflection on the Police to suggest that this situation can arise, since in deciding to prosecute a suspected person they are not, and ought not to be, required to be satisfied beyond reasonable doubt of his guilt. That is the function of the judicial tribunal. Nor does it do any service to the Police to suggest, what they themselves would not claim, that they are infallible. In 1970 there were over 69,000 prosecutions for offences other than breaches of the traffic laws and it would be straining our knowledge of human nature to assert that no mistake was possible in all that number.

For an innocent person to be brought before a criminal court must in itself be an extremely distressing experience and the distress would be only partially alleviated by a subsequent acquittal. Added to this there may be a quite heavy financial burden. Although the courts have power to award an acquitted person costs this appears to be much more the exception than the rule and one can certainly not be assured that it will be done. It seems to me that this is enough for the innocent person to face - he should not be called on to endure any additional suffering if it can possibly be avoided.

At the outset it must be acknowledged that a person's innocence is by no means necessarily demonstrated by his acquittal (in which term I include the dismissal of an information by a Magistrate's Court). In the absence of some intermediate verdict such as "not proven", all that an acquittal necessarily means is that the charge has not been proved beyond reasonable doubt, so that the defendant may or may not be innocent of the offence. However, for the general public there is no way of determining

into which group he falls; and I think, in considering questions of the type under discussion, we have no alternative but to treat all these people as if they were innocent unless we are prepared to base our law on the cynical view that every acquittal is fairly to be regarded as merely a lucky escape.

Unfortunately it is this cynical view that is most likely to be prevalent in the community generally. Even people who are prepared to be more charitable may not see or hear of the actual result of a case after they have read the initial report. The harm done to the acquitted person's reputation, and the consequent suffering caused to himself and to those associated with him, may therefore be considerable. Accordingly it is my view that, in the absence of very strong reasons to the contrary, it ought not to be permissible, in any report of criminal proceedings ending in an acquittal, to disclose the identity of the person charged. This would mean of course that no defendant's identity could be disclosed till the end of his trial.

It is generally accepted that the public have a legitimate interest in being informed of the identity of any person found guilty of committing an offence, and also that the publicity attached to a court appearance is an important element in the effective operation of a criminal law based on a system of sanctions. Neither of these propositions is relevant if the person charged is innocent.

There are, however, three other objections that need to be considered. The first is that it is essential for the proper administration of justice that information regarding the conduct of court proceedings and the disposition of cases should be freely available to the public. This is undoubtedly a principle of very great importance but it is one to which there are, and I think it would be generally accepted there ought to be, some partial qualifications. There is, for instance, already in our law a

provision which allows a court to order suppression of an accused person's name and identifying particulars (s.46 of the Criminal Justice Act 1954). An automatic ban on disclosure of his identity would leave no room for the suspicion to which - whether justifiably or not - the present provision can give rise, that is, that it operates unfairly in practice, to the advantage of the wealthy or the influential and the disadvantage of the ordinary man.

Moreover, it does not seem to me that the automatic ban would in any way undermine the general principle, or give ground for suspicions that justice was not being done, so long as the prohibition on publication extended only to the defendant's name and to any necessarily identifying particulars. I suggest it should be permissible for the press to publish such particulars as the person's occupation, the fact that he had played a prominent part in community affairs or was a well-known lawyer or a noted sportsman or the like, provided that that information did not point to any particular person as the one charged.

This leads, however, to the second objection, namely that public knowledge that a person had been charged might, if not supplemented by information as to his identity, in some cases give rise to ill-founded rumours from which others might suffer. To my mind this possibility, though in itself undesirable, is not of sufficient weight to displace the other serious considerations referred to in this report.

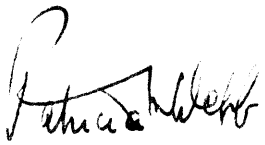
The third objection is that a prohibition on publication of any necessarily identifying particulars of an accused person might in some instances mean that no report whatever of the proceedings could lawfully be published till the end of the case, since the evidence itself would point to the person charged. I do not regard this as a weighty objection. Where a Supreme Court trial or the hearing in a Magistrate's Court was completed quickly the delay would be minimal. Where the case was a lengthy

one the interests of justice would normally be served, even if the public's appetite for the sensational or the salacious was not fully satisfied, by the right to publish the proceedings in full if and when a conviction was obtained.

I say "normally" in the last sentence because of the possibility that the accused person himself would wish his name to be published in the hope that witnesses might come forward to assist his defence. In those circumstances there should be no question but that authority for publication should be given - though it is to be noted that this would not oblige the press to publish the name if they did not choose to do so.

One final point remains to be covered. Strict logic would no doubt require that an automatic ban on publication of an accused person's name should in the case of a conviction continue through till the expiry of the time for appeal or, where there was an appeal, until it had been determined. I do not think this would be reasonable however. It would I think effectively stifle publication of any report in a high proportion of cases and this would certainly not be justified in the public interest.

My recommendation therefore would be that, except where it was requested by the defendant, there should be no authority to publish the name or necessarily identifying particulars of any person charged with a criminal offence unless and until a conviction was entered.



Patricia M. Webb