

CRIMINAL LAW

The Newsletter for the TBA's Criminal Justice Section

Letter from the Chair



By Jim Ramsey

I like my job, but it would be more satisfying if the public had a better understanding of the criminal justice process. The Governor's new Commission on Crime Victim Assistance can do that, and the TBA can help.

As a prosecutor I often find myself in the same posture as the proverbial sheriff from the old western movies -- standing in the jailhouse door holding off the angry lynch mob. This is not hyperbole. In the previous newsletter I pointed out that the prosecutor is surrounded by interested parties, each lobbying for a partisan result -- one side always seems to want "more law" than they can have, and the other side wants "less law" than they must have.

Since the state is constrained from commenting in a pending case, District Attorneys alone are not in a position to clarify or stop the momentum of pretrial publicity. Paradoxically, the prosecutor is obligated by the new Victims Bill of Rights to consult with the victim about plea negotiations, yet we have no control to prevent that victim (or perhaps a zealous police officer) from then running to the press about perceived leniency in that settlement.

So we hear, "I demand prosecution to the fullest extent of the law," or, "The DA is plea bargaining away my case!" The press reacts predictably, having previously bonded with the victim or the police officer by being on the scene (or perhaps through a public relations ride-along program). As a result, citizens routinely are dangerously uninformed about the justice process, perceiving only the tragedy of the crime.

Often advocacy groups (especially in DUI or domestic violence cases) claim a right to represent the victim, sometimes treading close to practicing law without a license. The popular concept of the DA as "leading the charge" makes it difficult to dampen that righteous popular impulse by injecting into the mix those frustrating technicalities tending to hinder "putting the

crooks behind bars" -- to wit: the principle of due process of law.

It is not generally understood that the prosecutor represents the state, not the victim. I've been told, "You're supposed to speak for my child," and I have been reviled for suggesting that first among the rights of victims is the civil justice system itself (the O.J. Simpson case's

sole successful remedy). It seems this impulse arises out of the notion that the DA is a free lawyer for any aggrieved person. When an inappropriate complaint is duly screened out in the exercise of prosecutorial discretion, dismay ensues -- voiced as, "You mean there's nothing I can do? You mean I'll have to hire a lawyer!"

It is not generally understood that a federal prosecutor screens his cases before a warrant is taken, while a

state prosecutor can screen his cases only after a warrant has been issued (and a headline has been written). It is endemic to the police understanding of charging functions that in exercising his arrest discretion the policeman is affirmatively committed to that set of cases he presents to the prosecutor. Any downward departure in prosecutorial charging discretion duly exercised thereupon -- screening -- is therefore misconstrued as, "The DA is not doing his job." The policemen has, after all, already dismissed those he chose not to arrest (with no external scrutiny of that decision -- perhaps recruiting a "snitch" thereby), and he is invested in those cases he deemed worthy as "righteous busts." Thus, by definition, the police officer is wedded to his own untutored charging decision and not the DA's professional assessment.

Institutionally then, while the police at the state level have an unquestioned arrest discretion on the street which is invisible to the system, the charging discretion of the prosecutor is spotlighted in open court, and that spotlight is filtered through presumptions in public opinion which are generated elsewhere than in the law.

While there is a militancy for automatic prosecution, there is a parallel trend where plaintiffs' attorneys, who represent the victim for the tort claim underlying a felony involving wrongful death or property loss, may effectively thwart prosecution in order to achieve a civil judgment. Look at the Kobe Bryant case, for example -- an unverified rumor of \$5 million to the victim for the

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Council to propose death penalty study to Board

By Joe Culver

Representatives of the Criminal Justice Section's Executive Council have been invited to present the section's proposal for a study of Tennessee death penalty issues to the TBA's Board of Governors on October 18, during the board's meeting in Townsend.

Jim Ramsey, Executive Council chair, and Professor Don Hall of Vanderbilt will give the presentation. Hall has agreed to serve as reporter for the study along with Susan Kay, also of Vanderbilt.

After Ramsey and Hall describe their proposal for a comprehensive study of death penalty issues, if the board mandates a more focused study on only the issue of effective assistance of counsel, "In either case, the committee will produce a study that will be of benefit to TBA members and to the public," committee chair Katie Edge told the section's Executive Council when it met on September 19.

