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Balancing Act: First and Sixth Amendment Rights in High-Profile Cases

James H. Landman

WE OFTEN HEAR that democracy is not a spectator sport. This is certainly true of trial by jury, a cornerstone of our democracy, which depends on the willingness of Americans from all walks of life to devote themselves to the difficult work of determining another person's guilt or innocence of a crime. But the work of those citizens selected to serve on juries has become a spectator sport for the rest of us, especially in cases involving a celebrity or a crime of particular infamy. As our interest in—and media coverage of—high-profile trials grows, so do concerns over the ability of juries to do their work impartially and give the defendant the fair trial guaranteed under the Sixth Amendment to the U.S. Constitution.

Last year, the trial of Scott Peterson for the murders of his wife and unborn son dominated the news, and a national television audience could watch a USA Network docudrama offering a fictionalized account of the case that was aired during Peterson's jury trial. This year, the child molestation trial of Michael Jackson has captured headlines, and viewers of the E! Network can watch actors perform daily reenactments of scenes from the trial (television cameras were banned from the courtroom). The E! Online website also offers a "scorecard," tallying points for the prosecution and defense, and a "Meet the Jurors" feature that provides a "rundown of the men and women chosen to decide Michael Jackson's fate."[1]

Media attention to famous trials is not new. Just over 50 years ago, the trial of suburban Cleveland doctor Sam Sheppard, accused of murdering his wife, became one of the first media spectacles of the television age. Sheppard's case eventually made it to the Supreme Court, which ruled that Sheppard had been denied a fair trial because of potential juror bias arising from the largely uncontrolled media frenzy that surrounded the case.[2] More recently, the murder trial of football star and movie actor O.J. Simpson set a new benchmark for high-profile trials. The Simpson trial became a national event, beginning in 1994 with the slow-speed police chase of Simpson's Ford Bronco that drew more than 90 million viewers and ending with the delivery of the trial jury's verdict of not guilty, watched or heard by an estimated 140 million Americans on October 3, 1995.

The Simpson trial added momentum to a trend that had already begun gathering force: namely, the treatment of high-profile cases as a blend of news and entertainment. As media coverage of high-profile cases continues to intensify, so do tensions between two of our most fundamental constitutional rights. The first is the criminal defendant's Sixth Amendment right to a fair trial by an impartial jury. The second is the media's First Amendment freedoms to observe and report on the trial. These rights are not necessarily in conflict. One of the ways in which the Sixth Amendment protects the defendant is by guaranteeing that the trial will be public and subject to the scrutiny of an independent press.

