SHEPPARD V. MAXWELL REVISITED—DO THE TRADITIONAL RULES WORK FOR NONTRADITIONAL MEDIA?

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In the late summer of 1954, all across northern Ohio—indeed, throughout much of the nation as a whole—people pondered this question: Did Dr. Sam Sheppard kill his pregnant wife Marilyn in their Bay Village home on Lake Erie, just west of Cleveland?

Certainly my mother thought so. Whether ironing, cooking, sewing, or just biting her lip with her ear next to the radio, she was only one of many in the western-Ohio town of Wapakoneta, fifty-three years ago, seemingly transfixed by each day's new shocking developments in the investigation. I was a mere lad of seven, but the scenes of my family, our neighbors, and the community in general discussing and debating Dr. Sam's guilt or innocence remain deeply etched in my memory, surpassed only by the first criminal trial of O.J. Simpson.

One thing the Sheppard case had in common with the Simpson case was the notion, held by many segments of the public in 1954, that the media were making too big a deal out of the case—pandering to the more sensational aspects of journalistic endeavors. Much of the criticism of the press subsided, though, when Dr. Sam was convicted. But the entertainment side of the media certainly knew a good story when it saw one, and while the case worked its way through the appeals process, the TV series entitled "The Fugitive" began its four-year run in 1963.

Then, in 1966, the U.S. Supreme Court decided that the "massive, pervasive and prejudicial publicity" attending Dr. Sam's prosecution prevented him from receiving a fair trial consistent with the Due Process Clause of the Fourteenth Amendment.[1] Thanks to successful arguments by F. Lee Bailey, Dr. Sam would be tried again on remand and this time would be acquitted.

By the time the Supreme Court granted certiorari for Dr. Sheppard, it had already begun wrestling with some of the inherent tensions between the First and Sixth Amendments.[2] But *Sheppard* became the critical precedent when it

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1. Sheppard v. Maxwell, 384 U.S. 333, 335, 349–63 (1966).

2. *See, e.g.*, Estes v. Texas, 381 U.S. 532 (1965) (holding that actual prejudice was not required to reverse the petitioner's conviction due to the high probability of a circus atmosphere denying him due process); Irwin v. Dowd, 366 U.S. 717 (1961) (two-thirds of jurors had formed a belief about petitioner's guilt before testimony was given).

held that responsibility for safeguarding the fundamental fairness and integrity of the trial rests solely with the judge. The Court even stressed that

> a responsible press has always been regarded as the handmaiden of effective judicial administration, especially in the criminal field. . . . The press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism. This Court has, therefore, been unwilling to place any direct limitations on the freedom traditionally exercised by the news media for "what transpires in the court room is public property."[3]

In short, media have no legal responsibility for the fairness of any criminal trial. Instead, the Court in *Sheppard* not only took great pains to detail the pervasiveness and sensationalist nature of the coverage of the case, but also took the judge to task for failing to counter or blunt the impact of the publicity, specifically enumerating steps the Court believed could have been taken:

> Bearing in mind the massive pretrial publicity, the judge should have adopted stricter rules governing the use of the courtroom by newsmen, as Sheppard's counsel requested. The number of reporters in the courtroom itself could have been limited at the first sign that their presence would disrupt the trial. They certainly should not have been placed inside the bar. Furthermore, the judge should have more closely regulated the conduct of newsmen in the courtroom. For instance, the judge belatedly asked them not to handle and photograph trial exhibits lying on the counsel table during recesses.[4]

In addition, the Court felt the judge should have insulated the witnesses; controlled the release of leads, information, and gossip to the press by police officers, witnesses, and counsel; proscribed extrajudicial statements by any lawyer, witness, party, or court official divulging prejudicial matters; and requested the appropriate city and county officials to regulate the release of information by their employees.[5]

This decision, in effect, has become the guidepost for judges today to deal with the media in high-profile cases—from protective orders (known as "gag orders" to the press) prohibiting lawyers, witnesses, and parties to the case from talking to the press about the case; to changes of venue; to sequestration of jurors; to continuances to let publicity abate; to press pool arrangements; to stronger admonitions to jurors to not read newspapers or watch television news or listen to radio news accounts of the trial. All judges are familiar with these tools today. Because these alternatives are embodied in a Supreme Court decision, few question their legal validity in coping with the dynamics of a fair trial and a free press.