The council continued to emphasize the necessity of conducting a balanced study. Toward that end, it appears that the Death Penalty Study Committee will have a diverse membership consisting of both prosecutors and defense attorneys, Edge reported.

Ramsey told the council that the District Attorneys Conference, meeting on September 18, appointed John Gill to be on the Death Penalty Study Committee. Ramsey said he would like to have Gill serve as co-chair of the committee.

"I would like to express my gratitude to the District Attorneys Conference for asking John to join the study committee, and to John for accepting," Edge said. "His presence on the committee will help

achieve the balance of membership which we've been emphasizing as a key to the committee's ability to conduct and present a credible study."

"John is dedicated to the TBA and he works hard on TBA issues," Edge added. "It has been my hope all along that he would become co-chair."

The council also discussed preparing a comment on the Supreme Court's proposed new Rule 13.

Jeff Henry told the council that the Knoxville Defense Lawyers Association has requested the Criminal Justice Section to comment on the proposed rule. The Public Defenders Conference has named a subcommittee that will study the proposed rule and make a comment, he said.

The council appointed a subcommittee consisting of Henry, Bill Ramsey, Sue Kay, Donald Bosch and John Williams to study the proposed rule and offer a "headline draft" proposal the Executive Council can review.

Ross Alderman, chair of the council's CLE committee, said he will prepare a proposal for online CLE on criminal justice.

Other Criminal Justice Section committees are looking at issues of due process and victims rights issues, court costs, and District Attorney and Public Defender resources. ■



Katie Edge
*Chair, Death
Penalty Study
Committee*

Proposed changes to Rule 13

The Executive Council of the TBA's Criminal Justice Section has named a subcommittee to study the Supreme Court's proposed new Rule 13 and offer a draft comment for review by the council.

The text of the proposed rule may be found on the Supreme Court's web site at this url:

<http://www.tsc.state.tn.us/opinions/tsc/rules/proposals/2003/rule13.pdf>

Together, we can make this an important communication tool

By Joe Culver, newsletter editor

I have practiced law a little, most recently with Laurence R. Dry, M.D., J.D. and Associates, a medical malpractice firm in Oak Ridge. I was "and Associates."

I have practiced journalism and public relations a lot longer, for more than 30 years altogether.

Preparing for a distinguished career as a scientist when I attended a small high school in a small county at the western tip of Kentucky, I awoke one morning with a revelation: I no longer wanted to be a scientist; instead, I wanted to be a lawyer. Maybe it was too many Perry Mason novels, or reading about the controversial trial attorney Earl Rogers, or reading transcripts of some of Clarence Darrow's brilliant cases.

Whatever the cause, I decided around 1960 that I wanted to be a lawyer.

A newspaper job sidetracked me after my first year of college. I loved the work so much that I kept working for paltry wages but tremendous satisfaction, even though the dream of being a lawyer never went away.

Finally, around 1978, I got the chance. Frustrated by working full-time days and attending the University of Tennessee full-time nights, I wrote to the UT Law School and said something like, "I'm pursuing an undergraduate degree only because you say I need one to get into law school. If I don't go to law school, I'll go back into journalism where my experience counts for more than a degree, so please let me in."

In response, I received a letter from a dean advising me of some old law still on the books that said if this and if that, I could be accepted. They weren't able to tell me what my chances of admission were because people didn't apply under that old rule. I did apply, was admitted, and earned my J.D. in 1982 after taking a couple of years off to be a newspaperman again.

The day after I graduated, I drove to Shelbyville to practice with George Eblen.

My first case – awaiting me the day I arrived – troubled me. I represented a client who had been charged with forging a check.

Minimal investigation by the police would have kept the client from having to hire an attorney and risk the uncertainty of appearing in court. He couldn't read or write, couldn't even read the check he was charged with forging.

For me, however, it was a Perry Mason moment, getting my client off in a preliminary hearing.