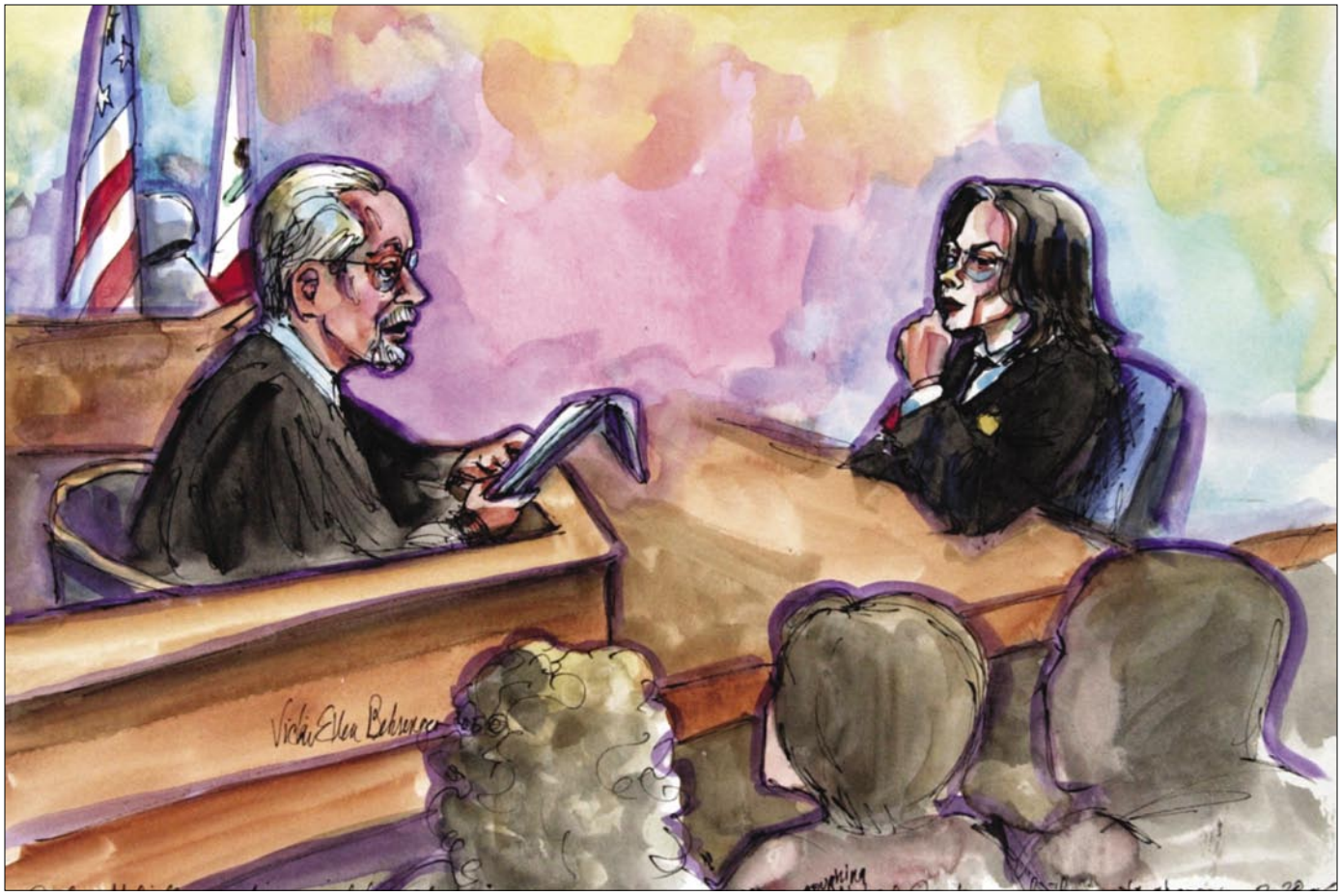
Media coverage can, however, have a detrimental effect on the defendant's ability to get a fair trial, especially when it exposes potential jurors to information or opinions that might predispose them against the defendant before the trial begins. At what point do the media's First Amendment rights jeopardize the defendant's Sixth Amendment rights? How can these potentially competing rights be balanced? Do any other parties—jurors, for example, or witnesses—also have rights that might affect this balance? The courts have not had an easy time answering these questions.

This article considers three issues that have emerged as points of conflict in high-profile trials. First, how broad is the public's right of access to criminal trials? Second, what limits, if any, can courts impose on media coverage of a trial? And third, should courts be able to distinguish between news-oriented reporting on a trial and other, more entertainment-oriented forms of media coverage?

Public Right of Access

The history of holding criminal trials open to the public stretches back for centuries. The Sixth Amendment guarantee that "the accused shall enjoy the right to a . . . public trial" essentially codified what had become standard practice under English law.

From the public's perspective, there are many good reasons for protecting open trials. Open trials enhance public confi-



AP Photo/Vicki Ellen Behringer

This artist rendering shows Michael Jackson, right, seated in court while Superior Court Judge Rodney S. Melville reads the indictment and instructions to the jury, foreground, at the start of the Jackson child molestation trial in the Santa Barbara County courthouse Monday, February 28, 2005, in Santa Maria, California.

dence in the justice system, while giving the public a supervisory function in ensuring that standards of justice are maintained in any given trial. Attending a trial can also give a community the satisfaction of "seeing justice done." But the right to a public trial belongs to the accused, not the public. The Supreme Court has ruled that this Sixth Amendment right is for the benefit of the accused alone, and is not enforceable by interested members of the public.[3]

Instead, the public's right of access to trials has been derived from the First Amendment. In *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980), a judge had closed a trial upon the unopposed motion of the defendant, without making any findings on the need for closure. The Supreme Court, relying upon an implied First Amendment right of public access to the trial, reversed the decision. The Court found the right of public access to trials implicit in several of the First Amendment's enumerated guarantees. Freedom of speech, for example, must carry with it a freedom to listen. Freedom of the press loses much of its meaning if there is not some protection given to seeking out the news. And freedom of assembly has historically found a home in the public courtroom, where members of the public have long gathered to observe trials.