As an aside, however, it is worth noting that almost all the offending publicity cited by the Court occurred in the investigation stage, before the trial court had jurisdiction. In fact, the most respected legal journalist of her era, the late Theo Wilson, in her book, *Headline Justice*, flatly accused the Court of deciding *Sheppard* "based on misleading information provided to the justices by

3. *Sheppard*, 384 U.S. at 350 (quoting Craig v. Harney, 331 U.S. 367 (1947)).
4. *Id*. at 358.
5. *Id.* at 359–62.

F. Lee Bailey."[6] She and other journalists sent a letter to the Supreme Court trying to correct the record about how the decorum of the trial had been handled. Telling the Court that the descriptions it included in the opinion were of things that occurred at the coroner's inquest and not at the trial, Ms. Wilson wrote,

> [W]e tried to be tactful for we knew we would have to work at the new trial in Cleveland. We would have to deal with Lee Bailey, who had won his appeal with allegations about the courtroom behavior which we knew had never occurred and which, of course, he never saw.[7]

But this article does not attempt to reargue *Sheppard* and its directives for today's judges. Rather, a more fundamental—and critical—question has arisen for today's courts: Are the suggestions the Court enunciated in *Sheppard* forty-five years ago still effective, given the changes that have occurred in the media?

When the U.S. Supreme Court developed the tools for judges, newspapers were the predominant source of news, although the nightly television newscasts were rapidly narrowing the gap. Moreover, the bulk of the news media were mainstream—local newspapers, regional television stations—the overwhelming majority of which sent journalists with reasonably ethical values to cover the courts. Supermarket tabloids sensationalized some trials, but their real impact on public perception of the courts was marginal at best. In other words, journalists and court personnel, for the most part, were able to create a working environment wherein both could do their jobs with minimal interference with the other. Journalists tended to respect boundaries because they knew any short-term gain by disrupting the status quo to get a story today could have long-term negative effects with sources down the road.

No more.

Technology has changed the playing field in every aspect of life, and the judicial system is not immune to those changes. The Internet has left journalism professionals almost in disbelief at the losses suffered—in terms of both economics and influence. Newspaper publishers are keenly aware of how much revenue has been lost in classified ads, at one time a cash cow for local papers. Now Internet sites offer wider reach, faster turnaround, and lower cost.[8]

With the advent of cable television, the networks' power and influence became diffused. Nothing illustrates the decline in television news better than the survey of today's youth as to where they get their national news. Over twenty percent of those between the ages of eighteen and twenty-nine listed

6. THEO WILSON, HEADLINE JUSTICE: INSIDE THE COURTROOM—THE COUNTRY'S MOST CONTROVERSIAL TRIALS 74 (1996).

7. *Id.* at 76.

8. Alan Jacobson, *The Growing Crisis: Unprofitable Online Sites May Cost Newspapers Their Classified Franchises*, INSIDE CLASSIFIED, April 2002, *available at* http://www.brasstacksdesign.com/franchise.htm.

their chief source of news as Jon Stewart on Comedy Central's *The Daily Show*.[9]

That technology is affecting the status quo of courts and media cannot be denied. It takes many forms. For example,

> This week, the United States became a more dangerous place for women. Many newspapers and TV stations across the country are splashing the face and the name of the accuser in the Duke Lacrosse case across their front pages, on their Web sites and on our TV screens. The move departs from a common media policy of not revealing the name of accusers in rape cases, a shield observed since the 1970s. The Internet is driving the push, with its looser standards on identifying accusers.[10]

The advent of "citizen journalists," or bloggers, raises a wide range of issues for the courts. Are these bloggers journalists? Do state shield laws include them? In *United States v. I. Lewis Libby*, U.S. District Judge Reggie B. Walton included bloggers among those granted media credentials for covering the trial.[11]

Mainstream journalists tend to be guided by generally accepted ethical codes, such as those promulgated by the Society of Professional Journalists or the Radio–Television News Directors Association. However, because the First Amendment effectively prohibits any governmental licensing of journalists, such ethical codes must be strictly voluntary. In short, the only discipline that can arise from a violation of an ethical norm is that of the marketplace. The reporter or editor could be fired by his or her employer—which happened to Jayson Blair at *The New York Times*, for example.[12]

The pressure of the marketplace has tended to create other, less extreme boundaries for journalists. For example, mainstream media tended not to name rape victims, in part out of a sense that anonymity was the moral thing to do, but also because any newspaper or TV station that named such a victim would soon feel the wrath of the readers or viewers.

