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WITNESS TO HISTORY: THE ROLE OF LEGAL COMMENTATORS IN HIGH PROFILE TRIALS

OPENING REMARKS

Professor Inniss: We are going to go ahead and get started now, if I can have your attention. Good afternoon, I am Lolita Buckner Inniss. I am an assistant professor here at Cleveland-Marshall Law School, College of Law. On behalf of the criminal law faculty at Cleveland-Marshall and our entire institution, I would like to welcome you to our conference and thank you for participating. I would also like to thank the Anderson Publishing Company for co-sponsoring this event.

Today we are honored to have with us as our keynote luncheon speaker, Laurie L. Levenson. Laurie Levenson is professor of law and William M. Rains Fellow at Loyola Law School in Los Angeles, where she teaches criminal law, criminal procedure, ethics, and evidence. She served as Loyola's Associate Dean for Academic Affairs from 1996 through 1999. In addition to her teaching responsibilities, Professor Levenson is also the director of the Loyola Center for Ethical Advocacy. Professor Levenson attended law school at UCLA's school of law.

Professor Levenson received her undergraduate degree from Stanford University. In law school, she was the chief articles editor of the law review. After graduation, she clerked for the Honorable James Hunter III, of the U.S. Court of Appeals for the Third Circuit. Prior to joining the Loyola Law School faculty in 1989, Professor Levenson served for eight years as an assistant United States attorney in Los Angeles. While a federal prosecutor, Professor Levenson tried a wide variety of federal criminal cases, including violent crimes, narcotics offenses, white collar crimes, immigration, and public corruption cases. She served as chief of the training section and chief of the criminal appellate section of the U.S. Attorney's Office. In 1988, she received the Attorney General's Director Award for superior performance. Professor Levenson has provided legal commentary on several high profile cases, including the presidential impeachment trial, the Rodney King beating trial, the Reginald Denny beating trial, the Menendez brothers murder trials, and the O.J. Simpson murder trial. She has been quoted in more than 4,500 newspaper articles and has appeared on national and international television. Professor Levenson has worked as an expert legal consultant for CBS News, CNN, and NPR. In addition to her many other accomplishments, Professor Levenson is a prolific writer and scholar. She is the author of a number of books and articles. The topic of Professor Levenson's talk today is, "Witness to History: The Role of Legal Commentators in High Profile Trials." Ladies and gentlemen, without further adieu, I give you Laurie L. Levenson.

LAURIE LEVENSON'S REMARKS

Laurie Levenson: Thank you for that kind introduction and thank you to the dean and organizers for inviting me to this conference. It has been wonderful and I have learned a great deal. As you heard, I am a survivor of the trials of the century and, frankly, in Los Angeles we have one about every six months. I saw *Rodney King I* and *II*, the *Menendez Boys I* and *II*, *Simpson I* and *II*. You are getting the idea of about how long it takes us to get it right.

Actually, without determining which verdicts were right or wrong, I have been a witness to history, and I believe there is a chance at this conference for all of us to pause and think about what we have learned from some of the most celebrated trials of our times, including the Sam Sheppard murder prosecution. Since the *Sam Sheppard* case is described as being in the DNA of Cleveland, I thought I might start by asking, what have we learned from that case? How does it compare with another famous DNA case in Los Angeles? Another way we refer to that case (the *Simpson* case) is as our recent unpleasantness. I want you, perhaps, to think about what imprint the *Sheppard* case had on the media, the public, and the courts? What have we learned in the past fifty years?

Tragically, I think, when I ask the question of what have we learned about pre-trial and trial publicity from the *Sheppard's* case, what will our answer be? Not much. The Ohio Supreme Court, as you know, described the *Sheppard* case as follows: murder, mystery, society, sex and suspense.¹ It is in this atmosphere of a Roman holiday Sam Sheppard stood trial for his life. If you add race, celebrity, or politics, then I think you have today's prototypical high-profile trial. There are many similarities between the *Simpson* and *Sheppard* case, beyond, in fact, the media. That is not to say that these are the only contestants for the trials of the century. There have been so many. The *Sacco Venzetti* case, the *Lindbergh* case, the *Hearst* case, and presidential indiscretions. You can pick quite a few.

