

Victim's Rights v. The Media

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Objectives

- Recognize privacy issues that arise for victims in high profile cases.
- Discuss practical examples of opposition to media requests.
- Compare and contrast case examples.
- Provide overview of relevant case law.

When or how does the media get interested in obtaining case information?

- When case becomes of high interest to the public and the media.
- When the media has reported heavily on the case or the parties involved.
- If the victim has utilized the media to help bring light to their case or assistance in the criminal investigation.

What happens when victims want certain information kept from the media dissemination?

- Issues that cause privacy interests to arise:
- Protection of victims and victims families from details of the case.
- Preventing the public at large from learning details of the case.
- The age of the Media: internet, social media, tv, and film.
- Revictimization and trauma
- Association with crime or case

Victims relationship with the media

- Feelings toward the media vary.
- Victims want nothing to do with media.
- Victims want extensive media involvement.
- Media involvement within reason
- Gauge victims interests

State of MD et. al, v. WBAL-TV

- *State of Maryland, et al., v. WBAL-TV* 187, Md. App 135 (2009) 975 A.2d 909 (2009)
- Highly publicized case due to graphic gruesome nature of crime.
- State, Defendant, and Victim's Representative v. WBAL-TV
- Facts: Victim was brutally murdered by college student
- *Defendant gave a graphic detailed confession that was recorded and videotaped by detectives.
- Video /audiotape confession was played during the trial. Video and audio was also replayed a second time for the media.
- Defendant was convicted of 1st degree murder , sentenced to life in prison.

Media's request for trial exhibits

- TV station wanted copies of the DVD and audiotape to broadcast.
- Motion to intervene and for access to trial exhibits
- Access to Court Records-Maryland Rules 16-1001, et. seq.
- Requested videotaped/audiotape confession of defendants.

Privacy interests of victim

- Victim's family wanted to protect victim's minor daughter from learning horrific details of the murder through the media.
- Wanted to tell victim's daughter at appropriate time.
- Fear of causing more distress and revictimization.

Filings by parties and participants

- Media filed Motion to Intervene and For Access to Trial Exhibits
- Defendant and State Opposed
- Victim filed Motion to Seal or Limit Inspection of the Case Record
- Media's motion granted
- State, Defendant, and Victim appealed

Maryland Constitution and Maryland Rules on Access to Court Records

- **State constitutional provisions-Maryland Constitution, Declaration of Rights, Art. 47(a)**, “a victim of crime shall be treated by agents of the State with dignity, respect, and sensitivity during all phases of the criminal justice process.”
- Maryland Rules 16-1001 *et. seq.*

Maryland Rule 16-1002(a) . General policy.

“(a) *Presumption of openness.*- Court records maintained by a court or by another judicial agency are presumed to be open to the public for inspection. Except as otherwise provided by or pursuant to the Rules in this Chapter, the custodian of a court record shall permit a person, upon personal appearance in the office of the custodian during normal business hours, to inspect the record.”

Maryland Rules Access to Court Records

- Maryland Rule 16-1003. Copies.
- Maryland Rule 16-1009. Court order denying or permitting inspection of case record.
- Maryland Rule 16-1005. Case records
Required denial of inspection.

Victim's arguments opposing the media's request for access to trial exhibits

- Access and broadcast of tapes will violate state constitutional rights.
- Sensationalized media coverage of confession will revictimize and traumatize the family.
- Media will have the ability to broadcast and rebroadcast material.
- “Exposure to the Defendant’s depictions of the last hours of their loved one’s life broadcasted on the airwaves will be disturbing to cause “intensified pain”...Victim’s Brief for Appellant, at 14, *State of Maryland, et al., v. WBAL-TV* 187, Md. App 135 (2009) 975 A.2d 909 (2009)

Media's argument in favor of access to DVD/audiotape

- The defendant's confession has been widely reported on by media.
- Victim's concerns speculative- already experiencing intense pain, any broadcast wouldn't be any worse than what has already been experienced.
- Request for only redacted info, in interest of family will not play most grotesque details.
- MD Rules give Media the right to access records.
- Not a first amendment issue
- No constitutional right to veto just because it may cause pain to the victim.
- The media should not be punished for exercising restraint.
- Public benefit to copying redacted trial exhibits.

Relevant case law

- *New York Times Co. v. National Aeronautics and Space Administration*, 782 F.Supp 628 (D.D.C. 1991)
- **Facts**
- Newspaper brought Freedom of Information Act (FOIA) action to obtain copies of voice recordings of astronauts last words aboard the space shuttle Challenger before its explosion.
- **Argument**
- NASA argued families of astronauts had a privacy interest exemption to FOIA request.
- Media argued that since transcript had been released no privacy interest existed in the tapes: “the tape contains no such ‘intimate details’, as it records only technical observations during the shuttle’s launch period.” *Id* at 631.