That constraint does not bind those on the World Wide Web. Some blogger on the Internet is generally credited with revealing the name of the woman who accused Kobe Bryant of rape in Eagle, Colorado. In that small town, the mainstream reporters fairly quickly knew the name but followed tradition in not revealing her identity. Thus, because standards have tended to become looser as the Internet has grown as an information source, it should not have been a surprise when mainstream journalists like Robert Novak "outed" CIA agent Valerie Plame.

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9. *Young America's News Source: Jon Stewart*, CNN.com, Mar. 2, 2004, http://www.cnn.com/2004/SHOWBIZ/TV/03/02/apontv.stewarts.stature.ap/http://www.cnn.com/2004/SHOWBIZ/TV/03/02/apontv.stewarts.stature.ap/.

10. Myron Pitts, *Naming Rape Victim a Dangerous Precedent*, FAYETTEVILLE OBSERVER, April 15, 2007 *available at* http://www.fayobserver.com/article?id=259809.

11. United States v. I. Lewis Libby, No. 05-394 (RBW) (D.D.C. Jan. 10, 2007); *see also* Robert Cox, *Judge's Order Lays Out Groundrules for Blogger Coverage of Libbby [sic] Trial*, MEDIA BLOGGERS ASS'N., Jan. 17, 2007, http://www.mediabloggers.org/robert-cox/judges-order-lays-out-groundrules-for-blogger-coverage-of-libbby-trial.

12. Byron Calame, *Preventing a Second Jayson Blair*, N.Y. TIMES, June 18, 2006, at 12.

Because of increasing reliance on the Internet for news, print and electronic media are converging in an effort to stem financial losses and adjust to the new realities of how people get news. Newspaper Web sites include blogs and streaming video. Television sites include much more detail than can be compressed into the news half-hour. Some communities see collaborative efforts between their local newspaper and a local television station.

The plain truth is that the days of Walter Cronkite are over. Whereas news was the loss leader for television, it now must show a profit as well.[13] In keeping the public informed, public service has given way to profit margins. Newspapers, too, are in flux. The sale of the esteemed Knight-Ridder was triggered in part because the profit margin had slipped to sixteen percent in 2005, down from nineteen percent in 2004.[14]

All of this would matter little to the courts if it were simply a change in who is covering trials and reporting on court activities. For most judges and court administrators, the concern is accuracy—whether the reporter is print, electronic, or some blend of the two. But the quest for ever-increasing profits has brought in a new—and in many ways unwelcome—dynamic for the courts. The entertainment side of the media also has discovered a rich vein to be mined in the courts. Consequently, "in the 1970s and '80s . . . the barrier between news and entertainment [was] increasingly eroded. Not all the changes of th[o]se years have been for the worse. But taken together, they raise serious questions about the future of journalism in an entertainment-dominated medium."[15]

The shift to entertainment is omnipresent. The shrillness of Nancy Grace on CNN, the attacks on judges by Fox's Bill O'Reilly, the proliferation of radio talk shows that focus on politics, the law, or both, are all just examples of market-driven journalism. Defense Attorney Mark Geragos, who represented Scott Peterson, told the 2005 Reynolds Center National Conference (the Conference) that "*People Magazine* found that when they put a picture of Laci or Scott on the cover, they would sell 300,000 to 500,000 additional copies. CNN and Fox found that when they covered that case, their ratings spiked."[16] CBS legal analyst Andrew Cohen added that he was directed to "put Laci's name" on his Internet commentary because it would guarantee more hits from those who daily ran a Google search of Laci Peterson.[17] Clearly, the focus is on corporate bottom-line mentality. Media lawyer Mark Curriden said at the Conference, "Just in the last three months, *The New York Times*, *Wall Street*

13. Daniel Hallin, *Whatever Happened to the News?*, MEDIA & VALUES, Spring 1990, *available at* http://www.medialit.org/reading_room/article441.html.

14. Steve Lovelady, *A Meditation on Disconnects and Dinosaurs*, COLUM. JOURNALISM REVIEW, Mar. 13, 2006, *available at* http://www.cjr.org/behind_the_news/a_meditation_on_disconnects_an.php?page=all.