When I started looking at the similarities between the *Simpson* and *Sheppard* cases it was quite telling to me that there were so many similarities.² First of all, in both *Sheppard* and *Simpson* you had high-profile defendants. You had a handsome doctor in the *Sheppard* case and a handsome all-American in the *Simpson* case. There were little things that were similar. I could not believe it when I found out that there was key evidence from a dog in both cases. You remember the plaintive wail. In the *Sheppard* case, there were the cries of Cokie, the dog. In both cases, police found these darkly-stained gloves, raising the issue of who they belonged to and what were the stains on them? And, of course, there was missing, bloody clothes that you would have expected, in both cases. In each of the cases, there was cutting-edge use of scientific evidence, although science has changed a great deal. In the *Sheppard* case, there was the blood spatter evidence. In *Simpson*, there was new DNA evidence. In both cases, there were flamboyant lawyers. In fact, in both cases, there was the same flamboyant lawyer—F. Lee Bailey. I would say that the lawyers, in some ways, have become even more polished in interacting both in the courtroom and with the media. In both cases, there were allegations of bad police work—whether it be a missing fingerprint, like in the *Sheppard* case, to socks with DNA that were not collected initially in the *Simpson* case. There were certainly claims that the police engaged in a rush to judgment. The banner headline in the *Sheppard* case read, “*Why no inquest? Do it now, Dr. Gerber.*”³ In both cases, there were

¹Ohio v. Sheppard, 165 Ohio St. 293, 294, 135 N.E.2d 340, 342 (Ohio 1956).

²For excellent discussions of the Sheppard case and media coverage surrounding it, see CYNTHIA L. COOPER & SAME REESE SHEPPARD, *MOCKERY OF JUSTICE* (1995); PETER E. KANE, *MURDER, COURTS AND THE PRESS* 7-21 (1986); DONALD M. GILLMOR, *FREE PRESS AND FAIR TRIAL* 1-9 (1966).

³See Michael Taylor, *In the Name of the Father: For 40 Years, Sam Reese Sheppard Has Lived in the Shadow of His Father*, *San Francisco Chronicle* 1 (Apr. 7, 1996).

conflicting verdicts. In the *Sheppard* case, initially guilty, then not guilty, then a third verdict. In the *Simpson* case, not guilty and then liable in the civil trial. In both cases, there was “another killer” theory suggesting that the police apprehended the wrong guy. But, if you take all of the similarities between the two cases, what stands out most in your mind? It was the media circus.

And that, ironically, was the very issue the Supreme Court thought they had addressed and remedied in the *Sheppard* case. Now, you are very familiar from today’s presentations about how much of a media circus the *Sheppard* case was. I can tell you how much of a circus the *Simpson* case was. It was phenomenal. There was literally a camp of reporters. We called it “Camp O.J.” We were trailer trash. About forty of us lived in a CBS trailer through the trial. It was such an intense experience that we had a dead rat in our water cooler and did not notice for a week. It took all this media to put out what you saw as the so-called “objective” reporting of the case. There were over 1,100 reporters hosted at the *Simpson* case. More people watched that trial than the Gulf War coverage.

In fact, another similarity to the *Sheppard* case was that the coroner’s inquest in the *Sheppard* case was televised live. In the *Simpson* case, the preliminary hearing, which is just a basic hearing, was televised live—on nice summer days. And 71% of the American public chose to sit inside and watch that instead of enjoying their day. In terms of the media coverage in both cases, when the jury went out to view the crime scene in the *Sheppard* case there were helicopters overhead broadcasting it for the media and it continued in the *Simpson* case, as well.

Finally, in the *Simpson* case, 150 million people stopped to hear the verdict. The media had grabbed us. It was sensational. People read things differently, but by and large, I think the media led us to believe that the only verdict that was possible was going to be a guilty verdict. Throughout the trial, the reporters’ standards flew right out the window. I knew that we had lost all control when the New York Times quoted the National Inquirer.

These trials, as the Supreme Court noted, are a combination of soap opera, game show, and Greek tragedy. But there is something very real at stake. Now, I am not here, frankly, to bash the media. I believe the media has an important job to do. It serves the following purposes: first, it keeps the judges honest. A little sunshine in the courtroom can be a good thing. Second, I have seen the media help find key pieces of evidence. They so much want to scoop their competitors that they become an investigative tool. In fact, remember those not so attractive Bruno Magli shoes. How were they found? By the media for the civil trial. Most importantly, I believe the media is important because it gives the public “an eye” on cases that, for some reason, we deem important to our history. The truth is, that not everyone who wants to can watch our trials. In a high publicity trial, it has been my experience that there is very little public seating. The public, as opposed to the media or family members, are allocated about six to ten seats. There is a lottery for these seats and winning this lottery is better than winning cash.

