This is to certify that the

thesis entitled

FREE PRESS - RIGHT TO PRIVACY:
EXTENDED MEDIA COVERAGE OF TRIAL WITNESSES

presented by

Michele Eileen McCauley

has been accepted towards fulfillment
of the requirements for

MA degree in Telecommunications

Major professor

Date May 5, 1988

FREE PRESS - RIGHT TO PRIVACY:

EXTENDED MEDIA COVERAGE OF TRIAL WITNESSES

By

Michele Eileen McCauley

A THESIS

Submitted to
Michigan State University
in partial fulfillment of the requirements
for the degree of

MASTER OF ARTS

Department of Telecommunications

1988

ABSTRACT

FREE PRESS - RIGHT TO PRIVACY: EXTENDED MEDIA COVERAGE OF TRIAL WITNESSES

By

Michele Eileen McCauley

The landmark case, Chandler v. Florida, 449 U.S. 560 (1981) announced that the presence of extended media during a trial did not deny defendants a fair trial. However, no serious consideration had been given to the privacy concerns of sensitive witnesses, especially victims of crime. A historical study revealed individuals considered newsworthy lose much of their right to privacy. During extended media coverage of trials, witnesses must rely on state guidelines and media ethics to insure some form of privacy protection. Extended media coverage of trials can be educational to the public. However, the media must not revictimize a witness/victim merely to provide a titillating story on the evening news. The courts must also consider the effects of the publicity, and enforce protective measures to shield the witnesses from unwarrented coverage.

To my parents,

Gene and Shirley McCauley

The love, encouragement, and support you shower me with daily has helped me reach this goal, and not be afraid to go on to another. Though I don't always show it, I love you both very much.

ACKNOWLEDGMENTS

Sincere thanks to Dr. Thomas Muth, who has encouraged and supported me from the very start of my graduate studies. His criticisms were balanced by compliments, making my thesis project a desirable challenge, not a dreaded chore. Special thanks also to Dr. Gerald Miller, whose interest in my thesis topic encouraged me to produce the best work I am capable of.

Thank you to Sheila Skutar, a great typist, but an even greater friend. We shared some rough times, yet we always seemed to end up laughing.

To my brother Tim, his wife Sharin, Gabe, and Dani, who helped me relax and enjoy myself, and forget about school for awhile, when I was home for a visit.

Thanks to my brother Dan, and my sister Tracey. The letters and phone calls (and few extra dollars!) always seemed to come when I needed them most. When we're together I'm still treated like the baby sister, but I don't mind since it shows that we can still be close even though we live so far away from each other.

Special thanks to Vivian and Frank Albert, my "adoptive parents", who helped me out so much while I've

been at MSU. A simple thank you is hardly enough. It's easy to see why my parents treasure their friendship so highly -- you're very special people.

TABLE OF CONTENTS

CHAPTER 1

INTRODUCTION

The U.S. Constitution was designed to assure citizens basic rights. For instance, freedom of the press is guaranteed by the first amendment of the Constitution. The right to a public trial is insured through the sixth amendment; and citizens are guaranteed a right to privacy under the fourth amendment. However, the framers of the Constitution could not have imagined the social and technological changes that were to occur over the years that would generate conflicts between these amendments.

The innovation of the extended media is one such example. When the guarantee of a free press was incorporated into the first amendment by the framers of the Constitution, the idea of radio and television, let alone cable, microwave, and satellite transmission, was inconceivable. Two hundred years later the press has evolved into the media -- every type of publishing which disseminates information, ideas, and opinions through a channel of communication. The media publicizes events and information deemed newsworthy to the general public. Today's press believes the first amendment's free press clause encompasses the extended media when public court

proceedings are covered by the press. Since newspaper reporters are allowed into courtrooms with their tool of the trade, a pen and notebook, it is reasoned, then a newspaper photographer and television crew should be permitted into the courtroom with their tools -- visual and audio equipment. The purpose of a free press is to allow the media to act as a watchdog for the general public; aural/visual coverage of court proceedings is the most advanced and ideal way to communicate news to the citizens.

There are many arguments that support extended media access to courtrooms[1]:

1. The public has a right to know what goes on in court proceedings.

2. There is a constitutional guarantee of a free press.

3. Visual and audio recorders are merely an extension of the courtroom walls.

Until 1981, cameras had been barred from most courtrooms. The Supreme Court's landmark decision in Chandler v. Florida, 449 U.S. 560 (1981) ruled that the presence of the extended media during court proceedings does not deny a defendant due process of law.[2] However, access by the extended media is not an absolute; each individual state must determine if, and to what extent, the aural/visual media will be permitted in courtrooms. The Chandler decision only demonstrated that the presence of the

extended media is not unconstitutional.

The Chandler decision addressed and outlined the rights of both the media and the defendants when broadcast coverage of trial proceedings is desired. However, the rights of some trial participants must now be examined by the courts, media, and society. Because the general policies and laws of the United States are based on the Constitution, the main concern during a judicial examination is that of the defendant's right to a fair trial. The rights of the media are even guaranteed by the first amendment. But trial participants, specifically witnesses, have no constitutional rights when participating in the judicial process, and must rely on the state to protect their interests. Witnesses -- especially when covered by the extended media -- become public figures, and thus newsworthy, unwillingly. Opponents of extended media coverage of victims and witnesses have many justifiable arguments:[3]

1. Cameras may have a subconscious effect on the witness.

2. There is a temptation by the media to sensationalize.

3. Extended media coverage of some types of trials may discourage other victims, who may be required to be a witness, from reporting crimes.

Witnesses are often forced to testify when persuaded

by an attorney or served a supeona. Although the testimony the witness supplies may not be damaging to either party, it will still be the job of the opposing attorney to discredit the witness in any (acceptable) way possible. A witness to a mugging may be questioned about his/her vision, memory, or past tendencies to fabricate stories to receive attention. A victim of sexual assault may be questioned about the clothing worn, the amount of physical resistance she used, or her sexual history. In both instances, though extremely different in the seriousness of the alleged crime, the witnesses may be ridiculed, embarrassed, and their character assassinated, feeling that they themselves are on trial for committing a crime. The presence of the extended media during the testimony may be unnerving and unwelcome to any witness in any type of court proceeding; the fear of publicity and public ridicule may be of equal concern to a witness asked only three questions about seeing a car stolen as to a rape victim who must endure endless hours of testimony.

The delicate balance between a free press and right to personal privacy needs to be examined and clarified as more states open their courts to the aural/visual media. The value the press places on responsible and ethical reporting of court proceedings must also be studied. Even

though a state determines what trials will be taped or photographed, how the information is used is left up to the media. Quotes out of context, small bites of video and audio, and stories solely intended to attract a larger audience may result in news reports which focus on only the most interesting, not the most important parts of a trial.

Journalists, judges, attorneys, victim/witness advocates, and members of the general public are split on whether the right to privacy outweighs the right of a free press. The contrasting viewpoints of these individuals who are involved with the judicial process must be analyzed. Each group is interested in court proceedings for different reasons: the media wants to report newsworthy information; lawyers want to defend or prosecute individuals; judges want to administer justice; victim/witness advocates want to assure that witnesses testify properly and willingly; and the general public wants to see how the court system works to bring justice to society.

The issue of extended media coverage and victim/witness right to privacy is important, as it involves constitutional rights and ethics. The media believe open courtrooms are only fair -- that the advanced technology which allows a trial to be broadcast across the entire country is simply a way of opening courtrooms to citizens

who have a right to see and hear a trial, but may not be able to attend. At the same time, however, others believe this coverage will prevent some individuals from testifying or even from pressing charges for fear of embarrassment or personal harm. The media respond that a judge will deny extended media coverage if it could be harmful to any trial participant; but opponents point out that not all judges and lawyers act in the best interest of the trial participants, and thus some trials that should allow victim/witness privacy do not. A balance between the conflicts needs to be found; and if not, then it must be decided whose right will be favored when conflicts of interest do arise.

RESEARCH QUESTION

Should trial witnesses have a right to privacy under the fourth amendment?

SUBSIDIARY QUESTIONS

1. In what classes should privacy interests be considered?
2. When should the media's right to free press outweigh the right to privacy during court testimony?

3. If extended media coverage of a witness results in a physical or emotional injury, who is held responsible?

4. Is the public educated as to how the court system works by viewing a thirty or sixty second news report?

REVIEW OF LITERATURE

The issue of right to privacy was first discussed in 1890. Since that time, court decisions, writings, and research have offered many opinions, ideas, and findings regarding freedom of the press and right to privacy.

Court decisions are the most important information to be considered when debating conflicts of interest between the press and the private citizen. When the broadcast medium was just developing, the first cases concerning extended coverage of trials focused on the defendant's right to a fair trial. Rideau v. Louisiana, 373 U.S. 723 (1963), Estes v. Texas, 381 U.S. 532 (1965), and Sheppard v. Maxwell, 384 U.S. 333 (1966) were heard by the Supreme Court, which ruled that in its present state aural and visual coverage of trials denied the defendant due process of law; the Court concluded that when the first and fourteenth amendment conflict, the latter takes precedence over the former.

However, as technology made major advancements in

the broadcast industry, the opinions of the judicial system began to change. The landmark case, Chandler v. Florida, 449 U.S. 560 (1981) ruled that the previous Supreme Court decisions did not announce a constitutional ban on all audio/visual equipment. The Court went on to say each state had the right to permit or deny extended media access; this was reemphasized in Combined Communications v. Finesilver, 672 F.2d 818 (1982).

The 1970s saw concern moving away from defendants' rights to the rights of trial participants, especially witnesses. Numerous cases have been heard regarding the privacy right that witnesses are allowed when the press -- traditional or extended -- are present during the proceedings. A significant case was Cox Broadcasting v. Cohn, 420 U.S. 469 (1975), which ruled that privacy rights fade if information (name, address, identifying information) is part of the court's public record. A Florida court ruled in 1983 (Doe v. Sarasota -- Bradenton Florida Television, 436 So2d 328 (Fla. App.2 Dist. 1983)), that unless the court takes necessary precautions to protect the privacy of a witness when the extended media has access to trials, the witness cannot sue for invasion of privacy. Other pertinent cases concerning privacy interests of trial participants include, Globe Newspaper Co. v. Superior Court, 457 U.S. 596

(1982) and Richmond Newspapers v. Virginia, 448 U.S. 555 (1880).

First amendment expert Thomas Emerson, offers an indepth analysis of freedom of the press in his book, Toward a General Theory of the First Amendment; other relevant books by Emerson include Political and Civil Rights in the United States and The System of Freedom of Expression. Yale Kamisar, et. al, discusses landmark Supreme Court decisions and their impact on the interpretation of freedom of the press. Alexander Meiklejohn and Alfred Kelly also provide insightful discussions about the history and impact of the U.S. Constitution on the citizens it protects.

Samuel Warren and Louis Brandeis were the first to argue that individuals should have a right to privacy. In the Harvard Law Review, Warren and Brandeis stated that privacy should be treated much like slander and libel. William Prosser wrote an article in the California Law Review suggesting four types of invasion of privacy: misappropriation, intrusion, public disclosure, and false light in the public eye. Prosser's article is considered a significant contribution to tort law. Two additional texts offer a philosophical perspective to personal privacy: Privacy: A Vanishing Value? and Philosophical Dimensions of Privacy: An Anthology.

Media Ethics: Cases and Moral Reasoning discusses the development, enforcement, and importance of ethical standards in the print and broadcast media. Bruce Swain, Reporter's Ethics, looks at the modern-day reporter and the obstacles that may hinder the reporting of news.

F. Lee Bailey and Henry Roghblatt explain the procedures and tactics of court proceeding in Successful Techniques for Criminal Trials; detailed and enlightening information about questioning different types of witnesses is included. Cross-examination techniques of witnesses are also explained in The Psychology of Evidence and Trial Procedure and How To Be A Witness.

Judith Rowland, a former prosecuting attorney, discusses the crime of rape, and the problems faced by rape victims in The Ultimate Violation. Actual cases are examined, while the testimony of victims and expert witnesses help illustrate the injustices faced by many sexual assault victims. The National Institute of Law Enforcement and Criminal Justice provide two publications for the public to help deal with the crime of rape: Rape and Its victim: A Report for Citizens, Health Facilities, and Criminal Justice Facilities and Rape: Guidelines for Community Response. "Section B" of the Sunny Von Bulow National Victim Advocacy Center Curricula offers suggestions

to the media on how to handle sensitive issues, particularly sexual assault, responsibly and morally. Steps that state legislatures can take to protect victims and witnesses from unnecessary publicity are outlined in Policies of the National Organization For Victim Assistance.

Considering forty-five states allow extended media coverage of court proceedings, very few studies have been done to allow an indepth examination of the effects coverage may have on trial participants. The most significant study, In re Petition of Post-Newsweek Stations, Florida, Inc., 370 So.2d 764 (Fla.1979), was considered by the Supreme Court when deciding the Chandler case. The surveys found that the presence of extended media had little effect on trial participants or the decorum of the courtroom. Susanna Barber examined nineteen studies, thirteen of which were conducted before 1980. The general finding was that aural and/or visual coverage of trials did not adversely effect trial participants. A study of two similar trials, one of which was covered by the extended media, was done by Dalton Lanscaster of Indiana University. Empirical research was included in the study; however, the study was not able to be controlled since each trial had different defendants, attorneys, and jurors. A simulated courtroom setting provided James Hoyt with the opportunity to analyze the

pressures felt by witnesses under three different circumstances: answering questions in front of a camera; answering questions with the knowledge that a hidden camera was present; answering questions when no camera was present. Hoyt found no significant difference in the verbal responses of the subjects in the three different settings.

In 1984, two U.S. Senate subcommittees dealt with the issue of victims testifying during court proceedings, and the effects publicity may have on the witness. Impact of Media Coverage of Rape Victims: Hearing before the Subcommittee on Criminal Law of the Committee of the Judiciary provided testimony from rape victims, victim/witness advocates, and members of the media. The benefits and negative effects that extended coverage may have on rape victims was discussed. The Subcommittee on Juvenile Justice dealt with Child Sexual Abuse Victims In the Court. Though emphasizing the overall impact that participating in a trial may have on a child, the testimony did touch on the subject of extended media coverage of proceedings.

Correspondence and personal interviews with members of the press, judicial system, and victim/witness advocates offer personal viewpoints that are not found in textbooks. Representatives of the media, such as Timothy Dyk, counsel

for CBS, Inc., Ernie Schultz, acting president of the Radio-Television News Directors Association, and Charles McCorkle Hauser, executive editor of the Providence Journal-Bulletin, suggest reasons why the extended media should be permitted to cover all court proceedings. Legal professionals, including Judge Carolyn Stell and Judge Michael Harrison, 30 Jud Circuit, Lansing, Michigan, Donald Martin, Ingham County (Michigan) Prosecuting Attorney, and Raymond Buffmyer, defense attorney, Charlotte, Michigan, discuss the positive and negative effects of aural/visual coverage of trials. Lastly, Anne Seymour, public affairs director of the Sunny Von Bulow National Victim Advocacy Center discusses the free press - right to privacy conflict from the perspective of the victim.

Transcripts from the ABC news programs Nightline, This Week with David Brinkley, and Viewpoint provide testimony that was aired by the extended media during the infamous New Bedford rape case in 1984. A variety of viewpoints, regarding the coverage of the trial, from a number of individuals are included.

RESEARCH METHOD

A historical research method will be used to analyze the conflict of free press - right to privacy. An examination of relevant constitutional amendments, as well as significant court decisions, will assist in determining the rights of the media and of trial witnesses. Current state guidelines, along with the opinions of the media, attorneys, and victim/witness advocates will be analyzed to determine the attitudes and concerns held today as more states allow extended media access to courtrooms.

This approach in research will enable a conclusion to be drawn about the balance between a free press and a right to privacy. A thorough examination of the resources available will also assist in formulating recommendations for the media and states to consider when granting access to aural/visual media.

ENDNOTES

1. Interview with Timothy Dyk, attorney, Wilmer, Cutler, and Pickering, Washington, D.C. (May 19, 1987); letter from Charles McCorkle Hauser, vice president and executive editor, The Providence Journal-Bulletin Rhode Island, to the author (November 6, 1986) (discussing free press v. right to privacy); Kenneth Dovel, ed., Mass Media and The Supreme Court (New York: Hasting House Publications, 1982), 419.

2. Chandler v. Florida, 449 U.S. 560 (1981).

3. Interview with Anne Seymour, director of public relations, Sunny Von Bulow National Victim Advocacy Center, Fort Worth, Texas, in Lansing, Michigan, (June 6, 1987); letter from Raymond Buffmyer, attorney, Charlotte, Michigan, to the author (October 6, 1987) (discussing free press v. right to privacy); interview with Donald Martin, Ingham County Prosecuting Attorney, Lansing, Michigan (October 14, 1987).

CHAPTER 2

THE CONSTITUTION: AN HISTORICAL SKETCH OF RELEVANT SECTIONS

During the formation of the United States the founding fathers were determined to establish a nation of sovereign states, free from authoritarian control.[1] It was believed that the people of the nation should be the source of the government's power.

While fighting the War of Independence (1775-1783) the Articles of Confederation (1781-1789) were ratified to establish the United States of America. The Articles contained three major provisions:[2] each state would be sovereign, free, and independent; the records, acts, and judicial proceedings of the courts and magistrates of each state would be honored; and the residents of each state would be allowed the privileges and immunities of the citizens in the other free states. However, at the close of the American Revolution economic problems and political agitation were growing -- it appeared that the Articles of Confederation were not working.[3] Alexander Hamilton, in writing about the defects of the Articles,[4] said,

> The . . . most palpable defect of the subsisting Confederation, is the total want of a SANCTION to its laws. The United States, as now composed, have no powers to exact obedience, or punish disobedience to their resolutions, either by any other constitutional mode.[5]

A convention was held by Representatives from twelve of the thirteen states in 1787. Numerous alternatives to the Articles of Confederation were drawn up by Representatives,[6] and the final document was a culmination of the original Articles and the many proposed plans.[7] The individual states would have the primary responsibility of governing the citizens, while the federal government would oversee foreign relations, establish a monetary system, and ensure the flow of commerce between the states and other countries.

The body of the Constitution did not mention the rights of citizens. This caused some states to wonder whether the people would accept the new government if a bill of rights was not included in the Constitution.[8] The Constitution was finally ratified in 1787, after promises to propose a series of amendments swayed many states in favor of ratification.[9]

James Madison initiated steps to formulate amendments to the Constitution during the first Congress in 1789. The majority of proposed changes concerned article I, section 9, prohibiting bills of attainer[10] and became the first five amendments, and the eighth and ninth amendments.[11] The sixth and seventh amendments resulted from proposed changes in art. III, sec. 2, guaranteeing citizens a fair trial by jury, and the benefits of common

law.[12] The amendments, which reflected injustices the Americans experienced during British colonialism, were ratified in 1791.[13]

The First Amendment

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the Government for a redress of grievances.

The first amendment is the most important constitutional guarantee for the print, aural, and visual media.[14] A major purpose of the first amendment is to protect the right of individuals to write and speak freely, without fearing restraints or punishment by the federal government. However, state and local government restrictions often denied citizens some forms of free speech and press. The ratification of the fourteenth amendment in 1868 did little to secure the first amendment as a basic fundamental right.[15]

It was not until the 1920s and 1930s that courts began to incorporate the first amendment's civil liberties in the due process clause of the fourteenth amendment. In Gitlow v. New York, 268 U.S. 653 (1925), Justice Sanford said,

> For present purposes we may and do assume that freedom of speech and of the press--which are protected by the first amendment from abridgement by Congress--are among the fundamental personal rights and 'liberties' protected by the due process clause of the fourteenth amendment from impairment by the States.[16]

In 1931, the Supreme Court formally included freedom of the press as a fundamental right; in Near v. Minnesota, 283 U.S. 697 (1931) the Court found unconstitutional a Minnesota statute which required the suppression of malicious, scandalous, and defamatory newspapers.[17] Chief Justice Hughes, who wrote the Court's opinion, stated, "It is no longer open to doubt that the liberty of the press and of speech, is within the liberty safeguarded by the due process clause of the fourteenth amendment from invasion by state action."[18]

The Near ruling was important to a field that was growing and expanding quickly. Freedom of the press soon encompassed newspapers, periodicals and magazines, radio, and television. Thomas Emerson, in his book Toward A General Theory of the First Amendment, says freedom of expression is necessary to assure individual self-fulfillment, attain the truth, secure participation by citizens in social and political decision making, and maintain a balance in society between stability and change.[19] It is evident that freedom of expression is one of our most important

civil liberties, however how far one can go when expressing themselves through free speech or press is still being debated. John Stevens has said that the free speech and press clause in the first amendment should favor the speaker or press when a question of balance arises:

> What it states is a commitment to giving the benefit of the doubt to issues of free expression when weighing them against other societal interests. It is not a perception; it is not even a yardstick. It is an ideal[20]

First Amendment experts Thomas Emerson and Alexander Meiklejohn, however, believe a balance is necessary when freedom of expression and societal interests conflict. Emerson has written,

> the overall standard under the first amendment should be one that would preserve the right of communications so far as possible but allow the court to protect the rights of the individual in situations demanding it.[21]

Meiklejohn believes:

> The first amendment was not written primarily for the protection of those intellectual aristocrats who pursue knowledge solely for the fun of the game, whose search for truth expresses nothing more than a private intellectual curiosity or an equally private delight and pride in mental achievement. It was written to clear the way for thinking which serves the general welfare.[22]

The Fourth Amendment

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The fourth amendment was originally intended to protect the property of citizens from unjust actions by the general government. Its purpose was not to safeguard personal privacy.

Common law rights of privacy were practically nonexistent until the 1890s when some courts began to relate personal privacy to the law of libel.[23] A Harvard Law Review article by Samuel Warren and Louis Brandeis shaped the laws of privacy by asserting that rights "could be pieced together from strands of property law and awards for mental anguish."[24]

Although the right of privacy has been without formal constitutional foundation, the fourth amendment has recognized personal privacy rights. By 1961, the Supreme Court had applied the due process clause of the fourteenth amendment to the fourth amendment.[25] The Mapp v. Ohio, 367 U.S. 643 (1961), decision ruled that, with regard to search and seizures, the Constitution does recognize a right to

privacy.[26]

Four years later in another privacy case (Griswold v. Connecticut, 381 U.S. 479 (1965)) Justice Douglas stated that "specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance."[27] The Court went on to say that the penumbras[28] create zones of individual privacy and are protected by the guarantees of the first, fourth, and fifth amendments.[29] However, the Court cautioned that the fourth amendment cannot be defined as a general constitutional right of privacy, an undertaking which is the responsibility of the individual states.[30]

The Sixth Amendment

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the Crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

The sixth amendment assures an accused criminal a fair trial. In 1963 this amendment was subsumed in the fourteenth amendment.[31] Justice Black, in writing the

Court's opinion for Gideon v. Wainwright, 372 U.S. 335 (1963), stated,

> We accept Betts v. Brady's assumption, based as it was on our prior cases, that a provision of the Bill of Rights which is "fundamental and essential to a fair trial" is made obligatory upon the States by the Fourteenth Amendment. We think the Court in Betts was wrong, however, in concluding that the Sixth Amendment's guarantee of counsel is not one of these fundamental rights.[32]

The media began to read the fundamental right of a fair and public trial as the right to cover all trial proceedings. However, the Supreme Court said that although the media had a right to attend most trials, as did ordinary citizens, the press did not have any special privileges over the general public, such as using audio and visual equipment in court-rooms.[33] It has been stressed that the sixth amendment concept of "public trial" is intended for the accused, and this right may be met as long as family members and legal counsel are present.[34]

The Fourteenth Amendment

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any

> person within its jurisdiction the equal protection of the laws. [Section 1 of 5.]

The fourteenth amendment may be considered one of the most significant and important ratifications to the U.S. Constitution. Adopted in 1868, the amendment grew out of the Freedmen's Bureau Bill and the Civil Rights Act of 1866.[35] The amendment's purpose was to incorporate a citizenship clause[36] into the Constitution, and to insure that no person's rights would be denied on the basis of race or color.[37]

The "due process" phrase was adapted from English law, dating back as far as 1354, when the term originally referred to common law writ.[38] However, by the seventeenth century the phrase came to mean "law of the land", and had been a part of many of the original colonial charters.[39] The phrase in the fourteenth amendment protects an individual's right to life, liberty, and property from state interference.[40]

For nearly fifty years after the ratification of the fourteenth amendment very few states or courts incorporated the Bill of Rights in the due process clause.[41] It was not until the 1940s, when Justices were appointed by President Franklin Roosevelt, that philosophies began to change in favor of economic democracy, political liberalism, and individual liberty.[42] Justice Black announced that the

entire Bill of Rights should be incorporated into the fourteenth amendment as the framers had originally intended.[43] However, it was not until the 1960s that the Bill of Rights was subsumed in the fourteenth amendment.

The 1960s saw four liberal Justices on the Supreme Court: Warren, Black, Douglas, and Brennan. The Warren Court wanted to reform state criminal procedures by requiring them to conduct criminal proceedings with guarantees of fair procedures, as the federal courts did.[44] This was accomplished by incorporating the fourth, fifth, and sixth amendments into the due process of the fourteenth amendment.[45] Though it took one hundred years after its ratification, the intentions of the fourteenth amendment, at the close of the Warren Court, had finally been fulfilled.[46]

ENDNOTES

1. Samuel Eliot Morison, Henry Steele Commager, and William F. Leuchtenberg, A Concise History of the American Republic, 2nd ed. (New York-Oxford: Oxford University Press, 1983), 108.

2. Alfred H. Kelly and Winfred A. Harbison, The American Constitution: Its Origins and Development, 5th ed., (New York: W.W. Norton and Company, 1976), 97-98.

3. The Federalist, Bicentennial Edition, (Washington-New York: Robert B. Luce, Inc., 1976), vii.

4. The Federalist is a collection of articles that appeared in the New York Press between October 1787 and May 1788. The articles, authored by "Publius" (Alexander Hamilton, John Jay, and James Madison), campaigned for the ratification of the Constitution.

5. The Federalist No. 21, at 125 (Alexander Hamilton) (Bicentennial Edition 1976).

6. Kelly and Harbison, supra note 2 at 114-119. (The Virginia Plan suggested that the problem of federalism could be solved by allowing Congress to define the authority of the states and itself; the New Jersey Plan modified the Articles of Confederation, and included a clause that made treaties and acts of Congress the supreme law of the states and enforced by the state courts).

7. Id. at 98-99 (The three provisions from the Articles of Confederation were retained while a provision was added (Article VI) to specify that enforcement of the Constitution would be done through the courts).

8. Alfred H. Kelly, Winfred A. Harbison, and Herman Belz, The American Constitution: Its Origin and Development, 6th ed., (New York: W.W. Norton and Company Inc., 1983), 121.

9. Kelly, and Harbison, supra note 2 at 164.

10. Bills of attainders are special acts passed by a legislature which brings about punishment without a judicial trial. See Black's Law Dictionary (Abridged 5th ed. 1983); see also Words and Phrases, "Bill of Attainder".

11. Kelly, and Harbison, supra note 2 at 164.

12. Id.

13. Ralph L. Holsinger, Media Law (New York: Random House, 1987), 12; National Archives and Records Administration, Some Facts About The National Archives, General Leaflet no. 18 (Washington, D.C.: National Archives and Records Administration, 1985).

14. The print media include newspapers, magazines, journals, news services, and other printed sources; aural refers to the sense of hearing. Visual is used in order to include all things that are made visible or can be seen. "Video", "camera", and "electronic media" all refer to specific types of visual aids. By using the term "visual media" no current or future form of extended media will be excluded.

15. Jethro K. Lieberman, The Enduring Constitution: An Exploration of the First Two Hundred Years (New York: Harper and Row, Publishers, 1987), 201.

16. Gitlow v. New York, 268 U.S. 653, 666 (1925). See also Stromberg v. California, 283 U.S. 359 (1931); Kelly and Harbison, supra note 2 at 533, 653; Yale Kamisar, William Lockhard, and Jesse H. Choper, Constitutional Rights and Liberties: Cases and Materials, 2nd. ed., (St. Paul, Minn.: West Publishing Co., 1967), 365.

17. Near v. Minnesota, 283 U.S. 697 (1931); Kelly and Harbison, supra note 2 at 653.

18. Near, 283 U.S. at 707.

19. Thomas I. Emerson, Toward A General Theory of the First Amendment (New York: Random House, 1966), 3.

20. John D. Stevens, Shaping the First Amendment: The Development of Free Expression (Beverly Hills: Sage Publications, Inc., 1982), 147.

21. Emerson, supra note 19 at 72.

22. Alexander Meiklejohn, Political Freedom: The Constitutional Powers of the People (New York: Harper and Brothers Publishers, 1960), 42.

23. Kelly, Harbison, and Belz, supra note 8 at 651.

24. Stevens, supra note 20 at 128 (quoting Samuel D. Warren and Louis D. Brandeis, The Right To Privacy, 4 Harv. L. Rev. (1890)).

25. Mapp v. Ohio, 367 U.S. 643 (1961).

26. Id.; 62 Am. Jur. 2D Privacy §4 (1962, 1987).

27. Griswold v. Connecticut, 381 U.S. 479, 484 (1965); Kelly, Harbison, and Belz, supra note 8 at 652.

28. Penumbras are implied powers of the federal government. See Black's Law Dictionary (Abridged 5th ed. 1983).

29. Kelly, Harbison, and Belz, supra note 8 at 652.

30. 62 Am. Jur. 2D Privacy §4 (1962, 1987) (quoting Katz v. United States, 389 U.S. 347 (1967)).

31. Gideon v. Wainwright, 372 U.S. 335, 342 (1963); Kamisar, Lockhard, and Choper, supra note 16 at 229.

32. Gideon, 372 U.S. at 342.

33. Estes v. Texas, 381 U.S. 532 (1965).

34. Stevens, supra note 20 at 133; 3 L.W. Levy, ed., Encyclopedia of the American Constitution (New York: MacMillian Publishing Co., 1986), 1493.

35. Kelly and Harbison, supra note 2 at 429-432 (The Freedom's Bureau Act was created in 1865. The bureau acted as an emergency wartime relief agency for blacks who were freed from slavery. The bill was to expire one year after the war ended. The civil rights bill was introduced by Illinois Senator Lyman Trumball to extend the Freedman's Bureau's life. The bill also assured the civil rights of blacks in the seceded states under federal military protection. Though vetoed by President Johnson, the Congress was able to pass the bill).

36. 1 Levy, supra note 34 at 432. (The citizenship clause formally defined what a citizen of the United States was: "All persons born or naturalized in the United States, and subject to the jurisdictions thereof").

37. U.S. Const. amend. XIV, §1; Kelly, and Harbison, supra note 2 at 432; 2 Levy, supra note 34 at 757.

38. Kelly, and Harbison, supra note 2 at 472; 2 Levy, supra note 34 at 589.

39. Id.

40. 2 Levy, supra note 34 at 590.

41. Michael Kent Curtis, No State Shall Abridge (Durham, N.C.: Duke University Press, 1986), 1.

42. Kelly, and Harbison, supra note 2 at 752.

43. Id. at 754 (quoting Adamson v. California, 332 U.S. 46 (1948)).

44. Kelly, Harbison, and Belz, supra note 8 at 643-644; 4 Levy, supra note 34 at 2023-2031.

45. Curtis, supra note 41 at 2; Kelly, supra note at 951-952.

46. 4 Levy, supra note 34 at 2029.