15. Hallin, *supra* note 13.

16. FROM O.J. TO MARTHA TO MICHAEL: WHAT HAVE WE LEARNED ABOUT THE CONDUCT AND COVERAGE OF TRIALS?: NATIONAL CONFERENCE ON COURTS AND THE MEDIA 9 (Jerrianne Hayslett, ed. 2005).

17. *Id.*

Journal, *Boston Globe*, *Dallas Morning News* and the *Atlanta Journal Constitution* have announced huge cutbacks. Tom Brokaw was on Larry King talking about 'you know what, you get fed up. You just don't have the money to do the stories that need to be done.'"[18]

So if this is the new reality for courts—Internet commentary that may or may not have any credibility or accuracy and broadcast talk shows that focus more on entertainment than information—the initial question remains: Do the tools provided for judges in *Sheppard v. Maxwell* still work?

The answer is a definite maybe, and then, not always.

For example, often the heavy publicity comes after the crime has been committed, with police and prosecutors offering information before a court takes jurisdiction. We see this most egregiously in the form of the police talking about a "person of interest"—not a suspect yet, but (wink, wink)—someone the police names to assure the public that they are working diligently. In this situation, none of the tools work well.

However, assuming the case has reached the court and the publicity is pervasive enough to cause concern affecting the jury pool, one recommendation is to continue the case until the publicity subsides. The only problem is that, once the date is set, virtually all media will have big stories the day before the trial starts, and these stories will rehash the very same information that prompted the delay in the first place. That is the nature of the competitive journalism business, so the effectiveness of that tool is at least questionable.

The same would apply, in most cases, to a change of venue. If the trial is shifted from Town A to Town B, that often becomes big news for Town B. Therefore, Town B's newspaper, TV, or radio station will call their counterparts in Town A to get all the details for their now-important story.[19]

Whether one believes sequestration of the jury is effective depends on how much one trusts the jurors not to talk to their families during visitation. Still, as Judge Hiller Zobel told the Conference, being a sequestered juror is, "except for the brutality and violence, [the same as being] locked into a medium security prison."[20] Of all the judicial tools, this is the most extreme and least desired by both the courts and the jury.

Probably the most controversial of the tools is the protective order preventing lawyers, witnesses, parties, or others tied to the case from commenting on the case to anyone, especially the press. Even how the tool is referred to is subject to disagreement—judges opt for "protective orders" while journalists use the pejorative "gag order."

Moreover, the federal circuits are split as to what standard is required before issuing such orders:

18. *Id.* at 10 (emphasis added).

19. *See generally* Thomas Beisecker, *The Role of Change of Venue in an Electronic Age*, 4 KAN. J.L. & PUB. POL'Y 81 (1995).

20. CONFIDENTIALITY IN THE COURTS AND MEDIA: THE GATHERING STORM: NATIONAL CONFERENCE ON COURTS AND THE MEDIA 47 (Jerrianne Hayslett, ed. 2005).

> As [U.S. District Judge Myron H.] Thompson noted, the Sixth, Seventh, and Ninth Circuits adhere to the most rigorous standard, demand[ing] a showing of a "clear and present danger" or "serious and imminent threat" to a fair trial before gagging participants. The Third and Fifth Circuits employ the "substantial likelihood of material prejudice" standard[,] while the Fourth and Tenth Circuits hold that gag orders may be justified by a "reasonable likelihood" of prejudice—a standard that may require an even lesser showing than "substantial likelihood" requires.[21]

One reason such variations in standards annoy journalists is that they are court-imposed content restrictions on speech. Ordinarily, that would require the court first to determine that less-restrictive means were unavailable under the circumstances.

> The court restrains speech based on what is being said, based on potential harm from the speech. The speech being curtailed generally concerns the operation of the legal system; it is speech in the public interest. In short, the critical values and concerns underlying the prior restraint doctrine and the First Amendment are implicated.[22]

Journalists further complain that too often courts impose the gag order without explaining for the record that the order was necessary to ensure the fairness of the trial. Lucy Dalglish, Executive Director for the Reporters Committee for Freedom of the Press, said journalists are increasingly worried about the growing use of gag orders in "run of the mill" cases.[23] She said her organization has experienced a marked increase in calls from concerned reporters encountering gag orders in both criminal and civil cases.[24] Another criticism is that "gag orders fail to recognize that even parties' attorneys may often have a duty to make extrajudicial statements to protect their clients' best interests."[25] The authors suggest that attorneys whose extrajudicial statements cross the line could be dealt with through state ethical rules instead of through a gag order.[26]

Gag orders have always been suspect, at least in the minds of the media. But even journalism die-hards can point to examples when it looked like lawyers or parties were trying their cases in the media. The difficulty today is that, because talk shows on television and radio have discovered the wealth of audience "draw" to be found in the legal system, the demand for commentary on pending cases is overwhelming. And with the 24-hour news cycle and the proliferation of cable shows, "the beast," as some call it, must be fed. The question thus becomes: By whom?