Other things have bothered me since then. Some judges are very good, but some are not; that bothers me. Police sometimes don't investigate as thoroughly as they should or don't always tell the truth on the witness stand; that bothers me. Attorneys who take on such a huge caseload that they don't really know the facts of a particular client's case bother me. The huge caseload of both prosecutors and public defenders also bothers me; it is my belief that the concept of due process includes the notion that both sides play fair, have equal resources, and have

adequate time to represent their clients – whether the State or the defendant – as effectively as possible.

One of the things I respect most about my friend and colleague Larry Dry is that he deliberately keeps a small caseload, one that enables him to give every client the attention that client deserves. Because of his background of more than 20 years as a great surgeon – I know he's great; he cut my throat one time and you would never notice the scar – he is in great demand on medical malpractice cases. He rejects most of them, accepting only those that meet his high standards.

Because of my limited experience with criminal cases, I was surprised when Jim Ramsey asked me to join the TBA's Criminal Justice Section and serve on the Executive Council, largely to prepare minutes of meetings and to produce a newsletter.

Jim and I have had our differences over the years. When I wrote editorials for The Oak Ridger, the daily newspaper in the county where Jim serves as District Attorney General, I took him to task when I disagreed with him. Not a timid person, he didn't hesitate to tell me when he believed I was wrong (and more often than not, he thought I was wrong when I took him to task).

But in conversations, we learned that we share many concerns and philosophies about criminal justice. Both of us believe that there are problems that need to be addressed, but by and large the system is fair. It gives the prosecutor and the defense attorney the opportunity to represent their clients in a refereed system with a long history of safeguards designed to ensure that no one is deprived of life, liberty or property without due process of law.

One of the primary points of discussion in our Executive Council meetings has been to propose a study of the death penalty in Tennessee.

With absolutely no experience, I have been an observer, a listener. What I've heard has impressed me so much that it has made me very proud to be a member of the Criminal Justice Section.

Whether the comments come from the prosecution side or the defense side, there is a consistent message: We have to have a balanced study committee if we are to produce a credible, useful study. We have to have strong membership representing both the prosecutors and the defense attorneys. We have to go into whatever study we undertake mindful of our pledge that we will not address issues of abolition of the death penalty or a moratorium on its administration.

Our members have listened closely to the statements made by Judge Gil Merritt (if you haven't read it already, read the interview with Judge Merritt in our August

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Vice Chair Jeff Henry has diverse experience



(NOTE: This is the second in a series of articles about members of the Executive Council of TBA's Criminal Justice Section. The purpose of the series is to introduce the members, give a glimpse into who they are as attorneys and as people.)

With 32 years of diversified experience as a practicing attorney, including experience in prosecuting and defending criminal cases, Jeffrey S. Henry's selection as vice chair of the Tennessee Bar Association's Criminal Justice Section constitutes an added endorsement of the section's stated emphasis of bringing balance to its studies of the criminal justice processes.

Henry is director of Research and Training for the Tennessee District Public Defenders Conference.

He also has extensive public service and private practice experience. He is licensed to practice before all courts of the State of Tennessee, the United States Supreme Court, U.S. Court of Appeals for the Armed Services and the U.S. District Court for the Middle District of Tennessee.

Henry began his legal career in 1971 defending and prosecuting cases before military courts-martial. He served as claims officer, investigating and resolving claims against the U.S. Government, and supervised initiation of government recovery claims against third parties.

He entered private practice in 1975. Appointed Assistant District Attorney General in 1976, he served until 1980, at which time he resumed his private practice of law until 1989, when he became full-time legal counsel for the Tennessee National Guard.

Henry returned to private practice in February of 1997 in Murfreesboro, with Trail and Trail, an association of attorneys. He joined the staff of the District Public Defender's Office (Rutherford and Cannon Counties) in November 1998 and assumed his current position in September 2001.

His background includes trial and appellate prac-

tice, supervision of lawyers and support personnel, teaching, training, research, working with legislative bodies at national, state and local level, participation in military exercises in U.S. and Europe, serving as protocol officer, leadership training, contingency planning, Government Ethics, Total Quality Management Seminars, Government Contract and Environmental Law Programs and extensive community involvement.

Henry earned his Doctor of Jurisprudence at the University of Tennessee, Knoxville (1971), three years after earning his Bachelor of Science degree from UT in 1968. Other education includes the U.S. Army, Judge Advocate General's Basic Course (1971), Advanced Course (1979), and U.S. Army Command & General Staff College (1986).

As director of Research and Training, Henry plans, develops and presents the training program for all Tennessee Public Defenders that meets the annual Continuing Legal Education requirements for Tennessee attorneys. This program presents topics of timely interest and importance to criminal defense attorneys. Responsibilities include: Keep public defenders timely informed of important developments in criminal law; assist in research requirements for public defenders; assist the conference executive director in working with the General Assembly; answer inquiries from the legislative staffs; review and draft legislation; and keep public defenders timely informed of legislative developments.

Henry's wife, Mary Jane, is an elementary school teacher in Murfreesboro. His daughter, Beth, is implementation manager for Gallagher Financial Systems in Brentwood; her husband, Joey, is vice president of sales and marketing with the same firm. Henry's son, Shaw, is the planner for the town of Bluffton, S.C.■

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newsletter). Judge Merritt agrees that there are many possible areas of study associated with capital cases, most significant of them, he believes, being the issue of effective representation by counsel.

I can tell from the discussions that Executive Council members have strong opinions, but what has most impressed me is that they are sincere in their willingness and, yes, their ability, not to let those opinions color the process of the study they will conduct, nor to predetermine the contents of the study's final report.

It is my hope as newsletter editor that I will be able to produce a meaningful product that informs Criminal Justice Section members of the section's progress by reporting the activities of this section as it deals with its responsibilities in the various areas of criminal law, and producing stories that will provoke discussion.

For instance, the interview with Judge Merritt certainly was provocative and could generate considerable discussion. I am on a waiting list for an interview with Governor Bredesen. I have asked for an interview with a justice of the Tennessee Supreme Court. I hope for later issues to be able to interview a highly competent District Attorney General for views from that side of the aisle, and also to interview a leading defense attorney who handles capital cases so we can hear from that side as well.

I welcome suggestions for interviews – you can send them to me at joeculver@aol.com – and also welcome proposals for articles you might write. I am excited about the possibilities for serving as newsletter editor this year. Together, let's make this newsletter an important communication tool.■

Governor, First Lady appoint nine members to Crime Victims' Commission

(Editor's note: On September 5, Governor Bredesen issued this press release appointing nine members to the new Commission on Crime Victim Assistance)

Nashville — Governor Phil Bredesen and First Lady Andrea Conte today announced nine Tennesseans to serve on a newly-formed Commission on Crime Victim Assistance. Members chosen to serve on the commission have extensive backgrounds working in victims' advocacy and have a broad knowledge of the challenges faced by crime victims.

"The issue of victims' rights is one that's very important to both Andrea and me," Bredesen said. "These individuals have either a history of working with crime victims or are crime survivors. I'm confident they will bring an important voice to the table regarding the expenditure of funds allocated to crime victim assistance."

"The Criminal Injuries Compensation Fund is an important resource in helping those victimized by violent crime get back on their feet. It's important that every Tennessean knows that it is available and how to access it," said Conte. "This advisory group can bring valuable expertise and ideas to ensure the state is doing all that it can to help meet the needs of crime victims. I'm convinced they will really make a difference and am pleased they have agreed to serve."

The commission, created by the Governor through executive order earlier this year, will be responsible for providing recommendations and advice on issues associated with the Criminal Injuries Compensation Fund. This fund was established in 1976 to provide financial assistance to victims of crime. The commission is also charged with identifying unmet needs of victims and their families.

"I am pleased to see additional efforts made to improve the awareness and availability of the Criminal Injury Compensation Fund," State Treasurer Steve Adams said. "The legislature initiated this program many years ago so that all innocent victims of crime would have an improved opportunity to recover from their misfortune. We welcome every opportunity to provide the program benefits to those innocent victims."

The appointments include:

Georgia Bond - Bond is a victim witness coordinator for the District Attorney General's Office for the 26th Judicial District in Jackson, where she has worked since 1986. Previously, she worked in social work for the Jackson Housing Authority and the Jackson Area Council on Alcoholism and Drug Dependency. She currently serves on the board of the Women's Resource and Rape Assistance Program, and is a member of the Child Protective Investigative Team and the National Organization of Victim Assistance. Bond is a native of Jackson. She holds a bachelor's degree in social welfare from Tennessee State University, Nashville, and a master's degree in coun-

seling and personnel services from the University of Memphis.

