



# The Pros and Cons of publicity in the legal domain

**T**his past November, Georgia Law played host to a professionalism conference that brought important legal and media experts from across the country together to explore the merits of publicity surrounding courtroom proceedings.

During the daylong conference, judges, lawyers and members of the news media debated the professional and moral consequences of discussing legal cases with the media.

Conference keynote speaker Geoffrey C. Hazard Jr., Trustee Professor at the University of Pennsylvania School of Law, kicked off the day by stating that a judicial proceeding is both a visible and political event. "It is important that the political nature of a judicial proceeding be appreciated for its [role] in the maintenance of our [country's] legal order."

Attendees' opinions varied, with some citing the relationship between lawyers and the press as vital to winning cases and others believing media exposure to be extremely harmful.

The issue of courtroom publicity has recently been brought even more into the limelight, with media exposure playing a key role in some of last year's biggest cases and legal controversies such as those involving Michael Jackson, former Atlanta Mayor Bill Campbell and "runaway bride" Jennifer Wilbanks.

In a world of 24-hour news coverage, it seems nearly impossible to avoid the public eye.

With all of this in mind, how do those at the forefront of the media matter feel? The following legal and media professionals shared their opinions as conference panelists.

Thomas Penfield Jackson, former U.S. District Court judge for the District of

Columbia, compared the association between the press and the judiciary to "the relationship between an infectious disease and a healthy organism. ... The press is an infectious disease. The judiciary is a healthy organism."

Jackson said during the Microsoft anti-trust trial, over which he presided, the media scrutinized his every move. "I, quite frankly, began to feel like I was the Wizard of Oz, that I was being viewed as the mechanic behind the scene in some way," he said.

Kenneth S. Canfield, plaintiffs' litigator and partner at Doffermyre Shields Canfield Knowles & Devine, added, "I work on a contingency basis. Winning in the court of public opinion is nice, but it's not what I [am] hired to do."

Canfield said he typically directs his clients not to speak with the press prior to trial, although this often proves difficult as some of them are plaintiffs in personal injury cases and think they have been personally wronged. "For them to appear in public to be right, they can be very enamored of it," Canfield said.

Elaborating, Canfield said he warns clients that they are the most important part of the story that a jury will hear. If they choose to speak to the media before the trial, he tells them "you've given up the most important tool in your arsenal. ... Let's do it at a time of our choosing that's done for tactical reasons in court."

Hilton S. Fuller Jr., DeKalb County Superior Court senior judge, advised judges to "almost never" talk with the media; and, if a judge does decide to speak with the press, to do so in writing.

Panelists also spoke on the differing relationships defense and prosecution teams have with reporters.

Atlanta criminal defense lawyer Bruce S. Harvey (J.D.'77) argued federal prosecutors have an obvious advantage of "tainting" a

defendant by utilizing the publicity regarding the release of an indictment.

He said his defense of clients was also hampered by the rules of the Northern District of Georgia, which ban him from publicly discussing a pending case.

"The U.S. attorney is very good at returning a 'speaking indictment,'" which may include pages and pages of detail about the alleged crimes distributed to the media by a public information officer, he added. "How about just leveling the playing field ... to remove the taint of an already tainted situation?"

However, First Assistant U.S. Attorney for the Northern District of Georgia Sally Q. Yates (J.D.'86) disagreed with Harvey's comments. "The rules apply both to the defense and the government," she said, "but the reality is very different. Defense attorneys talking about the credibility of a witness is squarely against the rule, but it happens almost every day," she continued.

Yates said usually defense attorneys are treated more leniently than prosecutors if defense teams publicly comment on a case against their clients or the credibility of the witnesses against them.

She said speaking with the media can have a "dramatic impact" during a trial, and that it is "virtually impossible for [juries] not to know about media coverage. Subliminally, I think it can even affect judges."

Harvey addressed Yates' remarks, insisting there are, in fact, ethical ways for defense attorneys to publicly discuss their cases. "We can respond based upon what's in the public record," he said. "You can, within the [legal] code of ethics, reply to pretrial publicity to give your side of the case." If prosecutors can file lengthy, highly detailed indictments, "why can't we file an answer giving specific responses?"

Although Harvey said it could be regard-

ed as “ineffective assistance of counsel not to respond to the media,” gag orders limiting media contact in criminal cases are not only appropriate, but also desirable.

While U.S. courtrooms, in practice, are not closed to the media, there is no constitutional right to have cameras present. “If there was a right to have cameras in the courtroom,” Harvey said, “we’d have one in every federal courtroom in America.”

Luncheon presenter Adam Liptak, *The New York Times* national legal correspondent and former senior counsel, put the whole media issue in a different light when he said, “It is not really your choice whether you take your case to the court of public opinion. We’re already here. ... It doesn’t matter whether you choose to participate or not.”

Liptak also expressed dismay at the repetitive warnings from many of the panelists

about talking to members of the press. “Why you wouldn’t want the people writing about your case to understand it is beyond me,” he commented, adding that reporters “are much more likely to give someone a full, fair shake if they talk to you.”

Counsel to *The Atlanta Journal-Constitution* and WSB-TV in Atlanta who practices with Dow, Lohnes & Albertson, Peter C. Canfield agreed with Liptak’s recommendation that speaking with the media can be beneficial to attorneys and judges, stating that having cameras present “tend[s] to improve the decorum in the courtroom. ... People tend to behave better than they would otherwise.”

Linda K. DiSantis, Atlanta city attorney, shared her opinions on the topic, citing the importance of “a media/PR strategy” when dealing with the media. “When bad things happen, it’s important we have a message

out there about what we’ve been doing to improve things,” she said, also advising how “absolutely essential” it is that the message be crafted by a lawyer.

Larry D. Thompson, general counsel of PepsiCo, former U.S. deputy attorney general and former Georgia Law professor, agreed with DiSantis. In situations when the press is present, it is vital that there is a prepared response – “the ‘no comment’ is just deadly,” he said.

Although conference panelists’ opinions fell across the board, perhaps all can agree on one thing: whether the media is seen as helping or harming litigation, its impact and influence in the legal field cannot be ignored.

*Summarized from an article by R. Robin McDonald in the Fulton County Daily Report. Compiled by Kristin Kissiah.*

Associate Professor Lonnie Brown (pictured) and Cleveland Chair Ron Ellington organized the Taking Your Case to the Court of Public Opinion – Strategic, Legal and Ethical Implications Conference. A professionalism symposium is hosted by the law schools of Mercer, Georgia State, Emory and UGA every fourth year at their home institution. The conferences are funded by a 1998 consent order reached in U.S. District Court where the DuPont Co. was accused of discovery abuse. ▶

Keynote speaker Geoffrey Hazard, Trustee Professor at the University of Pennsylvania School of Law, said, “Lawyers will, whether they want to or not, always need to be mindful in a case that has any possibility of being high profile, [and they] are going to have to think about the media aspects of the case.” Photo by Alison Church/Fulton County Daily Report. ▶

During the Advocacy in the Court of Public Opinion Part One panel, McKenna, Long & Aldridge Partner David Balsler (right, speaking) said, “There are some legitimate reasons other than to try to taint a jury pool or persuade a judge to take your case to the court of public opinion.” In the Marcus Dixon case, Balsler said he went to the media to pave the way to restore the 18-year-old’s former life to him once his 10-year sentence for having consensual sex with a 15-year-old schoolmate was reversed. Others serving on this panel were: (l. to r.) First Assistant U.S. Attorney for the Northern District of Georgia Sally Yates (J.D.’86); Dow, Lohnes & Albertson Member Peter Canfield; Atlanta criminal defense attorney Bruce Harvey (J.D.’77) and George Washington University School of Law Professor Paul Butler. ▼



During the Advocacy in the Court of Public Opinion Part Two panel, Joseph Gladden (speaking), retired general counsel of The Coca-Cola Company, said, “If you represent a high-profile corporate client, in most cases the least publicity possible is the most desirable. ... For corporations, the tactic is to have as little in the court of public opinion as possible. ... The complexity of the case is lost on the public except for the sound bites.” His fellow panelists were: (l. to r.) PepsiCo General Counsel and former U.S. Deputy Attorney General Larry Thompson, Arnall Golden & Gregory Partner Robert Rothman, (Gladden,) Atlanta City Attorney Linda DiSantis and Doffermyre Shields Canfield Knowles & Devine Partner Kenneth Canfield. ▼

