

Trial by press conference

Before prosecutors present a single witness in a federal or state courtroom, the community has formed a belief in the guilt or innocence of such recently indicted Boston public officials and business leaders as Sal DiMasi (convicted and pending appeal), Tim Cahill (pending trial), and Richard Vitale (acquitted after a federal jury trial). The reality is that not every defendant charged with a federal or state offense by a grand jury is guilty.

A cornerstone of our system of constitutional liberties is the presumption of innocence. Yet recent but widespread nationwide practices in federal and state cases — announcing indictments via press conferences, which include the disclosure of evidentiary details of the prosecutors' theory of the case, and the largely local practice of in-court filing of so-called "statements of the case" — profoundly threaten the charged citizen's right to a fair trial before a jury pool that is not contaminated by a one-sided disclosure of evidence resulting in prejudgment by the court of public opinion.

The one-sided blizzard of accusatory detail has the additional consequence of compromising reputations before even one shred of evidence is subjected to the test of a criminal trial. It requires a charged member of the business community or a public official to affirmatively prove their innocence in the media in order to maintain their professional reputation.

The process of exposing jurors to a one-



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sided pretrial presentation of "proof" at a time of maximum media attention is incompatible with policies of grand jury secrecy. Grand juries have become an *ex parte* instrument of accusation, controlled by prosecutors who often present evidence in secret, able to indict based exclusively on hearsay and without receiving evidence that would negate the accusation.

Although a trial jury is instructed that an indictment is just an accusation, entitled to no weight in counterbalancing the presumption of innocence, disclosures of the details of a grand jury investigation via press conference or "statements of the case" engrave in future jurors' psyches a belief about the reality of future proof.

The foundational right of charged citizens to maintain their innocence, to retain experienced criminal defense counsel to demand that the prosecution not just allege criminal wrongdoing but prove it, must not be burdened by the pretrial media dissemination to future jurors of out-of-court one-sided untested declarations of what the prosecution hopes to prove at a future trial.

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