Christopher Buford - Buford is an assistant district attorney for the Nashville Davidson County District Attorney's Office, a position he has held since 1997. He specializes in cases of domestic violence. Buford, 34, is a Nashville native. He holds a bachelor's degree from Tennessee State University and is a graduate of the University of Tennessee Law School. He is a member of the American and Nashville Bar Associations.

Carolyn Colvin - Colvin serves as a victim witness administrator in the District Attorney General's Office for the 10th Judicial District in Athens, where she has worked since 1985. She currently serves on the Tennessee Victim Assistance Conference Committee, the HOPE Center Board (10th Judicial District Child Advocacy Center) and the Tennessee Sex Offender Treatment and Monitoring Board. Colvin, 56, is a native of Tellico Plains.

Jody Folk - Folk currently serves as the deputy to the First Lady of Tennessee. Prior to joining the First Lady's office, she worked for 23 years in the District Attorney General's Office of the 20th Judicial District in Nashville, where she served as director of Victim Witness Services. She is a founding board member of You Have the Power...Know How to Use It, Inc., a nonprofit corporation dedicated to raising awareness about crime and justice issues, and serves on the board of directors for the Nashville Child Advocacy Center. Folk, 58, is a Franklin native. She holds a bachelor's degree in history from Peabody College at Vanderbilt University.

Tammy Foster - Foster serves as executive director for the Children's Center of the Cumberland, an organization that assists in providing coordinated, comprehensive services to victims of child abuse. Her previous experience includes having worked as assistant to the district attorney general with the Office of the District Attorney General for the 8th Judicial District in Huntsville. She is chairperson of the Scott County Children's Council, is a member of the Child Protective Investigative Team and the Child Abuse Review Team, and serves on the Tennessee Commission on Children and Youth. Foster, 44, is an Oneida native.

M. Gabriela Gomez - Gomez is a clinical therapist with the Nashville Child Advocacy Center, where she

has worked since 2001. She has worked with various community agencies serving at-risk children since 1997. She is a member of the Association for Play Therapy and Colegio de Psicólogos de Chile, Chile's college of psychological science. Gomez, 28, is a native of Chile. She holds a bachelor's degree in psychology from Universidad de Tarapac in Arica, Chile, and a master's degree in psychology from Pontificia Universidad Católica de Chile in Santiago, Chile.

Tom Henderson - Henderson serves as administrative assistant over General Sessions in the District Attorney General's Office in Memphis, where he has worked since 1976. Previously, he served as a lieutenant in the United States Navy in the Judge Advocate General's Corp. Henderson, 56, is a Jacksonville, Fla., native. He holds a bachelor's degree in political science from Memphis State University, and is a graduate of Memphis State University School of Law.

Jennifer Houston - Houston is the manager for the East Tennessee Livestock Center, where she has worked since 1987. Previously, she worked as an automation coordinator for the United States Department of Agriculture's then-agency for Agricultural Stabilization and Conservation Service. Houston, 42, is a native of Selmer. Houston lost her mother-in-law

to homicide and is a longtime advocate for crime victims' issues. In addition, she serves on the board of directors for the National Cattleman's Beef Association, as well as the Tennessee Beef Industry Council. She holds a bachelor's degree in animal science from the University of Tennessee, Knoxville.

Betty Ann Tanner - Tanner, wife of United States Congressman John Tanner, is a self-employed interior designer, serving as president of Betty Ann Tanner Accessories. She serves as the past president of the Obion County Chapter of the American Cancer Society, is the co-chair of the Cancer Research and Prevention Gala in Washington, D.C., and is currently working with Radiology/Mammography International to plan a breast cancer education mission to Bulgaria. Tanner, 57, is a native of Huntingdon. Tanner lost her brother-in-law to homicide and is an advocate for crime victims' issues. She holds a bachelor's degree in interior design from the University of Tennessee, Knoxville.

