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Terrorism and the Media: Legal Responses (Introduction)

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Terrorism and the Media: Legal Responses

INTRODUCTION

PATRICK BAUDE*

During the 1977 baseball World Series, a number of spectators ran onto the playing field. The delicate sensibilities of television viewers were immediately protected by averting the cameras with the explanation that any coverage of such disgraceful acts would only feed the latent tendencies of others to join the unruly. It was hard at that moment to remember that the same medium regularly covers wars, riots, highjackings and the like, not only without apology but even with the claim that compelling principles leave no other course. Whether entertainment based on violence stimulates imitation or, to the contrary, serves as catharsis is a question more often begged than answered. As a practical matter, since few are prepared energetically to defend the social virtues of mayhem for the sake of amusement, organized community pressure has at least succeeded in shifting this season's programming from violence to sex.

News coverage of the world's real violence is a different matter. The harmful effects of such reporting may be substantial: it can not only stir a desire for instant celebrity through copying but may also arouse an unreasoning lust for vengefully repressive measures. Yet a society which claims to respect the minds of its citizens dare not keep too many facts from them. Hence this symposium, intended to explore how the legal system should respond to recent events of "terrorism."

The word "terrorism" can range in meaning from the style of warfare said by his critics to have been practiced by Attila the Hun to an isolated act of psychologically disorganized violence. Professor Paust, in his contribution to this symposium, for example, gives thorough attention to the use of terrorist strategies of violence and repression by depressingly many national governments. Transnational violence on such a scale requires an international response and Professor Paust accordingly discusses large measures aimed at

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the problem. Professor Schornhorst, on the other hand, picks for his subject an episode in which one violent man took another man hostage to dramatize a personal grievance. Where one man is held with a shotgun at his head, responsible officials, as Professor Schornhorst points out, need help not provided by juridical observations alone.

Professor Catton examines the social context of organized violence, suggesting that terrorists commit terrorism for widely different but not, therefore, wholly obscure reasons. In some cases, those reasons will include the desire for notoriety or publicity, a desire most readily denied by control of the press. Professors Jaehnig and Terry explore specifically the question whether such control can realistically be expected from the press itself and, if not, whether governmental coercion is possible, necessary, or even tolerable.

The issues examined in this symposium are thus as diverse as the subject itself. The most important ideological question is whether one sees terrorism as a problem in its own right. If it is, then it requires its own solution. To some, this solution will be the elimination of perceived injustice to which powerless people lack effective response; to others the solution will be swift incapacitation of all who make society their enemy. But if terrorism encompasses the many problems of Palestine, of land finance in Indianapolis, of American racism and Italian politics, limiting terrorism will not be a unitary program.

One strand of current comment in the United States is that we may be subjected to the spectacle of our leaders meeting the fate of Aldo Moro. No doubt providently, American corporate executives already arrange for their chauffeurs to attend a school in California where drivers are taught to evade kidnappers. Maybe ironically, the most spectacular of these driving tactics, the "bootleg turn," was perfected by American outlaws fifty years ago.

The United States Constitution itself is no stranger to violence, conceived as it was in revolution. Many of the formative first amendment cases dealt with early twentieth-century efforts to control what would now be called "terrorism," with laws like New York's "Criminal Anarchy" statute passed in response to the assassination of President McKinley.¹ The incitement of illegal violence remains a familiar theme in constitutional law.² Although the Supreme Court has not yet defined the right of the press to gain access to places where hostages are being held, there is every reason to suppose that the Court would continue its refusal to insist that the press be admitted when the public is excluded.³ And if the press should learn things the immediate revealing of which would endanger lives, it is likely that publication could be restrained by analogy to "publication of the sailing dates of transports"⁴ in time of war. In short, this symposium asks what the law should do about terrorism; one answer may be to do what it has always done.

¹*Gitlow v. New York*, 268 U.S. 652 (1925).

²*E.g.*, *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

³*Pell v. Procunier*, 417 U.S. 817 (1974).

⁴*Near v. Minnesota*, 283 U.S. 697, 716 (1931).