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THE NEWS MEDIA AND THE GOOD SAMARITAN STATUTE CONTROVERSY: COVERING THE "ETHICS OF OTHERS"

Edmund B. Lambeth*

I. INTRODUCTION

Whether and how to regulate the behavior of "Bad" or "Good" Samaritans by statute are questions far more complex than many of us may suppose at first glance. Although these questions may *seem* straightforward, they tap the reserves of any country's moral, legal, and civic imagination. This essay's topic—how deeply journalists can or should be expected to report Good or Bad Samaritan issues—is almost as challenging. To address these questions is to simultaneously confront the current public cynicism toward many of the social practices of our democracy, including journalism.

The purpose of this essay is to assess the performance of the printed press in covering the public policy issues surrounding the rape and strangulation murder of seven-year-old Sherrice Iverson in the arcade bathroom of a casino in Primm, Nevada, forty-three miles south of Las Vegas, on May 25, 1997. The press coverage included pre-trial events that led to the confession and sentencing of her killer, Jeremy Strohmeyer, an upper-middle-class high school honors student. Central to this essay is the media-related public reaction to the failure of Strohmeyer's sometime friend, David T. Cash, Jr., to prevent or report the crime, or to seek assistance

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to save her life.[1] Fifteen months after his arrest and pre-trial deliberations, Strohmeyer pleaded guilty and was sentenced to life in prison without possibility of parole. Cash, a nuclear engineering student at the University of California at Berkeley, is free, but his callous behavior and unrepentant persona disgusted the public and invited the militant ostracism of campus peers.[2]

These news events will be examined in the context of public policy decisions by the citizens and the legislatures of Nevada and California with regard to what laws, if any, to enact in response to the tragedy and the public outrage it triggered.

The approach of this essay is part traditional news media criticism of public affairs reporting, part civic reflection, and part suggestion as to how coverage may be improved. This analysis focuses on the daily printed press on the assumption that of all the media, except perhaps serious magazines, its coverage is the most detailed, attentive to the major issues, and likely to be read and believed by other media and local civic leaders.

This essay focuses chiefly, though not exclusively, on a number of major stories in the largest circulating newspapers in the two states—the *Las Vegas Review-Journal* and the *Los Angeles Times*. In addition, the essay occasionally refers to the work of a few other metropolitan newspapers, national magazines, and television networks. This is not a formal or quantitative content analysis, but rather draws upon an extensive purposive sample of coverage that stretched over the better part of three years and included more than 300 published stories nationwide.

Shaping the analysis will be recently expressed concern by both scholars and a number of editors that news reporting needs to more effectively assist citizens to understand their communities and institutions, as well as to think through and

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1. *See* Associated Press, *Petition has 20,000 signatures in Primm slaying*, LAS VEGAS REVIEW-JOURNAL, Aug. 23, 1998, at 4B; Lori Roniger, *Campus protest condemns Cash for his inaction*, LAS VEGAS REVIEW-JOURNAL, Aug. 27, 1998, at 1A; Nora Zamichow, *Stroymehyer Friend Saw Him Molest Girl, Classmates Say*, L.A. TIMES, Sept. 16, 1998, at 1.

2. *See, e.g.*, Sandy Banks, *A Murdered Child and Our Moral Deficiency*, L.A. TIMES, Oct. 2, 1998, at 1; Kevin Fagan and Henry K. Lee, *Outcast on Campus*, S.F. CHRONICLE, Sept. 19, 1998, at A-17; Jeremy Glatstein, *Evil Actions Compel Us to Respond with Good*, S.F. CHRONICLE, Sept. 22, 1998, at A-21.

reach considered judgment on major public issues. This heightened awareness of the link between news media performance and the quality of public judgment is reflected in a wide range of scholarship at universities and non-profit philanthropic foundations. It is a strand of scholarship that spans the humanities and social sciences, tracing its lineage to the early part of this century.[3]

II. BACKGROUND

A. *Media Coverage of Public Policy Issues*

Barometers that reflect worrisome conditions in the body politic are not hard to find. The percentage of American households completing census questionnaires has fallen steadily for thirty years and may be the lowest ever in 2000.[4] Walter Dean Burnham estimates that "the USA has incomparably the lowest voting participation to be found in any advanced capitalist democracy with a policy-significant national government."[5] Voter turnout averages around fifty percent participation in presidential elections.[6]