CHAPTER 3

PRIVACY RIGHTS

Privacy is what separates the self from society. Based on individualism,[1] privacy has become a zone where a person "can think his own thoughts, have his own secrets, live his own life, reveal only what he wants to the outside world."[2] Alan F. Westin, in his book Privacy and Freedom, outlined four functions of privacy:[3]

1. Protects personal autonomy
2. Permits emotional release
3. Opportunity for self-evaluation
4. Allows limited and partial communication

However, individual privacy can be violated in a variety of ways, resulting in the publicizing of personal matters. Though the revelation is true, its exposure is embarrassing and may cause mental distress.

The word "privacy" does not appear in the Constitution or the Bill of Rights.[4] However, through the years privacy rights have been based on the first eight amendments, as well as the fourteenth amendment.[5] There are four branches of privacy law within the U.S. Constitution:[6]

1. Personal privacy (as outlined by Dean William Prosser's Privacy tort)
2. Fourth amendment protection of individual privacy from governmental intrusion

3. Protection from the government gathering and disseminating private personal information

4. Right to engage in private behavior, and free from the intrusion of the curious public and government

Individual states also have privacy laws, outlined in constitutions or statutes, which vary greatly from state to state.

There had been no serious consideration or discussion of the right of privacy until 1890 when Samuel Warren and Louis Brandeis wrote an article on the need for individual privacy rights against the intrusion of gossipmongers, particularly the press. Warren and Brandeis, asserting privacy rights were a kind of property right, believed that invasion of privacy was trespassing -- which itself evolved from physical injury to moral and emotional well-being.[7] The two men relied on the common laws of defamation, invasion of property rights, and breach of confidence when writing about privacy.[8]

Warren and Brandeis asserted, "Recent inventions and business methods call attention to the next step which must be taken for the protection of the person, and for securing to the individual what Judge Cooley calls the 'right to be let alone.'"[9]

The article went on to say:

> Instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life; and numerous mechanical devices threaten to make good the prediction that "what is whispered in the closet shall be proclaimed from the housetops."[10]

The two law partners reasoned that the advancement of culture and civilization had caused people to begin treasuring privacy; however, cultural and civil advances brought with them modern enterprise and technology--photographs and newspapers -- making solitude and privacy even more difficult to secure. The result of being subjected to unwarranted publicity, Warren and Brandeis said, was mental pain and distress "far greater than could be inflicted by mere bodily injury.[11] The ensuing injuries were said to resemble those inflicted upon a victim of slander and libel, for which legal remedies were attainable.[12] However, unlike defamation, truth was not the main concern in issues of privacy invasion. According to Warren and Brandeis, privacy concerns a desire to remain private, whether or not the truth was provided by the invader.[13]

When arguing for the personal right of privacy Warren and Brandeis suggested that common law guaranteed individuals the right of determining the extent to which

thoughts, sentiments, and emotions could be made public.[14] Warren and Brandeis also maintained that the right of property, which encompassed all possessions, including all rights and privileges, also included the right to an unmarred personality; thus, it was felt that the right of property was the basis upon which some privacy protections could rest.[15]

However, Warren and Brandeis concluded that the right of property was not sufficient to protect individuals' most intimate matters from becoming public. The right of privacy needed to become law:

> The design of the law must be to protect those persons with whose affairs the community has no legitimate concern, from being dragged into an undesirable and undesired publicity and to protect all persons, whatsoever; their position or station, from having matters which they may properly prefer to keep private, made public against their will.[16]

It was the publication and the effect of disclosures, not the actual act of intrusion, that Warren and Brandeis were most concerned about preventing.[17] The article concluded,

> The common law has always recognized a man's house as his castle, impregnable, often, even to its own officers engaged in the execution of its commands. Shall the courts thus close the front entrance to constituted authority, and open wide the back door to idle or prurient curiosity?[18]

Warren and Brandeis did admit that a person's life may cease to be private if for some reason the protection of privacy is lost. The idea of the "newsworthiness" defense in later years resulted from this statement by Warren and Brandeis.[19]

In 1960 Dean William L. Prosser wrote an article entitled "Privacy", outlining invasion of privacy. This law review article, as well as the Warren and Brandeis privacy article, made the right of privacy central to the law of torts.[20]

The accepted definition of right of privacy states that a person has the right to be left alone, to live a life of seclusion, or to be free from unwarranted publicity.[21] Prosser suggested that there were four different kinds of privacy invasion:[22]

1. Appropriation, for the defendant's advantage, of the plaintiff's name or likeness

2. Intrusion upon the plaintiff's seclusion or solitude, or into his private affairs

3. Public disclosure of embarrassing private facts about the plaintiff

4. Publicity which places the plaintiff in a false light in the public eye

Appropriation concerns the use of an individual's name or likeness, which may be considered private

property,[23] for the benefit and financial gain of another. Many court decisions have awarded recovery to individuals who have not consented to the use of their name, picture, or other likeness by people to sell a product, enhance a corporation's image, or for other business purposes.[24] However, a person cannot argue that their privacy has been invaded if "the mere incidental mention of the plaintiff's name" appears in a book or film, or if the plaintiff appears incidently in a published photograph or newsreel.[25] Although protection of individual privacy plays a role in appropriation cases, it is the recognition of the plaintiff's name and likeness as an exclusive tradename and trademark that are the determining factors.[26]

Intrusion involves an uninvited individual entering upon the premises or into the private affairs of another person. For this type of invasion to be actionable the intrusion must be offensive or objectionable to a reasonable person. No right to privacy exists on a public street or in a public place, and "[n]either is it such an invasion to take his photograph in such a place, since this amounts to nothing more than making a record, not differing from a full written description."[27] The interest protected in intrusion is a mental one. The intrusion defense is often used when trespass, nuisance, and the intentional infliction of mental

distress claims need added support.[28] There are two determining factors for intrusion of privacy:[29] the means used to obtain the information; the purpose of obtaining the information.

Public disclosure invades personal privacy by making known true private, often embarrassing, facts. There are three requirements for recovery of public disclosure:[30] the disclosure must be a public one; the fact disclosed must be a private one; and the item disclosed must be highly objectionable and offensive. The Second Restatement of Torts also stated that to claim invasion of privacy the public must not have a legitimate interest in having the disclosed information available.[31] Alfred Hill, in his law review article "Defamation and Privacy Under the First Amendment", went so far as to suggest that the controlling basis for privacy invasion "is the single principle of the shocking character of disclosure, such as when there is a disclosure of the name of a rape victim long after the crime."[32]

The fourth type of invasion of privacy concerns publicity which places a person in a false light in the public's eye. The publicity attributed to a person may be an utterance or an opinion.[33] The false light may also be in the form of a photograph used to illustrate something in

which the plaintiff has no connection, but it is implied that there is a connection.[34] In 1967, the Supreme Court ruled that a publication is privileged to print material unless the false statements made about the plaintiff were made willingly and knowingly by the defendant.[35]

If privacy rights are intruded upon by any kind of invasion, damages may be rewarded for presumed mental distress or for other harm.[36] Proof is not required when seeking damages. However, the law is not to protect the over sensitive individual, and, people must realize that to some reasonable extent our lives will be under public eye:[37]

> The ordinary reasonable person does not take offense at mention in a newspaper of the fact that he returned home from a visit, or gone camping in the woods. . . . It is quite a different matter when the details of sexual relations are spread before the public eye, or there is highly personal portrayal of his intimate private characteristics or conduct.

The right of privacy, however, as with all rights, is not absolute; there are limitations to the right of privacy. Often times people who feel their privacy has been invaded are surprised to learn that circumstances surrounding the situation have caused the individual to surrender privacy rights:[38] the plaintiff may have originally sought and consented to the publicity, therefore he or she cannot complain; the personalities and affairs of

the plaintiff may already be public and are no longer considered private; the Constitution gives the press the privilege to inform the public of legitimate affairs that concern the public.

The privilege of the press is a common defense in invasion of privacy cases. News is said to be all events and items of information that are out of the ordinary everyday routine.[39] As long as the event being publicized is not offensive or indecent and is of interest to the general public the event is said to be newsworthy, and no right of privacy can be claimed.[40] The name or picture of someone can also be publicized as long as it is of news or historical interest to the public, and no invasion of privacy occurred when obtaining the information.[41] However,

> the press has been given great latitude in defining newsworthiness. People who are catapulted into the public eye by events are generally classed by privacy law along with elected officials. In broadly construing the Warren and Brandeis public interest exemption to privacy, the courts have ruled material as newsworthy because a newspaper or station carries the story. . . . But is not the meaning of newsworthiness susceptible to trendy shifts in news values and very dependent upon presumed tastes and needs?[42]

Some people willingly give up their right of privacy when they have become public figures because of their business, character, accomplishments, or mode of

life.[43] However, other individuals become public figures unwillingly due to an act the person commits or is a part of which interests the general public. During the period of interest, and for a reasonable time afterward, consent is not required to use pictures, stories, and comments.[44]

W. Page Keeton and William Prosser said,

> Caught up and entangled in this web of news and public interest are a great many people who have not sought publicity, but indeed . . . had tried assiduously to avoid it. They have nevertheless lost some part of their right of privacy. The misfortunes of the frantic victim of sexual assault, the woman whose husband is murdered before her eyes, or the innocent bystander who is caught in a raid on a cigar store and mistaken by the police as the proprietor, can be broadcast to the world, as they have no remedy.[45]

The media may also report on judicial proceedings so long as the report is accurate and true.[46] For instance, a defendant in a criminal proceeding is a newsworthy person, thus the media has a right to report on the trial proceeding even though the defendant may object. However, "the liberty of the press does not confer on an individual the privilege of taking advantage of the incarceration of a person accused of crime to photograph his face and figure against his will."[47] Furthermore,

> the constitutional right to a public trial is a privilege intended for the benefit of the accused, and does not entitle the press or public to take advantage of his

> voluntary exposure at the bar of justice, "to picture his plight in the toils of the law."[48]

Public court records are often used for obtaining information for a news report. If the information is already in the public domain, disclosure cannot be prohibited.[49] However, reporters must be careful because the information obtained may be misleading or erroneous if the trial has not had all arguments presented yet. The news media must also be careful in states where the media can be penalized for publicizing the identity of victims of rape or other assaults, if the identities do not appear in the public court records.[50]

Inevitably, policies and actions will favor some individual rights over others. Most conflicts arise when one party feels personal privacy is of primary importance, while the opposing party believes societal interest is the major consideration. Some suggest that morals and ethics should play a role when determining if privacy interests or societal interests should outweigh the other.[51] Clifford Christian, Kim Rotzoll, and Mark Fackler said,

> By law, once individuals figure in the news they cease to be private persons protected by applicable statutes. But it is here that the photographer should consider the moral guideline that suffering individuals are entitled to the same respect as any other human being, despite

> the fact that events may have made them part of the news.[52]

Charles Fried, in his article "Privacy A Moral Analysis" wrote:

> Privacy is not simply an absence of information about us in the minds of others; rather it is the control we have over information about ourselves. . . . We may not mind that a person knows a general fact about us, and yet feel our privacy invaded if he knows the details.[53]

ENDNOTES

1. An individual is commonly considered a private or natural person. Pertaining or belonging to, or characteristic of one single person. See Black's Law Dictionary (Abridged 5th ed., 1983).

2. Thomas I. Emerson, The System of Freedom of Expression (New York: Random House, 1970), 545; Thomas I. Emerson, Norman Dorsen and David Haber, Political and Civil Rights in the United States, 3rd ed., (Boston: Little, Brown and Company, 1967), 1:238.

3. Westin, Privacy and Freedom, in Emerson, supra note 2 at 546.

4. Clifford G. Christians, Kim B. Rotzoll, and Mark Fackler, Media Ethics: Cases and Moral Reasoning (New York: Longman, Inc., 1983), 109; Emerson, Dorsen, and Haber, supra note 2 at 237.

5. Christians, Rotzoll, and Fackler, supra note 4 at 109.

6. Emerson, Dorsen, and Haber, supra note 2 at 238-240.

7. Levine, Privacy in the Tradition of the Western World in William C. Bier, S.J., ed., Privacy: A Vanishing Value? (New York: Fordham University Press, 1980), 7.

8. Lance, The Citizens Right To Privacy: Basis in Common Law in Bier, supra note 7 at 94.

9. Samuel D. Warren and Louis D. Brandeis, The Right To Privacy, 4 Harv. L. Rev. 195 (1890).

10. Id.

11. Id. at 196.

12. Id. at 197.

13. Lance, in Bier, supra note 7 at 94.

14. Warren and Brandeis, supra note 9 at 198.

15. Id. at 211.

16. Id. at 214.

17. Lance, in Bier, supra note 7 at 97.

18. Warren and Brandeis, supra note 9 at 220.

19. Lance, in Bier, supra note 7 at 104.

20. Id. at 93.

21. 77 C.J.S. Right of Privacy, § 1 (1952); 62 Am. Jur. 2D, Privacy, §1 (1962, 1987).

22. W. Page Keeton, et al., Prosser and Keeton on the Law of Torts, 5th ed., (St. Paul, Minn.: West Publishing Company, 1984), 851; 62 Am. Jur. 2D, Privacy, § 1 (1962, 1987).

23. Appropriation involves the taking of something to the exclusion of others; a conversion of property without a right. See Ballentine's Law Dictionary (3rd ed. 1969).

24. Keeton, et al., supra note 22 at 851-852.

25. Id. at 853-854.

26. Id. at 854.

27. Id. at 855-856.

28. William L. Prosser, Privacy, 48 Calif. L. Rev. 392, (1960).

29. Keeton, et al., supra note 22 at 856.

30. Id. at 856-857.

31. Id.

32. Id. (quoting Alfred Hill, Defamation and Privacy Under the First Amendment, 76 Colum. L. Rev. 1205 (1976).

33. Id. at 863.

34. Id. at 864.

35. Time v. Hill, 385 U.S. 374, 387-388 (1967); Keeton, et al., supra note 22 at 865.

36. Prosser, supra note 28 at 409.

37. Keeton, et al., supra note 22 at 857 (footnotes omitted).

38. Id. at 860.

39. Id.

40. 62 Am. Jur. 2D, Privacy, §21 (1962, 1987).

41. Id.

42. Christians, Rotzoll, and Fackler, supra note 4 at 110.

43. Keeton, et al., supra note 22 at 859-860.

44. 62 Am. Jur. 2D, Privacy §21 (1962, 1987).

45. Keeton, et al., supra note 22 at 861 (footnotes omitted).

46. 62 Am. Jur. 2D, Privacy, §21 (1962, 1987); 2 L.W. Levy, ed., Encyclopedia of the American Constitution (New York: MacMillian Publishing Co., 1986), 802 (citing Richmond Newspapers v. Virginia, 448 U.S. 555 (1980)).

47. 62 Am. Jur. 2D, Privacy, §23 (1962, 1987).

48. Id.; 2 Levy supra note 46 at 802.

49. Keeton, et al., supra note 22 at 863 (citing Cox Broadcasting Corporation v. Cohn, 420 U.S. 469 (1975)); 2 Levy supra note 46 at 802.

50. Cox Broadcasting Corp., 420 U.S. at 469; 62 Am. Jur. 2D, Privacy §23 (1962, 1987).

51. Keeton, et al., supra note 22 at 859; Christians, Rotzoll, and Fackler, supra note 4 at 123.

52. Christians, Rotzoll, and Fackler, supra note 4 at 123.

53. Fried, "Privacy [A Moral Analysis]" in Ferdinand David Schoeman, ed., Philosophical Dimensions of Privacy: An Anthology (Cambridge: Press Syndicate of the University of Cambridge, 1984), 209-210.

CHAPTER 4

AURAL AND VISUAL MEDIA AND THE COURTS: RELEVANT COURT DECISIONS

The issue of aural and visual media access to court proceedings was first addressed in the 1930s. Bruno Hauptmann was on trial for the kidnapping and murder of Charles Lindbergh's son. The press acted irresponsibly, reporting inflammatory information and unsubstantiated details, while having access to most of the courtroom. Hauptmann did not receive a trial by jury, but rather a trial by news media.[1]

In 1937, the American Bar Association House of Delegates adopted Judicial Canon 35, which stated that all photographic and broadcast coverage of courtroom proceedings should be prohibited.[2] The issue of aural and visual media access to courtrooms did not arise again until the 1960s with the full development of the television medium. The first case heard by the Supreme Court concerned the first and sixth amendments -- a free press versus a fair trial.

Wilber Rideau had been apprehended in Louisiana for bank robbery, kidnapping, and murder. While in jail a "moving picture film with a soundtrack" of the interrogation was made between the defendant and the sheriff, during which Rideau confessed to the three crimes.[3] The film was

broadcast three times over a three day period, causing the defense attorney to seek a change of venue.[4] The request for change of venue was denied, and Rideau was soon convicted and sentenced to death.

On appeal to the Supreme Court it was held that due to the circumstances surrounding the trial a refusal for change of venue was a denial of due process. Justice Stewart said,

> Under the Constitution's guarantee of due process, a person accused of committing a crime is vouchsafed basic minimal rights. Among these are the right to counsel, the right to plead not guilty, and the right to be tried in a courtroom presided over by a judge. Yet in this case the people of Calcasieu Parrish saw and heard, not once but three times, a "trial" of Rideau in a jail, presided over by a sheriff, where their was no lawyer to advise Rideau of his right to stand mute.[5]

The Rideau decision became a precedent for a 1965 Supreme Court case which concerned the actual presence of television and still cameras and sound equipment in a courtroom. Billy Sol Estes was charged for mail fraud and conspiracy. Newspaper photographers were permitted in the courtroom, and television and radio stations carried the hearings live.[6]

The Court found that Estes had been denied due process because of the media exposure his trial received.[7] The Court majority said the media cannot rely on the sixth

amendment's public trial provision, since that clause was intended for the benefit of the accused.[8] Nor could the media argue that the first amendment extended a right to aural and visual coverage from a courtroom, and refusal to permit this privilege discriminated between the different media:

> All are entitled to the same rights as the general public. The news reporter is not permitted to bring his typewriter or printing press. When the advances in these arts permit reporting by printing press or by television without their present hazards to a fair trial we will have another case.[9]

Although no confession was broadcast as in the Rideau case, this earlier Court decision was applied to Estes because of the minute electronic scrutiny and characterization brought about by the media.[10] The Court also commented that the media would choose only to cover the most notorious cases visually and aurally, thus causing the public to believe these trials were more extraordinary than others.[11]

The Justices also addressed the problems that aural and visual coverage of trial witnesses could cause. Justice Clark wrote,

> The impact upon a witness of the knowledge that he is being viewed by a vast audience is simply incalculable. Some may be demoralized and frightened, some cocky and given to overstatement; memories may falter, as with anyone speaking publicly,

> and accuracy of statement may be severely undermined. Embarrassment may impede the search for the truth, as may a natural tendency toward overdramatization. Furthermore, inquisitive strangers and "cranks" might approach witnesses on the street with jibes, advice or demands for explanation of testimony.[12]

Justice Clark commented that witnesses could return home to see or hear themselves or other witnesses on television or on the radio even though a judge may have instructed them to avoid the media. This exposure could cause the witness to reshape their own testimony when called to testify.[13]

Justice Warren, in his concurring remarks, refuted the argument that televised trials could educate the public. Warren said that an attempt to use a trial as an educational tool would draw attention away from the real purpose of the trial process and damage the court system's integrity.[14]

The 1970s did not see conflicts between the courts and audio/visual media coverage since the vast majority of courtrooms were not open to these extended forms of media, even for educational purposes. However, the media were still having to defend their first amendment rights; but the conflict turned to free press versus right to privacy.

In 1972, the father of a deceased rape victim brought charges against Cox Broadcasting Corporation for invasion of privacy. Mr. Cohn alleged that his privacy had been invaded when the broadcast company defied a Georgia

statute, by revealing the identity of the victim during television coverage of the accused rapists.[15] The Supreme Court found in favor of the media entity, stating that the Georgia statute making it a misdemeanor to publish or broadcast the name or identity of a rape victim violated the first and fourteenth amendments.[16]

The Court also announced that the interest of privacy fades when the obtained information is from a public record. Justice White's opinion for the Court stated that privacy rights do exist:

> There is a zone of privacy surrounding every individual, a zone within which the State may protect him from intrusion by the press, with all its attendant publicity. Indeed, the central thesis of the root article by Warren and Brandeis . . . . was that the press was overstepping its prerogatives by publishing essentially private information and that there should be a remedy for the alleged abuses.[17]

However, the Court added, since the state placed the information on official court records, the public interest, not the individual right of privacy, was to be served.[18] Thus, it was concluded that there was no liability since the defendant merely further publicized information that was already public.

The Court observed that not all individuals have the opportunity to witness first-hand the workings of the government; citizens must rely on the press to address the

governmental activities. In particular, the Court said a "function of the press serves to guarantee the fairness of trials and to bring to bear the beneficial effects of public scrutiny upon the administration of justice.[19] The Court said that if privacy interests in judicial proceedings are to be protected it is up to the states to devise a method which avoids public documentation or other exposure of private information.[20] The Court commented that reliance must also be placed on the judgement of those who decide what to broadcast or print.[21]

In 1980, the question concerning the right of the press and public to attend criminal trials was brought before the Supreme Court (Richmond Newspapers v. Virginia, 448 U.S. 555 (1980). After the fourth trial of a murder defendant began (the first was reversed on appeal, the following two retrials resulted in mistrials) the defense council requested that the court proceedings be closed to the public to avoid inappropriate discussion of information presented during the trial.[22] A motion was granted to exclude the press and public.

Chief Justice Burger stated, in the Court's opinion, the first amendment, as well as the fourteenth amendment, prohibits the government from denying freedom of the press and the right of people to peaceably assemble.[23] The Court

referred to Gannett Co. v. DePasquale, 443 U.S. 368 (1979) when commenting that the sixth amendment guaranteed the accused a public trial, not a private trial even if desired by the defendant.[24] However, the Court cautioned that the first amendment right allowing the press and public to attend civil and criminal trials was not absolute. Justice Stewart said,

> Just as a legislature may impose reasonable time, place and manner restrictions upon the exercise of First Amendment freedoms, so may a trial judge impose reasonable limitations upon the unrestricted occupation of a courtroom by representatives of the press and members of the public.[25]

During the 1970s attitudes changed toward aural and visual coverage of trial proceedings. By the end of 1979, almost half of the states opened their courts to cameras (still and/or television) and audio equipment.[26] This change occurred because the media had proved to be responsible, telecasting equipment improved, and closed-circuit cameras used for educational purposes proved to be worthwhile. Each state devised their own set of flexible guidelines to be followed by the press. Typical guidelines included: the trial judge had final authority in determining whether or not the aural and visual media would have access to a trial; if witnesses or the defendant objected to being photographed or recorded the request would

be honored by the media; and the number and position of necessary media equipment would be limited.[27]

Prior to 1980, the Supreme Court had based cases involving aural and visual media on how the press as people affected court proceedings. However, in 1981, the question of whether or not the physical presence of aural and visual media denied a person a fair trial reached the Court. Chandler v. Florida, 449 U.S. 560 (1981) was the landmark case that determined if states could provide for radio, television, and still photographic coverage of trial proceedings.

In 1977, Florida began a one year experiment allowing audio and video coverage of courtroom proceedings. At the end of the year the Florida Supreme Court conducted a survey of attorneys, witnesses, jurors, and court personnel on their perceptions of the audio and visual coverage. The court concluded from the survey that it was important for citizens to see the court system in progress if the public were to accept and understand court decisions.[28] Canon 3A(7) of the Florida Code of Judicial Conduct was rewritten to permit aural and visual media coverage of judicial proceedings. It was the presiding judge's responsibility to enforce guidelines that would assure the accused the fundamental right of a fair trial.

The defendants in Chandler v. Florida were two Florida police-officers who were arrested for burglary. The trial gained a great deal of media attention because law enforcers had committed a crime. The presiding judge permitted the court proceedings to be covered by the television media and newspaper photographers.

Relying on Estes v. Texas, the defendants appealed their conviction, arguing that televised criminal trials were a denial of due process. However, Chief Justice Burger and the Supreme Court said Estes did not announce a constitutional rule that all photographic or broadcast coverage of criminal trials was a denial of due process.[29] Burger went on to say that instances where a jury is impaired in making an impartial decision of guilt or innocence of a defendant could not justify a constitutional ban on broadcast coverage:

> It [Estes v. Texas] does not stand as an absolute ban on state experimentation with an evolving technology, which, in terms of mass communication, was in its relative infancy in 1964, and is, even now, in a state of continuing change.[30]

The Supreme Court did reflect on potential consequences of aural and visual coverage of trial proceedings. The Court emphasized that public attention is aroused not only by the nature of the crime, but also by the manner in which the event is reported:

> Selection of which trials, or parts of trials to broadcast will inevitably be made not by judges but by the media, and will be governed by such factors as the nature of the crime and the status and position of the accused -- or of the victim; the effect may be to titillate rather than to educate and inform.[31]

The Chandler decision was a victory for the media in that it determined aural and visual coverage were allowed so long as the state approved. However, Chandler did not announce absolute access to all courts by all media-types. Access is determined first by each state and then, if allowed, by the judge of each individual trial. This provision was reemphasized in Combined Communications Corp. v. Finesilver, 672 F.2d 818 (1982). Television station KBTV sought writ of mandamus[32] requiring a federal judge to allow television broadcast coverage of proceedings in a federal courthouse. KBTV argued that their ability to report the news as outlined in the first amendment had been injured.

The court ruled that KBTV had not been injured because no interest protected by the Constitution or a statute was violated. Reference was made to both Estes and Sheppard v. Maxwell, 384 U.S. 333, (1966), stating that a reporter's constitutional rights are no greater in a courtroom than the public's, and the courtroom premises are subject to the control of the court.[33] It was stressed that the first amendment did not guarantee a constitutional right

to televise in a courtroom, and restrictions may be placed on the media to protect the proper administration of justice.[34] The reporter was not denied access; the news reporter was still free to attend the proceedings, take notes, and report the information obtained.

In 1982, a case involving the right of free press and right of privacy went before the Supreme Court; Globe Newspaper Co. v. Superior Court, etc., 457 U.S. 596 (1982) concerned Section 16A of Chapter 278 of the Massachusetts General Law which required trial judges to exclude the press and general public from court proceedings during testimony of minor sex victims.[35] The Massachusetts provision was designed to encourage young sexual abuse victims to report the crime; "once they have come forward, the statute is designed to preserve their ability to testify by protecting them from undue psychological harm at trial."[36]

The Court admitted that there have been times when portions of trials have been closed to the public when victims of sexual assaults were involved; however, the 'unbroken tradition' is to have open criminal trials.[37] Justice Brennan wrote,

> the right of access to criminal trials places a particularly significant role in the functioning of the judicial process and the government as a whole. Public scrutiny of a criminal trial enhances the quality and safeguards the integrity of the factfinding process, with benefits to both the defendant and to society as a whole.[38]

In order to close a trial the state's justification must be a "weighty one . . . necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest."[39]

The Court agreed that the psychological and physical well-being of a minor is important, but this could not justify the mandatory closure rule. It was suggested that trial courts determine on a case-by-case basis whether a court proceeding should be closed to protect a minor.[40] Suggested factors to be weighed when deciding to open or close a trial were the minor's age, psychological maturity and understanding, the nature of the crime, the desires of the victim, and the interests of the parents and relatives.[41] Justice Brennan and the Court concluded:

> Surely it cannot be suggested that minor victims of sex crimes are the only crime victims who, because of publicity attendant to criminal trials, are reluctant to come forward and testify. The State's argument based on this interest therefore proves too much, and runs contrary to the very foundation of the right of access recognized in Richmond Newspapers: namely, "that a presumption of openness inheres in the very nature of a criminal trial and our system of justice.[42]

A case very similar to Cox Broadcasting was brought before a Florida court of appeals in 1983. However, in Coe v. Sarasota-Bradenton Florida Television, 436 So.2d 328 (1985) the victim herself was suing for damages after her

name and trial testimony had been televised, even though she had asked the prosecuting attorney that broadcast coverage not be permitted. The rape victim sued the television station for intensional invasion of privacy and infliction of emotional distress, charging that a Florida statute had been violated by broadcasting the victim's identity.[43]

Before the trial began the rape victim was assured by the prosecutor that her name and face would not be displayed or photographed. However, during the proceedings a television news team videotaped the trial. Later that evening the station ran a video of the trial, which featured the victims testimony, while the newscaster identified the victim by name.[44]

The appellee relied on Cox Broadcasting Corp. v. Cohn when asking that the case be dismissed.[45] The television station argued that the Florida statute did not apply in this case because, as ruled in Cox Broadcasting Corp., the identity of the victim was obtained through a public trial, where the court did not supress the victim's name from the court records. The court ruled in the station's favor, and dismissed the case. An appeals court affirmed the trial courts decision, citing three reasons:[46] there was no indication that the television station obtained the information in a improper manner; though the state made a promise

to the rape victim, measures were never taken to prevent the broadcasting of her name or picture; the Florida statute, which the victim claimed the station violated, was meant to protect citizens when the information had not yet been made public.

Although the appellate court affirmed the lower courts decision, favoring the media, it did so reluctantly:

> We deplore the lack of sensitivity to the rights of others that is sometimes displayed by such unfettered exercise of First Amendment rights . . . those rights should not be arbitrarily exercised when unnecessary and detrimental to rights of others.[47]

The court went on to say that the television station showed little concern for the rights of the victim:

> Prior to this trial, appellant was simply an ordinary citizen; she lacked fame and promience, the nature of which might make the publication of her name and visual image newsworthy, but she had the unhappy circumstance of becoming a victim of a crime. The publication added little or nothing to the sordid and unhappy story; yet that brief little-or-nothing addition may well affect appellant's well-being for years to come.[48]

However, the court also announced its displeasure with the state:

> We cannot resist the opportunity to chastise the state somewhat for not having sought a protective order regarding cameras in the courtroom or other

> proper steps to support its alleged assurance to appellant that her name and photograph would not be published.[49]

The court concluded that because the decision in Cox Broadcasting prohibits the balancing of privacy right and first amendment rights it remains up to the publisher or news director to determine what is newsworthy. "Therefore, we believe that in the future it would behoove the media to engage in their own balancing test with an eye to avoiding harm such as may have occurred here."[50]

ENDNOTES

1. Trial by News Media is the process by which the news media in reporting an investigation of a person on trial leads its audience to act as judge and jury in determining guilt, liability or innocence before the person is tried in a judicial forum. See Black's Law Dictionary (Abridged 5th ed. 1983).

2. Don R. Pember, Mass Media Law (USA: Wm. Brown Company Publishers, 1981), 343 (citing A.B.A. Rep 1135 (1937)). In 1952 Canon 35 was amended to include television also. Canon 35 was reaffirmed in 1972 when the Code of Judicial Ethics replaced the Canons of Judicial Ethics.

3. Rideau v. Louisiana, 373 U.S. 723, 727 (1963).

4. Id; Yale Kamisar, William Lockhard, and Jesse H. Choper, Constitutional Rights and Liberties: Cases and Materials, 2nd. ed., (St. Paul, Minn: West Publishing Co., 1967), 311; Kenneth S. Dovel, ed., Mass Media and The Supreme Court (New York: Hasting House Publications, 1982), 419.