Less certain is how far the presumption of openness extends to pretrial proceedings. These proceedings raise unique issues regarding the defendant's right to a fair trial. They occur, of course, before a trial jury has been empanelled, and publicity on these proceedings can "taint" the pool of potential jurors if information that casts a negative light on the defendant is released. In pretrial suppression hearings, for example, parties debate whether disputed evidence should be admissible at trial. If evidence that is found inadmissible, or "suppressed," is nonetheless reported in the media, there is a risk that the jurors who are eventually empanelled could be influenced by reports on the suppressed evidence.

In *Gannett Co. v. DePasquale*, 443 U.S. 368 (1979), the Supreme Court ruled in favor of a New York court's decision to close, at the defendant's request, a pretrial suppression hearing in a criminal case. The prosecution had agreed, but the publisher of two local newspapers was opposed. An important factor in the Court's decision to uphold the closure was its analysis of the history of the trial. That history demonstrated no right of the public to attend pretrial hearings; instead, the Court found substantial evidence to the contrary. The Court also noted that, in the case at hand, the trial court had agreed to release a full transcript of the pretrial hearing after the threat of prejudice to the defendant's case had passed. Denial of access was thus, in the Court's opinion, only temporary.

The *Gannett* holding was qualified by two subsequent cases, known as *Press-Enterprise I* and *Press-Enterprise II*.[4] In

Student Activities

Michelle Parrini

1. Most state bar associations have rules of professional conduct for lawyers. Sometimes these rules are also referred to as codes of professional responsibility. In some states, if lawyers violate these rules, they may be disciplined. (Links to these rules can be found on the American Bar Association website at: www.abanet.org/cpr/links.html)

In small groups, ask students to research the rules governing the professional conduct of lawyers when communicating with the public or the media in the area of trial publicity. Cover a number of states. The reports should include information about the subjects that are allowed or disallowed by the rules. Please Note: Before students begin their research, you may want to give them a definition of the legal term "reasonable person." A "reasonable person" is a hypothetical person who has average skill in judgment and conduct, and who provides a comparative standard.

As students deliver their reports, create a chart on the blackboard comparing state rules. What topics are most often deemed compromising to the fairness of jury trials? What topics appear to be fair game? As you identify commonalities, ask students to brainstorm hypothetical statements illustrating the permissible and impermissible content. Ask them if they agree with the delineation of prejudicial and benign subjects outlined in these rules. Can they think of other subjects that they believe lawyers ought to steer away from?

Finally, create a class Model Rules of Conduct for lawyers governing trial publicity.

Extension Activity: Ask students to investigate news accounts of recent local or national high-profile cases. Ask them to analyze quotes from lawyers in these news accounts and be prepared to report on them to the class. Do they feel the quotes exemplify potential violations of the class Model Rules of Conduct, or do they comport with the class rules? Ask them to be prepared to explain the rationales for their positions. After presenting quotes to the class, reevaluate the class model rules. Did the quotes make students think about reevaluating the topics lawyers should and should not be permitted to discuss with the media and public when they are litigating? After reviewing the news accounts, what changes, if any, would students like to make to the class rules, and why?

2. Ask students to read the following news account from the Court TV website on a prosecution's claim during a pretrial proceeding about the discovery of a confession-filled diary written by "Unabomber" Theodore Kaczynski.

► "Kaczynski Prosecutor's Bombshell," www.courttv.com/trials/unabomber/reports/bombshell.html

In small groups, ask students to:

- identify concerns a defense attorney might have about the revelation and its coverage in the news;
- put themselves in the position of a trial judge and brainstorm at least three ways that they might prevent such a disclosure or mitigate its consequences in future cases;
- investigate and prepare reports about whether they believe their solutions would meet constitutional muster (they should be prepared to provide explanations for their positions drawing from legal sources);
- find out if trial judges have implemented any of their solutions across the country, and, if possible, to what effect.

Students should share their findings.

Next, thinking about the media report on Kaczynski's journals, ask students to prepare *voir dire* questions that the defense could ask prospective jurors in the Kaczynski case. After reviewing the questions, considering media coverage of the journals before a jury was empanelled, do students believe that the voir dire process would mitigate consequences of publicity during pretrial proceedings? Would it be possible for Kaczynski to receive a fair trial by an impartial jury? Why or why not? Which do they believe would have been more effective in ensuring a fair and impartial jury—procedures and policies implemented by the trial judge, or the voir dire process? Or, is the involvement of both judge and attorneys necessary to ensure a fair trial? Why?

Conclude the activity by telling students that Kaczynski faced the death penalty. Do they believe different standards of publicity should be implemented in different types of cases involving different factors? Why or why not?

3. Ask students to read The Society of Professional Journalists' "Code of Ethics" (available at www.spj.org/ethics_code.asp). Point out that the code includes these statements: "Journalists should minimize harm… Ethical journalists treat sources, subjects and colleagues as human beings deserving of respect… Journalists should: Balance a criminal suspect's fair trial rights with the public's right to be informed."

Based on their analysis of the code, ask students, "How do journalists who adhere to the society's code appear to define their primary responsibilities and roles in covering jury trials?"

Ask students to read the "Preamble and Scope," and "Rule 3.6, Trial Publicity" of the American Bar Association's "Model Rules of Professional Conduct for Lawyers" (available at www.abanet.org/cpr/mrpc/mrpc_toc.html). Based on an analysis of these sections of the model rules, how do they think lawyers who adhere to the ABA Model Rules appear to view their primary responsibilities and roles during jury trials?

Finally, ask students who they think bears the larger burden, based on an analysis of these two codes of conduct, for ensuring a fair jury trial, and why? Do they agree or disagree with this delineation of responsibility? Why or why not? Which right do students believe is more important—the right of the public to be informed (First Amendment), or the right of citizens to a fair trial by an impartial jury (Sixth Amendment)? Why?

Extension Activity: Ask students to brainstorm possible journalistic behavior that might compromise the right of a criminal suspect to a fair trial. After students complete this list, ask them to revise each scenario to adequately balance the rights of criminal suspects to a fair trial and the public's right to know. Ask them to investigate whether journalists can be prosecuted for reporting that might be viewed as compromising a fair jury trial and to share their reports. Conclude by asking students if they believe journalists should be held legally accountable for reporting that compromises the fairness of a jury trial? Why or why not?

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Selected Online Resources

American Bar Association's American Jury Initiative
www.abanet.org/jury/
This website offers information on educational programs developed by the ABA Commission on the American Jury, including a new Dialogue on the American Jury. It also provides links to additional educational resources recommended by the commission and to new principles on jury service drafted by the ABA American Jury Project.

American Bar Association Division for Public Education: Teaching Activities for High School Students
www.abanet.org/publiced/lawday/schools/lessons/hs_jury.html
These brief teaching activities about the American jury system and jury trial rights are for high school students. The site includes links to two additional teaching activities from the National Constitution Center (www.constitutioncenter.org).

Constitutional Rights Foundation, Chicago—The American Jury: Bulwark of Democracy
www.crfc.org/americanjury/
This website for teachers, students, and the public, provides information and lessons about the jury and its role in all aspects of American life.

National Center for State Courts/Center for Jury Studies
www.ncsconline.org/Juries/
This center engages in and disseminates research and other materials about the jury system. It also offers a free, weekly e-bulletin, Jur-E Bulletin, about jury developments, from media coverage to court decisions.

The Texas Young Lawyers Association's We the Jury Curriculum
www.tyla.org/we_jury.html
This curriculum, available for downloading, focuses on how jurors are selected, and the role that a juror plays in a trial. An accompanying video with a mock trial for which students may serve as jurors is also available.

Press-Enterprise I, the Court extended the presumption of openness to the process of *voir dire*. During voir dire, prospective jurors are questioned for possible biases that would make them unsuitable for service on a particular jury. In this case, the trial court had closed all but three days of a six-week voir dire, citing a need to protect the privacy of prospective jurors because they may have been required to disclose sensitive personal information. In rejecting this approach, the Supreme Court reasoned that, as an alternative to general closure, the trial court could have allowed individual jurors to make an affirmative request to meet with the judge and counsel in the privacy of the judge's chamber. Closure would thus be limited to those few individuals who felt uncomfortable answering certain questions publicly.