In a comprehensive study of the health of the national media system, Leo Bogart, a sociologist with wide experience in the media industry, concluded in part that the media are awash in "excessive and obsessive commercialism."[7] Increasing competition—news twenty-four hours a day, seven days a week—leads many sectors of the news media to engage in "sensationalism" that "distorts our perceptions of the world

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3. *See, e.g.*, ART CHARITY, DOING PUBLIC JOURNALISM (1995); JAMES S. FISHKIN, DEMOCRACY AND DELIBERATION, NEW DIRECTIONS FOR DEMOCRATIC REFORM (1991); EDMUND B. LAMBETH ET AL., ASSESSING PUBLIC JOURNALISM (1998); DAVID MATHEWS, POLITICS FOR PEOPLE (2d ed. 1999); DAVIS MERRITT, JR., PUBLIC JOURNALISM AND PUBLIC LIFE: WHY TELLING THE NEWS IS NOT ENOUGH (1969); JAY ROSEN, GETTING THE CONNECTIONS RIGHT: PUBLIC JOURNALISM AND THE TROUBLES IN THE PRESS (1996); MICHAEL SALVADOR & PATRICIA M. SIAS, THE PUBLIC VOICE IN A DEMOCRACY AT RISK (1998); DANIEL YANKELOVICH, COMING TO PUBLIC JUDGMENT: MAKING DEMOCRACY WORK IN A COMPLEX WORLD (1991); James W. Carey, *In Defense of Public Journalism*, *in* THE IDEA OF PUBLIC JOURNALISM 49–66 (Theodore Glasser ed., 1999).

4. *See Evening Newscast* (Cable News Network television broadcast, Jan. 14, 2000).

5. WALTER DEAN BURNHAM, THE CURRENT CRISIS IN AMERICAN POLITICS 82 (1982).

6. *See id.*

7. LEO BOGART, COMMERCIAL CULTURE: THE MEDIA SYSTEM AND THE PUBLIC INTEREST 9 (1992).

by confusing illusion with reality."[8] Valuing advertising more than its customers "deflects the public's attention," Bogart concludes, "away from the problems that society must face."[9]

Some newspapers are not blind to such problems, even if only because they need a credible response to their own declining circulation. These newspapers have developed a citizen-based approach to local coverage in aggressive response to readers who have largely disconnected from participation in their communities. For example, the Norfolk *Virginian-Pilot* and *Ledger-Star* developed a typology of stories to encourage their reporters and editors to better connect with readers at several different levels.[10] Guidelines apply especially to continuing public policy and issue stories that compete for attention over weeks, months, or years. Indeed, the tragic intersection of the lives of Sherrice Iverson, Jeremy Strohmeyer, and David Cash gave the policy issue of Good Samaritan laws a long run in public attention.

In the *Virginian-Pilot* model for covering such an issue, "literacy," the first level of reporting, describes stories that allow readers to converse with others on a topic in the news and pursue related information elsewhere. "Utility" stories, the second level of reporting, give readers background and help them (if they wish) to develop informed opinions about their stake in certain problems. This second level also permits citizens to connect with those who have a somewhat similar stake in issues, providing information on which readers can act. Finally, "mastery" stories, the highest level of reporting, equip people to understand and explore not only their own stakes in an issue, but those of other citizens as well. They are designed to foster reflection and considered judgments on public issues.[11] This framework and the concept of the policy making cycle is used to conduct the analysis of this essay. However, a few particulars of the tragedy in Las Vegas first require summarization.

B. *The Murder of Sherrice Iverson*

The murder of Sherrice Iverson sickened and angered the

8. *Id.*
9. *Id.*
10. *See* LAMBETH ET AL., *supra* note 3, at 236.
11. *See id.* (discussing an interview with Dennis Hartig, then Deputy Managing Editor of the Norfolk *Virginian-Pilot*).