Why does that make a difference? Is it because we want to entertain the public? No. It is because these cases represent significant social judgments. I will use a different case to illustrate my point.

I was a witness to history—that is how I refer to my role during the *Rodney King* case. As you recall, that is one of the times that Los Angeles burned to the ground. We had a riot because people could not accept the verdict. Fifty-two people died; there was one billion dollars in damage. Then we had the federal trial—*Rodney King*

II. I would line up with the public at 1:00 a.m. in the morning to get a seat in the courtroom. When I turned to these people and asked, “Why are you here?,” their answer was, “Because this is my community. This is my police department. These were my homes that were burned and I want to know how my justice system works.”

So, even though I started with a bit of frivolity, I never forget that from the public’s perspective, what happens in these high visibility trials is really, really, important. Of course, the media’s goals are not always so noble. I think Fred Friendly got it right when he said, “Television will always remain to hock principle, hock more goods to the sponsors and advertisers, sacrifice principle to money, and abandon taste, fidelity, and integrity to win audience ratings.”⁴

The media has an important role, but it’s not easy. As was described earlier, the First Amendment rights of the media are continuously balanced against the defendant’s right to a fair trial. And that balance can work—if we take it seriously.

So, what I want to do in my remarks today is focus on a new phenomenon—something we might have to look at since the *Sheppard* case. If the *Sheppard* case was one of the Court’s best attempts to deal with traditional media coverage of cases, we have got so much more to deal with today. We are in the age of legal commentators. The legal commentariat, as I would call it. The most egregious violations in the *Sheppard* case appear to have been from the written press and the radio. TV was just too new, although they did have a room set up in the courthouse for their use. Walter Winchell took advantage of this opportunity to repeatedly proclaim Sam Sheppard’s guilt. There were debates among the legal commentators. But, who were the legal commentators during the *Sheppard* time? They were reporters—on the beat.

Who are the legal commentators today? Let me ask you to be honest. How many of you in this room have ever been asked to answer questions for the electronic media or the written press on legal matters? Raise your hands. Look around. You have gone to the dark side. My guess is that, like me, it was quite accidental that you were recruited. I remember that I became a media star when I actually just showed up to watch a trial because I thought it was interesting and the CBS producer yelled out, “Grab Levenson—she’s all we’ve got.”

For those of you who do commentary, you know how important it is to answer your phone. That is how the media chooses its experts to present trials to the public. During the *Simpson* case, 50% of all network news coverage involved the participation of these outside legal consultants. That means we have a responsibility to examine our own participation and what our responsibilities are as legal commentators.

Under the First Amendment, the media has a great deal of license in how they present a case. We would hope that they would do so ethically, objectively, and responsibly; but, we know differently. The First Amendment does not necessarily force them to do so. Legal commentators, on the other hand, are a different species—because we are, at least, many of us, still members of the bar; that is, practicing lawyers who have ethical responsibilities as officers of the court. I want to take a look at what is it that we do, as witnesses to history, and what the *Sheppard* case can teach us about how to perform in this role.

⁴See ALFRED FRIENDLY & RONALD L. GOLDFARB, CRIME AND PUBLICITY 229 (1967).

There are several different types of legal commentators. There is the behind-the-scene legal commentator whom the media calls to answer their questions. As we know, these questions are often basic. One of my favorites is, “How many of the twelve jurors does it take for a unanimous verdict?” My other favorite questions include: “Why would the witness say that, if it was not true,” and “Why does the judge seem in such a hurry to finish this thing?” Some questions, in the spirit of play-by-play Howard Cosell type commentary, may include: “Who do you think is ahead now? Was that a devastating cross?” Or, even better, “What is the jury thinking?”

Is that our role? As legal commentators, our role is, first and foremost, to educate the public and the media. Most reporters are not lawyers, including the ones who cover the United State Supreme Court. They need some help. As for the public, how does the public learn about law? Well, from such great scholarly hit shows as *Ally McBeal*, *Matlock*, and the like. I think, as legal commentators, we can give them better. We can help put things in perspective. We can explain to the public why, in fact, a witnesses’ testimony that may seem contradictory is actually consistent with prior claims. We can provide the missing voices. The second thing we can do is help the media find information—they are starved for information. They actually do not realize you can get copies of things like the trial memorandum or the jury instructions. If you do not give them official information, I can promise you this, they will make it up—much like they did in the *Sheppard* case. They guessed and assumed their guesses would be right; or, they found the most reliable informant they could at the time, but their leaks tend to come from one source.

