

Mass communication law and ethics notes assignment

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The problem: guidelines are voluntary The remedy: GRANTING A CHANGE OF VENUE, or moving the trial to a community less touched by pre-trial publicity, if news accounts in the area have created a situation in which It Is unlikely the accused can get a fair trial there. The remedy: GRANTING A CHANGE OF VENIRE, or ; running a panel of jurors from another areas where they are less likely to have formed opinions about the case. The problem: The remedy: RELYING ON HTH COIR DIRE, the process under which prospective Juror are screened.

Attempts are made to exclude people form the jury whose previously armed opinions will prevent them from reaching a fair verdict based on the evidence presented during the trial The problem: this may eliminate potential Jurors who follow the news and who can form intelligent opinions based on what they read or hear. The remedy: CAUTIONING JURORS to avoid media accounts of the trial outside the courtroom. The problem: there I no accurate way to monitor this. 1 OF 7 reduce the risk of them being exposed to media accounts of the trial.

The problem: this is very expensive, and may create a frustrated Juror who will take it out on the judge, the attorney or the accused GAS ORDER & THE NEWS MEDIA Very, VERY controversial, because it is the outright suppression of information about a trial. Shepherd v. Maxwell- 1967 “ Neither prosecutors, counsels for the defense, the accused, witnesses, court staff nor law enforcement officers coming under Jurisdiction of the court should be permitted to frustrate its function. As a result, Judges all over the country started issuing what they called protective orders or restrictive orders, and what Journalists call gag orders. Fall unto two categories: Those directed at <https://assignbuster.com/mass-communication-law-ethics-notes-assignment/>

participants in the trial ordering them not to reveal anything to the Edie. These are usually upheld when challenged on 1st amendment grounds. Those directed at the media, ordering them not to publish prejudicial information about a trial even if it's obtained legally. These are rarely issued because they are rarely upheld.

After several years (1967-1975) with lots of gag orders aimed at the press, the United States Supreme Court heard a case and ruled on the issued of restrictive orders as prior restraints. Nebraska Press Association v. Stuart Erwin Simians: 75 IQ murders six member of the Gillie family. Turns himself in & confesses the next day. His lawyer questions whether Simians had sufficient mental capacity to understand his rights, so confession was challenged. A preliminary hearing is held, and the judge orders media not to report any of the testimony.

The gag order was appealed by the Nebraska Press Association Appellate Judge replaces the gag order with one of his own, which only prohibited the reporting of certain kinds of information. Revised order appealed again The Nebraska Supreme Court modified the order, prohibiting press from publishing the confession & other "implicative facts," and the press was ordered not to even mention that there was a confession. The U. S. Supreme Court would NOT rule out the possibility of all protective/gag order in the future. Extraordinary circumstance" might call for such an order, but there be sufficient evidence to reasonably conclude that: A gag order may be appropriate if there is sufficient evidence to reasonably other remedy is likely to mitigate the effects of pretrial publicity Closed Courtrooms Judges begin to bar the press AND the public from preliminary hearings, hearings on <https://assignbuster.com/mass-communication-law-ethics-notes-assignment/>

motion to suppress evidence & sometimes even trials. To protect a defendant's right to a fair trial

To protect an individual's privacy To assure secrecy of information affecting national security To keep details of a police investigation confidential
Preliminary Hearings When a case is reviewed by a Judge to determine whether there is enough evidence to justify taking the case to trial Only the prosecution presents evidence Closing this hearing also protects the reputation of defendants who have been charged but are not held for trial because the hearing reveals the prosecutor has no evidence Why might news coverage of a preliminary hearing endanger the accused right to a fair trial?

Since only the prosecution presents evidence in a preliminary hearing, any news coverage of the hearing would automatically be one-sided
Pretrial Hearings Usually held to hear defense motions to suppress evidence because it was obtained unlawfully, or to suppress a confession that was coerced Why might media coverage of a pretrial hearing endanger the accused right to a fair trial? What good is to have tainted evidence suppressed if potential jurors can hear about it on the news? ("Tainting the Jury pool") Here's the thing: More than 90 percent of all criminal prosecutions in the U. S. are resolved without the case ever reaching a full trial.