Lucy Dalglish told the Conference that the gag orders today simply do not accomplish what they were designed for.[27] In fact, she said, they often help contribute to the inaccuracies judges complain about in legal-affairs reporting:

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21. Kimberley Keyes, *Free Speech, Gag Orders, and the Federal Courts*, 52 FED. LAWYER 38, 40 (2005) (citations omitted).

22. C. Thomas Dienes, *Gagging Trial Participants*, 19 COMM. LAWYER 3, 4 (2001).

23. CONFIDENTIALITY IN THE COURTS AND MEDIA, *supra* note 20, at 36.

24. *Id.*

25. Michael D. Seplow & Paul L. Hoffman, *Punishing Pundits:* People v. Dyleski *and the Gag Order as Prior Restraint in High-Profile Cases*, 39 LOY. L. REV. 1197, 1200 (2006).

26. *Id.* at 1221; *see also* Erwin Chemerinsky, *Lawyers Have Free Speech Rights, Too: Why Gag Orders on Trial Participants Are Almost Always Unconstitutional*, 17 LOY. L. REV. 311 (1997).

27. CONFIDENTIALITY IN THE COURTS AND MEDIA, *supra* note 20, at 36.

"The question becomes: Do you want [reporters] to do the story with good information or do you want them to find some so-called expert out there?"[28] She also said that putting the so-called expert on to get them to speculate works against the goals of both the courts and the media. She illustrated her point by telling how a representative from *The Nancy Grace Show* asked her to comment on a case. When Dalglish explained that she did not know anything about the issue and that the subject was not her expertise, the representative replied, that would not be a problem—they just needed somebody to comment, and if she did not come on the show, they would find somebody who would.[29] Dalglish suggested that the public and the courts are better served if the people with the accurate information—attorneys and witnesses—are allowed to talk to the press, instead of reporters' taking any and all who might have an opinion.

Many judges state directly that their only concern is protecting the defendant's Sixth Amendment right to a fair trial. I have encountered several judges at The National Judicial College with this view, usually stated along the lines of, "It's my job to protect the trial, not help the journalists get their story." While such sentiments are understandable, it can be argued that the role of the judge is to protect *both* constitutional values—the First and the Sixth Amendments. Even as egregious as the Supreme Court found the facts of *Sheppard v. Maxwell* to be, the Court did not find the two amendments to so conflict as to force a choice for the trial judge. Indeed, just the opposite: the Court held that both values were critical to our democracy and placed the burden on the judge to find ways to reconcile the amendments in high-profile trials.

Granted, it is a thorny area. One scholar suggested one solution might be to have anonymous defendants in high-profile trials, similar to how civil cases are handled when the court determines that a plaintiff's name needs to be shielded from the public.[30] Of course, if the defendant is a celebrity, the scholar acknowledges anonymity would not work. The suggestion, though, is that a defendant like Scott Peterson, charged with killing his pregnant wife, Laci, might have benefited from anonymity. And that might have worked ten or twenty years ago with the mainstream press. But, as occurred with the woman who accused Kobe Bryant of rape, the Internet pretty much assures that somebody will leak the name of the defendant if the coverage of the crime takes on a life of its own, as it did in the Peterson case.

Another example of the difficulty with trying to shield names in this information age is use of "Amber Alerts." When police determine that an "Amber" is missing and likely the victim of a kidnapping, her name and photo are placed on TV, on billboards, and any place law-enforcement officials think might be able to help solve the case. Yet there is an inherent dilemma if the

28. *Id.*

29. *Id.*

30. *See* Jaime N. Morris, *The Anonymous Accused: Protecting Defendants' Rights in High-Profile Criminal Cases*, 44 B.C. L. REV. 901 (2003).

facts subsequently determine that Amber was recovered safely but that she was raped by a child molester during the ordeal. When the molester stands trial, his name would not be shielded, but Amber's identity would be—even though those who followed the case from her disappearance to her abductor's trial would know Amber was a rape victim. Mainstream media, by and large, would refrain from using the name. But so far there is no constitutional way to apply ethical norms to those who publish on the Internet—thus the inherent flaw in trying to use the anonymous route.