The next thing that a commentator can do is, of course, provide some type of expertise. John Lofton, thirty-five years ago, wrote an excellent book criticizing the media’s handling of the *Sheppard* case.⁵ I think, if we look at his criticisms, we can see how the legal commentator, if he or she does his or her job right, could actually cure many of these problems. First, Lofton claims that there was poor reporting during the *Sheppard* case of even the courtroom evidence. There was always a slant to the salacious portions and to the question, what about the affairs? In the *Simpson* case, there was always a slant to either his marital difficulties or the dream evidence. An experienced lawyer or legal commentator should know enough to say, if given the opportunity, that a certain fact will not necessarily make a difference in the case because the jurors will not hear it or because it is unrelated to the legal issues in the case.

The second thing legal commentators can do is address problems in the presentation of what the law and the legal process is. In the *Sheppard* case, and in part in the *Simpson* case, there were attacks on the coroners for not proceeding quicker. Experienced lawyers know the danger in any case of a rush to judgment. In fact, I think, we would like to, to the extent that time permits, give the police an opportunity to do their job—to do a full-scale investigation. But the public does not want that. They want immediate answers now. Part of the role of the legal commentator is to help put the brakes on—to remind people how important it is to get the correct, not just the quickest conclusion.

Next, there were allegations in the *Sheppard* case that he must be the killer because he refused to take a lie detector test. Legal commentators, and this comes up

⁵See JOHN LOFTON, JUSTICE AND THE PRESS (1966).

in more recent cases, can aptly point out the problems with different types of forensic evidence, including lie detector tests. If the legal commentator does not know the problems, he certainly should be able to refer the media and the public to those experts who do. That is one of the roles of the legal commentator: to warn the public that science is helpful, but there are many factors, such as the collection of evidence, the corruption of evidence, and the way that evidence is presented to the jury, that can impact how devastating the scientific evidence will or will not be. For example, in the *Sheppard* case, there was an allegation that photographs were doctored so that it might look like an imprint of a surgical instrument on the blood stained pillow.

It reminded me, in the *Simpson* case, of how *Time* magazine doctored the photograph of O. J. Simpson so he would look darker and, somehow, more sinister to the public. It is the legal commentator's responsibility to note when the media is out of bounds because you are the only ones who will have the opportunity to do that. If one of the parties to the case says it, he or she will be viewed with skepticism. The commentator is the one with credibility. You might be saying: "Well why doesn't this happen already?," "Why aren't legal commentators doing it right?," or "Well, do you have any answers?"

Legal commentators sometimes forget what is at stake. They are hired by the media and, therefore, they think they should be part of them. They become, as it is called, the chattering class.

I have just shown a video of some legal commentators. It is time for some self-examination. What are the problems? We know what our roles should be and we know that we haven't done it particularly well. What, specifically, can we do better? Professor Erwin Chemerinsky of USC Law Center and I had an opportunity, after the *Simpson* case, to think about how we can improve the role of legal commentators and we came up with some suggestions that I offer to you today.⁶ Legal commentators, like reporters, need to be (and this is an incredibly high standard) competent. We need to know what we are talking about. Shooting from the hip is not helpful. You must know the law in the jurisdiction, and you must have actually watched or be familiar through transcripts with the proceedings.

Part of being competent, I think, is not being willing to speculate – not saying when I was asked, "What is inside the opaque envelope," as if that was the training I received in law school. It means actually having the background and the experience to remark regarding trial strategy. The more you have been a trial lawyer, the less you are inclined to criticize because you know how many things can go wrong and you know how many different strategies there can be in a case. If you think about who is doing the legal commentary, it is the people who are not out there trying the cases and never have been out there. Most importantly, to be competent, I think legal commentators have to be willing to say "I do not know," or "let us wait and see."

I remember this question being thrown at me at the end of the *Simpson* case. Picture this—the verdict has come out; recall what the national reaction was. I am on air live with Dan Rather and he says to me, "So, Professor Levenson, in the ten

⁶See Erwin Chemerinsky & Laurie Levenson, *The Ethics of Being a Commentator III*, 50 MERCER L.REV. 737 (1999); Erwin Chemerinsky & Laurie Levenson, *The Ethics of Being a Commentator II*, 37 SANTA CLARA L.REV. 913 (1997); Erwin Chemerinsky & Laurie Levenson, *The Ethics of Being a Commentator*, 69 S. CAL. L.REV. 1303 (1996).

seconds remaining, what does this case say about justice?" And I said, "Dan, that's an issue that will be debated for years to come." And that is what we are doing here—we are debating it for years to come. Legal commentators have to resist the pressure—to have the quick answer—just because that is what the media wants.