Why? Because: Judges' ruling on barring key evidence often results in a plea bargain, where prosecutor will drop charges or accept a guilty plea to a lesser charge. Or: If key evidence IS allowed as a result of pretrial hearing, the defendant can just plea guilty as charged, perhaps in exchange for a

lighter sentence... So a trial wont be so: In the vast majority of criminal proceeding, the pretrial hearing stage is the last chance the public will have to monitor the Justice system Gannett v. Departure - 1979 Two young men are charged with murdering a former New York police officer upstate.

They reportedly confessed to the crime and were indicted by a grand Jury The pre-trial publicity was so intense, both the defense AND the prosecution agreed to a closed pretrial hearing in the interest of having a fair trial The Judge bars the press from the pretrial hearing Gannett newspaper appeals the order New Work's high court affirms the order Gannett appeals to the U. S. Supreme Court The Supreme Court affirms the order; the press is barred from the hearing Justice Potter Stewart says the sixth amendment right to a public trial belongs to the DEFENDANT, not the public, and it's a right the defendant may waive.

The media's right to access this particular hearing was outweighed by defendant's right too fair trial However... The decision also said the press and the public have the right to challenge courtroom closures. In years since the decisions, many Journalists have challenged orders of courtrooms closures, have and succeeded. Cameras in the Courtroom Still photography and video were prohibited in almost all U. S. Earthworms up through the mid-1980's. The older equipment was very obtrusive: cameras, tripods, Wars, lights, cables, mimic stands, audio mixers, etc. Chandler v.

Florida - 1981 Two police officers were charged with using their squad car & radios aiding in the burglary of restaurants Florida has rules allowing TV coverage of trials without a defendant's consent. Much of the trial was

videotaped and portions of it aired on TV. The officers were convicted. They appeal their convictions, saying coverage denied them a fair trial; the case goes to the U. S. Supreme Court. The U. S. Supreme Court ruled against the convicted police officers. The court says the presence of the TV cameras does not automatically violate a defendant's right to a fair trial. However, that his or her rights were violated in a specific case. While the United States Supreme Court did say there is no constitutional prohibition on cameras in the courtrooms... It did not say the broadcast media have any special right of access to the nation's courts. The individual states are free to allow cameras in the courtroom if they so choose... And even then, if a defendant can show that the media coverage denied him or her a fair trial, then he or she is entitled to a new trial.

Manslaughter's Privilege The 6th amendment to the US Constitution guarantees the right to a fair trial, meaning the accused is supposed to get a complete, objective hearing on the issues of the case. This requires that both the prosecution and the defense have full access to all relevant evidence. Sometimes that includes material and information possessed by Journalists 1. Notes 2. Audio/video recording 3. Photographs 4. Records 5. Names of sources. It is generally accepted that anyone with information relevant to a case may be subpoenaed to testify as a witness at certain government proceedings.

Some relationships have been held to give rise to "privileges", meaning the persons in these relationships are permitted to withhold information he or she has learned in confidence. Example: spousal privilege Doctor/Patient Lawyer/Client Priest/Penitent. The recipient of the information may not be
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compelled to testify about that information, if the information was learned: 1. Confidence, and 2. Within that professional capacity. What about the relationship between a Journalist and a source? Should this relationship be a privileged one?

The right, sometimes asserted by Journalists, to be exempt from requirements to reveal secret sources and other confidences. Journalists have, for a long time, wanted legal recognition of a special privilege (to the condition of anonymity) even when the identity of that source is part of the evidence sought by a court, grand jury, district attorney, law enforcement, etc. Notes they've taken or documents they've obtained in the course of gathering information for stories. Unpublished or unused materials obtained in the course of engineering:

Negatives of photos not used
Unused video footage/audio tape
Notes from unused interviews
Their testimony about their thoughts, opinions and observations during the engineering and editing processes. There have been attempts to gather evidence by: Police searches of newsrooms
Obtaining reporters' travel or phone records in an attempt to figure out who their sources are
The concept of the newscasters' or Journalists privilege has generally been rejected under common law. The argument is that there are critical differences between a Journalist and a doctor, a lawyer, or a priest. Doctors, lawyers, and priests must meet certain educational requirements successfully complete years of training
2. Doctors, lawyers, and priests are required to adhere to professional standards in order to keep their positions
3. Doctors, lawyers and priests must be certified and/or licensed, and they are subject to official peer review
Journalists, on the other hand: Have no
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minimum education requirement No certification No license Are not subject to any official peer review In any event, twenty-eight states, including New Jersey, have enacted known as SHIELD LAWS: