BENCH-BAR-PRESS COMMITTEE OF WASHINGTON

STATEMENT OF PRINCIPLES

PREAMBLE

The Bench, Bar and Press (comprising all media of mass communication) of Washington:

(a) Recognize that reporting by the news media of governmental action, including the administration of justice, is vital to our form of government and protected by the Constitutions of the United States and the State of Washington.

(b) Seek to preserve the constitutionally protected presumption of innocence for those accused of a crime until there has been a finding of guilt in the appropriate court of justice.

(c) Believe both constitutional rights can be accommodated without conflict by careful judicial craftsmanship and careful exercise of discretion by the bench, the bar, and the news media.

PRINCIPLES

To promote a better working relationship between the bench, bar and news media of Washington, particularly in their efforts to protect both the constitutional guarantees of freedom of the press and of the right to a fair and impartial trial, the following statement of principles is suggested for voluntary consideration to all members of these professions in Washington. Any attempt to impose these Principles and Considerations as mandatory is contrary to the intent of the Bench-Bar-Press Committee and contrary to the stated goals of these Principles and Considerations.

1. Accurate and responsible reporting of the news media about crime, law enforcement, and the criminal justice system enhances the administration of justice. Members of the bench and bar should make available information concerning that process to the fullest extent possible under their codes of conduct and professional responsibility.

2. Parties to litigation have the right to have their causes tried by an impartial tribunal. Defendants in criminal cases are guaranteed this right by the Constitutions of the United States and the State of Washington.

3. Lawyers and journalists should fulfill their functions in such a manner that cases are tried on the merits, free from undue influence by the pressures of news media reports. To that end, the timing and nature of media news reports should be carefully considered. It is recognized that the existence of news coverage cannot be equated with prejudice to a fair trial.

4. The news media recognize the responsibility of the judge to preserve courtroom decorum and to seek to ensure both the open administration of justice and a fair trial through careful management.

5. A free press requires that journalists decide the content of news. Journalists in the exercise of their discretion should remember that readers, listeners, and viewers are potential jurors.

6. The public is entitled to know how justice is being administered. However, lawyers should be aware that the timing and nature of publicity they create may affect the right to a fair trial. The public prosecutor should avoid taking unfair advantage of his position as an important source of news, even though he should release information about the administration of justice at the earliest appropriate times.

7. Proper judicial, journalistic and legal training should include instruction in the meaning of constitutional rights to a fair trial, open justice and freedom of the press, and the role of judge, journalist and lawyer in guarding these rights. The bench, the bar and the press will endeavor to provide for continuing education to members of each respective profession concerning these rights.

8. Open and timely communications can help avoid confrontations. Toward that end all parties are urged to employ the Bench-Bar-Press Committees Liaison Subcommittee when conflicts or potential conflicts arise.

CONSIDERATIONS IN THE REPORTING OF CRIMINAL PROCEEDINGS

The Bench-Bar-Press Committee offers the following recommendations for voluntary consideration of all parties. They may be of assistance in educating law enforcement, the press, bar and bench concerning the exercise of rights, duties and obligations outlined in the Statement of Principles.

The bench, bar, press, and law enforcement officials share in the responsibility for the administration of an open and fair system of justice. Each has a special role which the others should respect and none should try to regulate the judgment of the others.

Public interest in the administration of justice may be particularly great at times prior to trial. Pretrial proceedings often are as important to the open administration of justice as the actual trial. The bench should help ensure both openness and fairness through commonly accepted judicial procedures consistent with these principles. The bar should carefully consider the timing and nature of the publicity it creates. The media should contribute to openness and fairness by careful evaluation of information that may be kept from the jury at trial and by exercise of restraint in reporting that information.

All parties should be aware that the jury system has the capacity to provide unprejudiced panels even in cases of great public interest and substantial media coverage.

1. It is appropriate to make public the following information concerning the defendant:

(a) The defendants name, age, residence, employment, marital status, and similar background information. There should be no restraint on biographical facts other than accuracy, good taste, and judgment.

(b) The substance or text of the charge, such as complaint, indictment, information and where appropriate, the identity of the complaining party.

(c) The identity of the investigating and arresting agency and the length of the investigation.

(d) The circumstances immediately surrounding an arrest, including the

time and place of arrest, resistance, pursuit, possession and use of weapons, and a description of items seized at the time of arrest.

2. The release of certain types of information by law enforcement personnel, the bench and the bar and the publication thereof by news media generally tends to create dangers of prejudice without serving a significant law enforcement or public interest function. Therefore, all concerned should be aware of the dangers of prejudice in making pretrial public disclosures of the following:

(a) Opinions about a defendants character, his guilt or innocence.

(b) Admissions, confessions or the contents of a statement or alibis attributable to a defendant.

(c) References to the results of investigative procedures, such as fingerprints, polygraph examinations, ballistic tests, or laboratory tests.

(d) Statements concerning the credibility or anticipated testimony of prospective witnesses.

(e) Opinions concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used at trial.

Exceptions may be in order if information to the public is essential to the apprehension of a suspect or where other public interests will be served.

3. Prior criminal convictions are matters of public record and are available to the news media through police agencies or court clerks; law enforcement agencies should, if requested, make such information available to the news media. The public disclosure of this information by the news media may be highly prejudicial without any significant addition to the publics need to be informed. The publication of such information should be carefully considered.

4. Law enforcement and court personnel should not prevent the photographing of defendants when they are in public places outside the courtroom. They should not encourage pictures or televising nor should they pose the defendant. The media should recognize that a judge is subject to the Code of Judicial Conducts Canon 3(7) which provides:

> A judge may permit broadcasting, televising, recording, and taking photographs in the courtroom during sessions of the court, including recesses between sessions, under the following conditions:
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> (a) Permission shall have first been expressly granted by the judge and under such conditions as the judge may prescribe;
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> (b) The media personnel will not distract participants or impair the dignity of the proceedings; and
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> (c) No witness, juror, or party who expresses any prior objection to the judge shall be photographed nor shall the testimony of such a witness, juror, or party be broadcast or telecast. Notwithstanding such objection, the judge may allow the broadcasting, televising, recording, or photographing of other portions of the proceedings.

Artists renditions sketched in the courtroom are not governed by this

canon and should not be curtailed unless such actions unduly distract participants or impair the dignity of the proceedings.

5. Photographs of a suspect may be released by law enforcement personnel provided a valid law enforcement function is served thereby. It is proper to disclose such information as may be necessary to enlist public assistance in apprehending fugitives from justice.

6. The media are free to report what occurs in the course of judicial proceedings. All participants in the administration of justice should work to keep the entire course of judicial proceedings, including pretrial hearings, open to public scrutiny. The bench should consider using all the means available to ensure protection of a defendants constitutional rights without interfering with the publics scrutiny of the criminal justice system. The closure of a judicial proceeding should be used only as a last resort.

7. The bar and law enforcement officials should expect that their statements about a case will be reported in the media. Such statements should be made in a time and manner contributing to public understanding of law enforcement and the criminal justice system, rather than influencing the outcome of a criminal trial.