Also serving on the commission, as non-voting members, are the state treasurer, the commissioner of Finance and Administration and the executive director of the District Attorney Generals Conference. Members of the commission will serve staggered three-year terms. ■

NEWS RELEASE

(Editor's note: The following is a news release issued by District Attorney General Jerry Estes commenting on the Governor's appointment of a Commission on Crime Victim Assistance.)

District Attorney General Jerry Estes today had great praise of Governor Phil Bredesen's appointment of a Commission on Crime Victim Assistance. Estes is the District Attorney General for Bradley, McMinn, Monroe and Polk Counties.

"Governor Bredesen has done two great things. First, the establishment of this commission should go a long way toward insuring that funds generated by criminals go to the victims of crime as intended. Second, at least two of the appointees are from this district and are quality appointments," Estes said. Carolyn Colvin began her affiliation with the District Attorney's office in 1985 as an unpaid volunteer for victims of crime. By 1986 she was hired with a grant to coordinate the Victim's Assistance Volunteer Program in the Tenth Judicial District. She wrote and obtained two additional grants for victim assistance personnel in Estes' office. In 1987 Estes named her to the position of Victim Witness Coordinator, which she currently holds. During her career, Colvin has worked over three hundred hours as an unpaid volunteer, and has assisted thousands of crime victims. Estes said, "Carolyn is one of the primary reasons our Victim Assistance Program consistently receives high marks from across this state and nation. She has always been an effective advocate for the interests of the victim within our office and beyond. She has even given from her own pocket to help

victims with clothing, food, medical, and other needs."

Colvin has received specialized training related to the delivery of victim services from the National Office of Victim Assistance, Tennessee Network for Child Advocacy, National District Attorneys Association, the University of Delaware, and the University of Tennessee. She has been instrumental in organizing or conducting training for assisting victims of child abuse, volunteers, networking for children, and other victim assistance providers across the State. Colvin was one of the original organizers of the East Tennessee Victims' Rights Task Force, and in 1991 received a citation from then United States Attorney General Richard Thornburgh for being instrumental with obtaining legislation in the State Legislature recognizing the rights of crime victims in Tennessee. She has also been recognized by United States Department of Justice Programs for outstanding dedication and service on behalf of crime victims. Jennifer Houston, another Bredesen appointment, also has connections with the Tenth Judicial District. "We have known and worked with Ms. Houston and members of her family in various capacities over the years. While we have not worked as closely with her as we have Carolyn, we believe Governor Bredesen made another quality appointment in naming Ms. Houston to the Commission," Estes stated. ■

Letter from the Chair *continued from page 1*

case to "go away." Recently my office received a signed statement from the victim in a DUI crash with severe injury, which asked for leniency in sentencing negotiations. The victim sat beside the defendant in court -- she has a \$2 million civil suit pending against him.

By these comments I by no means repudiate the victims rights movement, which has its legitimate origins in the undisputed inadequacy of the criminal justice process to make a victim whole. But that inadequacy cuts both ways: As professionals we prosecutors are sworn to seek justice, not only convictions. The Governor's new Commission on Crime Victim Assistance is justified and commendable in its timeliness and its thrust, but it must not be simply a happy cheerleader for hurt victims of crime, nor an ATM for the Criminal Injury Compensation Fund. The Commission must reflect the government's duty to balance the rights of individuals under the Constitution, and this means both the victims and the offenders -- we cannot make the mistake of "throwing the baby out with the bath water." The Bill of Rights is the historical condition precedent to acceptance by the thirteen original colonies of the U.S. Constitution, after all.

Since 1990, my Oath of Office has included this phrase: "I will practice care and fidelity in seeking to protect the rights of victims and offenders while I represent the People of the State of Tennessee." My current oath is signed by Riley Anderson.

Appropriate victims rights measures in criminal law include support systems addressing issues of security and safety -- especially in domestic violence cases -- and augmentation of trial support issues such as promulgation of necessary information to the public and specific communication and assistance (even transportation) for victims and witnesses. Physical and mental therapy programs for victims (especially children) are also appropriate victim assistance measures, as well as education and training for the entire prosecutorial team, and the general public. And, the process must be infused with compassion.