Relevant case law

- *New York Times Co. v. National Aeronautics and Space Administration*, 782 F.Supp 628 (D.D.C. 1991)
- **Court's analysis:**
- “However, plaintiff is misconstruing the nature of the privacy interest implicated by disclosure of the tape. NASA does not dispute that substantive information contained in the tape is technical and non-personal. Rather the ‘intimate detail’ that underlies the privacy interest in this tape is the sound of the astronauts’ voices. .. *What* the astronauts said may not implicate privacy interests; NASA has not argued that it does and has, in fact, provided the public with a transcript of the tape’s substantive contents. But *how* the astronauts said what they did, the very sound of the astronauts’ words does constitute a privacy interest. This is the ‘intimate detail’ that the Challenger families seek to protect from disclosure. Moreover this privacy interest is substantial.” *Id.* at 631-632

Relevant case law

- *National Archives & Records Admin. v. Favish*, 541 U.S. 157 (2004)
- *U.S. v. Criden*, 681 F.2d 919, (3rd Cir. 1982)
- *U.S. v. Amodeo, et. al.* 71 F.3d 1044 (2d Cir. 1995)

Cases cited by the media:

- *Group W Television, Inc. v. State*, 96 Md. App. 712 (1993)(Media sought videotape and still photographs for broadcast, played in open court. Court held tape could be made available after fair trial rights were no longer at issue)
- *People v. Glogowski*, 517 N.Y.S.2d 403, 407 (1987)
- *In re CBS, Inc.*, 828 F.2d 958, 960 (.2d Cir. 1987)
- Lack of cases where crime victims oppose release of exhibits.
- Cases arise from objections from the State and Defendant.
- Cases precede many crime victims' rights laws.

Opinion

- *State of Maryland, et al., v. WBAL-TV* 187, Md. App 135 (2009) 975 A.2d 909 (2009)
- **Court's analysis:**
- The interests of the victim must be weighed against the public's interest
- “No ‘compelling need’ to prohibit the media from obtaining copies of the dvd and audiotape” *.Id* 154, 920
- “Article 47 did not preclude the trial judge from exercising discretion regarding access to and the copying of exhibits at issue” *.Id* at 921.

Opinion

State of Maryland, et al., v. WBAL-TV 187, Md. App 135 (2009)
975 A.2d 909 (2009)

Court's analysis:

- Article 47 “does not, however, provide victims with an absolute right to veto a request to access and copy court records. The issue remains one of balancing competing interests.” *Id.* 158, 922-923
- The Court stated that the lower court did not ignore the victims’ privacy concerns.

Opinion

- *State of Maryland, et al., v. WBAL-TV* 187, Md. App 135 (2009) 975 A.2d 909 (2009)
- **Court's analysis:**
- The court considered the victims' interests
- Found the victim's argument that it would cause further victimization "speculative", since the media did not seek the most grotesque portions of the DVD.
- Transcript had already been released, the airing of portions of the tapes would not do more harm than what the victims' have already experienced.

Opinion

- *State of Maryland, et al., v. WBAL-TV* 187, Md. App 135 (2009) 975 A.2d 909 (2009)
- **Holding:**
- Lower court did not abuse its discretion by granting the Media's Motion for Access
- Lower court did not abuse its discretion by denying the Victim's Motion to Seal

U.S. v. Ingmar Guandique

- Motion of the Washington Post, The Associated Press, Gannett Company, And Reporters Committee for Freedom of the Press for Contemporaneous Access to Trial Exhibits and Completed Juror Questionnaires. (*U.S. v. Ingmar Guandique*, No. 2009 CF1 009230, (D.C. Super Ct. , filed Nov. 3, 2010))
- Victim's Opposition in Part to Motion of the Washington Post, The Associated Press, Gannett Company, And Reporters Committee for Freedom of the Press for Contemporaneous Access to Trial Exhibits and Completed Juror Questionnaires. (*U.S. v. Ingmar Guandique*, No. 2009 CF1 009230, (D.C. Super Ct. filed Nov. 22, 2010))

Relevant Law

- **U.S. Constitution, Amendment I**, “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 peaceably to assemble, and to petition the Government for a redress of grievances”
- **The Crime Victims’ Rights Act- 18, U.S.C. 3771(a)(8)**, a victim has “the right to be treated with fairness and with respect for victim’s dignity and privacy.”