In *Press-Enterprise II*, the Court made clear that the presumption of openness would be extended to pretrial proceedings if, first, there was no tradition of closure with respect to the proceeding in question, and second, public access played a significant positive role in the function of the proceeding. The Court acknowledged that negative publicity from media reports on pretrial proceedings might bias some prospective jurors, but suggested that in most cases, biased jurors could be identified during voir dire and excused from

AP Photo/Bebeto Matthews

An unidentified news producer signals a guilty verdict with a red scarf as she rushes from the Manhattan Federal Court after verdicts were delivered in the Martha Stewart trial in New York, Friday, March 5, 2004. Stewart was convicted of obstructing justice and lying to the government about a superbly timed stock sale.

service. For pretrial proceedings that carry a presumption of openness, the Court stated that it would look for findings by the trial judge that closure was essential to preserve a higher interest and that the closure order was narrowly tailored to serve that interest.

The recent trial of entrepreneur and businesswoman Martha Stewart on criminal charges related to a sale of corporate stock illustrates how questions on the balance between media access and juror impartiality in high-profile cases persist. The trial judge in the Stewart case, with the consent of the parties, developed a two-part plan for voir dire of prospective jurors. Prospective jurors were first screened based on their responses to a lengthy questionnaire, and remaining prospects were then to be individually questioned in the judge's robing room. Because of concerns that journalists would try to contact prospective jurors, the judge issued an order forbidding media communications with jurors or potential jurors until their service was complete. The court gave the screening questionnaire to the pool of prospective jurors on January 6, 2004. By the next day, paraphrased portions of the questionnaire appeared on the website www.gawker.com, apparently posted by one of the prospective jurors.

The government prosecutors moved to block media access to the voir dire, and also requested that the media be prohibited from disclosing the identity of prospective jurors. Stewart and her co-defendant, stockbroker Peter Bacanovic, did not object. The trial judge granted the request, but established that a transcript of the proceedings, with names and "deeply personal information" edited out, would be offered to the media. The judge's order cited "widespread and intense media coverage" of the trial and the need for prospective jurors to candidly disclose what they had heard about the defendants in the media and any opinions or preconceptions they held. The judge also believed that the release of the transcript made this order less restrictive than full closure of the proceedings.

Media groups successfully appealed the trial judge's decision to close voir dire to the U.S. Court of Appeals for the Second Circuit. Applying the Supreme Court's *Press-Enterprise* opinions, the circuit court defined "the ability to see and hear a proceeding as it unfolds" as "a vital component of the First Amendment right of access," a component not satisfied by a written transcript of a proceeding. "One cannot," the court wrote, "transcribe an anguished look or a nervous tic."[5] The circuit court also disputed the trial court's finding that the presence of reporters at voir dire would make prospective jurors less than candid about their preconceptions, given that, even in the closed hearings, the defendants were seated in the room for voir dire.

The circuit court did, however, identify a factor (not present in the Stewart case) that might make closure of voir dire permissible. In issuing its closure order, the Stewart trial court had made reference to the Second Circuit's decision in *United States v. King*, 140 F.3d 76 (1998), permitting closure of voir dire in a case involving boxing promoter Don King. That case had raised the issue of racial bias, and the circuit court had agreed that media access to voir dire might have impeded the willingness of prospective jurors to express unpopular opinions on racial issues. In the Stewart case, however, the court stated that in the absence of such sensitive social issues, the presence of reporters would be more likely to encourage honesty among prospective jurors.

The Stewart case illustrates another difficulty the media often face when confronted by an order denying access to a pretrial proceeding. By the time the Second Circuit reversed the trial court's decision denying media access, voir dire was over. Although the court's ruling could not reverse the immediate effect of the closure order, it did establish guidelines for future trial judges asked to consider closure of pretrial proceedings.

Prior Restraints

Once the media have gained access to a trial or pretrial proceeding, a strong First Amendment presumption against prior restraints makes it extremely difficult for a court to prevent or delay publication of obtained information. This presumption puts the United States somewhat at odds with practices in other countries that use trial by jury in criminal cases. In England, for example, courts have the power to restrict publications that pose a substantial risk of prejudicing or impeding the course of justice in a trial. English courts can also issue orders postponing the publication of reports on criminal proceedings to avoid the risk of prejudice. Once the trial has ended, the media are free to report on what happened.