5. Rideau, 373 U.S. at 726-727; Kamisar, Lockhard, and Choper, supra note 4 at 311; Dovel, supra note 4 at 419.

6. Estes v. Texas, 381 U.S. 532, 536 (1965); Kamisar, Lockhard, and Choper, supra note 4 at 314.

7. Estes, 381 U.S. at 535.

8. Id. at 536.

9. Id. at 540.

10. Id. at 577-578 (stating that "The petitioner was subjected to characterization and minute scrutiny to such an extent that at one point the photographers were found attempting to picture the page of the paper from which he was reading while sitting at the council table").

11. Id. at 571 (stating that "The alleged perpetrator of the sensational murder, the fallen idol, or some other person, who like the petitioner, has attracted the public interest would find his trial turned into a vehicle for television. Yet these are the very persons who encounter the greatest difficulty in securing an impartial trial, even without the presence of television").

12. Id. at 547; Kamisar, Lockhard, and Choper, supra note 4 at 315-316.

13. Estes, 381 U.S. at 547.

14. Id. at 575; Kamisar, Lockhard, and Choper, supra note 4 at 317.

15. Cox Broadcasting v. Cohn, 420 U.S. 469 (1975); 3 L.W. Levy ed., Encyclopedia of The American Constitution (New York: MacMillian Publishing Co., 1986), 1457.

16. Cox Broadcasting, 420 U.S. at 476.

17. Id. at 487.

18. Id. at 492.

19. Id.

20. Id. at 496.

21. Id.

22. Richmond Newspapers v. Virginia, 448 U.S. 555, 559 (1980).

23. Id.

24. Id. at 580.

25. Id. at 600.

26. Pember, supra note 2 at 324.

27. Id.

28. Chandler v. Florida, 449 U.S. 563, 565 (1981).

29. Id. at 570; Dovel, supra note 4 at 429.

30. Chandler, 449 U.S. at 573-574.

31. Id. at 580.

32. Writ of mandamus is a command by order of a court. See Words and Phrases "Mandamus".

33. Combined Communications Corp. v. Finesilver, 672 F.2d 818, 821 (1982).

34. Id.

35. Globe NewsPaper Co. v. Superior Court, etc., 457 U.S. 596, 600 (1982).

36. Id.

37. Id. at 601.

38. Id. at 606.

39. Id. at 606-607.

40. Id. at 600.

41. Id.

42. Id. at 610.

43. Doe v. Sarasota -- Bradenton Florida Television, 436 So.2d 328 (Fla.App.2 Dist. 1983).

44. Id. at 329.

45. Id.

46. Id. at 330.

47. Id.

48. Id. at 331.

49. Id.

50. Id. at 332.

CHAPTER 5

EXTENDED MEDIA IN THE COURTROOM: OPINIONS AND RESEARCH

When debating extended media coverage of court proceedings and the trial participants, advocates offer a variety of arguments in support of courtrooms being open. Constitutional guarantees, educational benefits, and research studies are presented as reasons for allowing aural and/or visual coverage of trial witnesses. Those who oppose aural and visual coverage suggest similar reasons for not allowing the extended media in.

THE MEDIA

As expected, journalists feel newspapers and broadcast stations should be allowed to publish what they choose. Timothy Dyk, legal counsel for CBS, Inc., said the first amendment guarantees the right to publish, allowing the press the right to "publish whatever you can get your hands on. . . . "[1]. The fair and public trial clause of the sixth amendment is another constitutionally based argument used by the press. James Ragsdale, editor of The Standard-Times urges that all court proceedings be open to extended media coverage:

> A fair trial means a public, open trial. Once we begin to place envelopes around certain cases -- develop certain protections -- I think we are running great risks of heading down the road toward Star Chamber proceedings.[2]

The media often refers to itself as a kind of watchdog for the public. The first and sixth amendment clauses allow the press this responsibility. Publicity of trial proceedings, they suggest, insures that the government will act in the best interest of the citizens. One newspaper editor said,

> Publicity provides an umbrella of protection against government excesses or, much worse in a criminal case, government non-protection for individuals charged with a crime. Publicity also engages the powerful forces of the public's perceptions about criminal behavior and molds and alters those perceptions. . . . Intensive news media coverage does <u>not</u> make the judiciary's job impossible. It makes it more difficult, perhaps, but difficulty is the key to our checks and balances system of government.[3]

A number of open courtroom advocates in the media industries do not see privacy interests of trial witnesses to be as important as the public's right to know. Ernie Schultz, of the Radio-Television News Directors Association, said the conflicting interests are not whether the news media's right to cover trials outweighs privacy rights of trial participants, but whether or not trials will indeed be truly public:

> The news media are there in the place of the public, and the public relies upon the media to find out what happens in our courtrooms. . . . We in the news media assume that when individuals become involved in a trial, they surrender some of their privacy as a private citizen. They are now involved in a state ordered and state controlled process. That does not mean they need to be harassed or abused. It does mean that their role in the trial must be fully reported so that the public has full knowledge of what transpires at the trial.[4]

Few also find valid the adversaries' argument that witnesses should have fourth amendment privacy protection. Charles McCorkle Hauser, vice president and executive editor of the Providence Journal Bulletin remarked:

> there's no way the fourth amendment can protect the privacy of someone who is thrust into the news. In the case of a rape victim, that privacy is provided by the decision of a newspaper and not through any "rights" of the individual. That may be old-fashioned male chauvinism or evolve from a pedestal syndrome or something else. But it also raises some serious questions about why the accused should have his name published and the accuser be given anonymity.[5]

Journalists admit that publicity may adversely effect witnesses. However, an individual's privacy is generally considered secondary to first and sixth amendment concerns.[6] The opinions of the media tend to suggest that this "invasion" of privacy is

> a very small price to pay for the trust and confidence which we now have in our

> judicial system, largely because the public has access to the judicial process and therefore is reassured as to its integrity.[7]

Some believe no privacy interests should be considered for witnesses. One news director said,

> If there is anything chilling regarding privacy, it probably takes place when that private person thinks of having to go on the stand and to swear that he or she will tell the truth.[8]

The assistant national editor for The Detroit News adds, "most people with a mania for secrecy strike me as rogues and scoundrels deserving all the attention we can give them.[9] However, other newspersons do feel that in some instances privacy interests of witnesses should be considered. Thomas Griesdorn, general manager of WXYZ-TV7 in Detroit, is concerned about over-sensationalism and individual right to privacy. Griesdorn said,

> The first order of business in the court is justice under the law, and witnesses are an essential and often fragile part of that effort. Viewers who miss a bit of testimony can read about it -- some responsibility for education in this matter, after all, falls on the citizen.[10]

ABC Law Correspondent, Tim O'Brien reasoned,

> It is said that everything secret degenerates, even the administration of justice -- that sunlight is the best of all disinfectants. But increasingly people are asking whether justice may be suffering from excessive sunlight and warning that too much sunlight might jeopardize the

> delicate balance between free press and fair trial.[11]

Another frequently cited argument by the press for allowing complete visual and aural coverage of trial proceedings is the educational value. A petition submitted to the Judicial Conference of the United States by a number of media organizations stated that a majority of citizens are ignorant about the judicial system's functions. The petition revealed that seventy-seven percent of the public are not at all familiar with any federal court, let alone the Supreme Court, and twenty-five percent of the people believe court decisions are politically oriented.[12] The petitioners said,

> The public is unable to adequately assess the strengths and weaknesses of the present system and is unable to participate meaningfully in the continuing debate about substantive legal issues and judicial administration. Since most people cannot gain the needed understanding by attending court proceedings, they must rely on the press -- both print and electronic. . . . Greater public awareness of the courts could lead to a better understanding of their workings and to a more informed public debate on substantive law issues and judicial administration.

It is believed that if people understand the workings of the courts then the judicial system, in turn, will have to be more accountable for its actions. Ernie Schultz said,

> If trials are fully covered, the results will achieve a higher level of justice and the public for whom the courts operate will have a greater degree of confidence in those courts.[13]

John Tune, editor of the Traverse City Record Eagle, suggested that televised proceedings will allow the public to see that the image of courts portrayed on television programs is unrealistic:

> Judges and the court system have a bad image, and I think it would help the court system's image if people could see how it works. Most people have never set foot in a courtroom and have only seen it on TV.[14]

However, George Gerbner, Dean of the Annenberg School of Communications, is not as certain about the assumed benefits of televised proceedings. When discussing how television stations will cover trials, Gerbner said,

> The problem is that opaque reality of the courtrooms is less illuminating of the judicial process than is translucent fiction. One must go behind the scenes to see how things really work. Surface appearances are more likely to conceal than to reveal how the judicial system operates.[15]

Gerbner also does not believe a televised trial will give a more accurate portrayal of the judicial system than a fictional televised court case.

> Selected courtrooms will become program originating locations, transporting the sights and sounds of real courtrooms into millions of homes conditioned to weekly rituals of courtroom and crime drama.

> Trials will be picked and edited to fit that dramatic ritual. . . . The integrity and independence of judicial proceedings serve to protect the accused from both arbitrary power and public prejudice. The purpose of open trials is to help assure observance of those protections, not to entertain or even to educate.[16]

Often it is not the legal constraints which force a reporter to act in a certain way, but rather it is the ethical behavior that influences how an event will be handled by the media. In 1924, Nelson Crawford was the first to suggest that objectivity in news reporting should be a journalism ethic, and in 1954, Louis Lyons, curator of the Nieman Fellowship Program at Harvard, said objectivity as an ethic was the "ultimate discipline of journalism."[17] However, it was not until 1973 that a Code of Ethics was adopted by a professional journalism society; though only a voluntary code and directed primarily to its members, the Society of Professional Journalists, Sigma Delta Chi (SDX), devised a code of ethics that was "intended to preserve the bond of mutual trust and respect between American journalists and the American people."[18]

SDX's Code of Ethics states that it is a journalist's responsibility to inform the masses:

> The purpose of distributing news and enlightened opinion is to serve the general welfare. Journalists who use their

> professional status as representatives of the public for selfish or other unworthy motives violate a high trust.[19]

The Code proclaims that journalists have an ethical responsibility to serve the public interest "despite obstacles," and assure that "the public's business is conducted in public and that public records are open to public inspection."[20] Appropriate fair play when reporting news is outlined in the Code:[21]

1. The news media should not communicate unofficial charges affecting reputation or moral character without giving the accused a chance to reply.
2. The news media must guard against invading a person's right to privacy.
3. The media should not pander to morbid curiosity about details of vice and crime.

Reporters and editors are also cautioned that headlines should reflect the contents of an article accurately, and photographs and telecasts "give an accurate picture of an event and not highlight a minor incident out of context."[22]

Although the Code (and others enacted by various media organizations) was meant to assist in serving the public interest while enhancing the image of the press, many journalists react negatively to codes of ethics. One tongue-in-cheek statement suggests that ethics in journalism

changes the original intent of news reporting. Theodore L. Glasser, of the University of Minnesota, said,

> Objective reporting has transformed journalism into something more technical than intellectual; it has turned the art of story-telling into the technique of report writing.[23]

John Merrill feels that ethics can actually hurt objective reporting. Though most journalists believe in the public's right to know, according to Merrill, most do not tell the public all the information gathered because of ethical considerations.

> Take the case of the reporter who decided . . . not to print the name of a rape victim. The report is flawed. It is incomplete. Verified and very pertinent information is purposely omitted from the story. It is a partial report, even in a journalistic sense.[24]

Charles McCorkle Hauser feels that constitutional rights, not ethics, should be the primary concern. The executive editor said,

> Local television may hype a story while the newspaper plays it down. Each medium has a first amendment right to be responsible or irresponsible as it wishes.[25]

However, some journalists do consider ethics in their news-making decisions. John Tune said,

> it' just like a judge -- you've got to be able to balance, decide what's right and

> wrong, and weigh all the factors, and make a responsible decision. You've got to have a conscious.[26]

Jeff Greenfield, political and media analyst for the ABC Network, stressed that although it is the job of the news industry to deliver news, good and bad, reporters and news directors should still consider the emotional impact a story might have.

> There is no way that a news organization can refuse to air material just because it unsettles the subject. But there is every reason, even in the rushed hothouse atmosphere of a nightly broadcast, for us to pause for a moment . . . to consider what the consequences may be . . . to act, in other words, as a morally mature member of society and to act out of reason, and not out of reflex.[27]

Thomas Griesdorn concluded,

> We in the electronic media will now be charged with proving our ability to truly represent our viewers responsibly with microphone and camera. We are in charge of our own destiny.[28]

THE JUDICIAL SYSTEM

It is apparent by the number of states that have opened their courtrooms to extended media coverage since the Chandler decision that even the judicial profession, though cautious, sees a value in televising trials. Since the 1981 landmark case forty-five states have approved some form of

visual and/or aural coverage of court proceedings.[29]

Michigan is one of the most recent states that has decided to open courtrooms to the extended media.[30] Just as many of the legal professionals from other states have commented in the past, Michigan judges and lawyers believe camera coverage of trials can be beneficial if precautions and rules are adhered to.[31] Judge Michael G. Harrison, an initiator of opening Michigan courts, said he does not see a distinction in the abilities of covering court proceedings by the print or aural/visual media.[32] The executive director of the Michigan Prosecuting Attorney's Association, James Shonkwiler, has been involved in trials that have been videotaped for educational purposes. In his opinion, most people quickly forget cameras are present in the courtroom; "it's not the camera," Shonkwiler said, "it's what you do with the picture" that should be the concern.[33] However, Raymond Buffmyer, a criminal lawyer who at one time was a prosecuting attorney for Eaton County, opposes extended media coverage of courts:

> If the general public wants to see a trial, the courtrooms are open to anyone who wants to observe. All they have to do is go and watch the proceedings on the date and place scheduled. . . . The freedom of the press in my opinion is not compromised by attempts to preserve the dignity of the courtroom setting.[34]

The views held by Buffmyer are voiced by many who are cautious about allowing aural and visual coverage of trials, particularly of witnesses. Senator Strom Thurmond, former Chairman of the Senate Committee on the Judiciary, said "we must not let our haste to preserve the rights of the criminal swerve us from our duty to protect the rights of victims as well."[35] A study conducted by the U.S. Department of Justice's Office of Justice Programs and Office for Victims of Crime found that fear of intimidation and invasion of privacy are the main reasons that some victims and witnesses refuse to cooperate in judicial proceedings.[36] The district attorney during the infamous New Bedford rape case[37] contended,

> We cannot get justice without having witnesses in the courtroom, and if our system is discouraging them from coming, if it is driving them away, then something is wrong with our system. . . . It is time to redirect the debate to focus on the impact of the news coverage itself.[38]

The opinions of individuals directly involved in the judicial system differ from those of journalists, with regards to the public's right to know. Although many attorneys and judges agree that the extended media has a right to cover (most) trials, including (most) witnesses, they do not agree with the media's philosophy that the public has a <u>right</u> to know <u>all</u> that transpires during court

proceedings.[39]

Robert Weiss, the Genesee County (Michigan) Prosecuting Attorney, is one who feels the media and public has a right to receive all information:

> I believe that the balance between personal privacy rights of victims at trials and the right of a free press should be (and is) tipped in favor of media access. This is so because the integrity of the criminal justice system is of overriding importance.[40]

However, other Michigan attorneys feel there are exceptions to the public's right to know. Michael Franck, executive director of the Michigan Bar Association, feels that though the public has a right to know ultimately what goes on in courtrooms, the right cannot be translated into the right to know at the exact moment what is happening in a courtroom.[41] James Shonkwiler believes the rights that should be considered are those of the litigants; Shonkwiler also said,

> I don't think the public has a right to follow the details of a litigation. They have a right to know how matters come out, which are publically charged [if a criminal matter].[42]

According to Shonkwiler, the public has a right to know such things as the charges being assessed by the prosecutor, under what conditions the charges are being made, the factual situations and policies which apply to the decision to charge or not charge a person, and what happens to the

charges in the judicial system and sentences passed.[43]

A few legal professionals feel extended media coverage of trials will only increase the amount and type of information made available to the public. Michigan attorney Raymond Buffmyer reasoned,

> Turning trials into media events does not enhance our judicial system. Must the media dominate and orchestrate every aspect of our lives in the name of "the public's right to know". . . . [44]

Ronald Pina said,

> I do not dispute the right of the press to swarm through a victim's neighborhood, devouring bits of information combed haphazardly from sources good and bad. But is this patchwork of detail regarding the crime victims lifestyle really necessary. . . . Is there not some point at which the providing of information stops and the pandering begins?[45]

Criminal defense attorney Herald Price Fahringer remarked that journalists have always been permitted to report the minute details and events of a trial, and excluding extended media coverage of trials would not infringe upon the public's right to know.[46]

Some opponents of audio and visual coverage of witnesses feel that the right to privacy should be a basis for excluding the extended media from trial proceedings. However, it has been generally held among legal professionals that privacy rights do not exist when concerning a

public matter.[47] Robert Weiss said the fourth amendment guarantees cannot be expanded to cover witnesses who object to extended media coverage:

> The questioning of a witness is not a search or seizure under the commonly accepted definitions of those words. Even if it were, such a "search" would not be "unreasonable". To the contrary, the public has a right to every man's (or woman's) evidence.[48]

Ronald Pina believes that there is a lack of balance between the right to know and the right to privacy; "the first amendment speaks in terms of absolute, at times," Pina said, "if you listen to the press. . . . "[49]

Because witnesses have very few rights when a part of a trial there is little that can be done if a witness feels he or she has been exploited by extended media coverage. Judge Harrison said if the extended media is granted permission to cover a trial then there can be no issue regarding emotional trauma as a result of audio and/or visual coverage. Harrison added that it would be difficult to determine if trauma was indeed the result of extended media coverage, or the result of testifying in front of a jury, going through cross examination, or having to tell the court (and public) how the witness became a part of the trial proceedings.[50] Judge Carolyn Stell commented that it must be remembered that in a criminal case it is the <u>people</u>

of the state, not the victim, who initiates the lawsuit, and as such the victim's rights as a witness are limited "because it has to be society's interests in enforcing the criminal law. If you let the victim alone determine the interest it may well be to the detriment of the society."[51]

It would also be difficult for an individual to sue for invasion of privacy through misappropriation. According to James Shonkwiler, once the decision has been made to permit extended media coverage there is no limit to the uses of the material; however, if the state feels that the extended media is using courtroom testimony simply to sensationalize and increase their audience then extended media coverage could be reduced or eliminated.[52] Donald Martin feels that it may be possible to sue on the grounds of exploitation of the testimony if the information is repeatedly aired so that it becomes a detriment to the witness.[53]

Individuals in the legal profession seem less likely to believe that the extended media want to cover trials solely for the public's interest. Defense attorney Gerry Spence said,

> I think the issue is money. I think the issue is ultimately what is entertainment, what trial would be a good commodity that we could sell to the public, and that what is sold to the public isn't, as the good judge says, the sort of solemn, uninteresting arguments before appellate courts.[54]

Herald Fahringer said that in order for television news programs to survive rating wars the broadcasters attempt to capture the largest audience possible by concentrating on the sensational; "most TV journalists lust for the spectacular," Fahringer said, "They don't want 'talking heads' but search for the melodramatic."[55]

Law professionals believe that aural and visual coverage of trials could be educational if the material is used responsibly. Since most people do not attend trials, extended media coverage would enable the public to learn how the court system works, as opposed to viewing only the television programs which often portray the justice system incorrectly.[56] Videotaped and/or recorded trials could also serve an archival function, allowing future generations to "witness" important state and federal cases.[57] In addition, broadcasting witness testimony could educate people about crimes, such as rape and date rape, and how witnesses/victims of these and similar cases are often treated on the witness stand by judges and attorneys.[58]

However, attorneys and judges warn that though the media may argue all portions of a trial has educational value, the segments must be edited and aired objectively in order for the public to fully understand the workings of the judicial system. Michael Franck believes television news

directors must allow enough time to show portions from both sides of a case in order not to distort and imbalance the trial proceeding.[58]

Ronald Pina argues that reporters who cover trials aurally and/or visually need to be experienced in courtroom procedures themselves before they can be expected to help educate the public through news reports. Pina says the print media usually sends court reporters who are experienced with the court system; however,

> the electronic media sends in new people who do not know anything about the system. They are coming in, they are photographing a situation, they do not know the rules of evidence, they do not know what can and cannot be used, what is a voir dire hearing, out of the sight of the jury, which is supposed to be considered, and yet they run that.[60]

According to James Shonkwiler, the arguments in favor of educational benefits is probably not as true as the public simply being curious about people "being put through periods of agony in their lives and trying to see how they hold up or don't hold up."[61]

> Nobody is going to turn on their television to watch a televised trial because they feel it makes them a better citizen and to find out how the court really works. But, they're going to turn it on because they heard about a particular trial in progress and it has juicy aspects to it that are stimulating or interesting to them.[62]

VICTIM/WITNESS ADVOCATES

Advocacy groups that work for victim and witness rights are not as anxious to see extended media coverage of court proceedings. The groups are particularly concerned about state courts that allow audio and/or visual coverage of sexual assault victims. Few positive results are thought to come about by photographing or broadcasting rape trials.

Lynn Marks, executive director of Women Organized Against Rape, in Philadelphia, feels the only good extended coverage of a sexual assault trial can do is to show the public that rape is a societal problem, not isolated cases between individuals.

> That is important because for years rape and the sexual abuse of children were not talked about publicly and they did not receive media attention. Thus, victims felt very isolated and alone. So even though publicity can be difficult for individual victims, in the long run, I think it can be beneficial.[63]

However, Marks warns that extended media coverage of witnesses in rape cases can only be beneficial if the media acts in a responsible manner; coverage should not sensationalize the case, resulting in the public getting "vicarious thrills", or polarize the issue so that only one side is presented.[64]

A primary concern of victim/witness advocates is the "invasion of privacy" that witnesses experience when aural and visual coverage of trials is permitted. The Chandler decision focused on the guarantee of a fair trial for the defendant. The right to privacy for defendants and witnesses was not considered. Keith Boone, an assistant professor in the Public Service Studies Program at Oberlin College, suggests that the desire for privacy is not only being let alone, or separating one's self from society.

> It is not merely freedom from something or someone. Rather, privacy is the legitimate assertion of ownership and control over personal and spiritual goods -- over what the ancients often called the "soul".[65]

Many believe that wanting to remain private does not mean that a witness is trying to hide something, only that some witnesses who have already been traumatized in some way wish to keep intimate facts to themselves.[66] One rape victim commented,

> Victims need protection, not exploitation. The victim has been manipulated, invaded and controlled by a criminal. The media does not have the right to assault the victim again. As surely as an assailant is held responsible for this invasion of a woman's life, the press must also be responsible.[67]

Boone argues that extended coverage of court proceedings may damage the reputation, dignity, and integrity of some

witnesses:

> they are coerced into surrendering to the gaze of the public at large what is properly their "own". As a result, they lose ownership and control over what may be extremely personal, sacrosanct and not for public consumption.[68]

Victim/witness advocates also do not see aural and visual trial coverage being as educational to the public as journalists and judicial professionals believe. Advocates argue that a thirty or sixty second news report which only publicizes particulars about a rape case serves only to satisfy the public's curiosity, not to dispel some of the myths surrounding sexual offense cases.[69] Jennifer Barr contends that coverage of trials will not adequately educate the public about the seriousness of violent crimes or the workings of the judicial system, because the public cannot be exposed to all activities that go on during trials, and because the media is so selective in choosing which trials to cover:

> The testimony in the courtroom is only the tip of the iceberg of what she has endured. The camera doesn't catch the victim having to wait in a waiting room with the witness for the defense or when the victim is verbally abused by the defendant's mother when they meet in the hallway . . . . Rapes that get heavy media coverage are the sensational crimes, the most violent, the most dramatic. This glorification of crime does not educate the public about the extent of the crime, the effect of the

> crime. It does not deal with the issue of rape. The grizzly, titillating details, the details that tend to identify and further injure the victim, do not serve the public good. The portrait these selected stories paint is a dangerously distorted one.[70]

Lynn Marks also cautions that if extended coverage is not done in a responsible manner the attempt to educate the public may work in a negative way. Marks said that publicity of certain trials can encourage imitation acts: after viewing portions of the New Bedford rape case a boy raped a young girl on a pool table; and in 1978, after NBC televised a movie about a girl sexually assaulted by a group of boys with a mop handle the act was imitated in San Francisco, where a nine year old girl was the victim.[71]

Finally, supporters of victim/witness rights fear that aural and/or visual coverage of trials will deter people from reporting crimes, or from cooperating in the judicial process.[72] Victims of sexual assault worry not only that extended media coverage will publicize intimate details of the assault, but also that publicity may encourage the accused, or family and acquaintances of the accused, to threaten the victim again.[73] Victims also fear that people -- such as parents, neighbors, co-workers, and relatives -- who had not known about the assault will learn about it, and all of the intimate details, if extended

media is permitted to cover rape trials.[74]

According to Carolyn Stewart Dyer and Nancy Hauserman, the greatest fear among sexual assault victims when microphones are allowed in courtrooms is that the name of the victim will be broadcast; however, there seems to be more concern from victims about having cameras allowed in courtrooms. In today's society a television broadcast (audio and video coverage) will reach a much larger audience and identify the witness more precisely than will just an audio broadcast, newspaper publication, or traditional news report (no camera coverage) of the trial proceedings.[75] Jo Beaudry, a victim/witness service coordinator for the District Attorney's Office in Milwaukee County, said,

> I have . . . seen prosecutors struggling with the possibility of losing or dismissing serious criminal cases because an essential witness becomes uncooperative solely because of the publicity they received or because of their fear of publicity. The terrible cost to our citizens and our communities of cases lost as a result of victim/witness publicity cannot be calculated.[76]

RESEARCH

Considering the number of states that allow extended media coverage of court proceedings, few studies have been done to analyze its impact on trial participants or the

general public. The majority of research that has been done was conducted during the experimental phases of state court coverage, and a few were conducted in simulated courtrooms.[77] The research findings that scholars rely on when discussing extended coverage of trials are also becoming dated. For instance, Susanna Barber, in her book News Cameras in the Courtroom: A Free Press - Fair Trial Debate, relied on nineteen studies for discussion; of the nineteen studies, thirteen were conducted before 1980 (six of which were conducted over a one year period in Florida).[78] A comparative study of two similar trials in Indiana has also been done[79]; however, the research was done in 1977, in a state that does not allow extended media coverage of the courts, except for official court purposes.

Of the nineteen pieces of research literature analyzed by Susanna Barber, nine studies questioned witnesses directly about the affects of extended media being present in the courtroom during their testimony. Six of the studies also questioned jurors, five questioned attorneys, and eight questioned judges about the affects on witnesses. There were mixed feelings among the witnesses questioned about cameras and/or recorders being allowed to cover trials. According to Barber, reactions ranged from completely unaffected to refusal to testify for fear of

personal safety.[80] Though three-fourths of the respondents said still cameras did not inhibit their testimony, and two-thirds replied the same about television cameras, forty percent said still camera coverage, and thirty-three percent said television coverage was not fair to witnesses.[81]

Attorneys who were a part of case studies indicated that camera coverage had no affect on witness testimony, while those who responded to surveys tended to be less positive about extended media coverage. Between forty and fifty percent of those who responded to surveys immediately following a trial said television and still cameras inhibited witness testimony and was unfair; mail survey responses showed that fifty percent thought television cameras had adverse affects, while sixty-six percent thought still cameras had no adverse affects on witnesses.[82] Barber found that judges overall responded favorably to extended media coverage of witnesses. Generally, judges found no hesitations or inhibitions from witnesses who testified; they also reported that witnesses tended to ignore the cameras.[83] Jurors responded that no noticeable distractions or changes in behavior occurred in witnesses who testified in the presence of audio and video recorders.[84]

During the state experiments, according to Barber, over two-thirds of the trials covered were in criminal court; however, some studies reported that proceedings such as sentencings, arraignments, zoning disputes, and an affirmative action case were also covered.[85] Few trials were broadcast in detail, and even less were broadcast from gavel to gavel. Most trials were reported by the broadcast industry in the traditional news manner -- a short snippit of video with a reporter doing a voice-over; the footage tended to focus on the defendant or the attorneys' opening and closing statements.[86] Judges and attorneys responded in the surveys that they do not believe this type of coverage is an accurate portrayal of the case, trial participants, or court system.[87]

> One of the most disturbing aspects of televised trials, particularly to attorneys and judges, is that broadcasters are generally interested in covering only notorious and sordid types of cases, such as murder, rape, bribery, and corruption. A major concern is that, by concentrating on these kinds of issues (in order to maintain high newscast ratings), the viewing public receives a distorted picture of what takes place in the nation's courtrooms on a daily basis. In reality, many proceedings are tedious civil and public interest disputes, domestic cases, summary judgments, and legal arguments in appeals courts.[88]

However, Barber said that the nineteen pieces of independent

research reached the similar conclusion that extended media coverage of judicial proceedings does not have a behavioral affect on trial participants in general:

> It appears that camera coverage of trials (even sensational criminal cases) does not necessarily influence the majority of trial participants to behave in ways that are noticeably different from behavior in nontelevised trials. This is not to say that many trial participants do not have mixed or negative attitudes toward camera coverage, only that the bulk of empirical research conducted to date shows little correlation between the presence of cameras at trials and perceived prejudicial behavior on the part of jurors, witnesses, judges, or attorneys.[89]

One of the studies that Barber analyzed was originally part of In re Petition of Post-Newsweek Stations, Florida, Inc., 370 So. 2d 764 (Fla. 1979). This survey is of great importance as it was referred to by the Supreme Court in the landmark Chandler v. Florida decision. The Florida Survey Results indicated that the "presence of the electronic media in the courtroom had little effect upon the respondents perception of the judiciary or the dignity of the proceedings."[90] Awareness of the extended media being present during trials by survey respondents averaged between "slightly" and "moderately"; all respondents indicated that they were made to feel "slightly" self-conscious by having television and still cameras present. Respondents also reported that the presence of cameras made them feel "only

slightly" nervous or more attentive.[91]

For witnesses specifically, the presence of cameras made them feel "just slightly" more responsible for their actions. Witnesses were "slightly" distracted by the extended media coverage, and fear of harm after appearing on a broadcast ranged from "not at all" to "slightly". Attorneys and court personal responded that extended media coverage made witnesses flamboyant "not at all" to "slightly". Attorneys and court personal also felt that witnesses were "slightly" inhibited by the presence of extended media.[92]

The second survey that was a part of the In re Petition of Post-Newsweek Stations, Florida, Inc. was conducted by the Florida Conference of Circuit Judges, and was administered only to judges. Two-thirds (96 of 146) of the respondents had some experience with extended media coverage of trial proceedings. Thirty-six of these judges responded positively to aural and visual coverage, twenty-nine responded negatively, and thirty-seven had neutral feelings.[93] Between ninety and ninety-five percent of the judges felt that camera coverage had not affected the performance of jurors, attorneys, or witnesses.[94] However, when summarizing the survey findings, Circuit Judge Arthur J. Franza said,

> From the whole, I think Courts do not object to the use of cameras in the courtroom now that they have had some experience. However, in certain areas, some judges have strong opinions. Paramount being . . . that confidential or undercover agents who are witnesses, victims of crimes, family especially children of the convicted, and juvenile proceedings not be photographed.[95]

In 1977, the opportunity arose to study the effects of extended media coverage of trial participants. Two men, who were accused of murdering a millionairess, were granted separate trials in separate courts. A judge, whose courtroom was equipped with videotape equipment for recording trials for court purposes, agreed to let the media patch into the court's system in order to record portions of the trial.[96] Analysis of the two trials included empirical research: the two men were accused of identical crimes; separate trials were granted; many of the same witnesses and testimony were presented in both cases; public interest was equal; and the same reporters covered the two trials. However, the research could not be controlled since the two trials had different defendants, counsel, and jurors. The data collected and analyzed consisted of: a telephone poll of public opinions within four days of each trial; a questionnaire completed by both juries; calculation of the total newshole devoted to the two trials by the two local

newspapers; the official court transcript and taped trial; an aircheck of the local news each night; a telephone interview with the jurors from the televised trial; and interviews with the presiding judges, prosecutors, counsel, television news editors, and newspaper city editors.[97]

When asked whether they learned more or less about the two trials then from news reports of trials in the past, forty-three percent of the public responded that they learned more when viewing the televised trial reports, while thirty-two percent of those who saw only reports of the nontelevised trial reported learning more than from news reports of past court proceedings; however, twenty-four percent who saw the televised court reports and twenty-two percent who only saw the traditional news reports responded that they learned about the same as from news coverage of trials in the past.[98] A majority of both the televised trial (sixty-two percent) and nontelevised (fifty-eight percent) opinion sample said that extended media coverage of trials would not deny the defendant a fair trial.[99]

Jurors of both the televised and nontelevised trials indicated that the activities of reporters distracted them to some extent. However, the jurors presiding during the televised trial found the reporters more distracting.[100] Only four of the total fourteen jurors recognized the names

of the newspaper reporters who covered the trials, but twelve of the jurors could identify at least one of the television reporters who covered the trials.[101] Dalton Lancaster concluded that this finding suggests that it is the presence of television reporters, not the television equipment, that indicates to the trial participants that the trial has gained media attention.[102] Jurors also responded that the presence of cameras during trials would be distracting to some extent.[103]

The television reports were longer and newspaper reports were more prominently displayed during the first trial, which was covered by the extended media. The television news reports decreased from 2:42 to 1:55, while the mean column inches of newspaper coverage dropped from sixteen to twelve.[104] Lancaster suggested that these declines may have been the result of the public having more curiosity during the first trial, and that five months later when the second trial began much of the information was "old news". Also, the importance of other local and world events may have played a factor in the length of news coverage given to the two trials. However, as Lancaster pointed out, the television reports and newspaper reports indeed may have been longer during the trial open to the extended media simply because of the camera access, and thus the local

television stations and newspapers sensationalized the coverage.[105]

Witnesses were not surveyed in this study. However, at least one witness was reluctant to testify during the second trial before learning that those proceedings would not be televised.[106]

James Hoyt conducted a controlled experiment in 1977 to analyze the simulated pressures of being a witness. The thirty-six participants were told the fifteen-minute sessions were to study the "effectiveness of some different types of media presentations."[107] The subjects were shown a film, then asked specific questions about the content. When answering the questions participants were in one of three settings: in front of a television camera, which the participants were told would tape the session and be viewed by a large number of people; told that a hidden camera would be recording the question/answer session; or in a setting where no camera was present.[108]

The study revealed that there was no significant difference in the verbal behavior of the participants who answered questions in the presence of a camera or not. When the camera was hidden, its presence "seemed to be irrelevant."[109] Those who answered questions directly in front of the camera responded with longer sentences.

However, Hoyt reported that the longer answers did not contain additional incorrect information, but rather more correct and relevant information.[110]

A survey done in Minnesota questioned newspaper reporters and legal professionals about the role of the press and the court system.[111] When asked if the press should confine its reports primarily to the facts that unfold in the public court records and proceedings, judges and attorneys agreed that they should, but reporters disagreed. However, all three groups strongly agreed that court actions should be reported as objectively and as humanly as possible. Judges and attorneys agreed, while the press strongly agreed to the statement that the press should attempt to educate the public about the judicial process. The newspaper reporters also strongly agreed that the press should play the role of a watchdog; attorneys agreed with that statement, but judges were undecided ("neither agree nor disagree"). With regards to the importance of the press interpreting and/or analyzing court action for readers, both attorneys and judges were undecided, and the reporters agreed with the statement.[112]

George Gerbner has done a great deal of research on the impact of television on the viewer. Gerbner said that television has "reshaped politics, changed the nature of

sports and business, transformed family life and the socialization of children, and affected public security and the enforcement of laws."[113] According to Gerbner, each week a typical television viewer sees forty-three law enforcers, six lawyers, and three judges on dramatic programs. Nearly all of the television legal professionals work on criminal cases, usually involving murder, and bring the criminal to justice. Research also shows that television programs rarely cover the legal process, such as arraignments, indictments, jury deliberations, and plea bargaining.[114] Studies done at the Annenberg School of Communications suggest that people who rely on television are more likely than others to blame the court system for crime, and approve harsher punishments, warrantless searches, illegally obtained evidence, and other violations of due process.[115] When comparing these findings to the possibility of more court proceedings being covered by the extended media, Gerbner said,

> These trends take on added significance when we contemplate the appeal of "real life" trials using courtrooms as program origination locations, selected and edited to the specifications of already existing programming of proven audience and ratings drawing power. The stakes become very high indeed. How can (and why should) broadcasters resist the pressures of the marketplace and the rewards of higher ratings?[116]

ENDNOTES

1. Interview with Timothy Dyk, attorney, Wilmer, Cutler and Pickering, in Washington, D.C. (May 17, 1987).

2. Impact of Media Coverage of Rape Trials: Hearing Before the Subcomm. on Criminal Law of the Senate Comm. on the Judiciary, 98th Cong., 2nd Sess. 28 (1984) (statement of James M. Ragsdale, editor, The Standard-Times, Bedford, Mass) [hereinafter Impact of Media coverage]; See also letter from Tony Villasana, news director, WMAZ-TV13, Macon, Georgia, to the author (September 18, 1987) (discussing free press - right to privacy); letter from Thomas C. Griesdorn, general manager, WXYZ-TV7, Detroit, Michigan, to the author (October 19, 1987) (discussing free press-right to privacy); letter from Tom Johnson, publisher and chief executive officer, Los Angeles Times, to the author, (October 28, 1987) (discussing free press - right to privacy).

3. Impact of Media Coverage, supra note 2 at 31-32 (statement of James M. Ragsdale).

4. Letter from Ernie Schultz, acting president, Radio-Television News Directors Assoc., Inc., Washington, D.C., to the author (Nov. 3, 1986) (discussing free press-right to privacy).

5. Letter from Charles McCorkle Hauser, vice president and executive editor, The Providence Journal-Bulletin, Providence Rhode Island, to the author (Nov. 5, 1986) (discussing free press - right to privacy).

6. Letter from Tom Johnson supra note 2; Impact of Media Coverage, supra note 2 at 80 (statement of Ed Godfrey, president, Radio-Television News Directors Association).

7. Letter from Tom Johnson, supra note 2.

8. Letter from Tony Villasana, supra note 2.

9. Letter from Lawrence T. Sullivan, assistant national editor, The Detroit News, Detroit, Michigan, to the author (October 5, 1987) (discussing free press - right to privacy. In reference to growing up in a small town. Sullivan also favors public disclosure of such things as individual income tax returns).

10. Letter from Thomas Griesdorn, supra note 2; See also WDIV (Post Newsweek Stations, Michigan, Inc.), John J. Ronayne, III, The Associated Press, Michigan News Exchange, Mid-Michigan Professional Chapter of The Society of Professional Journalists, Sigma Delta Chi, The Reporters Committee for Freedom of the Press, and The Society of Professional Journalists, Sigma Delta Chi (Detroit Chapter), Comments on Proposed Administrative Order Providing For Extended Media Coverage of Judicial Proceedings 1987 [hereinafter WDIV, et al.] ("a party may for articulable reasons feel that extended media coverage will affect the proceedings in an adverse and identifiable manner"); interview with John Tune, editor, Traverse City Record Eagle, Traverse City, Mich. (July 25, 1987) ("If the judge is given enough power to make certain safeguards to insure the safety of witnesses, then I think that can be accomplished).

11. Viewpoint: Courts, Cameras, Justice? (ABC television broadcast, May 24, 1984) (published transcript).

12. Accrediting Council on Education in Journalism and Mass Communications, American Broadcasting Companies, Inc., American Newspaper Publishers Association, American Society of Newspaper Editors, Associated Press, Association for Education in Journalism and Mass Communications, CBS, Inc., Community Television of South Florida, Inc., C-SPAN, Gannett Companies, Inc., Media Access Project, The Miami Herald Publishing Company, Mutual Broadcasting System, Inc., National Association of Broadcasters, National Broadcasting Company, Inc., National Cable Television Association, Inc., National Press Photographers Association, National Public Radio, The New York Times Company, Post-Newsweek Stations, Inc., Public Broadcasting Service, Radio-Television News Directors Association, The Reporters Committee for Freedom of the Press, Society of Professional Journalists, Sigma Delta Chi, The Times Mirror Company, Turner Broadcasting System, Inc., Cable News Network, United Press International Company, The Washington Post, Petition to the Judicial Conference of the United States Concerning Visual and Aural Coverage of Federal Court Proceedings by the Electronic and Print Press, March 1983, 14 (citing Yankelovich, Skelly, and White, Inc., The Public Image of Courts; Highlights of a National Survey of the General Public, Judges, Lawyers, and Community Leaders, prepared by the National Center for State

Courts (May 1978)) [hereinafter Accrediting Council on Education in Journalism and Mass Communications, et al.].

13. Letter from Ernie Schultz, supra note 4.

14. Interview with John Tune, supra note 10. See also letter from Thomas Griesdorn, supra note 2 (quoting the Ann Arbor News, editorial. 'Anything that would make the courts more understandable to the public and make the judicial process user-friendly would be all to the good. The people need to branch of government is also an open book'); Norman Davis, Television in Our Courts, 64 Judicature 86 (1980).

15. George Gerbner, Trial by Television: Are We at the Point of No Return? 63 Judicature 420 (1980); See also George Gerbner in Susana Barber, News Cameras in the Courtroom: A Free Press - Fair Trial Debate (Norwood, N.J.: Ablex Publishing Corp., 1987), xv.

16. George Gerbner, supra note 15 at 420-421.

17. Theordore L. Glasser, Objectivity and the Ideology of News, lecture delivered at "Ethics in Journalism" seminar, co-sponsored by Augsburg College and the University of Minnesota's Journalism Center, March 3-4, 1983.

18. Society of Professional Journalists, Sigma Delta Chi, Code of Ethics, reprinted in Bruce M. Swain, Reporters' Ethics (Ames, Iowa: The Iowa State University Press, 1978), 116.

19. Id. at 114.

20. Id. at 115.

21. Id.

22. Id.

23. Theodore Glasser, supra note 17 at 10-11.

24. John C. Merrill, Good Reporting Can be a Solution to Ethics Problems, 42 Journalism Educator 28 (1987).

25. Letter from Charles McCorkle Hauser, supra note 5.

26. Interview with John Tune, supra note 10.

27. Jeff Greenfield, political and media analyst for ABC News and Good Morning America, in Tommy Thomason and Anantha Babbili, eds., Crime Victims and The News Media a synopsis of a national symposium sponsored by the Texas Christian University Department of Journalism and the Gannett Foundation, November 18, 1986, n.d.

28. Letter from Thomas Griesdorn, supra note 2 (in reference to Michigan courtrooms opening up to the extended media).

29. Four States Start Tests with Cameras, Recorders in Courts; Total up to 45 States, 11 The News Media and the Law 42-44 (Fall 1987) (Indiana, Mississippi, Missouri, South Carolina, and South Dakota do not permit extended media coverage of trial proceedings).

30. Beginning February 1, 1988 Michigan will begin a one year experiment in all Michigan courts except for the juvenile division, allowing oral and visual coverage of trial proceedings.

31. Interview with Judge Michael G. Harrison, 30th Jud Circuit, Lansing, Mich (October 14, 1987); interview with Judge Carolyn Stell, 30th Jud Circuit, Lansing, Mich (October 19, 1987); interview with Donald E. Martin, Ingham County Prosecuting Attorney, Lansing, Mich (October 14, 1987); interview with James Shonkwiler, executive director, Michigan Prosecuting Attorney's Association (October 23, 1987); interview with Michael Franck, executive director, Michigan Bar Association, Lansing, Mich (October 22, 1987); letter from Robert Weiss, prosecuting attorney, Genessee County, Flint, Mich, to the author (August 27, 1987) (discussing free press - right to privacy); letter from John D. O'Hair, prosecuting attorney, Wayne County, Detroit, Mich, to the author (August 11, 1987) (discussing free press - right to privacy).

32. Interview with Judge Michael G. Harrison, supra note 31.

33. Interview with James Shonkwiler, supra note 31; See also Barber, supra, note 16 at 74 (In nineteen independent studies, judges responded that witnesses tended to ignore cameras when present in the courtroom); In re Petition of Post-Newsweek Stations, Florida, Inc., 370 So. 2d 764, 768 (Fla. 1979) (witnesses who were surveyed said they were "slightly" distracted when cameras were present during trial proceedings. Attorneys and court personal responded that witnesses were "slightly" inhibited by the presence of cameras); James Hoyt, Courtroom Coverage: The Effects of Being Televised 21 Journal of Broadcasting 490 (1977) (Hoyt found that subjects who answered questions in the presence of a television camera responded with longer sentences, which contained more correct information, than did other subjects).

34. Letter from Raymond G. Buffmyer, attorney, Charlotte, Mich, to the author (October 6, 1987) (discussing free press - right to privacy).

35. Impact of Media Coverage, supra note 2 at 3 (statement of Senator Strom Thurmond).

36. Office of Justice Programs and Office for Victims of Crime, U.S. Department of Justice, in Cooperation with Crime Victims Project, The National Association of Attorneys General and Victim Witness Project, Criminal Justice Section, The American Bar Association, Victims of Crime: Proposed Model Legislation (1986).

37. This March 1984 rape case involved the multiple rape of a woman in a New Bedford, Mass. bar. The trial generated national attention, and was broadcast live by the Cable News Network.

38. Impact of Media Coverage, supra note 2 at 8, 18 (statement of Ronald A. Pina, district attorney, Bristol District, Mass.).

39. Letter from Robert Weiss supra note 31; interview with Donald E. Martin, supra note 31; interview with Michael Franck, supra note 31; interview with Judge Michael G. Harrison, supra note 31.

40. Letter from Robert Weiss, supra note 31.

41. Interview with Michael Franck, supra note 31.

42. Interview with James Shonkwiler, supra note 31.

43. Id.

44. Letter from Raymond Buffmyer, supra note 34.

45. Impact of Media Coverage, supra note 2 at 19 (statement of Ronald A. Pina).

46. Television in the Courtroom -- Limited Benefits, Vital Risks? 3 Communications and the Law 42 (1981).

47. Charlotte Carter, Television in the Courts, State Court Journal 25 (1981). Photocopy 1987. See also interview with Judge Michael G. Harrison, supra note 31; interview with Judge Carolyn Stell, supra note 31; interview with Michael Franck, supra note 31.

48. Letter from Robert Weiss, supra note 31 (citing U.S. v. Nixon, 418 U.S. 683 (1974)).

49. Impact of Media Coverage, supra note 2 at 4 (statement of Ronald A. Pina).

50. Interview with Judge Michael G. Harrison, supra note 31.

51. Interview with Judge Carolyn Stell, supra note 31.

52. Interview with James Shonkwiler, supra note 31.

53. Interview with Donald E. Martin, supra note 31.

54. Viewpoint: Courts, Cameras, Justice? (ABC television broadcast, May 24, 1984) (published transcript) (statement of Gerry Spence, defense attorney).

55. Keith Boone, TV in the Courtroom: Is Something Being Stolen From Us? 9 Human Rights 41 (1981); interview with Judge Michael G. Harrison, supra note 31.

56. Interview with Judge Carolyn Stell, supra note 31; letter from John D. O'Hair, supra note 31; Lyle W. Denniston, The Reporter and the Law (New York: Hasting House, Publishers, 1980) xix.

57. Alan Dershowitz, "Burger Sees TV as Court's Foe," The Boston Herald (Nov. 26, 1984). Photocopy 1987.

58. Impact of Media Coverage, supra note 2 at 14 (statement of Ronald A. Pina); interview with Judge Michael G. Harrison, supra note 31.

59. Interview with Michael Franck, supra note 31.

60. Impact of Media Coverage, supra note 2 at 10 (statement of Ronald A. Pina).

61. Interview with James Shonkwiler, supra note 31.

62. Id.

63. Impact of Media Coverage, supra note 2 at 62 (statement of Lynn Marks, executive director, Women Organized Against Rape, Philadelphia, Pennsylvania).

64. Id. at 63.

65. Boone, supra note 55 at 26 (footnotes omitted).

66. Interview with Anne Seymour, director of public affairs, Sunny Von Bulow National Victim Advocacy Center, Fort Worth, Texas, in Lansing, Mich (June 4, 1987); Impact of Media Coverage, supra note 2 at 53 (statement of Jennifer Barr, rape victim, rape crisis counselor); Boone, supra note 55 at 26.

67. Impact of Media Coverage, supra note 2 at 53 (statement of Jennifer Barr).

68. Boone, supra note 55 at 26.

69. Interview with Anne Seymour, supra note 66; Impact of Media Coverage, supra note 2 at 49 (statement of Ellen Guyker, rape victim, Maryland).

70. Impact of Media Coverage, supra note 2 at 58 (statement of Jennifer Barr).

71. Id. at 68 (statement of Lynn Marks).

72. Carolyn Stewart Dyer and Nancy R. Hauserman, Exemption of Sexual Assault Victims from Electronic News Coverage in Court, 1 Sexual Coercion and Assault 86 (1986); Boone, supra note 55 at 27; Impact of Media Coverage, supra note 2 at 64, 71, 87 (statement of Lynn Marks; statement of Jo Beaudry, coordinator, Victim/Witness Services, Milwaukee County, Wisconsin; statement of Cecily Robbins, executive director, Rape Crisis Center, Washington, D.C.).

73. Stewart Dyer and Hauserman, supra note 72 at 86.

74. Id.; Impact of Media Coverage, supra note 2 at 87 (statement of Cecily Robbins).

75. Stewart Dyer and Hauserman, supra note 72 at 88.

76. Impact of Media Coverage, supra note 2 at 77 (statement of Jo Beaudry).

77. Barber, supra note 15 at 19, 70-71; James Hoyt, supra note 33 at 487-495.

78. Susanna Barber, supra note 15 at 70-71 (Barber is an instructor in the Department of Mass Communication at Emerson College).

79. Dalton Lancaster, Cameras in the Courtroom: A Study of Two Trials, Research Report No. 14 (Bloomington, In.: School of Journalism, Center for New Communications, Indiana University, 1984). Photocopy 1987.

80. Susanna Barber, supra note 15 at 74.

81. Id.

82. Id. at 75.

83. Id.

84. Id. at 74-75.

85. Id. at 80.

86. Id. at 81.

87. Id.

88. Id. at 80.

89. Id. at 87.

90. In re Petition of Post-Newsweek Stations, Florida, Inc., 370 So. 2d at 768 (Fla. 1979).

91. Id.

92. Id. at 768-769.

93. Id. at 769.

94. Id. at 770.

95. Id.

96. Lancaster, supra note 79 at 2 (Judge John B. Wilson was forced to halt extended media coverage on the last day of the trial after receiving a notice from Indiana's Supreme Court reminding judges that Canon 3A(7) prohibited extended media coverage of trial proceedings. Indiana to date still has a closed door policy for the aural and visual media).

97. Id. at 3.

98. Id. at 4 (the forty-two percent and thirty-two percent figures are the combined response totals for learned "a little more" and "much more").

99. Id. at 5.

100. Id.

101. Id. at 6.

102. Id.

103. Id.

104. Id. at 7.

105. Id.

106. Id. at 8.

107. Hoyt, supra note 33 at 490.

108. Id.

109. Id.

110. Id.

111. Robert E. Drechsel, News Making in the Trial Courts (New York: Longman, 1983) (A questionnaire was sent to judges, attorneys, and court clerks, while newspaper reporters were interviewed and asked the same questions. The survey took place in early 1980. In 1983, Minnesota opened the courts to extended media coverage on an experimental basis).

112. Id., 126-127 (Respondants rated the roles of the press on a 5-point scale, ranging from "strongly disagree" to "strongly agree". The median ratings were reported).

113. George Gerbner, supra note 15 at 418.

114. George Gerbner, Introduction, in Barber, supra note 15 at xiii.

115. Id. at xiv.

116. Id.

CHAPTER 6

AURAL AND VISUAL COVERAGE IN COURTROOMS

The decision of whether or not to open state courtrooms to extended media coverage usually is made by the top state court or through state legislation. The Code of Judicial Conduct or the court rules must be suspended or amended in order to allow aural and visual media access. No state has ever reversed its decision after allowing the extended media in.[1]

By March 1988, forty-five states will permit microphones and/or still and/or video cameras in the courts, either on an experimental or permanent basis; nine states will allow coverage of appeal courts only, while thirty-six states will allow trial and appeal court coverage.[2] In the majority of states, prior consent or notice of the court is required before the extended media can cover a court proceeding; the consent of the various trial participants are not required by most of the states.[3] According to a 1987 summary of state courts, compiled by the National Center for State Courts, only Arkansas, Maryland, Minnesota, and Pennsylvania required the consent of parties and witnesses involved in trials; and only Alabama, Ohio, Oklahoma, Tennessee, and Washington did not allow extended

media coverage of individuals who objected.[4]

Prior to 1988, of the states whose courts were open to the extended media, only eighteen of the forty-three provided outlined coverage exemptions for certain trial participants.[5] Juvenile proceedings (twelve states), divorce (eleven states), and child custody (eleven states) trials were the most frequently exempt proceedings; trade secret hearings (eight states), sex crimes (eight states), adoption (seven states), and motions to suppress (seven states) were exempt in fewer states, as were police informants who testified (six states), undercover agents (six states), vior dire hearings (six states), and relocated witnesses (five states). Rarely have states allowed automatic exemption from extended media coverage for probable cause proceedings (three states), motions to dismiss (three states), minor witnesses (two states), and witnesses in jeopardy of bodily harm (one state).[6]

There are great differences among the states with regard to exemption rules. The discretion allowed by judges varies, and includes such considerations as applicable legal tests, burden of proof required, and the interests to be considered.[7] Exemption is usually approached in one of two ways: requiring the individual to consent before he/she may be covered by cameras or microphones, or providing the

individual an opportunity to object to the extended media coverage.[8] The important difference in consent and objection is that the former presumes that coverage will not be granted unless the person to be covered gives an affirmative response beforehand, while the latter presumes coverage is affirmed unless an objection is filed by the individual to be covered before the proceedings begin.[9] Consent rules range from all parties having to give written consent, to the right of individuals to withhold consent to deny coverage only of themselves. However, it is more common among the states to request that individuals submit reasons for objecting to extended media coverage before exemption is granted.[10]

The consent requirement was found in only three of the forty-three states (prior to 1988) which had adopted rules for aural and visual coverage of trials, while seven had included provisions permitting witnesses to withhold consent to preclude coverage of him/herself.[11] Post-Newsweek station, WDIV-TV4, Detroit, and various media association in comments submitted to the Michigan Supreme Court regarding extended media coverage object to party consent requirements:

> As a practical matter, any experimental program incorporating a consent requirement will be no program at all. The experience

> from other states indicates consent will lead to a virtual absence of extended media coverage.[12]

WDIV, et al. said that this belief is supported by the number of states which have abandoned consent requirements.[13] The problem with consent rules, according to WDIV, et al., is that no attempt is made to discover <u>why</u> consent is being withheld by a person.

> A unilateral consent requirement . . . places a very important decision in entirely the wrong hands. It is in the wrong hands because it is in the hands of an individual who is, to say the least, unlikely to consider any interests beyond his or her own and who will invariably make the decision based solely upon a determination of whether extended media coverage is perceived as helping or hurting the one making the decision.[14]

The media industries also oppose consent requirements because a key witness can object to extended media coverage of themselves, leaving the viewer with a skewed picture of the trial; the public may receive incomplete information about the proceedings and be unable to comprehend the outcome of the trial if key witnesses are not included in the aural and/or visual media reports.[15]

A preferred method for determining exemption from camera and microphone coverage is the two-pronged "qualitative difference" test, which was first utilized in Florida. Two determinations are made by the presiding judge

about the qualitative differences between traditional news reporting (written or spoken word) and extended media coverage (print and broadcast pictures, and/or aural testimony broadcast over radio or television):[16]

> 1. Whether extended media coverage of a particular person would have an adverse effect, and its impact would be qualitatively different from the impact on the other individuals in the same case.
>
> 2. Whether there would be a qualitative difference in the adverse effect on an individual between traditional news reports and extended coverage news reports.

In determining the vulnerability of witnesses, Florida courts consider the likely effect aural and/or visual coverage of the trial will have on the participant's willingness to cooperate with the judicial system; the witness' "subjective state of mind" and personal well-being is not considered.[17] If extended media coverage causes a witness to refuse to testify, even if faced with contempt of court, aural and/or visual coverage will be denied for that witness. However, if the witness only indicates objection and discomfort, yet agrees to testify in the presence of extended media, then the individual will not be exempt from aural and/or visual coverage.[18] The relative viewing, listening, and reading audience size is also not considered when determining whether a trial will be open to the

extended media. Audience size is considered an irrelevant and quantitative difference, not a qualitative difference, as required by Florida courts.[19]

COURT PROCEEDINGS COVERED BY THE EXTENDED MEDIA

According to the media organizations who submitted a petition to the Judicial Conference, requesting that federal courts be open to microphone and camera coverage, a variety of proceedings have been covered by the extended media throughout the states. The petitioners said these types of proceedings could be educational if covered properly: criminal and civil trials involving misconduct of public officials, overcrowding in city jails; welfare fraud; police brutality; rights of mental patients committed to institutions after being acquitted from criminal charges using the insanity defense; constitutionality of state election laws; and challenges to gambling, abortion, and drunk driving statutes.[20]

However, television and still cameras do manage to also capture the drama of more titillating trials. For example, a few select courts in Michigan opened their door to camera and microphone coverage early to work out any unexpected problems before the rest of the courts opened their door to the extended media in February 1988. The

first court proceeding that a Lansing television station chose to photograph and record was the preliminary examination of a man accused of stabbing an eight-month pregnant woman to death. A local newscast set up the report with a reporter doing a voice-over, updating the viewers on the latest proceedings, while the camera focused on the accused. The report then included the victim's boyfriend explaining to the court how he found the body, the physical condition of the body, and the actions he took before the police arrived. Comments made by the attorneys and judge were not included in the news report. Donald Martin, Ingham County Persecuting Attorney, said that Ingham County has approximately seventeen judges, who have cases stacked up throughout each day; and when the judges are not working on criminal cases, they are hearing civil cases. Martin said there is ample opportunity for the media to choose from a variety of types of trials to cover that could educate the public, however, the media seems to cover only the sensational cases.[21]

> Where is the press? When do they choose to show up? What type of cases do they want? They want the East Lansing rape case, they want the murder case . . . they're gonna want the Basil Brown cases.[22]

Tony Villasana, news director of a Macon, Georgia television station, remarked that witnesses do not seem

distracted by the presence of audio and video equipment. However, the example Villasana used to illustrate his point also illustrates the type of proceedings covered by television stations:

> On one occasion we experimented with the court by turning the camera away from pointing at the stand while a woman testified against her former live-in-boyfriend who was accused of killing her daughter and then helping her dismember the child. The court thought she would not testify against him as was part of her plea bargain arrangement. We complied with the court until the court, after observing her composure, gave us the ok [sic] to swing the camera slowly back to the stand to videotape her testimony.[23]

Florida's extended media have covered a number of court proceedings. Most notably, cameras and microphones covered the trials of convicted murderers Ted Bundy and John Spinkelink, the divorce of Peter and Roxanne Pulitzer, and the murder trial of Ronny Zamora, whose defense was that violence on television drove him to his crime.[24]

Cable News Network has carried court proceedings that some say have exploited the parties involved. CNN provided coverage of the trial of Claus Von Bulow, who was tried twice for allegedly attempting to kill his wife, Martha "Sunny" Von Bulow, with overdose injections of insulin.[25] The libel suit against the National Enquirer by Carol Burnett, as well as the libel suit of Dr. Carl

Galloway against CBS's 60 Minutes were also carried by the all-news network. CNN was denied permission to cover the pre-trial hearing involving the alleged sexual abuse of children at a Los Angeles preschool; the news station was also denied permission to cover the General Westmoreland libel case against CBS, because the proceedings were in a federal, not a state court.