Due Process safeguards must accompany these victim assistance considerations; and without disregarding the need to enhance prosecutorial resources for victims and witnesses, it must not be forgotten that there exists a full complement of private remedies in the concurrent civil justice system, where every crime is also a tort. This is the residual wisdom of our legal process, and it is system-tested down through the ages in some 800 years of refinement in Anglo-American law. The accepted jurisprudence has been to separate private passion from public justice, so the State is the "victim" in criminal law and the "victim" is the plaintiff in civil law.

When some victim advocates fail to recognize due process concepts in their rush to criminalize, they cease to be the prosecutor's witness; they venture instead into the forbidden zone of vigilantism. Most special interest advocates are sincere; but often they press for inappropriate measures in their zeal. Because the victims advocacy movement is in its infancy, growing pains are to be expected. The question is, "When is it advocacy and when is it vigilantism?" It is up to the professionals in law to discern the answer. The pretrial publicity responsibilities of lawyers are pretty well defined, but I would sub-

mit there is more we can do to better inform the public (which includes the victims advocacy community and the police), inasmuch as their lack of understanding significantly impacts the criminal justice process.

What is our responsibility as lawyers? It is said that the District Attorneys in Tennessee have not taken the bull by the horns with respect to the issue of due process in the victims rights movement; likewise, I would suggest that by and large the defense attorneys have equally failed. This TBA Criminal Justice Section has the potential to provide an invaluable professional service by undertaking an effort to inform the public about justice expectations -- that is, after all, where the jurors reside. And it is what we bought into when we became lawyers.

A case in point arose two decades ago (April 9, 1984, p.12) when in its "Case Comments" section (referencing the notorious Mary Evans case), The National Law Journal put it this way:

"One of the legal profession's many challenges is to deal with the public's perception of how justice is administered in this country. This sometimes puts lawyers in uncomfortable positions, since -- as we all know -- the public's perception is often quite out of tune with reality. ...Nobody can condone conduct such as that of Ms. Evans; but when a prosecutor is so convinced by psychiatric testimony that he felt he had 'no choice' but to accept the recommendation that the defendant not be jailed, then we don't see why a judge must invoke an unnecessarily harsh punishment. We have reported that the public outcry was quite strong, but nowhere in that outcry was there any indication that the organized bar stood strongly behind the prosecutor -- a public official who is committed to seeing that justice is done."

Both prosecution and defense share 95% of criminal justice concerns, but the concerns are incomprehensible to the general public. Certainly this is true with respect to issues of due process in the victims rights movement, and apparently also incomprehensible to the Legislature with respect to the abysmal inadequacy of fiscal resources afflicting both District Attorneys and Public Defenders. Further, it is an impediment that while the advocacy community ostensibly has the same mission as the state, they are not constrained by the same rules we have to play by. And the press -- the Fourth Estate after the nobility, the clergy and the commons -- has to work with whatever they can get by deadline, and that is the limit of public understanding about the criminal justice process (except for the highly counterproductive input of TV programming).

This is clearly an unsatisfactory scenario, detrimental to the interest of all the institutions comprising the criminal justice process, including the Governor's Commission on Crime Victim Assistance. Let it be remembered that the prosecution and the defense are not faced just with conflicts of interest in the adversary process, but also with "communities of interest." The TBA offers itself as the only available forum where all interests can coincide knowledgeably. Our subcommittee on Due Process in the Victims Rights Movement could be helpful in joint efforts with the new Governor's Commission on Crime Victim Assistance -- to take the bull by the horns and inform the whole process.■



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CRIMINAL LAW

The Newsletter for the TBA's Criminal Justice Section

Calendar of Meetings

Here is a listing of upcoming meetings of the Criminal Justice Section:

- **October 18**
Representatives of the Criminal Justice Section will present the Executive Council's proposal for a study of death penalty issues in Tennessee to the TBA's Board of Governors meeting in Townsend. Section Chair Jim Ramsey and Don Hall of Vanderbilt will give the presentation.
- **October 23**
The first meeting of the Death Penalty Study Committee will be held from 1 to 5 p.m. at the Bar Center. Katie Edge is chair of the committee.
- **October 31**
The section's Executive Council will meet at 11 a.m. Central time, noon Eastern.