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William Harvey, Dean of the Indiana University Law School, chats with Don Fedderson, right, after the dean addressed the Bloomington Rotary Club Tuesday afternoon. His topic was "Fair Trial vs. Free Press." Fedderson was program chairman.

At Rotary Club

5/8/68

Harvey Probes Fair Trial Rule

By JOHN FANCHER

Neither the right to a fair trial nor the right of a free press is regarded as negotiable. "If one is given full sway, the other is compromised," says William Harvey, Dean of the Indiana University Law School.

Harvey spoke before the Bloomington Rotary Club at the Peplars Midtown Motor Hotel Tuesday afternoon. He was introduced by Rotary Program Chairman Don Fedderson.

The dean said attorneys, through the American Bar Association, had tried to deal with the problem of "Fair Trial vs. Free Press" through Canon 20, but it was not effective.

In 1954, the ABA created the Advisory Committee on Fair Trial and Free Press. The committee heard witnesses and submitted proposals to the House of Delegates of the

ABA. After hearing comments, the committee made 14 changes in its original proposals, said Dean Harvey.

Standards were finally adopted by the Bar's House of Delegates last January.

He made it plain to the Rotarians that these standards were "not a code to regulate the conduct of the news media."

Dean Harvey said the code is addressed to lawyers, police, judicial officers and judges. The standards do not restrict the dissemination of information the news media develops. Nor do they impose any restrictions on criticism or comment on the administration of justice once the record is closed on a trial.

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any restrictions on criticism or comment on the administration of justice once the record is closed on a trial.

The focus of restraint, said Dean Harvey, is on the pre-trial and trial period when statements published could be prejudicial in a case.

He cited the Dr. Sam Shephard case as a "rare occurrence" in which concern was raised about publicity in criminal cases. Dean Harvey pointed out there was lots of newspaper publicity and demands for police action prior to the trial. The trial itself became a circus. Dr. Shephard was convicted. His prison term ended after a review by the U.S. Supreme Court. He was tried again and acquitted.

His guilt or innocence is irrelevant, the dean continued. What is important is the defendant's right to a fair trial with immunity from the rule of the mob.

If the atmosphere for a fair trial cannot be maintained, then it results in convictions that can't be sustained on appeal, he said.

The new standards adopted by the Bar's House of Delegates affect the following:

1. The conduct of lawyers, both prosecution and defense: It becomes the duty of an attorney not to release information or opinions that will interfere with a defendant's right to a fair trial. An attorney is not to make statements for publication about the character or reputation of a defendant or talk about any confession by the accused.

Dean Harvey said these standards are to be implemented by the Committee on Professional Responsibility.

2. The conduct of law enforcement officers, judges and judicial officers: These would be expected to exercise restraint with regard to statements made for publication during the pre-trial and trial period.

This could be implemented through rules of the court at various state and local levels, and if this didn't work they could be implemented through state legislation, the dean said.

3. Conduct of judicial proceedings: This could entail exclusion of the public if the accused asked for this. It could include such proceedings as requests for change of venue, waiver of a jury trial or for the conduct of the trial itself.