The trial that probably generated the most media attention was the New Bedford Massachusetts rape case. In 1984, six men were tried for raping a woman on a pool table in a New Bedford bar. The two cable systems owned by Colony Communications, Inc. in the New Bedford-Fall River area provided gavel-to-gavel coverage of the two trials. Individual stations and the three major networks took pieces of feed from the cable stations' pool camera. However, CNN chose to air full portions of the trial. The news network averaged two to three hours of daily coverage, but increased coverage to seven hours during the closing days of the trial; in all, CNN ran thirty-five hours of live testimony, and fifty-four hours of taped trial proceedings.[26] According to Ronald Pina, the district attorney involved in the case, the first trial was televised by CNN from 10:30 a.m. to 12:30 p.m., and the second trial aired from 1:30 p.m. to 5:00 p.m.; CNN also ran reruns of portions of

the trials at night.[27] Pina believes this type of coverage violates obscenity laws.[28]

> The two defendants practically got on the stand and explicitly described their activities . . . with the victim, and what they went through, and their argument was that it was consent, that all of these other items occurred, A, B, C, D, and E, oral sex, natural sex, if you want to call it natural sex, whatever else occurred, explicitly, step by step, and what was done, and where, by the bar, by the pool table, and explaining it in very basic street language.[29]

The credibility and responsibility of the alleged victim was questioned by the defense attorneys, and broadcast to cable viewers:

> Defense Attorney: You may very well say sex is a private activity, and it very well is. But just because John Cordeiro commits it in Big Dan's in front of several people does not make him guilty of aggravated rape. Your sense of propriety has nothing to do with this case.[30]
>
> Defense Attorney: But remember this, that woman have a responsibility by their words and by their behavior to say no.[31]
>
> Defense Attorney: Isn't it fair to say that whenever you don't want something to come up you just say "I don't remember"? Isn't that true?[32]
>
> Defense Attorney: Even if you're willing to take money from welfare, you don't just willy-nilly give the card out to other women to achieve welfare, do you?[33]

The victim's testimony was broadcast as well:

> After the first one had gotten off, he came around and grabbed my shoulders and then the second one came around . . . . he came around and got on top of me . . . . He had intercourse with me.[34]

Arguments of the prosecuting attorney were also heard:

> And they pushed her leg, and they pushed her leg, until they could do what they wanted to do and as a result they left their own mark. It's almost like a fingerprint, but it's a handprint which shows in a dramatic fashion that there was no consent.[35]

Radio talk shows provided listeners with the opportunity to call in and express their opinions about the proceedings and the victim. According to Pina, some listeners called in saying the victim was a prostitute.[36] Talk show hosts themselves often expressed their opinions about the victim:

> Do you know how much money she could be making from this whole deal? . . . This person has been on welfare, and now she's going to make thousands!! We're talking thousands of dollars, sir!! . . . She's going to be richer than me![37]

To the dismay of victim advocates, the prosecutors, and the presiding judge, the victim's name and address were broadcast live to the viewers and listeners. Newspapers, wire services, and television stations that normally did not identify rape victims suddenly began identifying this victim since the cable station had inadvertently allowed the information to be aired.[38] Charles McCorkle Hauser, whose

newspaper usually did not identify victims, replied,

> Since the name was going into living rooms all over the area via the airwaves, it seemed sort of stupid for us to "protect" the victim by suppressing the name that everybody knew. So we didn't.[39]

Once the name and address were broadcast, "the race to publish it was on" and "huge numbers of people arrived at [the victim's] doorstep . . ."[40] The presiding judge criticized the press for publishing and broadcasting the information. Judge Young said the publication added nothing to the public's understanding of the case, and it did nothing more than sell more newspapers and "encourage the 'voyeuristic aspect' of the trial."[41]

CNN Executive Producer Larry Lamotte said one reason the network televised the trial was because the proceedings were of public interest, "and we think the higher ratings reflect that indeed there was interest."[42] CNN even ran promotional announcements: "Find out why opinion leaders across the nation are watching this controversial courtroom drama."[43] James Ragsdale agreed the public was interested in the trial and that "the numbers watching these trials would embarrass producers of daytime TV soaps."[44] Viewers also agreed: "I love General Hospital, but I haven't seen it since the case began."[45]

Ronald Pina, and others do not believe the extended

media coverage of the New Bedford rape case was beneficial to the public in the long run. Pina said that the public formed an opinion about the proceedings when they had not seen all aspects of the trials:

> Many viewers in my own Bristol County and throughout the world who watched or listened to the Big Dan's coverage came to their own conclusions about the guilt or innocence of the defendants. They did so believing that they had watched the trials from beginning to end, heard all the evidence necessary, and reached their own verdicts. This, of course, was simply not true. People, who over a period of three weeks believed that they watched the entire trial did so in their living rooms where they were subject to the normal distractions of telephones ringing, visitors calling, children desiring attention, and errands to run.[46]

Ellen Goodman, a syndicated columnist, feels the trial became a national spectacle, and may deter women in the future from reporting a rape for fear of publicity.[47] Colony Communications was dismayed to find, after speaking with over seventy news organizations across the country, the main reason media industries wanted to cover the trial was not because of the merits of the case itself, but because other news organizations were covering it; "it was a sobering lesson on what makes news in this country."[48]

However, members of the media believe the trial coverage provided many benefits. According to James Ragsdale, editor of the Standard-Times, the publicity

heightened male awareness about rape, and future rape victims learned what to expect in court. The coverage may have also caused hospitals, police, and prosecutors to reevaluate their investigative practices. Ragsdale added that public awareness can lead to precaution and preventative techniques, as well as enforcement, which will lead to a reduction in crime.[49] These benefits, Ragsdale said, outweigh the negative aspects of the televised New Bedford rape case:

> There are times, as my mother used to tell me, when I was a young boy, Senator, that life is not fair. That this was a sensational case proved to be of high public interest, from coast to coast, was outside anyone's control, Senator.[50]

FUTURE EXTENDED MEDIA COVERAGE OF COURT PROCEEDINGS

There are a number of ways that the audio and video recordings of court proceedings can be used by the media. Lawyers and judges in Michigan, for instance, hope that once the state's courts are open to the extended media the aural and/or visual recordings will be used to educate the public.[51] Ingham County Prosecuting Attorney Donald Martin, would like to see the media educate the public about the different types and levels of state courts:

> I think it would be good if they would take a look at the court systems, and enlighten the people as to "this is a circuit court,

> these are the types of cases that are heard," or "we're going in today to look at Judge Harrison's courtroom where there's a personal injury case going on. . . ."[52]

Judge Carolyn Stell hopes to see a television program which illustrates how the judicial system works. Stell said,

> Maybe the cable stations or PBS might possibly videotape a whole trial, and perhaps not show the whole trial but use it to illustrate a panel discussion on the judiciary system. What would be interesting for people would be to see not that a trial is boring, but the minutia of the trial -- the very detailed questions and answers, the very repetitive questions and answers that go on. That would go a long way in showing that it's not like Perry Mason. . . ."[53]

Michael Franck, executive director of the Michigan Bar Association, would like the extended media to cover the appellate courts, particularly the Michigan Supreme Court. Many appeal cases would be of public interest. Appellate hearings have the advantage of being one to two hours long, which would allow a trial to be televised without stopping, without interruptions, and in one day.[54] Franck would also like the tapes to be made available to law students and others who might be interested in analyzing and evaluating the trial proceedings.[55]

Unfortunately the footage from taped trials being used ideally is unlikely. Most trials will only be covered in order to pull out short bites of footage for the evening

news. Judge Michael Harrison said,

> First of all, we have to recognize that they can only afford to spend so much time covering a trial and they're not going to cover every minute of it. I can't see that the press is going to get involved in an educational process of providing it to school districts or anything of that nature because that's just not their business.[56]

How the public perceives and receives the coverage of trials depends a lot on who decides what aspects of the proceedings are important, how the information will be used, and how it will be edited. James Shonkwiler, executive director of the Michigan Prosecuting Attorney's Association, said,

> The real cutting question is what drives the critical decision making on the issues. . . . Who's going to have their hands on the editing decisions? Is it going to be the marketing manager who's trying to sell advertising, or is it going to be the news director whose job . . . is based on a sense of public interest and public benefit in terms of the content of what they do?[57]

Shonkwiler said the media's main concern is editing out the hours of boring testimony and proceedings down to a few dramatic moments; however, this can often present a misleading picture to the public because of how the proceedings were edited.

> How the media uses the material, how accurate they are and how sensitive they are in editing it and presenting an

> accurate picture is ultimately going to determine if this was a good idea or a bad one.[58]

However, others argue that it is not necessary or a requirement to provide full coverage of trials. The length of the coverage will depend on the news value of the events of the day's court proceedings.[59] The assistant national editor of The Detroit News concluded,

> Even with an interesting trial, television's concept of "coverage," let's face it, is 10 seconds of live footage -- one good quote and a few tears will do -- plus 20 seconds of chatter proudly placing the station's reporter on the scene. I cannot see this as trampling upon anyones rights.[60]

If the media continue to edit and control the flow of information regarding a trial made available to the public, then some precautions can be taken to insure that the concerns of trial participants are considered. James Ragsdale suggests the media continue using self restraints, and not publicize the name or photograph of a rape victim--even if other newspapers or broadcast stations do.[61] Ragsdale and Ronald Pina also feel a fifteen second loop should be used to bleep out sensitive material during live broadcasts of trial proceedings.[62] Additionally, Pina feels that the burden discussed in Chandler, regarding the extended media having access to trials, should be reversed; the burden would then be that a trial would normally be

closed to aural and visual coverage, unless there was an overriding interest to open the court.[63] Pina added that the FCC should "tighten its deteriorating standards."

> Under current regulations angry, anonymous voices are apparently permitted to call talk shows and broadcast ethnic slurs and almost any type of character assassination.[64]

Donald Martin and Anne Seymour argue that if a trial is closed to the extended media courtroom artists can capture the drama as they have done in the past, and continue to do in federal courts.[65] Susanna Barber suggests that courts appoint media liaisons to monitor court proceedings and the media, passing the cost on to media organizations who choose to cover courtroom proceedings.[66] Finally, James Ragsdale added that parents should use discretion when allowing children to view televised court hearings:

> I am confident in the intelligence of the American people -- they can decide what they want to hear and see, and they do not need us telling them what they cannot see or hear.[67]

A simple solution to the problem, many feel, would be for the media to establish a code of ethics which would be enforceable and adhered to by all journalism professionals. Judge Paul Baker, of the Eleventh Judicial Circuit of Florida, said a media code of ethical conduct should resemble the code of conduct imposed upon judges and

lawyers.[68] For example, the Sunny Von Bulow National Victim Advocacy Center endorses the Media Code of Ethics produced by Seattle's Women in News and Seattle University; the code states that a journalist shall not:[69]

1. photograph, film or print for publications photographs of victims, graphic crime scenes, or victim's in the courtroom without permission.

2. print or broadcast unverified or ambiguous facts about the victim, his or her demeanor, background or relationship to the offender.

3. print facts about the crime, the victim, or the criminal act that might embarrass, humiliate,hurt, or upset the victim unless there is a need to publish such details for public safety reasons.

4. print, broadcast, photograph or film lured or graphic details of the crime.

5. promote sensationalism in reporting crime or criminal court cases in any way.

Roy Peter Clark, associate director of The Poynter Institute for Media Studies in St. Petersburg, Florida, said that the greater the technology used by the news industry, the greater the likelihood a victim will be endangered or outraged by the press attention. According to Clark, the

ethics of gathering information must be considered as well as the ethics of publishing information:

> This principle affects press photographers and television camera crews most directly, many of whom think their only responsibility is to shoot good pictures.[70]

ENDNOTES

1. Audrey Pinkham Benson, Do Cameras in the Courtroom Hurt the Cause of Justice? Update 20, 23 (Spring 1984). Photocopy 1987.

2. Four States Start Tests with Cameras, Recorders in Courts; Total up to 45 States, 11 The News Media and The Law 42-44 (Fall 1987) (Indiana, Mississippi, Missouri, South Carolina, and South Dakota do not permit extended media coverage of trial proceedings to date).

3. National Center for State Courts, "Summary of TV Cameras in the State Courts," 3 (January 30, 1987) (unpublished summary); Four States Start Tests with Cameras, supra note 2 at 43; Susanna Barber, News Cameras in the Courtroom: A Free Press - Fair Trial Debate (Norwood, N.J.: Ablex Publishing Corp., 1987), 18-19.

4. National Center for State Courts, supra note 3, at 3.

5. Barber, supra note 3, at 106-107 (citing Radio-Television News Directors Association, 1984, B1-B17).

6. Id.

7. Carolyn Stewart Dyer and Nancy R. Hauserman, Exemption of Sexual Assault Victims from Electronic News Coverage in Courts, 1 Sexual Coercion and Assault 82 (1986).

8. Id. at 92.

9. Id. at 87.

10. Id.

11. WDIV (Post Newsweek Stations, Michigan, Inc.), John J. Ronayne, III, The Associated Press, Michigan News Exchange, Mid-Michigan Professional Chapter of The Society of Professional Journalists, Sigma Delta Chi, The Reporters Committee for Freedom of the Press, and The Society of Professional Journalists, Sigma Delta Chi (Detroit Chapter), Comments on Proposed Administrative Order Providing For Extended Media Coverage of Judicial Proceedings. 1987, 19 (footnotes omitted) [hereinafter WDIV, et al.]

12. Id. at 15-16 (citing Cameras in the Criminal Courtroom: A Sixth Amendment Analysis, 85 Colum. L. Rev. 1546, 1563 (1985); An Assessment of The Use of Cameras In States and Federal Courts, 18 Ga. L. Rev. 389, 408 (1984); New Rules For Open Courts: Progress or Empty Promise? 18

Tulsa L. J. 147, 157 (n.d.)).

13. Id. at 16.

14. Id. at 21.

15. Letter from Thomas Griesdorn, general manager, WXYZ-TV7, Detroit, Mich., to the author (October 19, 1987) (discussing free press v. right to privacy); interview with Michael Franck, executive director, Michigan Bar Association, Lansing, Mich. (October 22, 1987).

16. Stewart Dyer and Hauserman, supra note 7 at 88.

17. Id. at 89 (citing Palm Beach Newspapers Inc. v. Florida, 378 So.2d 862 (1979)).

18. Id.

19. Id. (citing Florida v. Green, 395 So. 2d 532 (1981)).

20. Accrediting Council on Education in Journalism and Mass Communications, American Broadcasting Companies, Inc., American Newspaper Publishers Association, American Society of Newspaper Editors, Associated Press, Association for Education in Journalism and Mass Communications, CBS, Inc., Community Television of South Florida, Inc., C-SPAN, Gannett Companies, Inc., Media Access Project, The Miami Herald Publishing Company, Mutual Broadcasting System, Inc., National Association of Broadcasters, National Broadcasting Company, Inc., National Cable Television Association, Inc., National Press Photographers Association, National Public Radio, The New York Times Company, Post-Newsweek Stations, Inc., Public Broadcasting Service, Radio-Television News Directors Association, The Reporters Committee for Freedom of the Press, Society of Professional Journalists, Sigma Delta Chi, The Times Mirror Company, Turner Broadcasting System, Inc., Cable News Network, United Press International Company, The Washington Post, Petition to the Judicial Conference of the United States Concerning Visual and Aural Coverage of Federal Court Proceedings by the Electronic and Print Press, March 1983, 34-40 [hereinafter Accrediting Council on Education in Journalism and Mass Communications, et al.]

21. Interview with Donald Martin, Ingham County Prosecuting Attorney, Lansing, Mich. (October 14, 1987).

22. Id. (The East Lansing rape case refers to proceedings involving a man accused of a number of rapes in the East Lansing area; the press has dubbed the accused "the Laundryroom rapist". The murder case is in reference to a pregnant woman who was killed. Basil Brown was a Michigan State Senator who pleaded guilty to cocaine and marijuana

delivery. To date, cameras and microphones have only been allowed into the proceedings involving the murder).

23. Letter from Tony Villasana, news director, WMAZ-TV13, Macon, Georgia, to the author (September 18, 1987) (discussing free press v. right to privacy).

24. Cameras In the Court: A Success In Florida, 117 Editor and Publisher 16 (1984); Accrediting Council on Education in Journalism and Mass Communications, et al., supra 20 at app.

25. The Sunny Von Bulow National Victim Advocacy Center, headquartered in Fort Worth, Texas, was established in 1986 by Alexander Von Auersperg and Ala Kneissl, children of Martha "Sunny" Von Bulow, to provide resources and support for victims of violent crimes who must deal with the judicial system and the media.

26. Kevin Goldman, CNN Brings State Courts Into Public Living Rooms, 133 Variety 76 (1984).

27. Impact of Media Coverage of Rape Trials: Hearing Before the Subcomm. on Criminal Law of the Senate Comm. on the Judiciary, 98th Cong., 2nd Sess. 13 (1984) (statement of Ronald Pina, district attorney, Bristol District, Mass.) [hereinafter Impact of Media Coverage].

28. Miller v. California, 413 U.S. 15, 24 (1973); M. Galvin, Media Law (Calif: Nolo Press, 1984), 26 (Although the Supreme Court has ruled that obscenity is not protected by the first amendment, they have never clearly defined what constitutes obscenity. In 1973, the Court applied the 1957 Roth Test guidelines to define obscenity: "(a) whether 'the average person, applying contemporary community standards' find that the work taken as a whole, appeals to pruient interests; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value").

29. Impact of Media Coverage, supra note 27 at 13 (statement of Ronald Pina).

30. Nightline: Chemical Weapons -- Back On the Battlefield (ABC television broadcast, March 21, 1984) (published transcript).

31. Id.

32. This Week with David Brinkley (ABC television broadcast, March 25, 1984) (published transcript).

33. Id.

34. Id.

35. Nightline: Chemical Weapons -- Back on the Battle- field, supra note 30.

36. Impact of Media Coverage, supra note 27 at 6 (statement of Ronald Pina).

37. Nightline: The New Bedford Rape Trial (ABC television broadcast, March 15, 1984) (published transcript).

38. Impact of Media Coverage, supra note 27 at 33, 44, 98 (statement of James M. Ragsdale, editor, The Standard-Times, Bedford, Mass.; testimony submitted on behalf of Colony Communications, owner of Greater Fall River Cable TV and Whaling City Cable TV).

39. Letter from Charles McCorkle Hauser, vice president and executive editor, The Providence Journal-Bulletin, Providence, Rhode Island, to the author (November 5, 1986) (discussing free-press v. right to privacy).

40. Impact of Media Coverage, supra note 27 at 26, 98 (statement of James M. Ragsdale; testimony of Colony Communications).

41. Phil Kakielski, "Big Dan's Judge Assails Media For Naming Rape Complainant," The Providence Journal, March 22, 1984. (A)9.

42. This Week with David Brinkley, supra note 32.

43. Nightline: The New Bedford Rape Trial, supra note 37.

44. Impact of Media Coverage, supra note 27 at 34 (statement of James M. Ragsdale).

45. Nightline: The New Bedford Rape Trial, supra note 37.

46. Impact of Media Coverage, supra note 27 at 20 (statement of Ronald Pina).

47. Nightline: Losing in Politics (ABC television broadcast, March 16, 1984) (published transcript).

48. Impact of Media Coverage, supra note 27 at 98 (testimony of Colony Communications).

49. Id. at 31 (statement of James M. Ragsdale).

50. Id. at 27.

51. Interview with Judge Michael G. Harrison, 30th Jud Circuit, Lansing, Mich. (October 14, 1987); interview with Judge Carolyn Stell, 30th Jud Circuit, Lansing, Mich. (October 19, 1987); interview with Donald Martin, supra note 21; interview with Michael Franck, supra note 15.

52. Interview with Donald Martin, supra note 21.

53. Interview with Judge Carolyn Stell, supra note 51.

54. Interview with Michael Franck, supra note 15.

55. Id.

56. Interview with Judge Michael G. Harrison, supra note 51.

57. Interview with James Shonkwiler, executive director, Michigan Prosecuting Attorneys Association, Lansing, Mich. (October 23, 1987).

58. Id. See also interview with Michael Franck, supra note 15.

59. Norman Davis, Television in Our Courts: The Proven Advantages, the Unproven Dangers, 64 Judicature 89 (1980); Impact of Media Coverage, supra note 27 at 94 (written statement of Ed Godfrey, president, Radio-Television News Directors Association and Ernie Schultz, executive vice president, Radio-Television News Directors Association).

60. Letter from Lawrence Sullivan, Assistant National Editor, The Detroit News, to the author (October 5, 1987) (discussing free press v. right to privacy).

61. Impact of Media Coverage, supra note 27 at 25 (statement of James M. Ragsdale).

62. Id. at 21, 25 (statement of James M. Ragsdale and Ronald Pina).

63. Id. at 7 (statement of Ronald Pina).

64. Id. at 21.

65. Interview with Donald Martin, supra note 21; interview with Anne Seymour, director of public affairs, Sunny Von Bulow National Victim Advocacy Center, Fort Worth, Texas, in Lansing, Mich. (June 6, 1987).

66. Barber, supra note 3 at 88.

67. Impact of Media Coverage, supra note 27 at 30 (statement of James M. Ragsdale).

68. Accrediting Council On Education in Journalism and Mass Communications, et al., supra note 20 at app. D.

69. Sunny Von Bulow National Victim Advocacy Center, "Section B: Crime Victims and the Media," Curricula, n.d.

70. Roy Peter Clark, "Covering Crime: Journalists Face Difficult Choices," in Tommy Thomason and Anantha Babbili, eds., Crime Victims and the News Media. A synopsis of a national symposium sponsored by the Texas Christian University Department of Journalism and the Gannett Foundation, November 18, 1986, n.d.

CHAPTER 7

WITNESSES ON TRIAL

Trial proceedings take place in either a criminal or civil court. Criminal actions are taken by the state or federal government to punish an individual who has broken a public law. Civil actions arise when private rights, established by a contract or tort, are infringed upon.[1] Civil actions usually seek monetary compensation for the plaintiff from the opponent for the wrongdoing that occurred; in criminal actions, if the defendant is found guilty, the punishment may be a fine, supervised release, incarceration, or even death. In some instances, a case may be tried in both a criminal and civil court.

The testimony of witnesses is necessary in civil and criminal trials to determine if the accused is guilty of any wrongdoing. Though the examination of witnesses is under the control of the court counsel for either party may generally ask questions about anything related to the case. However, the information solicited by an attorney must be competent, relevant, and material to the proceedings. A judge at anytime may decide that a particular line of questioning is immaterial, and stop a witness from answering a question.[2]

The mode and manner of questioning of a witness is also under the control of the judge. The presiding judge should take steps to relive the fears or nervousness of a witness.[3] In some instances the court may even take steps to protect a witness from being taken advantage of unfairly. "The court is under duty to interfere, regardless of objection, in order to protect a witness from being brow-beaten, insulted, or intimidated by counsel."[4] However, the court should not classify witnesses, suggesting to the jury and other trial participants that one class should be viewed with caution "because its vices are different in a kind or degree from those of another class."[5]

Each witness is a distinct problem for an attorney. Two people may witness the same incident, however, their recollection of the event may be completely different. The way in which a person processes information is influenced by such things as background, past experiences, temperament, faculties, and intelligence.[6] Because it is common for testimony to vary from one witness to another, an attorney will use numerous tactics during the cross-examination designed to discredit even the most honest witness:

> It is said that there are few citizens who participate in a lawsuit who come out of it with a better reputation than the one with which they went in . . . . The law is no

> respecter of persons, or persons' feelings if they happen to be witnesses under cross-examination.[7]

One way to impeach a witness is by discrediting the actual individual.[8] This can be accomplished by the attorney illustrating that the witness's past may influence his/her testimony; for instance, a witness in a friend's divorce case, may be impeached (as well as embarrassed) when questioned about his/her own unpleasant divorce. The testimony of a witness may also be discredited if the court allows expert testimony from a mental health professional, commenting on the mental condition of a witness. A psychologist could conclude, for example, that a witness's recollection of an incident may not be reliable because, the individual shows the tendencies of a pathological liar. Attacking testimony by accenting improbabilities and contradictions is another method used to impeach a witness. This may be accomplished by questioning the witness on a specific subject, then presenting a police document that shows a differing statement made earlier by the individual regarding the same subject. An attorney may also attempt to discredit a witness by questioning the memory and faculties of a witness: "Did the incident occur before lunch or after lunch" "were you wearing your glasses, as you are now, at the time you witnessed the incident."

Witnesses can also be impeached by the attorney's mode of questioning.[9] During direct examination open-ended questions are often used in order to elicit as much information from a supporting witness as possible. However, during cross-examination closed-ended questions are preferred, since this line of questioning allows the examiner to "control" the answers of the witness. Closed-ended questions tend to require a simple "yes" or "no" response, thus stopping the witness from offering any unanticipated information. Although a witness may feel that this form of questioning manipulates the actual intent of his/her testimony, a "yes" or "no" response is all an attorney will generally accept, ignoring or refusing any additional explanatory comments. However a frustrated witness, who refuses to answer just "yes" or "no", can be easily impeached by an attorney who continues to

> [p]ress for definite and specific answers until [the witness's] evasiveness becomes clear to the jury. The jury will then easily conclude his testimony is worthless.[10]

Tag questions are also used by attorneys to control responses given by witnesses. Asking tag questions ("You did see the man, didn't you?") will elicit more "yes" responses than other forms of questions.[11] A final way to impeach a witness, while at the same time humiliating

him/her is for the attorney to use the "silent treatment" on the witness after a particular response; this tactic is especially unnerving for an ignorant, timid, or inexperienced witness.[12]

Any individual can easily be belittled while on the witness stand. However, often times victims of crimes who testify must additionally defend themselves when being questioned by attorneys. Because of the seriousness of some crimes, and the punishments imposed on an individual found guilty, an attorney will use every tactic available to defend a client. An extreme example is sexual assault victim who is forced to testify about the alleged incident. This example is noteworthy for three reasons: sexual assault is a common occurrence in today's society; victims are still frequently blamed for the assault; the media tend to cover sexual assault crimes, and other sensational crimes such as murder, in much more detail then other equally serious crimes (such as arson).

RAPE VICTIMS AND THE SECOND ASSAULT

A victim is a person, or relative of a person, who, through no fault of their own, suffers direct physical harm, pain, or emotional trauma; a person may be victimized as the result of a crime, accident, or natural disaster.[13] Victims of trauma experience a two-phase post-traumatic stress

disorder.[14] Phase One immediately follows the exposure to the initial traumatic event, and is a stage of disorganization, varying from person to person. An individual may appear calm, but underneath be very upset and stressed. Victims may be fearful, unable to sleep, appear apprehensive, feel upset, and be emotional. The phase may last only moments, or last for hours, weeks, or even months.[15] Phase Two involves a gradual reorganization of the victim's life. Superficially, an individual will return to the psychological state that was present before the traumatic incident; however, deep down, the individual tends to be troubled by events that remind him/her of the traumatic incident. Phase Two can last from months to years.[16]

Sexual assault victims also experience a two-phase post-traumatic stress disorder, though it differs from the disorder experienced by victims of other trauma. According to rape trauma experts Ann Burgess and Lynda Holmstrom, Phase One

> triggers an acute disruption of the victim's psychological, physiological, and social lifestyle, as evidenced by somatic problems, disturbances in sleeping and eating patterns, and the development of minor mood swings and fears specific to the circumstances of the assault. The sexual offense, from this standpoint, constitutes a situational crisis imposed on the victim, and the impact of the assault may disrupt the biopsychosocial functioning

> of the victim for an indefinite period of time. Tragically, the victimization often does not end with the assault.[17]

Victims often try to surround themselves with added protection and emotional support. Because of the feeling of defilement and violation most assault victims experience problems in having sexual relations.[18] In Phase Two, an individual may behave as though everything is fine, and try to push the incident behind them by denying it ever happened. The reactions are induced by events that remind the individual of the original trauma. The phase may occur over a very long period of time.[19] Victims of rape also often go through different suffering then do victims of other violent crimes because of the social stigma attached to rape. The victim often feels guilty about the assault and tries to figure out what he/she may have done to bring on the violation.[20] "A lot of men still see rape as a sexual act, and a lot of men identify with the rapists," said Tim Beneke, author of Men On Rape, "and a lot of men are still blaming women for rape."[21] Elizabeth Bennett, of the New Bedford Women's Center agrees: "If we treated rape as we treated other crimes the questions would be, who did it? The question is , what kind of woman are you, and it should not be that way."[22]

Even some state rape laws reflect out-dated philosophies about rape and women. It can be "implicitly assumed," in some states, that the victim consented to intercourse, or other sexual conduct, unless there is clear evidence -- usually resistance -- illustrating the lack of consent.[23] For example, in California a jury instruction allows every person a defense for the charge of rape. Attorney Judith Rowland explained that if a defendant thinks he had consent from the alleged victim, and the belief is reasonable and in good faith, then a jury must find the defendant innocent of the charges.[24] A defense attorney will skillfully ask leading questions in hopes that the jury will believe the alleged victim consented to sexual intercourse:[25]

Defense Attorney: Isn't it true that it seemed to you that he felt what he had done was all right . . . that nothing was wrong?

Witness: He seemed to act as if I wouldn't do anything about it.

Defense Attorney: He didn't run, did he?

Witness: No.

Defense Attorney: Or chase you out of the house?

Witness: No.

Defense
Attorney: Or order you not to tell anyone?

Witness: No.

Defense
Attorney: Then everything he said or did would lead you to believe he didn't think he'd done anything wrong?

The past sexual history of a victim can also be considered relevant in a case, and prosecutors often do not raise objections to this line of questioning because it may appear that the victim has something to hide.[26]

> While in some instances this may be true, in many others it seems to serve as a subtle sanction and disapprobation of sexually active women either "deserved" or "wanted" to be raped.[27]

Judge Lisa Richette argued,

> You don't bring the person's whole background into evidence in a burglary or a narcotics or any other case. Only in rape do you feel that you are able to do this, and you're talking about a system of jurisprudence. That system has been changed through these new laws that have been passed, and you're trying to wipe them out.[28]

One defense attorney tried to show the jury that if the alleged victim had sexual relations with a friend of the defendant, then she must have willingly slept with the defendant:[29]

Defense Attorney: How about the fact that he [the defendant] drank and got drunk? Would this have a bearing on your feelings toward him?

Witness: Yes.

Defense Attorney: How about the fact that he smoked pot, did this have a bearing on your feelings?

Witness: I think probably because of the excess of it.

Defense Attorney: Now Ms. Adkins, did Stan [the defendant's friend] drink?

Witness: Yes.

Defense Attorney: Did Stan get high on pot?

Witness: Yes.

Defense Attorney: So that Mr. Harter and Mr. Pease were no different?

In the past it was often believed that women falsely accused men of rape, out of anger, guilt, or fear; it was also felt that jurors were sympathetic to women who had been raped. However, according to Deborah Carrow, author of Rape: Guidelines for a Community Response, these two myths have been found to be false. A false rape complaint making its way to trial is very unlikely because of the many stages and screening processes required; the process is one that no person would take lightly, and may even discourage some

individuals from reporting and pursuing legitimate complaints.[30] While an attorney for San Diego County, Judith Rowland was involved in a rape case where the defense attorney suggested to the judge and Rowland that the alleged victim many have accused the defendant of rape in order to get her boyfriend to let her move in. Rowland said,

> I considered the absurdity of the proposition and had to smile: that a woman -- in order to get to move in with her boyfriend -- would run naked into the street, endure endless interviews, be subjected to an embarrassing physical examination, and spend long hours answering detailed questions on a witness stand in front of twelve strangers; and just for insurance, during the fertile time in her menstrual cycle, not take any precautions, planning to use a resulting pregnancy as her ace; an abortion is simple enough and its threat would bring round any but the most callous, certainly a boyfriend, to take her in during her time of need.[31]

There is also evidence that jurors are not sympathetic to the plight of rape victims; one study found that a jury would have convicted an accused rapist in three out of forty-two cases, while the judges would have convicted twenty-two of the forty-two defendants accused of non-aggravated rape.[32]

Victims who pursue a complaint and go through the trial process are often upset by the lack of information

they are supplied with regarding the legal status and court proceedings. Victims are frightened by grand juries and subpoenas, and are often not consulted about plea bargaining -- being left to feel that the judicial system has "little regard for the victims' well-being."[33]

The criminal procedure for rape usually involves five steps: the defendant has a presentment hearing, where he/she is advised of the right to counsel and the nature of the charges; a preliminary hearing follows, to determine if a crime was committed and if there is substantial evidence that the accused committed the crime; next, during an arraignment, a plea of guilty or not guilty is offered by the defendant; the trial then begins; and plea bargaining commonly goes on throughout the trial process.[34] The preliminary hearing can be especially brutal for the rape victim.

> Often, it is conducted by a lay magistrate or lower court judge who lacks sensitivity to the issues and who exercises little control over the far-ranging, sharp, and often, deprecating cross-examination techniques of defense counsel.[35]

Often in the county's District Attorney's Office, male attorneys out number female attorneys. Many sexual assault victims must work with a male prosecutor who may not understand the trauma of rape, or wonder how something like "this could have happened, how could she be so dumb."[36]

Many victims fear the male prosecutor will not believe the victim, according to Judith Rowland, and reveal information that is only directly asked for; Rowland said prosecutors must learn to ask every question imaginable before placing greater importance on some information over other information.[37]

Although it is the prosecuting attorney's job to bring justice to society, a few "bad apples" may use their position and a particular case to benefit themselves. Prosecutors are usually elected, and often use the office as a stepping-stone to higher political positions. Because of this, and because the prosecutor has power of discretion,[38] the media often scrutinizes the actions of this public official more than other public officials.[39] At the expense of serving the public interest, to look good a prosecutor may reduce charges unnecessarily in order to assure conviction, or a case that normally could be handled swiftly and quietly may be over-exposed to the public and the media.[40]

The defense attorney is retained or appointed to defend a person accused of a crime. It is the defense counsel's job not to prove the innocence of the accused, but to show that the prosecutor failed to prove guilt. If this defense does not work, then the defense attorney will

attempt to show that the accused was not properly brought through the trial process, by arguing the defendant was denied due process of law, for example. No matter how serious the crime, it is the defense counsel's responsibility to ensure that a person's constitutional rights are carried out to their fullest intent.

The trial stage begins with opening statements being made by both counsels. Next, the prosecutor begins the presentation of evidence, with the direct examination of witnesses. The defense attorney has the option to cross-examine any of the witnesses. The purpose of cross-examination is to test the witness' observation, recollection, truthfulness, and possible bias against the accused.[41] During the first phase of cross-examination the attorney may only ask the witness about things that were discussed during direct examination; however, leading questions are permissible during the examination.[42] A skillful defense attorney will attempt to confuse, fluster, frighten, and anger the witness in hopes that he/she will lose self-control and composure. Yet Judith Lindahl, a defense attorney in the New Bedford rape case, claims "a truth-telling woman cannot effectively be cross-examined or humiliated."[43] However, Alan Dershowitz, a well-known defense attorney and professor at Harvard Law School, said,

"I think I would have a great deal of trouble doing what so many defense lawyers do, which is subjecting the woman to a second rape -- this one in the courtroom itself."[44] One woman was cross-examined about the lack of physical injuries she sustained during the alleged rape:[45]

Defense Attorney: Ms. Adkins, you claim Mr. Harter grabbed you roughly about the mouth, is that correct?

Witness: He shoved my head back down on the bed with his hand over my mouth.

Defense Attorney: Was it hard enough to bruise you?

Witness: No, it wasn't.

Defense Attorney: What other force was used?

Witness: When he grabbed me, I tried to get out of bed. He grabbed my arm and threw me back down on the bed.

Defense Attorney: Hard enough to leave any bruises?

Witness: No. The bed was soft.

Defense Attorney: In fact, Ms. Adkins, you had no bruises or contusions or lacerations of any kind anywhere on your body after this incident, did you?

Witness: I was very sore, very very sore around my vagina. It hurt me alot.

Defense Attorney: Just there? [emphasis in original.]

After the cross-examination the prosecutor may recross-examine the witness to clarify points brought out during the crossexamination.

Once the prosecutor completes the state's side of the case, the defense attorney will present his/her case. However, some defense attorneys may not present their own witnesses, as this is not required by law.[46] A defendant is not required to take the stand at any point in a trial, and this fact cannot be called to the jury's attention.[47]

Charles Dean and Mary deBruyn-Kops note that even the judge may lack sensitivity during a rape trial. While most judges remain impartial in a rape case, a few may, out of concern to ensure the defendant is given absolute due process under law, become prejudice in favor of the accused, causing the victim to feel she herself was the criminal.[48] Dean and deBruyan-Kops also said that a victim who goes through the entire trial process can be put through severe anguish, which explains why victims do not want the proceedings widely publicized.

> The Supreme Court Justice who suggested that young victims might be afforded privacy during their testimony at a rape trial apparently did not stop to think that privacy might be desirable for older victims, too.[49]

A victim of sexual assault in an open, public court must describe the assault in minute and explicit detail. Old wounds may be reopened or the healing process retarded when a victim is forced to mentally relive the assault in the presence of the defendant:

> The details of the assault are often humiliating and degrading to victims, and they may have difficulty speaking about them. One study described the necessity for the victim to publicly disclose details the assault as "tantamount to leaving her naked in a crowd of curious observers."[50]

During one trial, in hopes of illustrating that the woman did not consent to sexual intercourse with the defendant, a prosecuting attorney had the witness explicitly describe the assault. The testimony included:[51]

> Prosecuting Attorney: What about his voice?
>
> Witness: It was different. He didn't yell or anything . . . he commanded me and I . . . like when he first told me to take off my top, and I said no. Then he said, "Take it off!" and I did. And when he told me to spread my legs, I said no to that too. Then he said, "Spread 'em!" and I did. It was the tone that scared me, and I . . . obeyed. . . .

Prosecuting Attorney:	You've told us Ms. Adkins, that his penis wasn't hard and that it wouldn't go in.
Witness:	Yes.
Prosecuting Attorney:	What happened next?
Witness:	He said, "Put it in your mouth."
Prosecuting Attorney:	What did you say?
Witness:	I said, "I don't want to," and he said "Put it in your mouth and make it hard." And he pushed it . . . he was over me and he pushed it up to my mouth.
Prosecuting Attorney:	Did you do it?
Witness:	Yes. I didn't want to do it. . . .

Adding the fact that extended media coverage of rape trials is permissible in many states imposes even more pressure on the victim. Victims and witnesses whose name, address, and even photograph might appear in the news can experience "revictimization" because vulnerability is exposed so openly.[52] Few victim advocates agree with the media's argument that by suppressing the victim's identity the stigma associated with rape is perpetuated.

> Rape is the ultimate invasion of privacy. In some ways, cameras seem like another rape, a gang rape, since the eyes of so many would be participating in the invasion.[53]

However, the managing-editor of Providence, Rhode Island television station WLNE-TV, said the media "fell into a trap" when they decided not to name rape victims, and the only way the social stigma of rape can be "cleansed" is when women come forward publicly.[54] James Ragsdale, a newspaper editor, disagrees with this familiar argument:

> Publishing the names of victims in the crime of burglary has not stopped burglary . . . It has not stopped killings. I suggest that the publishing of names is not going to stop rape. . . . Only in the case of rape is the victim the one that gets placed on trial. One does not accuse the woman teller at a bank for standing too close to the money at the time she got robbed. A woman is not held suspect for charging that a man snatched her purse--only it seems, in the case of rape.[55]

One victim said she was not sure who to trust, and was afraid that people would not believe her if the details of her rape were made public:

> I was afraid . . . that people would blame me for it, that people would judge my actions, reactions or motives. . . . To testify at the trial, to recount all the details, was the hardest thing I have ever done, even with the support of many in the courtroom. I was forced to relive the rape in front of strangers and my assailant. . . . I was aware that the court proceedings were open to the public, and it threatened me. I wanted to know who the

> people were that were in the courtroom. If I had had to face TV cameras in that courtroom, being exposed to anyone in the community at the flick of a dial, I can say with certainty I would not have testified.[56]

Another victim felt assured her sexual assault would not be reported in detail. However, the television, radio, and newspaper reported on the trial proceedings, and published her age, address, and occupation. The victim said,

> Not only was I hurt and angry from the assault. I was now ashamed and embarrassed, wondering who knew, what were people thinking, what were they saying.[57]

However, in some instances publicity of a trial may be beneficial. Attorney Timothy Dyk said, "[t]he reason we have public trials is because it helps deter purgery, encourages witnesses to come forward, [and] urges the trial participants to do a better job."[58] For example, a California newspaper ran a story on a rape trial that was in progress, with the name and photograph of the victim published along side the article. A former male acquaintance of the victim called the prosecuting attorney's office to say he knew the woman, and had slept with her on one occasion; the man added that he had not known, at the time he met the woman, that she had recently been raped. However, it was apparent to him that something was troubling the woman. The gentleman said that their date was pleasant

and progressing nicely. The woman seemed very receptive to the idea of sexual intercourse; she responded favorably to foreplay, but, when they attempted to have intercourse the woman "froze up," became very depressed, and said she could not have sexual relations with the man. The man became a witness for the prosecution to help illustrate how the trauma of rape had left the woman, who previously enjoyed sexual relationships, with a sexual dysfunction.[59]

Others are concerned for the relatives of violent crime victims, especially when children are involved. Although the names and photographs of minor victims are rarely made public, often times nothing stops the media from publicizing the parents' name. When discussing CNN's and other extended media's desire to cover the McMartin preschool child abuse case, Kee MacFarlene, director of the Child Sexual Abuse Diagnostic Center in Los Angeles, said,

> I am as concerned about the parents as I am about the children in this case. Their privacy has been ruptured by this situation. And I think that while we may solve some of it by protecting children, the parents will be testifying as well in this case, and the medical people will be testifying as to the identities of the children, and so will we. I do not see how this case can be televised live and protect these children and their families.[60]

Children who are cross-examined can be belittled just as easily as an adult. F. Lee Bailey and Henry B. Rothblatt offer cross-examination techniques to use on children:

> Young children are prone to suggestion. Your questions should be stated affirmatively. The child is likely to answer "yes" to a question that suggests a yes answer . . . . Children are extremely imaginative. Their stories can be pure fiction or part fact and part fiction. If the child has let his imagination run away with him, encourage him to exaggerate. Gently lead him further and further until his story reaches the point of ridiculousness.[61]

Ann Seymour, of the Sunny Von Bulow National Victim Advocacy Center, is also concerned about the family, and even friends, of victims. Seymour said family and friends often do not attend the accused's trial because of the emotional pain. However, the extended media often captures the courtroom drama, and publishes it as newsworthy information. The example Seymour gave concerned the trial of a man accused of sexually assaulting and murdering a mother and daughter. An enlarged photograph of the young girl's breast was submitted as evidence during the trial; the photograph was used by the prosecutor against the offender, and a medical doctor discussed bite marks visible on the breast.

> That evening on the five o'clock news, the picture was aired and identified as Julie's breast for all the world to see. Her

> family, and particularly her young friends, were outraged at the blatant disrespect for Julie. They felt that since Julie, in life, would never have exposed her breast, the media had no right to do so on the evening news.[62]

PROTECTING THE PRIVACY INTERESTS OF SEXUAL ASSAULT VICTIMS

Many believe measures should be taken to insure that sexual assault victims are allowed some right to privacy during trial proceedings. A common recommendation is to allow the victim a greater voice in how the trial proceedings will be handled by the extended media.[63] Stewart Dyer and Hauserman suggest that a victim be given control over extended coverage of trial proceedings by requiring the victim's consent before coverage is permitted. If a victim objects to coverage that has already been permitted, then an automatic exemption of the victim should be allowed. Regardless of which type of procedure is enforced, Stewart Dyer and Hauserman maintain the victim should be notified well in advance about plans for aural and/or visual coverage of a trial, and the procedures for consenting or objecting.[64] Michael Franck, executive director of the Michigan Bar Association, agrees; Franck said that if out front victims know how the judicial process and the process for covering trials aurally and visually works, and the options available to decline coverage are explained, then

there should not be a problem of victims not wanting to provide testimony.[65] One rape victim also feels the consent of the victim should be considered more seriously, as well as what type of information is made available to the public by the extended media:

> People might become more inclined to report this crime against both body and integrity if details of their private lives were published only with their consent. Perhaps reporting the rapists modus operandi and the general location of the crime would alert an educated public. But publishing details of alleged victims lives perpetuates the intrusion. To me it felt like another intrusion, another rape. . . .[66]

Other victim advocates stress that if state guidelines cannot fully protect sexual assault victims from extended media coverage, then at least the identification and photograph of the victim should be prohibited by the broadcast and newspaper industries.[67] Ed Godfrey suggests that while a sexual assault victim is on the stand testifying the television camera be pointed away from the witness, perhaps focusing on the defense attorney, prosecutor, judge, jury, or defendant. Precautions would also be taken to avoid publicizing the victims name.[68] Though Godfrey approved of televised trials, he said,

> I think rape victim's rights have been forgotten, which is one of the reasons I feel so strongly about somehow televising

> these trials. . . . Unfortunately, it is the most sensational cases which are publicized, but it seems to me the constitutional rights of a victim have been overshadowed by trying to protect those accused, in our judicial system.[69]

Ann Seymour is particularly concerned about the publicizing of sensitive victims' identities, such as children, elderly, and the handicapped. Seymour also added that publicizing any witness' name and address could be damaging if the state does not require that the witness be notified about particulars of the case, such as the defendant being released on bail.[70] Lynn Marks, executive director of Women Organized Against Rape, suggests that the media industry continue to use sketch artists in sexual assault trials if it is felt a picture is necessary when reporting on the proceedings.[71]

A few individuals see privacy rights and constitutional rights as important considerations to be weighted more heavily when trying to balance the rights of the press and the rights of witnesses.[72] Charlotte Carter observed that

> opponents of courtroom photographs argue that the nature of camera coverage, with its ability to capture intimate closeups and its widespread exposure of an individual's features and private emotions, requires a re-evaluation of the privacy rights of those subject to such coverage. Even those who advocate courtroom photography have recognized the need to protect

> the privacy right of the innocent bystander who becomes a chance witness or the individual who unwittingly is summoned to jury duty.[73]

Gary Melton, director of the Law and Psychology Program at the University of Nebraska, at Lincoln, argues that the sixth amendment public trial clause if fulfilled so long as the defendant, counsel, family, and friends are present; thus, young witnesses may avoid having to recount embarrassing and emotional material to large audiences.[74]

Another remedy to the problem of extended coverage of sexual assault proceedings would be to educate society about the crime of rape to eliminate the stigmas often attached to the crime.[75] Ernie Schultz and Ed Godfrey said that the problem of rape is within our society, not in how rape trials are covered. The problem will not be solved, Schultz and Godrey said, until society is educated to realize that rape is not a sex crime, but an assault crime.[76] Godfrey said,

> We hope the day will come and come soon when society treats them just like other victims of crimes, and the news media can do the same without setting off a fire storm of criticism. We believe if there is a fault, it lies within the courts and the society they reflect, not in the media which merely exposes what already exists.[77]

Ann Burgess and Lynda Holmstrom said,

> Persons who subsequently come into contact with the victim must be particularly careful not to compound the core issues underlying the trauma of being raped. It is crucial that the individuals (police officers, examining physician, family members, etc.) not be angry with the victim for having been victimized, that is, not blame her for the assault. It is equally important that she be permitted to have as much opportunity as possible to be self-determining again and to have some say in the subsequent series of events, activities, and decision-making processes that come into play following the attack. By capitalizing on these opportunities, much can be accomplished in helping the victim restore her sense of competency, adequacy, and self-worth.[78]

Finally, a simple solution to the problem, suggests Carolyn Stewart Dyer, is for the media to consider some ethics and "put themselves in the place of the victims and ask themselves if they would want to testify to embarrassing humiliating, or frightening experiences on camera for all the world to witness."[79]

ENDNOTES

1. 7 Words and Phrases, Civil Action (1968); 10A Words and Phrases, Criminal Action (1968).

2. C.J.S. Witnesses 317.

3. Id.

4. Id. (citing State V. Goodwin 186 P.2D 935 (Washington).

5. F. Lee Bailey and Henry B. Rothblatt, Successful Techniques for Criminal Trials, 2nd. ed. (Rochester, NY: The Lawyers Co-operative Publishing Co., 1985), § 26:4.

6. Id., 11:19.

7. Kevin Tierney, How To be a Witness, Legal Almanac Series No. 67 (Dobbs Ferry, NY: Oceana Publications, Inc., 1971), 63-64.

8. Id., 64-70; F. Lee Bailey and Henry B. Rothblatt, supra note 5 at §11:20-11:29.

9. F. Lee Bailey and Henry B. Rothblatt, supra note 5 at § 11:20-11:29; Elizabeth Loftus and Jane Goodman, "Questioning Witnesses," in Saul M. Kassin and Lawrence S. Wrightman, eds., The Psychology of Evidence and Trial Procedure (USA: Sage Publications, Inc., 1985), 255-271.

10. F. Lee Bailey and Henry B. Rothblatt, supra note 5 at§11:22.

11. Elizabeth Loftus and Jane Goodman, in Saul M. Kassin and Lawrence S. Wrightman, eds., supra note 9 at 11:22.

12. F. Lee Bailey and Henry B. Rothblatt, supra note 5 at §11:20- 11:29.

13. Roy Peter Clark, "Covering Crime: Journalists Face Difficult Choices," in Tommy Thomason and Anantha Babbili, eds., Crime Victims and the News Media. A synopsis of a national symposium sponsored by the Texas Christian University Department of Journalism and the Gannett Foundation, November 18, 1986, n.d.

14. Judith Rowland, The Ultimate Violation (Garden City, N.Y.: Doubleday and Company, Inc., 1985), 337 (Expert testimony of Dr. Joshua Golden, Psychiatrist, UCLA School of

Medicine. The post-traumatic stress disorder has been officially recognized by the American Psychiatric Association) (Judith Rowland served as an attorney in the felony division of the San Diego County District Attorney's Office before going into private practice. The Ultimate Violation was written in hopes that readers would get a better understanding of what rape is and is not, who rapes, how victims cope, and what should be happening in rape trials. The four rape trials discussed in the book are true and accurate, except for the names of the victims and other related characters).

15. Id.

16. Id.

17. Id. at 303 (citing Ann Burgess, Lynda Holmstrom, and Nicholas Groth, Rape: Power, Anger, and Sexuality, 134 Am. J. Psychiatry 1239-1243 (November 1977)); see also Ann Burgess and Lynda Holmstrom, Rape Trauma Syndrome, 131 Am. J. Psychiatry 982-983 (September 1974).

18. Rowland, supra note 14 at 339.

19. Id.; see also Burgess and Holmstrom, supra note 17 at 985.

20. Nightline: The Responsibility of the Witness (ABC television broadcast, March 17, 1984) (published transcript).

21. Rowland, supra note 14 at 339.

22. Nightline: The New Bedford Rape Trial (ABC television broadcast, March 15, 1984) (published transcript).

23. Deborah M. Carrow, Rape: Guidelines for a Community Response (USA: National Institute of Law Enforcement and Criminal Justice, 1980), 169.

24. Rowland, supra note 14 at 93 (Rowland said this jury instruction "could only be the product of a male perspective of the act").

25. Id., 93 (After the defense attorney asked the last question the prosecuting attorney objected, saying the defense attorney was giving a conclusion to the jury. Before the judge could rule the defense attorney said he was through questioning the witness).

26. Carrow, supra note 23 at 169; Lisa Brodyga, et al., Rape and Its Victim: A Report for Citizens, Health Facilities, and Criminal Justice Facilities (USA: National Institute of Law Enforcement and Criminal Justice, 1975), 103.

27. Carrow, supra note 23 at 169.

28. Nightline: The Responsibility of the Witness, supra note 20.

29. Rowland, supra note 14 at 88-89 (After the last question asked by the defense attorney the prosecuting attorney objected, saying the question was argumentative and called for a conclusion. The judge sustained the objection).

30. Carrow, supra note 23 at 175.

31. Rowland, supra note 14 at 87.

32. Carrow, supra note 23 at 175.

33. Ezzart A. Fattah, ed., From Crime Policy to Victim Policy (New York: St. Martin's Press, 1986), 215.

34. Brodyga, et al., supra note 26 at 97.

35. Id. at 101.

36. Rowland, supra note 14 at 147.

37. Id. at 148.

38. Power of discretion refers to an option open to judges and administrators "to act or not as they deem proper or necessary and such acts or refusal to act may not be overturned without a showing of abuse of discretion" (citing Black's Law Dictionary (abridged 5th ed. 1983)).

39. Harold J. Vetter and Leonard Territo, Crime and Justice in America: A Human Perspective (St. Paul: West Publishing Co., 1984), 231.

40. Id., 260.

41. Id., 319.

42. Id.

43. This Week with David Brinkley (ABC television broadcast, March 25, 1984) (published transcript).

44. Nightline: The Responsibility of the Witness, supra note 20.

45. Rowland, supra note 14 at 92.

46. Vetter and Territo, supra note 39 at 319.

47. Id.

48. Charles Dean and Mary deBruyn-Kops, The Crime and the Consequences of Rape (Springfield, IL.: Charles C. Thomas, 1982), 89.

49. Id. at 38.

50. Carolyn Stewart Dyer and Nancy R. Hauserman, Exemption of Sexual Assault Victims, 1 Sexual Coersion and Assault 82 (1986) (cited K. Weis and S.S. Borges, "Victimology and Rape: The Case of the Legitimate Victim," in L.G. Schultz, ed., Rape Victimology (Springfield, IL.: Charles C. Thomas, n.d.), 91-141; Anne Burgess and Lynda Holmstrom, Rape: Victims of Crisis (Bowie, MD.: Robert J. Brady, 1974); T.W. McCahill, L.C. Meyer, and A.M. Fischman, The Aftermath of Rape (Lexington, MA.: Lexington (1979)).

51. Rowland, supra note 14 at 92 (The testimony went on to give other more graphic and explicit details of the incident from both the alleged victim and the defendant).

52. Impact of Media Coverage of Rape Trials: Hearing Before the Subcomm. on Criminal Law of the Senate Comm. on the Judiciary, 98th Cong., 2nd Sess. 73 (1984) (statement of Jo Beaudry, coordinator, Victim/Witness Services, Milwaukee County, Wisconsin) [hereinafter Impact of Media Coverage].

53. Id. at 69 (statement of Lynn Marks, executive director, Women Organized Against Rape, Philadelphia, Pennsylvania).

54. Thomas J. Morgan, "TV Newsman, Editor Clash on Rape Coverage Channel 6, Standard Time Part Ways on Identifying Women," The Providence Journal, March 22, 1984. Photocopy 1986.

55. Id.

56. Impact of Media Coverage, supra note 52 at 51-52 (statement of Jennifer Barr, rape victim, rape crisis counselor).

57. Id. at 48 (statement of Ellen Guyker, rape victim).

58. Interview with Timothy Dyk, attorney, Wilmer, Cutler, and Pickering, Washington, D.C. (May 19, 1987).

59. Rowland, supra note 14 at 271-172.

60. Child Sexual Abuse Victims in the Court: Hearing before the Subcomm. on Juvenile Justice of the Committee on the Judiciary, 98th Cong., 2nd Sess. 95 (1984) (statement of Kee MacFarlane, director, Sexual Abuse Diagnostic Center, Children's Institute International, Los Angeles, Calif.) [hereinafter Child Sexual Abuse Victims].

61. F. Lee Bailey and Henry B. Rothblatt, Successful Techniques for Criminal Trials, 2nd ed., (Rochester, NY: The Lawyers Co-operative Publishing Co., 1985), §11:38.

62. Sunny Von Bulow National Victim Advocacy Center, "Section B: Crime Victims and the Media," Curricula, n.d.; interview with Anne Seymour, public affairs director, Sunny Von Bulow National Victim Advocacy Center, Fort Worth, Texas, in Lansing, Mich. (June 6, 1987).

63. Stewart Dyer and Hauserman, supra note 50 at 86-92; letter from Carolyn Stewart Dyer, associate professor, School of Journalism and Mass Communication, University of Iowa, to the author (May 7, 1987) (discussing free press v. right to privacy); Impact of Media Coverage, supra note 52 at 49 (statement of Ellen Guyker); Carrow, supra note 23 at 102; interview with Michael Franck, executive director, Michigan Bar Association, Lansing, Mich. (October 22, 1987).

64. Stewart Dyer and Hauserman, supra note 50 at 92.

65. Interview with Michael Franck, supra note 63.

66. Impact of Media Coverage, supra note 52 at 49 (statement of Ellen Guyker).

67. Id. at 64, 82 (statements of Lynn Marks and Ed Godfrey, president, Radio-Television News Directors Association); interview with Anne Seymour, supra note 62.

68. Impact of Media Coverage, supra note 52 at 82 (statement of Ed Godfrey).

69. Id.

70. Interview with Anne Seymour, supra note 62.

71. Impact of Media Coverage, supra note 52 at 64 (statement of Lynn Marks).

72. Charlotte Carter, Media in the Courts (USA: National Center for State Courts, 1981), 21; Impact of Media Coverage, supra note 52 at 50 (statement of Ellen Guyker); Child Sexual Abuse Victims, supra note 60 at 146 (testimony of Gary B. Melton, on behalf of the American Psychological Association and the Association of Psychology. Excerpt from published book).

73. Carter, supra note 72 at 21.

74. Child Sexual Abuse Victims, supra note 60 at 147 (statement of Gary B. Melton).

75. Letter from Ernie Schultz, acting president, Radio-Television News Directors Association, Washington, D.C., to the author (November 3, 1986) (discussing free press - right to privacy); Impact of Media Coverage, supra note 52 at 81 (statement of Ed Godfrey); Rowland supra note 14 at 303 (citing Burgess, Holmstrom, and Groth, Rape: Power, Anger and Sexuality, 134 Am. J. Psychiatry 1239-1243 (November 1974)).

76. Letter from Ernie Schultz, supra note 75; Impact of Media Coverage supra note 52 at 81 (statement of Ed Godfrey).

77. Impact of Media Coverage, supra note 52 at 81 (statement of Ed Godfrey); letter from Ernie Schultz, supra note 75 ("Rape victims should not be regarded by our society as any different from victims of armed robbery. Once the stigma vanishes so, too, do the problems of trial coverage").

78. Rowland, supra note 14 at 303 (citing Burgess, Holmstrom, and Groth, Rape: Power, Anger, and Sexuality, 134 Am. J. Psychiatry 1239-1243 (November 1977)).

79. Letter from Carolyn Stewart Dyer, supra note 63.

CHAPTER 8

FINDINGS, IMPLICATIONS, AND RECOMMENDATIONS

FINDINGS

The witness is a delicate, yet vital part of our judicial system. Without the cooperation of witnesses, the justice that our society deserves can not be brought forth. The guarantee that the defendant shall be confronted by witnesses against him/her, as well as other rights for the accused, is embedded in our Constitution. The founding fathers outlined privileges for the accused so that all individuals would be assured equal protection under law. However, in the efforts, to preserve the rights of the accused, the framers of the Constitution provided no rights for witnesses, or other trial participants, who became involved in judicial proceedings.

Should trial witnesses have a right to privacy under the fourth amendment?

It is clear that the fourth amendment, as currently interpreted, cannot extend privacy rights to witnesses. Griswold v. Connecticut clearly states that the fourth amendment cannot be regarded as a general right to privacy;[1] and, as Robert Weiss pointed out, even if a witness were protected by the fourth amendment, testimony (evidence)

would not be considered an unreasonable search by the state or federal government.[2]

Individual privacy rights do exist, but not in the courtroom. The four types of privacy invasion cannot be claimed by witnesses who reveal personal or intimate information during the course of a public trial, which is open to the public, press, and in many instances, the extended media. Claims that a person's privacy is invaded through misappropriation by a television station is unlikely since the court approves extended media coverage of the court proceedings in advance; thus, the witness cannot argue that a profit-making newspaper or television station used the individual's name, picture or image without proper consent.[3]

The extended media also can not be accused of invasion of privacy by means of intrusion. First of all, the "intrusion" would not involve an uninvited party, as the state and presiding judge approves of the extended media being present. A courtroom is a public place; and as Prosser and Keeton explained, a right to privacy does not exist in a public place.[4] More important, however, is that two significant factors in intrusion claims are not abused in any way: the means used to obtain the information are aural and/or visual equipment specifically approved by the

state; the purpose for obtaining the information is to inform society about a public matter.

Though public disclosure makes known true private facts,[5] remedies cannot be rewarded to a plaintiff. The publicized fact must be a private fact. It would be concluded that though intimate, and at one time private, the information was obtained in a public setting, in the presence of other strangers, and recorded in a public transcript, thus, it would no longer be a private fact by the time the media publicized the information. The appellee could also successfully argue that the public had a legitimate interest in receiving the information.

Lastly, invading personal privacy by placing the witness in a false light in the public's eye cannot be claimed by a witness whose actual testimony is publicized by the extended media. Publicizing the photograph or aural/visual testimony of a person is true information, and hence the media is not connecting the witness with a false statement or situation.[6]

Witnesses also lose their individual right to privacy because of privileges accorded the media through the first amendment. The press believes it is their responsibility to be the eyes and ears of the public, with the freedom to publicize all information that is deemed

newsworthy. Although there are instances when the press can legally be restrained from publicizing information, it is only in the most extreme circumstances. The freedoms granted to the press were reaffirmed in the Near v. Minnesota decision, which stated that a free press is a liberty safeguarded by the fourteenth amendment due process clause.[7] Reporting on the activities of court proceedings is one of the privileges protected by the first and fourteenth amendments. If the press publicizes information and testimony that is part of the court transcript -- a public record -- then a trial participant cannot claim that their privacy has been invaded.[8] An individual also cannot sue for invasion of privacy against a media entity if the state does not take the necessary precautions to avoid having certain information made public.[9]

Since witnesses cannot be afforded privacy protection by means of the fourth amendment, and the Supreme Court has ruled that states may permit aural and/or visual coverage of trials,[10] it is up to the state legislature or top court when devising guidelines, the presiding judge, attorneys, and even the media to consider the benefits and the consequences that extended media coverage may have on witnesses. The majority of state courts require the consent of the presiding trial judge before the extended media may

cover a case; as of 1987, only nine of the forty-three states which allowed aural/visual coverage required the consent or objection of parties or witnesses.[11]

In what classes should privacy interests be considered?

The media is most likely to suggest that witnesses not be classified or distinguished for the purpose of granting varying degrees of privacy. The press feels that, in most circumstances, it is necessary to cover aurally and/or visually all witnesses in a trial in order to present a fair and clear news report. They argue that it is a witness' duty to come forward and participate in the public proceedings regardless of personal inhibitions.[12] However, in instances where a state has given specific witnesses a say in whether or not they oppose extended media coverage, media advocates favor objection requirements over consent rules; this allows easier access to trials by the extended media because the presiding judge approves aural and/or visual coverage before the witnesses are allowed to submit statement objecting to extended media access, and only in special situations is the judge likely to reverse his approval. However, an <u>individual</u> witness may be protected by the court to avoid intimidation by the counsel in a number of ways, regardless of the objections from

attorneys.[13] This protective order may then also shield the witness from having private facts exposed to the press. For instance, the judge may deny the questioning of the witness' residence and employment status. Thus, the press could not report these facts (unless obtained elsewhere) since the information is not allowed during the witness examination.

Victim/witness advocates feel certain classes of witnesses should be exempt from extended media coverage. It is argued that witnesses are not trying to hide information when he/she seeks to keep facts private -- either by avoiding extended media coverage or refusing to testify-- but, only trying to preserve their dignity and reputation.[14] Many witnesses have already been affected emotionally in some way -- an adult fighting for custody of his/her children, a rape victim, a police informant, a relocated witness, a young child witness to a crime, or an individual threatened with physical harm if he/she testifies -- and fear the consequences that the added exposure may cause. Every individual experiences trauma, fear, and humiliation differently, and what may be uninhibiting to one person may be terrifying to what seems to be an equally stable individual. Victim/witness advocates feel that at least rape victims, children, and relatives of victims should be exempt from extended media coverage.[15] If these individuals

cannot be exempt from coverage automatically, then victim/witness advocates would like to see witnesses given more control over their participation in the trial proceedings.[16]

The one class that the majority of people feel does deserve some form of privacy protection are victims of rape. Judges, lawyers, victim/witness advocates, and even members of the media realize the trauma rape victims experience is often a lasting, painful, and humiliating feeling.[17] Publicizing the plight of the victim can hurt the victim even more, causing them to experience revictimization.[18] Victim advocates argue that publicizing the victim and the explicit details of the assault through the extended media adds nothing pertinent to a news report; and contrary to other opinions, the advocates stress, the crime of rape and its social stigma will not diminish as a result of publicizing a rape trial.[19] As one rape victim commented, "the victim has been manipulated, invaded and controlled by a criminal. The media does not have the right to assault the victim again."[20]

The rape victim suffers a two-phase post traumatic stress disorder, which disrupts the individual's psychological, physiological, and social well-being in a variety of ways.[21] The stressful and often humiliating

process of taking a rape case to trial adds to the trauma the victim has already endured. In some instances a rape victim must relive her assault over months, or even years, while the case slowly makes its way through the judicial process. During the trial the victim may be subjected to humiliating questions, attacks on his/her reputation, lifestyle, and sexual history, and be forced to relive the assault mentally. There is a need for the people surrounding the victim not to compound the core issues of the trauma, and allow the individual to be self-determining again.[22] Exempting rape victims from extended media coverage is one way of helping the victim cope with the assault and its aftermath.

Rape, as are most serious crimes, is generally considered a felony, either by a statutory provision or because a guilty party is punished by being imprisoned in a state prison.[23] The state becomes a party in the case, while the victim serves as a witness for the state. The purpose is to redress a wrong done to <u>society</u>. However, if a rape victim, or other type of victim, pursues civil action the state is no longer an interested party. Thus, in civil court a victim has more control over the proceedings by being able to have a say in how the accused should be "punished" -- in civil court monetary awards may be allowed

for physical injuries, mental anguish, humiliation, embarrassment, or the maintenance and support of a resulting child.[24] Victims could feel in even more control during civil proceedings if given the opportunity to determine if the extended media will have access to the proceedings. Victims involved in the criminal trial process already have little control over the proceedings since they are merely a witness for the state; denying the victim/witness a direct say in whether or not he/she wants to be covered by the extended media leaves the individual with no control over any aspect of the trial, which concerns a crime committed against their own person.

When should the media's right to free press outweigh the right to privacy?

There are still those who believe the balance between a free press and a right to privacy should tilt in favor of the media. Not permitting extended coverage of certain witnesses may suppress pertinent information that the public should know. Eliminating coverage of some witnesses may also result in an unbalanced representation of the trial. The media argues that since the public cannot always witness public events first hand, as guaranteed in the Constitution, the press has a responsibility to publicize information that is newsworthy. This philosophy

was affirmed in such cases as Cox Broadcasting, Richmond Newspaper, and Coe.[25] The press contends that "invading the privacy" of an individual involved in court proceedings is sometimes necessary and worthwhile in order to preserve the checks and balance system of our government.[26]

The media and other press advocates also believe the first amendment free press clause should outweigh the right to privacy when information in a trial may be educational to the public. Many members of the media argue that the public is not educated adequately about the judicial system; publicizing trials aurally and visually will enable the public to gain a greater understanding about the judicial process -- other than what is absorbed from viewing fictitious television shows -- and increase the public's confidence in our legal and judicial processes.[27] Trials covered by the extended media can enlighten the public about particular crimes such as rape that are often misunderstood.[28] Publicity of a trial proceeding can also help a case. An individual with information regarding the alleged crime may only learn of the proceedings through the extended media, causing the individual to come forward with the information.[29]

If a videotape, still photograph, or audio recording of a trial brings physical or emotional harm to a witness or victim, who is held responsible?

Because witnesses lack privacy rights there is little that can be done if extended coverage of a particular witness causes him/her to suffer physical or emotional harm. It is the responsibility of the state to establish concrete guidelines to assure privacy protection of specific witnesses; if the state or presiding judge does not take measures to shield witnesses from extended media coverage, then the media is free to report on the proceedings that take place in the open court.[30] Also, in criminal cases a victim is merely a witness for the prosecuting party (the people of the state); thus it is the interest of the state that is most important, not the interest of the witness.[31]

Even with just cause, it would be difficult for a witness to blame the extended media for physical or emotional injuries sustained. Too many intervening factors would be present -- cross examination, the courtroom, a jury, an audience, etc. -- to determine whether the injuries were truly the result of aural and/or visual media coverage.[32]

Since the media is rarely restrained from publicizing particulars of a trial, witnesses must rely on the ethics of the press, and hope that each reporter and

editor will hold themselves responsible for the consequences of extended coverage. Opponents to unrestricted aural/visual coverage of trials argue that the media should stop looking at the first amendment as an absolute right, and begin looking at the needs of the individuals. One television journalist said,

> we need, along with our print colleagues, to stop assuming that the First Amendment is the only, the sole constitutional value enshrined in our system. . . . I sometimes believe that we journalists sometimes use the first amendment the way a diplomat uses his passport when he's stopped for drunken driving -- a way to claim immunity from the consequences of what we do.[33]

NBC reporter Jim Plante adds that the press has a responsibility to remember that their function as a watchdog is to report news, not make news:

> You see, once we begin to try and save society, once we start writing for the purpose of effecting a specific result, we're no longer reporting. What we're doing is manipulating.[34]

However, other advocates of extended coverage of trial participants believe the press should not be held accountable ethically for the consequences of aural and visual coverage of a witness.[35] Advocates argue that the media is reporting newsworthy information and does not exploit trial proceedings through the extended media. Norman Davis reasoned,

> Opponents of televised trials often decry the "spectacle" of the "trial conducted in an arena," but so do the advocates. A trial unfolding before 100,000 people in a stadium or colosseum is a phenomenon far, far different from one conducted in a decorous courtroom under careful rules with 100,000 people looking on from their living rooms. The first is spectacle; the second is witness. . . . Notorious trials there certainly are, but courtroom television didn't invent them and television doesn't cause them.[36]

With regard to the freedoms the press has in how they chose to disseminate the aural/visual coverage of a trial, Ed Godfrey and Ernie Schultz concluded,

> As Chief Justice Warren Burger has written, "For better or worse, editing is what editors are for; and editing is selection and choice of material."[37]

Is the public educated as to how our court system works by viewing a thirty or sixty second news report?

Studies show that very few trials are broadcast in any detail; most trials have been covered by the extended media in the traditional news fashion -- a fifteen-second to thirty-second voice-over, with the video providing a pan of the courtroom, and close-ups of the defendants or attorneys.[38] Media advocates argue that this -- or any type -- of coverage is educational to the public. The many types of proceedings that can be covered in civil and criminal court can enlighten all social classes about the court system, the criminal process, how trial participants

are treated, what changes need to be made in the legal or judicial system, and the consequences of crime.[39] Trials covered by the extended media will also allow the public to see a realistic view of the legal and judicial process, as opposed to viewing only television programs.[40]

Research, however, offers conflicting views on the educational value of televised trials. For instance, although a study found that a majority of people said they learned more from news reports that included aural and/or visual coverage of trials, the study also reported that individuals who responded that they learned about the same were equal for those who saw extended media news reports and those who saw only traditional news reports.[41] One survey revealed that the press and judicial/legal profession agree that the media should educate the public,[42] but other surveys show that judges and attorneys worry that because the extended media tends only to cover sensational trials the public will get a distorted and unrealistic view of court proceedings.[43]

Victim/witness advocates argue that a thirty second excerpt of a trial that is aired by the broadcast media is not intended to educate, but rather to satisfy the public's curiosity.[44] Short excerpts of trials, edited by reporters to fit the time constraints of television, could create an

imbalanced and distorted picture of the trial.[45] There is also concern that this selective broadcasting could provoke imitation acts or deter people from reporting crimes for of publicity.[46]

IMPLICATIONS

Social and technological changes through the years have caused private citizens to value and protect their privacy. Even the astonishing advancement in the mass media has begun to affect the general public. Unfortunately the modern-day press has the technology, as well as the right in most instances, to publicize events that are considered newsworthy, including court proceedings, regardless of how the concerned parties feel about the exposure. With forty-five states now permitting some form of extended media coverage of court proceedings, it is no wonder some trial participants are reluctant to cooperate with the judicial system.

When an individual seeks the limelight he/she voluntarily gives up -- to some extent -- their right to privacy. Other individuals, however, unwillingly become public figures due to unavoidable circumstances. A person does not ask to be victimized, to become a witness in a public trial, and to have strangers, in and out of the

courtroom, learn about intimate or tragic events of the person's life. Yet the media may decide these types of events are newsworthy and should be made public to all citizens who might find the information of value. Thus, individuals lose much of their right to privacy because the media, not the individual, decides to publicize the event.

This problem multiplies in the courtroom. First a witness must deal with the press and extended media turning him/her into a public figure. Additionally, the witness must contend with the fact that any information entered into the court record is considered public information, and hence may be reported by the media. No matter how intimate or humiliating testimony may be, if the court sets no guidelines prior to the trial, a witness must endure the actions of the press. It would be frustrating to learn that facts normally considered private and unimportant to others (such as a person's spending habits or sexual history) are suddenly considered public information and newsworthy just because the facts were revealed in an open court. The media could argue correctly that the private facts were made public in court before the media made the information known, and thus the media merely reported public facts!

States try to preserve some privacy rights of witnesses by implementing guidelines to be followed by the

court and the media when extended coverage is permitted. Victim/witness advocates want to see more states implement consent rules requiring the approval of the witness even before the court approves extended coverage. The media argues that this type of consent places important decisions in the hands of individuals (the witnesses) who are only concerned with their own interests. However, whose interest is the media looking out for when trying to gain access to courtrooms? The media too are only concerned with their own interests -- reporting news. The cry from the media that consent rules could literally keep courtrooms closed to aural and/or visual coverage is moot. With thirty-six states now permitting extended coverage of trial and/or appellate courts, and allowing access to most types of proceedings, it is unlikely that the extended media will never gain access. If the media uses their access right responsibly they will have numerous cases to choose from. Granted, if a television station only petitions to cover rape and murder trials, and are repeatedly denied access, it would feel that the media was not bring treated fairly. However, if the station petitioned all the courts, such as small claims court, traffic court, and appellate court, in addition to the titillating criminal cases, and if the court and attorneys properly explained the procedure to the

individuals involved, access would be granted in some instances to the television crew.

The qualitative difference test, which may be used in objection requests, is the guideline preferred by much of the media. The press accepts the reasoning that a judge can determine if extended coverage should be permitted by comparing the different trial participants, and how each would likely react to the traditional news media and to the extended media. It is difficult to understand how a judge could be best qualified to make such a judgement that is based on the mental and emotional stability of a person. No two individuals act alike (superficially or subconsciously), witness and remember a crime in the exact same way, or react to and recover from personal trauma identically. The potential for revictimization does not seem to be considered by most judges when determining if extended coverage should be allowed.

The media also stress that giving witnesses the opportunity to deny extended media coverage of themselves may result in a distorted view of the trial since all testimony will not be made public. The educational value, it is argued, is lessened since the viewing audience can not hear all the arguments and testimony that is considered relevant to the case. Yet editors and reporters routinely

summarize, interpret, and edit trial proceedings that may last hours, days, or weeks into a thirty or sixty second news package.

The media also contends that publicity of all trial testimony will help to lessen crimes and remove stigmas associated with crimes, particularly rape. How a woman is going to stop the stigma of rape by having her identity and testimony against her wishes, as well as the defendant's testimony, widely publicized is unclear. The stigmas associated with alcohol, venereal disease, and AIDS have not been lessened through public service campaigns -- alcoholics are still seen by many as unrecoverable, people inflicted with social diseases such as herpes are seen as being sexual deviants, and AIDS patients are seen as homosexuals or intravenous drug users. It is true these messages reach and influence a small portion of the population; but for the most part, people remain ignorant because once a belief is set in one's mind it is difficult to change it, no matter how many facts or figures are presented. So it seems unlikely that a thirty second television news report or a two-column newspaper story with a photograph will enlighten the public enough to change their mind about the stigma of rape -- especially in the case of an acquaintance or date rape.

The less-educated individual relies more on the broadcast medium for information about politics and current affairs than do the better-educated.[47] Thus, negative results may actually be occurring when portions of trials are televised: the less-educated are not educated about the judicial system due to the style and length of coverage the extended media gives a trial; editing techniques and reporter summaries may inadvertently send false or conflicting information to the less-educated viewer. However, the better-educated rely on the print medium for their information. Newspapers describe and interpret news, such as court proceedings, in much more detail than a television station is able to do. Ironically, it is the educated individual who is actually receiving the educational news! If the aural/visual media truly is concerned with educating the public, then reporters, editors, and news directors should change the style of news reports in order to meet the educational needs of their audience.

Also, if education is a primary concern, the stations and networks who run trials in their entirety would cover all types of trials, not just the most exciting or entertaining. When a television station runs promotional teases to lure people to watch trial proceedings -- such as CNN did during the New Bedford rape trial -- education is

not their motivating factor. Encouraging the viewers to watch a "controversial courtroom drama", and giving them the opportunity to watch reruns of selected portions of the trial suggests that entertaining the audience while increasing ratings is most important. A CNN producer claimed that the increased ratings proved that the public's interest was being served.[48] But was it an educational or voyeuristic interest that was being served? Would the interest have been as great if CNN had not encouraged viewing through the promotional ads? If education is the ultimate concern of the media, then their behavior should be as enthusiastic when covering a day in traffic court or small claims court. Would a television station run promotional spots and rerun segments of the court proceedings so that the public could find out whether a man really was guilty of going forty miles per hour in a twenty-five mile per hour zone?

Another member of the media compared the ratings of the New Bedford trial to the ratings of soap operas;[49] such a comparison seems inappropriate. Our judicial system is a <u>real</u> and vital part of our society, while soap operas are only cheaply produced, fictional entertainment. Television programs are meant to entertain and provide the viewer a vicarious experience. Televised court proceedings are

supposed to be newsworthy information. It is unfortunate that the trauma of private citizens may be turned into entertainment, acting as vicarious thrills for the general public.

The media often suggest individuals who fear extended coverage of trials have never set foot in a courtroom. Thus, the press contends, how can opponents argue that trials are sensationalized and trial participants are traumatized when most of these opponents have never been a part of the judicial process themselves? But the same can be asked of the press -- how many reporters and camera-persons have been involved in a court proceeding to know how a participant feels? Editors and news directors do not cover the news, they assign reporters to do so, yet it seems to be newspaper editors, news directors and general managers (who are even less involved in the news-gathering process) who are making the comments about opponents not ever setting foot in courtrooms!

One man told the Senate Subcommittee on Criminal Law that life is not always fair, and it is the media's responsibility to report newsworthy events.[50] It is true that everything cannot be fair in life, which is why rules and standards are implemented so that we can at least try to be as fair as possible. Ethics are one way that people

strive for fairness. The media has a number of ethics written on paper, but seemingly not always carried through in their work. If the media continues to ignore ethics, in its effort to be the public's watchdog, not only will society fear that our government has become "Big Brother" by having access to our every move, but also that the press has become a "Big Brother" for the very same reason.

RECOMMENDATIONS

Giving the public the opportunity to see and/or hear court proceedings could help educate and inform citizens about our criminal justice system. The extended media is the obvious choice to act as a liaison between the courts and the public. However, steps must be taken to insure that the complicated court process is covered accurately, completely, and ethically.

The Media

1. A short video and/or audio snippet of a trial does not inform or educate the public. This familiar style of news reporting does nothing more than show an exciting portion of testimony from a witness. However, if larger segments were shown, along with explanations of the proceeding, valuable information could be passed on to the

public. An ideal way to cover court proceedings would be for a local television station to develop a public affairs show designed specifically to inform and interpret current judicial proceedings.

A weekly half-hour program, hosted by a newsreporter who covers the criminal justice "beat", could highlight a different type of court proceeding each week. A number of excerpts (longer than sixty seconds) from the trial would be aired, including testimony, opening and closing statements of the attorneys, comments from the judge, and the verdict. A panel of guests, such as a defense lawyer, prosecuting attorney, and judge, would be asked to interpret and analyze the cases. The trial process, roles and actions of various trial participants, rendering a verdict, and the sentencing process are just a few of the important and newsworthy topics that could be discussed. The trial would not have to be shown in its entirety since competent legal professionals would be "reporting" on the court proceeding, not a reporter -- whose main interest is to squeeze a news <u>event</u> into a news <u>report</u>. There would be less room for error and misinterpretation if a five minute segment of testimony was aired and analyzed by a panel member, than if a general assignment reporter attempted to summarize four hours of

testimony into a twenty second news spot on the evening news.

Of course, the panel would not have to be restricted to law professionals; it would also be enlightening to have a doctor describe how it was determined that a particular kind of knife caused a wound on a victim, or to have a mental health expert explain the characteristics of typical offenders of a particular crime. Trials that are less captivating to the viewers can also be informative. A police officer can explain how a radar detector works and why a plaintiff could not convince the court that the detector was inaccurate. Tenant advocates and landlords could discuss why a renter was not entitled to compensation for negligence on the part of the owner when an apartment flooded. City or state officials could offer explanations regarding a case involving the legality of a city ordinance or state law. The opportunities to serve the public interest are endless since no two court proceedings will ever be exactly alike and there are so many different aspects of one trial to analyze.

2. A reporter who truly understands the judicial process should cover the court system. A news reporter who does not understand the legal and judicial process fully cannot be assured of interpreting the proceeding accurately and properly.

3. Video and/or audio portions of the trial should only be used if the inclusion will best explain or illustrate the main topic or finding during the day's proceedings. Witness testimony should not be aired if its only purpose is to satisfy the public's curiosity.

4. The identification of some trial witnesses is also unnecessary during a news report that is suppose to inform the public about the over-all activities of the newsworthy event; publicizing the name or photograph of a witness will not help bring justice to society, but only serve to anger or humiliate an individual who would normally be considered a private citizen if not involved in a trial proceeding.

5. Potentially sensational trials should be covered with extra caution. Often times a witness is also a victim who must recount unpleasant events in an open court; it is not uncommon for the witness to feel that he/she is actually the one on trial. The reporter must not focus on the details of the witness' testimony, since this is not the most important part of the trial. The defense of the accused should be emphasized, as well as the opposing arguments presented by the prosecuting attorney.

6. Many actions taken by the media are a result of the role ethics play in the reporting and decision-making process of reporters, editors, and news directors. In a time when instantaneous media can capture and expose any event to any person, ethics should become a major part of the decision-making process. Though glamorous to outsiders, the broadcast industry is extremely competitive. Beating the opponent -- another network, station, reporter, or media entity -- increasing the audience, and making more money has become more important than broadcasting in the public interest (the original intention set forth by the Communications Act of 1934).[51] In their quest to be number one the press must begin to pause and consider the effects that the news story will have on the viewers and the individuals connected to the news event. Pause and reflection should become a routine step in news reporting--just as covering the story, viewing the video footage, writing the story, editing the video, and cutting the audio track is routine. Pause and reflection should definitely fall between viewing the footage and writing the story, but also can be considered during the entire reporting process.

7. When victims are testifying at a trial the individuals involved in the news-making process must <u>not</u>

attempt to put themselves in the place of the victim and then conclude extended media coverage would not be harmful. A reporter is not qualified to determine who may or may not be harmed by extended media coverage.

8. News-gatherers should also reflect upon ethics when editing trial footage, and when promoting the upcoming news report. The sequence of events that take place during a trial are very important. Editors who tamper with the original order of the proceedings, by flipping a sequence around for the purpose of producing a news report which flows better, mislead the public by misrepresenting the trial. For example, a local television station aired a report about a man being tried for the death of his infant daughter. As the audio portion of the report began to describe the testimony of the male defendant the videotape showed a young woman exiting the courtroom, walking to a bench, sitting down and burying her face in her hands. No explanation was given as to the role of this woman in the trial. The report continued with a stand-up of the reporter detailing further the day's activities. As the report was concluded the exact same footage, that was shown before, of the distraught woman leaving the courtroom, was aired. At no point were the viewers told why the emotions of the woman were a part of the report. What was the purpose of showing the same footage twice -- was it because the camera person

did not shoot any other footage; did a novice edit the report; or was it because of the expressive pain that the woman was revealing in a public place, at a news worthy event, making her actions fair game? Regardless of why the footage was used, it should not have been since it added no news value to the report; all the footage did was exploit the trauma of an individual. If for no other reason, the news director should not have allowed the report to air as it did because of how it was edited. In order to show the same video twice, the editor had to tamper with the natural sequence of the trial. Though in this instance no real harm was down, it does illustrate how the media can manipulate events to fit into their preferred style of news reporting.

The Court

Ultimately it is the state who controls the extended media's access to judicial proceedings. Specific guidelines that the press must adhere to can help eliminate many of the problems that are foreseeable when trials are covered aurally and/or visually.

1. If state guidelines grant privacy protection to certain witnesses, then guidelines must also be implemented to assure that the media honors privacy interests. When

broadcasting a trial live a simple solution, that most broadcasters would likely agree to, is the seven or fifteen second delay that is used in live television to edit material quickly before it reaches the viewing audience. If the state requested that the name of a witness be left off the court record, or arranged for pseudonyms to be used, then the delay function would insure that the privacy rights were fulfilled if the identity inadvertently had been made public during the proceedings. Since the court has control over what trials will be open to the extended media, what witnesses can be photographed or recorded, and what type of lighting and cameras are permissible, it seems that the court -- if specified in the official state guidelines-- could also enforce the use of a delay mechanism.

2. Requesting that a trial actually be taped delayed is another option. Previewing the trial before it aired would enable the court and the media to determine if certain material should be removed. Not only would this assure that certain names and faces were not exposed, but also it could be decided if a disclaimer should run before the trial, warning the audience of explicit or graphic evidence to be aired.

3. In some cities it may be feasible to develop a "courtroom channel", much like the public affairs network, C-SPAN. The local cable franchise could provide a station for local public affairs programming. Court proceedings could be shown in their entirety, either by means of a fifteen second delay, or tape delayed. Or, if more feasible, public affairs shows, much like those suggested for a local broadcast station, could be developed. The same type of programming could also be done on a local public broadcasting station.

4. Separate guidelines for criminal and civil court proceedings could also be developed. In criminal proceedings the state is one party, thus it makes sense that the state should have much of the control over the extended media coverage of a trial. However, in civil proceedings the plaintiff is an individual; the guidelines should allow the opposing parties, not the state court, to decide whether aural and/or visual coverage should be permitted.

5. If specific guidelines are not implemented by the state to safeguard certain classes of witnesses, then a judge should consider placing a protective order on certain witnesses. If a judge determines that a witness may suffer

emotional trauma from having to testify, the protective order can stop an attorney from questioning the witness on some private facts; reporters would not be able to publicize intimate or private facts if not disclosed during the court proceedings. Of course, the press would be free to report such information if obtained in another (legal) manner.

6. Thorough testing, research, and evaluations of extended media coverage of courtrooms should be required by the courts not only during a state's experimental phase, but also after permanent coverage has been adopted. Michigan should not rely on study results from California or Idaho; every state is made up of a separate brand of people, and definitely a separate brand of newspersons. Thus, every state should look at the make-up and needs of its own population, and each county or district court should then examine its defined population even more; just as each state is different, each county and city within a state have differing concerns also. A detailed record of what type of trials are covered should be kept by each court: what extended media covered the trial, how many days the trial was covered, what participants were focused on, and if possible, how the footage was used. Questionnaires should be filled out by each trial participant, before and after

the trial, to determine how they may have been effected by the presence of extended media equipment and the coverage.

7. The request applications and the participant questionnaires should be reviewed on a regular basis. If it is found that the media chooses only to cover sensational trials, then measures should be taken by the court to encourage coverage of other types of proceedings. Or, if the questionnaires reveal that victims/witnesses, in metropolitan areas prefer their trial to be covered by the extended media, while victims/witnesses from rural communities fear the publicity, then the judges in each different court should be given the discretion to increase or decrease the extended media coverage as seen fit. A re-examination of the court rules, media guidelines and subsequent behavior, and the opinions of the people involved in court proceedings could be useful in other ways as well. For instance, it may be determined that some courtrooms are not functional for use by the extended media, perhaps because the courtroom is too small, or because of the physical arrangement of the room. It may also be revealed that distractions are caused by a particular videocamera that makes a clicking noise when the operator repeatedly turns the camera on and off. The official state

guidelines could easily be modified as needed to best meet the interests of the judicial system, the media, trial participants, and, of course, the general public.

8. States should reevaluate the use of the qualitative difference test, or the like, when determining if a witness should be exempt from aural and/or visual coverage. Comparing the personality of one person to another "similar" individual does not seem like the most reliable method for determining the effect extended coverage may have on a person. The court system must stop treating trial participants, especially witnesses, indifferently and equally. Witnesses need to be considered individually, given the feeling that their concerns and inhibitions do matter, regardless of how trite others may find their fears. Even identical twins have different emotions and coping capabilities -- thus, it should be understandable how two witnesses, though similar in many ways and victimized by the same person, feel differently toward extended media coverage. However, if a qualitative test must be used, an experienced professional, such as a mental health worker, in addition to the presiding judge, should determine the emotional stability of the witnesses.

9. The potential size of a viewing audience should be a consideration when determining extended coverage of a trial and its participants. It is true that a titillating case may encourage spectators to pack into the courtroom, perhaps creating distractions and inhibiting the trial participants. Allowing the case to be covered by the aural/visual media may convince some of the curious to stay at home to watch the proceedings. However, a courtroom can only hold a certain number of people, while a televised trial can reach endless numbers of people by means of satellite feeds and cable. Televising a trial could also actually encourage people to attend the trial, hoping to get a better vantage point and to be sure of hearing all the testimony. Certain witnesses and trials could almost be exploited by the media who put portions of the trial, along with the station's reporter and identifying logo, on a satellite feed, hoping a larger station -- or better yet, one of the networks -- will use the story on their newscast. If the potential for media sensationalism exists, the court should deny or limit extended media coverage of witnesses, or the entire trial. A routine court proceeding involving a person accused of drunk-driving would not be titillating to many of the local television viewers, let alone the people in a neighboring state, thus, the potential audience size

would not be a major concern in deciding whether to allow aural/visual coverage. However, the trial of an accused serial rapist, whose victims were attractive co-eds, would arouse not only the curiosity of a local television audience, but also people in other states as well; in this instance, a judge would be wise to deny or restrict extended coverage of the trial, especially the witnesses.

The State Legislature

The state legislature also plays an important role in helping trial participants keep some of their privacy, while the media continues to have access to the courts. Legislation for victims and witnesses, such as a Bill of Rights (actually standards of fair treatment[52]), could provide a person with some protection. For instance, it may be resolved that the court not require a witness to disclose in open court his/her address, telephone number, or place of employment; in some instances the identity of the witness might also be kept from the open court. Both the prosecution and defense would be required to adhere to these standards during their questioning of a witness. A Bill of Rights for victims and witnesses could also require that identifying biographical information about certain witnesses not appear on the public court; instead, nondescriptive designations would be used.

The Education System

It is clear that the public needs to be educated about the functions of our courts. However, it cannot be expected that the media and judicial system take on the entire task. Extended media coverage of trials aimed at educating the public is a timely and costly process for both the courts and media.

A simple and inexpensive way to learn about our courts is through the education system. The Constitution and the judicial branch of the federal and state governments is important to understand, yet it seems that these subjects are barely introduced to students of any age. Elementary school children learn about important presidents, junior high students learn about the history of the United States, and high school students are required to take a government course that focuses on the legislative and executive branches of government. College students usually learn about the judicial system through specific elective courses offered through a political science department; and when students do learn about a court, it is generally the federal and U.S. Supreme Court system. Steps need to be taken by schools and colleges to educate students not only about the federal court process, but also about the state court process. A greater understanding of the judicial system will enable citizens to participate in court proceedings confidently, whether as a defendant, witness, juror, or spectator.

ENDNOTES

1. Griswold v. Connecticut, 381 U.S. 479 (1965).

2. Letter from Robert Weiss, prosecuting attorney, Flint, Genesee County, Mich., to the author (October 13, 1987) (discussing free press v. right to privacy).

3. W. Page Keeton, Dan B. Dobbs, Robert E. Keeton, and David Owen, Prosser and Keeton on the Law of Torts, 5th ed. (St. Paul, Minn: West Publishing Co., 1984), 851-854.

4. Id.

5. Id. at 856-857.

6. See Time v. Hill, 385 U.S. 374 (1967).

7. Near v. Minnesota, 283 U.S. 697 (1931).

8. Cox Broadcasting Corporation v. Cohn, 420 U.S. 469 (1975).

9. Coe v. Sarasota -- Bradenton Florida Television, 436 So.2d 328 (1985).

10. See Chandler v. Florida, 449 U.S. 563 (1981); Combined Communications Corp. v. Finesilver, 672 F.2d 818 (1982).

11. National Center for State Courts, "Summary of TV Cameras in the State Courts," 3 (January 30, 1987) (unpublished summary); Four States Start Tests with Cameras, 11 The News Media and the Law 43 (Fall 1987); Susanna Barber, News Cameras in the Courtroom: A Free Press - Fair Trial Debate (Norwood, N.S.: Ablex Publishing Corp., 1987), 18-19.

12. Letter from Ernie Schultz, acting president, Radio-Television News Directors Association, Inc., Washington D.C., to the author (November 3, 1986) (discussing free press v. right to privacy); letter from Charles McCorkle Hauser, vice-president and executive editor, The Providence Journal-Bulletin, Rhode Island, to the author (November 5, 1986) (discussing free press v. right to privacy); letter from Lawrence Sullivan, national editor, The Detroit News, Detroit, Mich., to the author (October 5, 1987) (discussing free press v. right to privacy); interview with Timothy Dyk, attorney, Wilmer, Cutler and Pickering, Washington, D.C. (May 19, 1987).

13. C.J.S. witnesses §317.

14. Interview with Anne Seymour, director of public affairs, Sunny Von Bulow National Victim Advocacy Center, Fort Worth, Texas, in Lansing, Mich (June 4, 1987); Impact of Media Coverage of Rape Trials: Hearing Before the Subcomm. on Criminal Law of the Senate Comm. of the Judiciary, 98th Cong., 2nd Sess. 53 (1984) (statement of Jennifer Barr, rape victim, rape crisis counselor) [hereinafter Impact of Media Coverage].

15. Id., 51-52 (statement of Jennifer Barr); Child Sexual Abuse Victims in the Courts: Hearing before the Subcomm. on Juvenile Justice of the Committee of the Judiciary, 98th Cong., 2nd Sess. 95 (1984) (statement of Kee MacFarlane, director, Sexual Abuse Diagnostic Center, Children's Institute International, Los Angeles, Calif.); Sunny Von Bulow National Victim Advocacy Center, "Section B: Crime Victims and the Media," Curricula, n.d.; interview with Anne Seymour, supra note 14.

16. Carolyn Stewart Dyer and Nancy R. Hauserman, Exemption of Sexual Assault Victims, 1 Sexual Coersion and Assault 86-92 (1986); letter from Carolyn Stewart Dyer, associate professor, School of Journalism and Mass Communication, University of Iowa, to the author (May 7, 1987) (discussing free press v. right to privacy); Impact of Media Coverage, supra note 14 at 49 (statement of Ellen Guyker, rape victim); Deborah M. Carrow, Rape: Guidelines for Community Response (USA: National Institute of Law Enforcement and Criminal Justice, 1980), 102; interview with Michael Franck, executive director, Michigan Bar Association, Lansing, Mich. (October 22, 1987).