At the September 2007 conference at Duke University Schoo1 of Law entitled *The Court of Public Opinion: The Practice and Ethics of Trying Cases in the Media*, one panel focused on "The Role and Responsibility of the Court" in dealing with the media. Apart from me, the panel included David F. Levi, Dean of the Duke University School of Law; Chief Judge Leroy F. Millette Jr. of Prince William County, Virginia, who presided over the trials of D.C. sniper John Muhammad and John Wayne Bobbitt; Chief Judge W. Terry Ruckriegle, of Breckenridge, Colorado, who presided over hearings in the Kobe Bryant rape case before the prosecution dismissed the charges; U.S. District Judge Reggie B. Walton, who presided over the trial of I. Lewis Libby; and David A. Sellers, Assistant Director for Public Affairs at the Administrative Office of the United States Courts.[31] Chief Judge Millette focused on ways in which the court can keep the jury from being tainted or otherwise losing its collective impartiality. Indeed, all three judges acknowledged that, especially in high-profile trials, the voir dire process may involve additional steps or extra work to examine prospective jurors more closely. Judge Ruckriegle noted that more-extensive and detailed voir dire is burdensome but felt that courts were left with no alternative if the Sixth Amendment requirements are to be achieved. All, however, did agree that, despite massive publicity, fair juries can be had through diligent efforts by counsel and the judge.

All the judges employed orders to spell out to the media what rules were in place. Judge Ruckriegle termed his a "decorum order." Judge Walton said his concern was whether the presence of several reporters would inhibit the candor of prospective jurors. He resolved this by having the media select one print journalist and one electronic journalist to be in the courtroom during voir dire, while the rest observed from a specially created "media room," where journalists could observe via closed-circuit television. David Sellers noted the growing number of courts that use court public-information officers—media liaisons—as a means of assisting the press and minimizing the need for the trial judge to deal with media matters.

All on the panel agreed that the ever-changing technology is affecting how trials are handled—from instances of jurors blogging or checking the Internet for information, to reporters in the courtroom text-messaging on cell phones to

31. Although there are no published transcripts, the panel discussion was videotaped by C-SPAN. *See* DVD: Role of the Court in Media Access (C-SPAN 2007) (on file with author).

gain a competitive advantage, to the difficulty of dealing with lawyers not directly under the restraining order themselves, but who comment on behalf of a client who is a witness and thus so restrained.

Judge Millette noted that many of the concerns about media coverage occur before the court obtains jurisdiction, thus minimizing the effectiveness of the tools provided in case law. He said judges could use more guidance on how to deal with such circumstances, perhaps through bar association efforts. Judge Ruckriegle, pointing to the Supreme Court cases, suggested that the traditional tools used to cope with traditional media may need to be considered again in this age of nontraditional media.

All of this resurrected Judge Learned Hand's view of the power of the media. Speaking at a memorial service for Justice Louis Brandeis, Judge Hand remarked, "The hand that rules the press, the radio, the screen and the far-spread magazine, rules the country."[32] And he said it on December 21, 1942—before television, the Internet, and the other electronic media advances courts face today.

Certainly with respect to balancing First and Sixth Amendment rights and values under our system, the answers are not readily apparent. But, as Jonathan Eric Pahl wrote in his student note included in the Duke conference materials,[33] "[T]he various methods courts can use to restrict speech, the uncertainty about the standards courts will apply to review those restrictions, and the confusion about the meaning of the standards, . . . provides courts and trial participants little, if any, guidance." In essence, Pahl's analysis is, in his words, a plea for clarity.34 Forty-plus years after Sheppard v Maxwell, and with the sweeping changes in the media, that is not an unreasonable request.

32. Adrienne A. Berry, *Meet the Press*, 46 FED. LAWYER 2 (1999).
33. Jonathan Eric Pahl, *Trial Participant Speech*, 57 DUKE L.J. 1113, 1127 (2008).
34. *Id.* at 128.