The U.S. Supreme Court has not issued an absolute prohibition against restrictive orders, commonly known as "gag orders," in criminal cases. But it has made clear that it views such orders with a strong First Amendment presumption against their constitutional validity. In *Nebraska Press Association v. Stuart*, 427 U.S. 539 (1976), the Supreme Court established a three-part test for determining whether a gag order limiting reporting on a criminal case violates the media's First Amendment rights.

Nebraska Press involved the trial of a suspect accused of murdering six members of a Nebraska family who lived in a small community of about 850 people. The crime received attention on local, regional, and national levels. Both the prosecutor and defense counsel sought and successfully obtained a restrictive order banning the public release of information on testimony or evidence. On appeal, the Nebraska Supreme Court limited the scope of the order to information on confessions or admissions made by the defendant or other facts "strongly implicative" of the defendant; the court agreed, however, that an order was necessary to protect the defendant's right to trial by an impartial jury.

The Supreme Court disagreed, and ruled that the validity of a restrictive order could be determined by asking three questions. First, what was the nature and extent of pretrial news coverage? Here, the Nebraska courts were justified in their assessment that pretrial news coverage was likely to be intense and pervasive. Second, could other measures be taken to mitigate the effects of unrestrained publicity? The Court found that the Nebraska courts had

failed to adequately consider alternatives short of a prior restraint on the press that might have insured the defendant a fair trial. These measures might include,

- a change of venue to a location less saturated by media coverage,
- postponement of the trial until public interest diminished,
- intensive voir dire of prospective jurors,
- emphatic instructions to the jury to consider only the evidence presented at trial, and
- sequestration of the jury.

Third, how effective would a restraining order be in preventing the threatened danger? Here, the Court found it unlikely that a restrictive order would have much effect on the defendant's ability to get a fair trial, especially in a community of 850, where the crime was likely to remain a topic of widespread discussion with or without an order.

The *Nebraska Press* test attempts to balance the defendant's fair trial rights against the media's First Amendment rights. But how might the rights of additional trial parties affect this balance? This question has been raised in two recent high-profile cases involving prior restraints.

In July 2003, professional basketball player Kobe Bryant was accused of raping a woman at a resort in Colorado. Rape cases are particularly sensitive, and many states have enacted "rape shield laws" designed to protect victims from the unnecessary disclosure of information about their sexual history at trial. These statutes do not, however, prevent media disclosure of information about the victim's past sexual life.

In the Bryant case, the trial judge held a closed pretrial proceeding in his chambers to address issues regarding the victim's sexual history. A court reporter mistakenly e-mailed a transcript of the proceedings to several media outlets, and the court issued a gag order forbidding publication of the information in the transcript. A closely divided Colorado Supreme Court upheld the gag order, citing the intent of the rape shield law to protect the victim's privacy. The U.S. Supreme Court also refused to reverse, especially since the trial court appeared ready to release much of the transcript at the time of the appeal. The transcript was eventually released, but the media were still barred from publishing some 68 lines of its contents.

The Michael Jackson case has also put gag orders in the public eye. Courts are typically more willing to consider gag orders that do not directly restrict the media. A common form is a gag order that restricts individuals under the court's immediate control—the parties, their lawyers, and potential witnesses—from discussing the case with the media. In the Michael Jackson child molestation case, where such an order has been in effect, late night talk-show host Jay Leno was named as a potential witness. The court's gag order might technically have prevented Leno from using material from the case in his nightly *Tonight Show* monologue. Leno sought clarification from the court on the extent of the order, but while his request was under review he invited a series of "surrogate" entertainers to tell Michael Jackson jokes during his monologue. The trial judge ultimately gave Leno permission to tell his own jokes, as long as they did not touch upon things to which he was a witness.

Michael Jackson opposed Leno's request to obtain clearance for his jokes. And indeed, critics of gag orders limited to the trial participants argue that such orders can potentially affect a defendant's fair trial rights as much as unrestrained coverage. Party-specific gag orders do prevent lawyers from the two sides from staging a "trial in the media" before the actual trial begins. But the media do not need the parties or their lawyers to publish stories about an upcoming case. And when the parties are under a gag order, they can have a difficult time responding to inaccurate or misleading stories in the media. Instead of silencing pretrial publicity, gag orders that restrict comments from parties in the trial can force the parties, both defendant and prosecutor, into a position of unwanted and potentially harmful silence amidst intense media coverage.