17. Impact of Media Coverage, supra note 14 at, 48, 69 (statement of Jennifer Barr, Ellen Guyker, rape victim, Lynn Marks, executive director, Women Organized Against Rape, Philadelphia, Pennsylvania); Charles Dean and Mary deBruyn-Kops, The Crime and the Consequences of Rape (Springfield, IL.: Charles C. Thomas, 1982), 38; Stewart Dyer and Hauserman, supra note 16 at 82 (citing K. Weis and S.S. Borges, "Victimology and Rape: The case of the Legitimate Victim," in L.G. Schultz, ed., Rape Victimology (Springfield, IL.: Charles C. Thomas, n.d.), 91-141; Anne Burgess and Lynda Holmstrom, Rape: Victims of Crisis (Bowie, MD.: Robert J. Brady, 1974); T.W. McCahill, L.C. Meyer, and A.M. Fischman, The Aftermath of Rape (Lexington, MA: Lexington (1979)); Thomas J. Morgan, "TV Newsman, Editor Clash on Rape Coverage Channel 6, Standard Time Part Ways on Identifying Women," The Providence Journal (March 22, 1984). Photocopy 1986; interview with Donald Martin, Ingham County Prosecuting Attorney, Lansing, Mich. (October 14, 1987); interview with Judge Carolyn Stell, 30 Jud Circuit, Lansing, Mich. (October 19, 1987); interview with

Judge Michael G. Harrison, 30 Jud Circuit, Lansing, Mich. (October 14, 1987).

18. Impact of Media Coverage, supra note 14 at 73 (statement of Jo Beaudry, coordinator, Victim/Witness Services, Milwaukee County, Wisconsin).

19. Coe v. Sarasota -- Brandenton Florida Television, 436 So.2d 328 (1985); Impact of Media Coverage, supra note 14 at 82 (statement of Ed Godfrey, president, Radio-Television News Directors Association); Morgan, supra note 17; Phil Kakielski, "Big Dan's Judge Assails Media For Naming Rape Complainant," The Providence Journal, March 22, 1984, (A)9.

20. Impact of Media Coverage, supra note 14 at 53 (statement of Jennifer Barr).

21. Judith Rowland, The Ultimate Violation (Garden City, N.Y.: Doubleday and Company, Inc., 1985), 303, 337 (citing Ann Burgess, Lynda Holmstrom, and Nicholas Groth, Rape: Power, Anger, and Sexuality, 134 Am J. Psychiatry 1239-1243 (November 1977)).

22. Id., 303.

23. 75 C.J.S. Rape § 3 (1952).

24. Id. at 93.

25. Cox Broadcasting Corporation v. Cohn, 420 U.S. 469, 492 (1975) (the "function of the press serves to guarantee the fairness of trials and to bring to bear the beneficial effects of public scrutiny upon the administration of justice"). Richmond Newspapers v. Virginia, 448 U.S. 555, 559 (1980); Coe, 436 So.2d at 332.

26. Impact of Media Coverage, supra note 14 at 31-32 (statement of James M. Ragsdale); letter from Tom Johnson, publisher and chief executive officer, Los Angeles Times, Calif., to the author (October 28, 1987)) discussing free press v. right to privacy); letter from Ernie Schultz, supra note 12. See also letter from Robert Weiss, supra note 2.

27. Accrediting Council on Education in Journalism and Mass Communications, American Broadcasting Companies, Inc., American Newspaper Publishers Association, American Society of Newspaper Editors, Associated Press, Association for Education in Journalism and Mass Communications, CBS, Inc., Community Television of South Florida, Inc., C-SPAN, Gannett Companies, Inc., Media Access Project, The Miami Herald Publishing Company, Mutual Broadcasting System Inc., National Association of Broadcasters, National Broadcasting Company, Inc., National Cable Television Association, Inc.,

National Press Photographers Association, National Public Radio, The New York Times Company, Post-Newsweek Stations, Inc., Public Broadcasting Service, Radio-Television News Directors Association, The Reporters Committee for Freedom of the Press, Society of Professional Journalists, Sigma Delta Chi, The Times Mirror Company, Turner Broadcasting System, Inc., Cable News Network, United Press International Company, The Washington Post, Petition to the Judicial Conference of the United States Concerning Visual and Aural Coverage of Federal Court Proceedings by the Electronic and Print Press, March, 14 (citing Yankelovich, Skelly, and White, Inc., The Public Image of Courts: Highlights of a National Survey of the General Public, Judges, Lawyers, and Community Leaders, prepared by the National Center for State Courts (May 1978)) [hereinafter Accrediting Council on Education in Journalism and Mass Communications, et al.]; letter from Ernie Schultz, supra note 12; interview with John Tune, editor, Traverse City Record Eagle, Traverse City, Mich. (July 25, 1987); letter from Thomas Griesdorn, general manager, WXYZ-TV, Detroit, Mich., to the author (October 19, 1987) (discussing free press v. right to privacy); Norman Davis, Television in Our Courts, 64 Judicature 86 (1980); interview with Judge Carolyn Stell, supra note 17; letter from John D. O'Hair, prosecuting attorney, Wayne County, Detroit, Mich., to the author (August 11, 1987) (discussing free press v. right to privacy); Lyle Denniston, The Reporter and The Law (New York: Hasting House Publishers, 1980), xix.

28. Impact of Media Coverage, supra note 14 at 14 (statement of Ronald Pina, district attorney, Bristol County, Mass.); interview with Judge Michael G. Harrison, supra note 17; Stewart Dyer and Hauserman, supra note 16; interview with Anne Seymour, supra note 14.

29. Interview with Timothy Dyk, supra note 12; Rowland, supra note 21 at 271-272.

30. Cox Broadcasting, 420 U.S. at 492; Coe, 436 So.2d at 330.

31. Interview with Judge Carolyn Stell, supra note 17.

32. Interview with Judge Michael G. Harrison, supra note 17.

33. Jeff Greenfield, political and media analyst, ABC News and Good Morning America, "TV: The Medium Determines Impact of Crime Stories," in Tommy Thomason and Anantha Babbili, eds., Crime Victims and the News Media, 21, a synopsis of a national symposium sponsored by the Texas Christian University Department of Journalism and the Gannett Foundation, November 13, 1986, (n.d.). See also Susanna Barber, supra note 11 at 109 ("ultimately, a little

self-restraint could protect the first amendment freedoms of the press as well as the privacy interests of sensitive witnesses"); Bruce Swain, Reporters' Ethics, (Ames, Iowa: The Iowa State University Press, 1978), 60 (" ...the law tells journalists only what they can get away with, not what is ethical. Reporters are mostly left to their own devices").

34. Jim Plante, managing director of news support services, NBC News, New York, "Press Helped By Discussion of Victim Issues," in Thomason and Babbili, supra note 33 at 34.

35. Norman Davis, Television in Our Courts: The Proven Advantages, The Unproven Dangers, 64 Judicature 87 (1980); John C. Merrill, Good Reporting Can be a Solution to Ethical Problems, 42 Journalism Educator 28 (Autumn 1987); Charles McCorkle, Hauser, supra note 12.

36. Davis, supra note 35.

37. Impact of Media Coverage, supra note 14 at 95 (written statement of Ed Godrey and Ernie Schultz, Radio-Television News Directors Association, Washington, D.C.).

38. Barber, supra note 11 at 81.

39. Accrediting Council on Education in Journalism and Mass Communications, et al., supra note 27 at 34-40.

40. Interview with John Tune supra, note 27; interview with Judge Carolyn Stell, supra note 17; letter from John D. O'Hair, supra note 27; Denniston, supra note 27 at xix.

41. Dalton Lancaster, Cameras in the Courtroom: A Study of Two Trials, Research Report No. 14 (Bloomington In.: School of Journalism, Center for New Communications, Indiana University, 1984). Photocopy 1987.

42. Robert E. Drechsel, News Making in the Trial Courts (New York: Longman, 1983), 126-127.

43. Barber, supra note 11 at 70-71.

44. Interview with Anne Seymour, supra note 14; Impact of Media Coverage, supra note 14 at 49 (statement of Ellen Guyker).

45. Interview with Michael Franck, supra note 16.

46. Impact of Media Coverage, supra note 14 at 68 (statement of Lynn Marks); Stewart Dyer and Hauserman, supra note 16 at 86.

47. Citizens' Commission To Improve Michigan Courts: Final Report and Recommendations To Improve the Efficiency and Responsiveness of Michigan Courts ([Lansing, MI]: Michigan Supreme Court, 1986), 23.

48. This Week with David Brinkley (ABC television broadcast, March 25, 1984) (published transcript).

49. Impact of Media Coverage, supra note 14 at 34 (statement of James M. Ragsdale).

50. Id.

51. Broadcast Deregulation, Congressional Digest 100 (April 1984).

52. Victim Bills of Rights are actually standards of fair treatment because there are no remedies explicitly provided for a victim should the criminal justice system fail to meet the outlined standards. See National Organization For Victim Assistance, Victim Rights and Services: A Legislative Directory, (Washington, D.C.: U.S. Department of Justice, 1985), 8.

CHAPTER 9

CONCLUSION

> "Tell me every detail, I want to know it all, and do you have a picture of the pain?"[1]

There is no doubt that aural and/or visual coverage of court proceedings can be beneficial to the general public. However, problems are likely to occur if the media begins to focus its coverage on sensational trials for the purpose of attracting viewers and increasing their ratings. To insure that the press does not abuse their privilege to provide extended coverage, both the judicial system and the media must take measures to protect the privacy concerns of certain witnesses.

During court proceedings the rights of the accused are protected, rights of the media are safeguarded, the jury is shielded from extensive publicity, and the presiding judge maintains the decorum of the courtroom. However, the witness -- who plays an essential role in bringing criminals and offenders to justice -- is often considered nothing more than a piece of evidence; the justice system must begin treating the witness as a human being, not merely as "Exhibit A". Just as the interests of the other trial participants are considered, so must the witness' if the

judicial system is to rely on citizens to perform their civic duty.

When devising guidelines for extended media coverage, the court must allow victims of rape and other heinous crimes, witnesses of traumatic or life-threatening events, and children the opportunity to oppose extended media coverage of themselves, if not the entire trial. If a judge permits coverage of all witnesses, even if a witness opposes, then the court should at least protect the identity of the concerned witness. The name of the witness should be excluded from the open court, and photographs of the individual's face should not be permitted. The court should also monitor the extended media's courtroom coverage and modify the state guidelines as needed.

Many of the rules and regulations would not have to be monitored by the court so closely if the extended media demonstrated that newsworthy information, not a titillating revelation, was what the press was truly after. How a media entity reports the news ultimately depends on the value that the news decision-makers place on ethics. The Constitution, courts, and legislators outline <u>what</u> the press can report; unfortunately <u>how</u> the news is reported by the press is basically left up to the discretion of each individual news medium.

The telecommunication industry is continuously advancing, giving the media more power and ease to gather and disseminate information. Improved technology, deregulation of the broadcast industry, and diminishing ethical standards have caused television stations to become increasingly competitive. News teams are boasted as being "the first, fastest, and live with the news of the day, and number one in the ratings." Rarely does a station promote "indepth and complete reporting, intended to serve the needs of the community."

The press stands on the first amendment when criticized for its news reporting. The constitutional guarantee of a free press allows the media to act not only as a watchdog, but also as a gatekeeper and news maker:

> [t]elevision newscasters are not accredited members of any bar association, or any related profession, are not licensed by Government, or restricted by a legal code of ethics. They do have the free choice to edit, capsulize, dramatize, sensationalize any issue to satisfy the most basic public appetite in order to generate commercial demand.[2]

Murder, sex, money, and intrigue are a part of nearly every entertainment program on television; the same drama tends to be the focus of news reports. Without enforced ethics witnesses covered by the extended media could become just one more melodrama produced by the evening news team. Victims of rape and other traumatic crimes should not have to be re-victimized for the sake of the news -- and ratings.

ENDNOTES

1. Jeff Greenfield, "TV: The Medium Determines Impact of Crime Stories," in Tommy Thomason and Anantha Babbili, eds., Crime Victims and the News Media. A synopsis of a national symposium sponsored by the Texas Christian University Department of Journalism and the Gannett Foundation, November 16, 1986, n.d. (quoting the late Phil Ochs, a journalist before becoming a folksinger).

2. Television in the Courtroom -- Limited Benefits, Vital Risks? 3 Comm. and the L. 35 (Winter 1981).

SOURCES

ABC News. Nightline: Rape: The Responsibility of Witnesses, 17 March 1983. New York: Journal Graphics, Inc., 1983. Published transcript.

_____. Nightline: The New Bedford Rape Trial. 15 March 1984. New York: Journal Graphics Inc., 1984. Published transcript.

_____. Nightline: Losing in Politics, 16 March 1984. New York: Journal Graphics, Inc., 1984. Published transcript.

_____. Nightline: Chemical Weapons -- Back on the Battlefield, 21 March 1984. New York: Journal Graphics, inc., 1984. Published transcript.

_____. Nightline: Camp David Treaty - Five Years Later, 26 March 1984. New York: Journal Graphics, Inc., 1984. Published transcript.

_____. This Week with David Brinkley, 25 March 1984. New York: Journal Graphics, Inc., 1984. Published transcript.

_____. Viewpoint: Courts, Cameras, Justice, 24 May 1984. New York: Journal Graphics Inc., 1984. Published transcript.

Accrediting Council on Education in Journalism and Mass Communications, American Broadcasting Companies, Inc., American Newspaper Publishers Association, American Society of Newspaper Editors, Associated Press, Association for Education in Journalism and Mass Communications, CBS, Inc., Community Television of South Florida, Inc., C-SPAN, Gannett Companies, Inc., Media Access Project, The Miami Herald Publishing Company, Mutual Broadcasting System, Inc., National Association of Broadcasters, National Broadcasting Company, Inc., National Cable Television Association, Inc., National Press Photographers Association, National Public Radio, The New York Times Company, Post-Newsweek Stations, Inc., Public Broadcasting Service, Radio-Television News Directors Association, The Reporters Committee for Freedom of the Press, Society of Professional Journalists, Sigma Delta Chi, The Times Mirror Company, Turner Broadcasting System, Inc., Cable News Network, United Press International Company, The Washington Post, Petition to the Judicial

Conference of the United States Concerning Visual and Aural Coverage of Federal Court Proceedings by the Electronic and Print Press, March 1983.

American Bar Association. "Free Trial and Free Press: Standard 8-3. Broadcasting, Televising, Recording and Photographing Courtroom Proceedings." American Bar Association Standards for Criminal Justice. Washington, D.C.: American Bar Association, 1982. Photocopy 1986.

62 Am. Jur. 2D Privacy §1-49 (1962).

62 Am. Jur. 2D Supp. Privacy § 1-49 (1987).

81 Am. Jur. 2D Witnesses §1-472. (1962).

Administrative Order 87-4 Concerning One-Year Experimental Program Permitting Cameras in Trial and Appellate Courts. Supreme Court of the State of Michigan. 26 August 1987.

Arnold, Ruth B. Scripps Howard Broadcasting, Cleveland, Ohio. Letter to the author. 13 November 1986.

Bailey, F. Lee and Henry B. Rothblaft. Successful Techniques for Criminal Trials, 2nd. ed. Rochester, NY: The Lawyers Co-operative Publishing Co., 1985.

Ballentine's Law Dictionary (3rd ed. 1969).

Barber, Susanna. News Cameras in the Courtroom: A Free Press - Fair Trial Debate. With an introduction by George Gerbner. Norwood, N.J.: Ablex Publishing Corp., 1987.

_____. The Problem of Prejudice: a New Approach to Assessing the Impact of Courtroom Cameras, 66 Judicature 248 (1983).

Bier, William C., ed. Privacy: A Vanishing Value? New York: Fordham University Press, 1980.

Black's Law Dictionary (Abridged 5th ed. 1983).

Boone, Keith. TV in the Courtroom: Is Something Being Stolen From Us? 9 Human Rights 24 (Summer 1981).

Broadcast Deregulation, Congressional Digest 100 (April 1984).

Brodyaga, Lisa, Margaret Gates, Susan Singer, Marna Tucker, and Richardson White. Rape and Its Victim: A Report for Citizens, Health Facilities, and Criminal Justice Facilities. USA: National Institute of Law Enforcement and Criminal Justice, 1978.

Buffmyer, Raymond G. Attorney, Charlotte, Michigan. Letter to the author. 6 October 1987.

Burgess, Ann and Lynda Holmstrom. Rape Trauma Syndrome, 131 Am. J. Psychiatry 981-985 (September 1974).

77 C.J.S. Right to Privacy § 1-6 (1952).

Cameras in the Court: A Success In Florida. 117 Editor and Publisher 16 (1984).

Carrow, Deborah M. Rape: Guidelines for a Community Response. USA: National Institute of Law Enforcement and Criminal Justice, 1980.

Carter, Charlotte. Media In The Courts. USA: National Center for State Courts, 1981.

_____. Television in the Courts, 1981 State Ct. J. 6 Photocopy 1987.

Chandler v. Florida, 449 U.S. 563 (1981).

Christians, Clifford G., Kim B. Rotzoll, and Mark Fackler. Media Ethics: Cases and Moral Reasoning. New York: Longman, Inc., 1983.

Citizens' Commission To Improve Michigan Courts: Final Report and Recommendations To Improve the Efficiency and Responsiveness of Michigan Courts. [Lansing, MI]: Michigan Supreme Court, 1986.

Combined Communications Corp. v. Finesilver, 672 F.2d 818 (1982).

Cox Broadcasting Corporation v. Cohn, 420 U.S. 469 (1975).

Curtis, Michael Kent. No State Shall Abridge. Durham, N.C.: Duke University Press, 1986.

Davis, Norman. Television in Our Courts: The Proven Advantages, the Unproven Dangers, 64 Judicature 85 (1980).

Dean, Charles, and Mary deBruyn-Kops. The Crime and the Consequences of Rape. Springfield, IL: Charles C. Thomas, 1982.

Denniston, Lyle W. The Reporter and the Law. New York: Hastings House, Publishers, 1980.

Dershowitz, Alan. "Burger sees TV as Court's Foe." The Boston Herald. 26 November 1984. Photocopy 1987.

Doe v. Sarasota -- Bradenton Florida Television, 436 So.2d 328 (Fla. App. 2 Dist. 1983).

Dorsen, Norman, ed. Our Endangered Rights. New York: Pantheon Books, 1984.

Dovel, Kenneth S., ed. Mass Media and The Supreme Court. New York: Hasting House Publications, 1982.

Drechsel, Robert E. News Making in the Trial Courts. New York: Longman, 1983.

Dyk, Timothy. Attorney, Wilmer, Cutler and Pickering, Washington D.C. Personal interview. 19 May 1987.

Ellsworth, Karen, and Neil Downing. "Judge Bars Court Photos of Victim." The Evening Bulletin. 23 February 1984, A.

Emerson, Thomas I., David Haber, and Norman Dorsen. Political and Civil Rights in the United States, Vol. 1, 3rd ed. Boston: Little, Brown and Company, 1967.

Emerson, Thomas I. The System of Freedom of Expression. New York: Random House, 1970.

_____. Toward a General Theory of the First Amendment. New York: Random House, 1966.

English, Elaine. Staff Attorney, The Reporters Committee for Freedom of the Press, Washington, D.C. Letter to the author. 12 November 1986.

Estes v. Texas 381 U.S. 532 (1965).

Fattah, Ezzat A., ed. From Crime Policy to Victim Policy. New York: St. Martin's Press, 1986.

Four States Start Tests with Cameras, Recorders in Court; Total up to 45 States, 11 The News Media and the Law 42 (Fall 1987).

Franck, Michael. Executive Director, Michigan Bar Association, Lansing, Mich. Personal interview. 22 October 1987.

Franklin, Marc. The First Amendment and the Fourth Estate. New York: The Foundation Press, Inc., 1981.

Fuchs, David C. Senior Vice President, Corporate Affairs, CBS, Inc., New York. Letter to the author. 28 October 1986.

Galvin, M. Media Law. Calif: Nolo Press, 1984.

Gerbner, George. Trial by Television: Are We at the Point of No Return? 63 Judicature 416 (1980).

_____. Annenberg School of Communications, Philadelphia, Penn. Letter to the author. 20 April 1987.

Gideon v. Wainwright, 372 U.S. 335 (1963).

Gitlow v. New York, 268 U.S. 653 (1925).

Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982).

Goldman, Kevin. CNN Brings State Courts into Public Living Rooms, 133 Variety 76 (1984).

Griesdorn, Thomas. General Manager, WXYZ-TV7, Detroit, Mich. Letter to the author. 19 October 1987.

Griswold v. Connecticut, 381 U.S. 479 (1965).

Gross, Gerald, ed. The Responsibility of the Press. New York: Fleet Publishing Corp., 1966.

Harrison, Judge Michael G., 30 Jud Circuit, Lansing, Mich. Personal interview. 14 October 1987.

Hemmer, Joseph J., Jr. Journalistic Freedom, Vol. 4, Communication Under Law. New Jersey: The Scarecrow Press, Inc., 1980.

Hosinger, Ralph L. Media Law. New York: Random House, 1987.

Hoyt, James L, Courtroom Coverage: The Effects of Being Televised, 21 Journal of Broadcasting 487 (1977).

Johnson, Tom. Publisher and Chief Executive Officer, Los Angeles Times, Calif. Letter to the author. 28 October 1987.

Juvenile Trial Secrecy Surveyed, 7 The News Media and the Law 3 (March/April 1985).

Kamisar, Yale, William Lockhard, and Jess H. Choper. Constitutional Rights and Liberties: Cases and Materials, 2nd ed. St. Paul, Minn: West Publishing Co., 1967.

Kassin, Saul M. and Lawrence S. Wrightsman, eds. The Psychology of Evidence and Trial Procedure. USA: Sage Publication, Inc., 1985.

Keeton, W. Page, Dan B. Dobbs, Robert E. Keeton, and David Owen. Prosser and Keeton on The Law of Torts, 5th ed. St. Paul, Minn: West Publishing Co., 1984.

Kelly, Alfred H., and Winfred A. Harbison. The American Constitution: Its Origins and Development, 5th ed. New York: W.W. Norton and Company, 1976.

Kelly, Alfred H., Winfred A. Harbison, and Herman Blez. The American Constitution, 6th ed. New York: W.W. Norton and Company, 1983.

Kukielski, Phil. "Rape Crisis Unit Angry Over Use of Alleged Victims Name by Media." The Providence Journal. 29 February 1984, 3(A).

_____. "Big Dan's Judge Assails Media For Naming Rape Complainant." The Providence Journal. 22 March 1984, 9(A).

Lampert, Donna M., ed. "Broadcasting and the Government: A Review of 1983 and Preview of 1984." National Association of Broadcasters. Washington, D.C.: National Association of Broadcasters, 1984.

Lancaster, Dalton. Cameras in the Courtroom: A Study of Two Trials. Research Report No.14. Bloomington, IN: School of Journalism, Center for New Communications, Indiana University. February 1984. Photocopy 1987.

Levy, Leonard, ed. Encyclopedia of the American Constitution, Vols. 4. New York: MacMillian Publishing Co., 1986.

Lieberman, Jethro K. The Enduring Constitution: An Exploration of the First Two Hundred Years. New York: Harper and Row, Publishers, 1987.

Low, Erick. Librarian, National Center for State Courts, Williamsburg, VA. Letter to the author. 28 April 1987.

McCombs, Amy. President and General Manager, WDIV-TV4, Detroit, Mich. Letter to the author. 16 October 1987.

McCorkle Hauser, Charles. Vice President and Executive Editor, The Providence Journal-Bulletin, Rhode Island. Letter to the author. 5 November 1986.

McLaughlan, William P. American Legal Process. USA: John Wiley and Sons, 1977.

Mapp v. Ohio, 367 U.S. 643 (1961).

Martin, Donald. Ingham County Prosecuting Attorney, Lansing, Mich. Personal interview. 14 October 1987.

Meiklejohn, Alexander. Political Freedom: The Constitutional Powers of the People. New York: Harper and Brothers, Publishers, 1960.

Merrill, John C, Good Reporting Can be a Solution to Ethics Problems, 42 Journalism Educator 27 (Autumn 1987).

Miller v. California, 413 U.S. 15 (1973).

Morgan, Thomas J. "TV Newsman, Editor Clash on Rape Coverage Channel 6, Standard Times Part Ways on Identifying Women." The Providence Journal. 22 March 1984.

Morison, Samuel Eliot, Henry Steele Commager, and William F. Leuchtenburg. A Concise History of the American Republic, 2nd. ed. New York - Oxford: Oxford University Press, 1983.

Musser, Marilyn J. News Coverage of Sexual Assault. Des Moines, Iowa: Iowa Coalition Against Sexual Abuse, 1986.

National Archives and Records Administration. Some Facts About the National Archives, General Leaflet no. 18. Washington, D.C.: National Archives and Records Administration, 1985.

National Association of Broadcasters. Counsel from the Legal Department, April 1982. Photocopy 1987.

National Center for State Courts. "Summary of TV Cameras in the State Courts." Williamsburg, VA: National Center for State Courts, 30 January 1987. Photocopy 1987.

National Organization For Victim Assistance. Policies of the National Organization For Victim Assistance. Washington, D.C.: National Organization For Victim Assistance, 1982. Photocopy 1987.

_____. Victim Rights and Services: A Legislative Directory. Washington D.C.: U.S. Department of Justice, 1985.

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

O'Hair, John D. Prosecuting Attorney, Wayne County, Mich. Letter to the author. 11 August 1987.

Pember, Don R. Mass Media Law. USA: Wm. Brown Company Publishers, 1981.

Pinkham Benson, Audrey. Do Cameras in the Courtroom Hurt the Cause of Justice? Spring 1984 Update 20. Photocopy 1987.

Price, Larry W. News Director, KSTP Television, Minneapolis - St. Paul, Minnesota. Letter to the author. 13 January 1987.

Proposed Administrative Order, Mich. B.J. 420 1987. Photocopy 1987.

Prosser, William L., Privacy, 48 Calif. Law Rev. 383 (1960).

Rassel, Richard E., and James E. Stewart, Some Considerations on Court Closure in Michigan, Mich. B.J. 653 1987. Photocopy 1987.

Richmond Newspapers v. Virginia, 448 U.S. 555 (1980).

Rideau v. State of Louisiana, 373 U.S. 727 (1963).

Rockwell, John H. Memorandum: TV in the Courts, Evaluation of Experiments, 3 February 1983. National Center for State Courts. Photocopy 1987.

_____. Memorandum: TV in the Courts: Evaluations, Guidelines and Articles, 3 May 1983. National Center for State Courts. Photocopy 1987.

Rowland, Judith. The Ultimate Violation. Garden City, N.Y.: Doubleday and Company, Inc., 1985.

Schoeman, Ferdinand David, ed. Philosophical Dimensions of Privacy: An Anthology. Cambridge: Press Syndicate of the University of Cambridge, 1984.

Schultz, Ernie. Acting President, Radio-Television News Directors Association, Inc., Washington, D.C. Letter to the author. 3 November 1986.

Seymour, Anne. Director of Public Relations, Sunny Von Bulow National Victim Advocacy Center, Fort Worth, Texas. Personal interview in Lansing, Mich. 6 June 1987.

Shonkwiler, James. Executive Director, Michigan Prosecuting Attorney's Association, Lansing, Mich. Personal interview. 23 October 1987.

"Statement of Recommended Judicial Practices." Presented at the National Conference of the Judiciary on the Rights of Victims of Crime, 29 November - 2 December 1983. Photocopy 1987.

Stell, Judge Carolyn. 30 Jud Circuit, Lansing, Mich. Personal interview. 19 October 1987.

Stevens, John D. Shaping the First Amendment: The Development of Free Expression. Beverly Hills: Sage Publications, Inc., 1982.

Stewart Dyer, Carolyn. Associate Professor, School of Journalism and Mass Communication, University of Iowa. Letter to the author. 7 May 1987.

Stewart Dyer, Carolyn, and Nancy R. Hauserman. Exemption of Sexual Assault Victims From Electronic News Coverage in Court, 1 Sexual Coercion and Assault 81 (1986).

Stokes, Carl B. Administrative judge. Inter-Office Correspondence, subject: News Media, 7 February 1984. Cleveland Municipal Court, Judicial Division. Photocopy 1987.

Stromberg v. California, 283 U.S. 359 (1931).

Sullivan, Lawrence T. Assistant National Editor, The Detroit News, Detroit, Mich. Letter to the author. 5 October 1987.

Sunny Von Bulow National Victim Advocacy Center. "Section B: Crime Victims and the Media." Curricula. n.d.

Swain, Bruce M. Reporter's Ethics. Ames, Iowa: The Iowa State University Press, 1978.

Television in the Courtroom -- Limited Benefits, Vital Risks? 3 Comm. and the L. 35 (Winter 1981).

The Federalist, Bicentennial Edition. Washington-New York: Robert B. Luce, Inc., 1976.

Thomason, Tommy, and Anantha Babbili, eds. Crime Victims and the News Media. A synopsis of a national symposium sponsored by the Texas Christian University Department of Journalism and the Gannett Foundation, 13 November 1986. (n.d.).

Tierney, Kevin. How to be a Witness, Legal Almanac Series No. 67. Dobbs Ferry, NY: Oceana Publications, Inc., 1971.

Time v. Hill, 385 U.S. 374 (1967).

Tune, John. Editor, Traverse City Record Eagle, Traverse City, Mich. Personal interview. 25 July 1987.

U.S. Congress. Senate. Subcommittee on Criminal Law of the Committee on the Judiciary. Impact of Media Coverage of Rape Victims: Hearing before the subcommittee on Criminal Law of the Committee on The Judiciary. 98th Cong., 2nd Sess., 24 April 1984.

_____. Senate. Subcommittee on Juvenile Justice of the Committee on The Judiciary. Child Sexual Abuse Victims In The Court: Hearing before the Subcommittee on Juvenile Justice of the Committee on The Judiciary. 98th Cong., 2nd sess., 2,22 May 1984.

U.S. Department of Justice. Victim/Witness Assistance, by Robert Rosenblum and Card Blew. [Washington, D.C.]: U.S. Department of Justice, 1979.

_____, Office of Justice Programs in cooperation with The National Association of Attorney General, Crime Victims Project and The American Bar Association, Criminal Justice Section, Victim Witness Project. Victims of Crime Proposed Model Legislation. Washington D.C.: U.S. Department of Justice, n.d.

Vetter, Harold J., and Leonard Territo. Crime and Justice in America: A Human Perspective. St. Paul: West Publishing Co., 1984.

Villasana, Tony. News Director, WMAZ-TV13, Macon, Georgia. Letter to the author. 18 September 1987.

Warren, Samuel D., and Louis D. Brandeis. The Right to Privacy, 4 Harv. L. Rev. 193 (1890).

Watson Hillenbrand, Susan. Project Director, Victim Witness Project, American Bar Association, Section of Criminal Justice, Washington, D.C. Letter to the author. 31 December 1986.

WDIV (Post Newsweek Stations, Michigan, Inc.), John J. Ronayne, III, The Associated Press, Michigan News Exchange, Mid-Michigan Professional Chapter of The Society of Professional Journalists, Sigma Delta Chi, The Reporters Committee for Freedom of the Press, and The Society of Professional Journalists, Sigma Delta Chi (Detroit Chapter), Comments on Proposed Administrative Order Providing For Extended Media Coverage of Judicial Proceedings. 1987.

Weiss, Mark E. Attorney, Mekler, Schreier, Nolish, and Friedman, Southfield, Mich. Letter to the author. 13 October 1987.

Weiss, Robert. Prosecuting Attorney, Flint, Genesee County, Mich. Letter to the author. 27 August 1987.

Words and Phrases, Civil Action (1968).

10A Words and Phrases, Criminal Action (1968).