I believe that legal commentators, like reporters, have to recognize that we all have inherent biases and that we have to do our best to either set them aside or, at minimum, disclose what they are. Now, these conflicts arise in many different ways. Sometimes it is because you might know the lawyers on one side of the case. Sometimes it might be because you were a lawyer. Do not forget that, much to my amazement, Bob Shapiro—you recall that gentleman—who was a lawyer for O.J. Simpson during the criminal case, was hired by CBS to be an "objective" legal commentator during the civil case. I would suggest that it is a little harder at that point not only to put your biases aside, but to deal with issues like confidentiality. When the former lawyer's client takes the stand, will he be at liberty to say to the public he is lying or will he have to say "Mmm, doesn't sound like what he told me."

Indeed, legal commentators must do the job that reporters do not always do, which is, constantly, as a lawyer would look for the conflicts, take steps to ensure that they are not misleading the public. In that regard, like it or not, when I look at the balance of whether we are part of the media or we are part of the officers of the court, I like to think I am still an officer of the court and there are things that I know the media will do that, I would not countenance. For example, legal commentators are often asked, because they know the players, to go behind the scenes and get things off the record, especially when a judge has somehow thought that a gag order would work. A gag order never, ever works. It only comes close to working if the judge says he will personally be mad at the violator. Should a legal commentator allow herself to be used? Obviously not. Legal commentators know things about grand juries. I would know how to contact a grand jurist and I knew very much that the media wanted to do so. Was it part of my role in assisting the public to understand the case fairly to do that? No. So, I think there are many lessons we can learn from these high profile cases and from the conference this weekend. One of the ones I want to emphasize is that we have to stop thinking of the *Sheppard* case as a lesson, just for the judges or the media.

In this day and age, it is very much how we, as legal commentators, do our job because we have an unprecedented opportunity to ensure that trials are fair, to explain the forensic evidence, to work with the new technology, and to present all perspectives. If we learn these lessons, then, I think, the *Sheppard* case has a greater opportunity to live on in history for the right reasons, not as a prequel to the *Simpson* case, but more of a wake-up call of what we can achieve. Thank you.

QUESTIONS AND ANSWERS

Audience (Larry): Sometimes when there are legal commentators, there are twelve people in the whole world who have not seen them—those are the people on the jury.

Professor Levenson: So the question is: Does it really matter what legal commentators do because it does not necessarily impact the jury?

Audience (Larry): No, no, admittedly legal commentators have an educational function. Sometimes the jury seems to see a case very differently from the public.

Professor Levenson: Ah.

Audience (Larry): Having lacked input from the legal commentator, it might show that our system of evidence undereducates the jury about a case. Maybe we can learn something from it that way.

Professor Levenson: That is very interesting. It can go either way. One can say, look, the jury does not hear the legal commentator, so they are at an advantage or, one can say, they are at a disadvantage because the public knows so much more than they do. I think the legal commentator must consider both possibilities in presenting commentary. I do not decline to answer a question just because the jury's not hearing it. Rather, I answer the question, explain to the media the jury is not hearing the information, and explain why. My experience is that the reason they are not hearing it is that the court has held that it is inappropriate in the courtroom. The public is entitled to ask other questions, but if they are asking about a lie detector test and it is not in the courtroom, I think it has to be said, here is the value or lack of value to it and here is why it may not at all impact the case. I want to make one other remark in this regard. I think that *Sheppard* was right in suggesting, in ways we do not even appreciate, that even juries that we think are pristine, do hear what is in the media. For example, the *Simpson* jury was sequestered. The *Simpson* jury, by the way, did acquit, so all the pre-trial publicity did not necessarily work to the defendant's disadvantage. There was a great deal of publicity to his advantage. The big question is, did what happened outside the courtroom filter into the courtroom? I have no doubt that the answer is yes. As long as you allow sequestered jurors to have any type of human contact with loved ones, and they did have that, or just with popular culture, there will be some amount of extrajudicial information that gets through. More interestingly, it is not the impact on the case at hand that raises the biggest questions. It is the question of how much, when the public learns about contamination of evidence or corruption of evidence, do they start applying that information to the next case they are called upon to evaluate. So, when you provide legal commentary, you have to keep in mind that you are not just influencing how a jury thinks about this case, you are influencing potential jurors on how they are going to approach the next case.