Different Standards for Different Speech?

Should courts give less weight to entertainment-oriented media coverage of a trial? For fair trial advocates, one of the most distressing media developments of recent years has been the production of docudramas timed to coincide with, or even precede, the trial of high-profile defendants. Docudramas are based partly on fact, but most of the dialogue and the behavior of characters in individual scenes are the creative product of the screenwriters and actors. As noted earlier, the USA Network broadcast *The Perfect Husband: The Laci Peterson Story* during the murder trial of Scott Peterson in 2004. The same network broadcast *DC Sniper: 23 Days of Fear* in 2003 to coincide with the trial of John Muhammad, before the trial of the other accused D.C. sniper, Lee Malvo, had begun. Nightly reenactments of scenes from the Michael Jackson trial on the E! Network—a new twist in the docudrama phenomenon—are based on the transcript of proceedings. But the words of the parties and witnesses are filtered through the interpretations of professional actors, not the original speakers.

Existing law would create numerous obstacles to any attempt to restrict broadcast of docudramas or other entertainment-oriented coverage of a high-profile trial. First, although the Supreme Court has historically shown some willingness to distinguish between types of speech in determining the level of First Amendment protection it will apply, that willingness has weakened in recent years. Commercial speech related to economic transactions was for many years given less protection than political speech, but recent decisions of the Court have been less tolerant of restrictions on commercial speech.[6] The Court has also clearly granted First Amendment protections to movies.[7]

Second, any attempt to block or restrict broadcast of a docudrama would fall squarely within prior restraint law and the difficult three-part test established by *Nebraska Press*. A court would probably determine that broadcast of a docudrama during the trial of a high-profile defendant, after the jury had been empanelled, could be mitigated by strict directions to jurors to avoid any media coverage of the trial outside the court or, as a last resort, seques-

tration of the jury.

The most likely challenge to a docudrama would come if broadcast were scheduled to occur before the trial began, when the pool of prospective jurors might be tainted by the broadcast. Such a broadcast was at issue in *Hunt v. National Broadcasting Co., Inc.*, 872 F.2d 289 (1989), a case from the Ninth Circuit that involved the trial of the convicted "Billionaire Boys Club" murderer, Joe Hunt. Hunt sought a restraining order to prevent the airing of an NBC docudrama, also called *Billionaire Boys Club*. The docudrama portrayed Hunt planning and committing a murder for which he had already been convicted and another murder for which he had not yet been tried.

Hunt's lawyers conceded that the *Nebraska Press* test was applicable to the docudrama. Under that standard, the Ninth Circuit ruled that the impact of the broadcast was unlikely to be so great as to prevent the trial court from finding 12 jurors who had not been biased by the broadcast. But the court's opinion also said that, if the applicability of *Nebraska Press* had not been conceded, the court might have looked at the question of whether a docudrama is entitled to the same degree of protection under *Nebraska Press* as a news report. If it had, the court also suggested that the severity of the charges against Hunt might have affected its decision.

Conclusion

Intense media coverage of high-profile cases has become a regular feature of American culture. But these cases can offer much more than entertainment. By bringing into conflict two of our most cherished constitutional rights—the right to fair trial by an impartial jury and the right to freedom of speech—they offer opportunities to explore the tensions between rights that we typically take for granted. They also invite us to consider more closely, and respect, the difficult work of the many citizens called to jury service each year, who are asked to give all defendants a fair trial based not on popular opinion or media reports, but on the evidence they see and hear at trial.

Notes

1. "The Michael Jackson Trial: E! News Presentation," www.eonline.com/News/Specials/Jackson/.
2. *Sheppard v. Maxwell*, 384 U.S. 333 (1966).
3. *Gannett Co. v. DePasquale*, 443 U.S. 368 (1979). The Court also stated that, although the Sixth Amendment gives the defendant the right to a public trial, it does not grant the defendant a right to compel a private trial.
4. *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501 (1984); *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986).
5. *ABC, Inc. v. Stewart*, 360 F.3d 90, 99 (2004).
6. See, for example, *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980) and *Edenfield v. Fane*, 507 U.S. 761 (1993).
7. *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952).

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