

Bergen Paper Told to Surrender Tapes of Talk in Slaying Case

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W. Trautwein, changed the venue of the trial, despite strong objections from Mr. De La Roche's lawyer. Judge Trautwein said The Record's article, which ran on the frontpage on Sunday, Oct. 23, made it "impossible" to impanel a jury here that had not read and been prejudiced by the story.

In upholding prosecutor Roger W. Breslin's contention that the tapes were evidence in the forthcoming murder trial, Judge Madden rejected The Record's argument that the recordings were protected from forced disclosure by First Amendment freedom of the press rights and by New Jersey's 44-year-old "newspaperman's shield" law.

Basically, the law grants the news media a legal privilege from being compelled by judicial or legislative tribunals to disclose confidential news sources.

Mr. Banaszewski, the reporter, clearly identified Mr. De La Roche as his source and quoted him extensively in his contention that his younger brother, Ronald, killed his parents, Harry, 44 years old, and Mary Jane, 53, and their brother, Eric, 13, and that he in turn shot Ronald.

Arguments in the Case

Mr. Banta, the newspaper's lawyer, argued that the fact that Mr. De La Roche's identity was disclosed in the article was not legally relevant under the state's shield law. But Judge Madden rejected this argument and said that once confidentiality had been waived, all news gathered from that source was no longer protected from subpoena.

"To accept The Record's theory would be to grant the media an immunity not a privilege," the judge wrote in his nine-page opinion.

In dismissing The Record's constitutional freedom-of-the-press argument, the judge cited two United States Supreme Court decisions. One, issued in 1972, refused to grant three newsmen a privilege exempting them from testifying either before grand juries investigating criminal matters or at criminal trials.

The other citation was the Supreme Court's unanimous ruling in 1974 that

compelled former President Nixon to turn over his Oval Office tapes relating to the investigation of the Watergate scandal.

Judge Madden recalled that the high court said then in the Nixon case that "the very integrity of the judicial system and public confidence in the system depends on full disclosure of all the facts, within the framework of the rules of evidence."

He went on to say that "the public has a right to every man's testimony." He found the De La Roche tapes contained "evidence relevant" to a criminal trial involving four murders, and said that the "interest of the state firmly outweigh any privilege The Record may claim," and that "the First Amendment does not afford The Record the privilege to withhold this information."

The judge also held that the "court cannot allow a defendant to frustrate his own trial and then hide behind a newspaperman's shield. If this were allowed to occur any number of defendants could influence the media to interfere with a trial. The legal process will not tolerate interference of this type."