Audience: My question, I think, picks up a little bit on both Larry's question and your answer. It is about televisions in the courtroom, for which various reasons I am firmly opposed to. In your experience, is there is a difference between seeing what happens in the courtroom as a legal commentator, being physically present, versus watching it on television? One of the things you said, I think, is that you need experience at the actual trial. Does that experience make a difference and, if so, does it explain the disparate perceptions of the *Simpson* case?

Professor Levenson: First of all, I am not necessarily against cameras in the courtroom. I have seen cameras in the courtroom for many trials when it has not become a circus and the court has done an excellent job in controlling the parties. I think if Judge Ito had, at some point, turned to both of the sides (because they were both equally culpable) and said, "Excuse me, counselors, you are making jerks of yourselves on national television," he would have chilled that behavior. The studies, as were recited to, tend to show that, in most cases, a camera in the courtroom does not actually change the conduct in the courtroom.⁷ To get back to what you are

⁷See Molly Treadway Johnson & Carol Krafka, Federal Judicial Center, *Electronic Media Coverage of Federal Civil Proceedings: An Evaluation of the Pilot Program in Six District*

saying, I think, frankly, it does make a great deal of difference—whether you are there or it is on memorex. Let me give you my best example. When Mark Fuhrman finished testifying and came off the stand, the way Judge Ito was working his courtroom, is that the public and media would file out first, then the parties, and the jury was the last group to leave the courtroom. Well, Marcia Clark evidently forgot that because when Mark Fuhrman came down off the witness stand and the cameras had stopped, because they were in recess, she went over and gave Fuhrman a little squeeze, a little hug. That is something the jury saw. That is not something you saw and I think it is something that actually made a tremendous difference in the case. There was no way Clark could separate herself from that witness after giving him that little hug and squeeze in front of the jury. It is things like that, which do not even relate to what happens on the witness stand that make the difference from being there and reading about it.

Audience: What are the employment prospects for legal commentators who subscribe to and conduct themselves according to a strict code of ethics?

Professor Levenson: Ah, yes. In other words, does the media ever want anybody who is ethical? Well, you know what, if we just locked arms, what choice would they have? My answer is actually that it depends. There are different media outlets and some really do want the legal commentator who is going to be ethical and objective. In other words, the media may want a legal commentator who is not going to be ridiculed by critics. In my town, we now have newspaper critics of the legal commentators and they put out ratings on the legal commentators, depending, not so much about whether they have particularly salacious stories, but whether they do subscribe to certain objectivity and ethics. It may, in part, be fighting a losing battle because there are so many unethical ones. But, I think not. We strive for a higher standard. My phone has not stopped ringing off the hook. Other legal commentators I know who tried to follow these ethical rules, they also do not lack for business. The media will still call you because they know you and they need you. And, if they are not calling you because they want somebody to do a food fight, you are still better off. What we will see is a split between the good and the bad legal commentators. The public will at least have a choice.

Audience: After years of private practice, I am now a law professor and I get a lot of calls from the media in the form of, did you hear how Judge Smith over in Berry County just ruled that the police could ransack your house without a warrant? And, I know that cannot be right. I know that is not what Judge Smith ruled and I want to answer some questions about basic Fourth Amendment law or whatever the question is without it getting put into the paper as Professor Moran thinks that Judge Smith is out of his mind.

Professor Levenson: Which will be the quote, anyway.

Audience: Which will be the quote, anyway, is right. And there will always be the paraphrase.

Professor Levenson: Right.

Audience: How do you handle that kind of question?

Professor Levenson: There is the nuts and bolts of dealing with the media because the scary thing is that they have the power of editing. I will answer your question in two parts. First, television, in some ways, is much easier than even radio

Courts and Two Courts of Appeal (1994); J. Stratton Shartel, *Cameras in the Courts: Early Returns Show Few Side Effects*, *Inside Litig.*, Apr. 1993, at 24.

because if you know that you are giving a bite and that it is likely to be taken out of context, you can say it in a way that the media cannot use the tape. Second, as to the newspaper, I tend to say, can you send me the copy of the court's ruling, can you read me the court's ruling, or can I call one of the lawyers to find out or the court to find out what happened here and I will call you back? Actually, reporters appreciate that. Sometimes they think you have better access. You can call them back and say, you know, I think you missed this little fact like, the judge and parties stipulated to the search. The best practical advice I have in dealing with the media is getting to know the reporter. When people ask, "How do you deal with the media that does not want to be ethical?" I tell them that I have stopped dealing with the media that does not want to be ethical. I firmly believe that the members of the public, in their own minds, know that there is a difference.