The Media's Request for Trial Exhibits

- Requested that the Court provide “immediate and contemporaneous access to (1)all exhibits presented during the ongoing criminal trial...” Media’s Motion, *U.S. v. Ingmar Guandique*, No. 2009 CF1 009230,(D.C. Super Ct. filed Nov. 3, 2010)
- Request made pursuant to the First Amendment and the common law.
- “No demonstration of any compelling and overriding interest that would warrant delaying or blocking access by the public and the press to at least the bulk of these materials” Media’s Motion, *U.S. v. Ingmar Guandique*, No. 2009 CF1 009230,(D.C. Super Ct. filed Nov. 3, 2010)

Victim's Opposition to Media's Request for Trial Exhibits

- Victim opposed the release of trial exhibits.
- Photographs that contain skeletal remains and trial exhibits of clothing and shoes.
- Pursuant to the CVRA, 18 U.S.C. 3771 (a)(8), a crime victim has “the right to be treated with fairness and with respect for the victim’s dignity and privacy.”
- “The First Amendment generally grants the press no right to information about a trial superior to that of the general public.” *Nixon v. Warner Communications*, 435 U.S. 589, 609 (1978)
- “the right to inspect and copy judicial records is not absolute.” *Id* at 598

Victim's Opposition to Media's Request for Trial Exhibits

- “the publishing of photographs depicting Chandra Levy’s skeletal remains and clothes she was wearing when she went missing will likely ‘inflict unnecessary pain and intensified pain’ on Mrs. Levy and the Court should exercise its discretion to limit access to those particular exhibits.” Victim’s Motion at 5, *U.S. v. Ingmar Guandique*, No. 2009 CF1 009230,(D.C. Super Ct. filed Nov. 22, 2010)
- Balancing media interests: “among countervailing factors favoring nondisclosure are: (i)prejudicial pretrial publicity; (ii) the danger of impairing law enforcement or judicial efficiency; and (iii) *the privacy interests of third parties.*” *U.S. v. Salemmé, et al* 985 F. Supp. 193, 195 (D. Mass. 1997)(emphasis added)(citations omitted)

Victim's Opposition to Media's Request for Trial Exhibits

- “The privacy interests of innocent third parties...should weigh heavily in a court’s balancing equation”, *U.S. v. Amodeo, et al.* 71 F.3d 1044, 1050(2d Cir. 1995)
- Court’s Ruling:
Media’s request for trial exhibits *DENIED.*

Comparisons and Contrasts

- Similarities of case examples:
- Victims did not want material disseminated to the general public for similar reasons.
- High-profile cases
- Media requested permission to intervene to access court records.
- Victim asserted victims' rights to prevent dissemination.
- One Victory, One Loss. Why? What was different?

Differences in case examples

- Access to Records rules vs. First Amendment
- State Constitution v. Crime Victims' Rights Act
- Contemporaneous Request vs. Request after conviction and sentencing
- Media's broad requests for *all* trial exhibits vs. Media's narrowly tailored request for portions of dvd/videotape
- Court's possible view of victims' risk for revictimization
- National media attention v. Local media attention
- Victims' opposition to media's motion vs. Victims' motion to seal (no opposition)
- Victims' broad request to seal record vs. Victim's narrowly tailored request.
- Exhibits at issue: Defendants confession vs. Victim's remains and personal effects.

Conclusion

An issue on the rise: Victims' privacy interests vs. Media:

Media supply for public's demand for intimate details of criminal cases ("Dateline", "The First 48", "48 Hours", "Snapped", "Forensic Files", "20/20", "E! Investigates", etc...)

"Mr Kercher does not give radio or TV interviews but in a brief exchange of e-mails he told BBC News that he considered the scenes "graphic" and he found them 'horrific and distressing.' The producers are reported not to have spoken to any of the families, instead working from media reports and a 400-page report drawn up by the judge in the case." **Article, "Meredith Kercher's father attacks US film of her murder"**
BBC News UK, <http://www.bbc.co.uk/news/uk-12371487> (last visited June 8, 2011)

• **"Motion for Injunctive Relief from the Orange County Jail and/or the State of Florida from Releasing Information to the Media as it relates to Inmate Communication Between the Defendant Casey Anthony and Her Parents George and Cindy Anthony"** *State of Florida v. Casey Marie Anthony*, Case No. 2008-CF-015606-A-O (9th Judicial Cir. Court of Florida, Orange County, filed May 4, 2011)

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Acknowledgments

- D.C. Crime Victims Resource Center services are funded by a grant from the National Crime Victim Law Institute (NCVLI), grant number 2008-DD-BX-K001 awarded by the Office of Victims of Crime, Office of Justice Programs, U.S. Department of Justice and a grant from the District of Columbia, Office of Victim Services, Grant Number 11-VAF-02. Points of view in this presentation and document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice, NCVLI and OVS.