public, and captured news media attention in Nevada and California for the better part of three years. Eighteen-year-old Jeremy Strohmeyer, energized by a mix of alcohol and drugs, lured his young victim into the women's restroom, then strangled and raped her in a struggle that lasted about twenty-five minutes.[12] Early on, Strohmeyer's erstwhile companion, David Cash, Jr., also eighteen years old, entered the women's restroom and observed at least the beginning of the struggle by peering over the top of an adjacent bathroom stall. Cash testified that other than tapping Strohmeyer on the head and telling him to let the girl go, he did little else in an attempt to rescue the child. Cash exited after about two minutes, but failed to alert casino security officers or police, despite the fact that a crime was underway. Shaken and full of fear, Strohmeyer left the strangled child and shortly afterward told Cash that he had killed her. Such was the narrative reported in detail in both the *Review-Journal* and the *Los Angeles Times*, based largely on court documents and grand jury testimony.[13]

Not until months after Sherrice Iverson's murder did the move for corrective legislation gain momentum. The heady intellectual and moral question that emerged from southern Nevada in the spring of 1997 was whether the adoption of a Good Samaritan statute in California or Nevada would provide an effective response to the tragedy that befell Sherrice Iverson. Seemingly, this was the most nationally significant development in this case,[14] but how well did the two major

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12. *See* Caren Benjamin, *Strohmeyer admits guilt*, LAS VEGAS REVIEW-JOURNAL, Sept. 9, 1998, at 1A; John L. Smith, *Strohmeyer gets breath of life he strangled out of Sherrice*, LAS VEGAS REVIEW-JOURNAL, Sept 9, 1998, at 1B; *Jeremy Strohmeyer Statement*, LAS VEGAS REVIEW-JOURNAL, Oct. 14, 1998 (reporting the summarization of Strohmeyer's memories of the incident, where Strohmeyer stated "everything I saw was through a drunken and drugged haze").

13. *See, e.g.*, Associated Press, *Strohmeyer Admitted to Child Sex Fantasy, Prosecutor Says: Suspect wrote Internet messages about 5-and 6-year olds 30 hours before girl was strangled, judge is told*, L.A. TIMES, Sept. 4, 1998, at 15; Eric Lichtblau & Nora Zamichow, *Guilty Plea in Strohmeyer Slaying: Strohmeyer deal averts murder trial and chance of death sentence*, L.A. TIMES, Sept. 9, 1998, at 1; *Troubling Questions in Murder*, L.A. TIMES, Sept. 17, 1998, at 8.

14. *See, e.g.*, Jessica R. Givelber, *Imposing Duties on Witnesses to Child Sexual Abuse: A Futile Response to Bystander Indifference*, 67 FORDHAM L. REV. 3169 (1999); Charles Colson, *Poster Boy for Postmodernism*, CHRISTIANITY TODAY, Nov. 16, 1998, at 120; Don Terry, *Mother Rages Against Indifference*, N.Y. TIMES, Aug. 24, 1998, at A10.

newspapers closest to the tragedy cover this public policy question?

III. NEWSPAPER COVERAGE IN THE AFTERMATH OF THE SHERRICE IVERSON TRAGEDY

A. *The* Las Vegas Review-Journal

On August 27, 1998, fifteen months after Iverson's murder, the *Review-Journal* reported the plans of Nevada Assembly Majority Leader Richard Perkins to draft a bill to better protect children from criminal acts.[15] Three days later, the *Review-Journal* published a column by *Chicago Tribune* writer Steve Chapman attacking a petition drive supported by Sherrice's mother, Yolanda Manuel, for a law requiring anyone knowing of a sexual assault on a child to report it to authorities.[16] Based on interviews with legal authorities in Minnesota and Vermont, which have similar statutes, Chapman argued that the laws were seldom invoked and "capricious and selective" in their enforcement.[17] However, Chapman's hypothesized targets of such irresponsibility—public housing residents "ratting on the local gang leader" and motorists encountering urban street fights—are only indirectly affected by a law designed to protect children.

Further, while drum-rolling for the "traditional Anglo-Saxon legal system," Chapman failed to distinguish adequately between (1) Good Samaritan laws requiring citizens to help prevent crime or injury; (2) "duty to assist" statutes that require prompt reporting of an accident or crime; and (3) immunity from liability statutes for those who voluntarily attempt rescue or those who are expected to rescue, such as doctors or emergency medical technicians. As in a number of articles reviewed in this study, the phrase "Good Samaritan" was used—by lawyers and lobbyists as well as writers across the country—without much regard for the fact that in its cultural and religious origin it was applied not to someone who notifies the authorities, but rather to one who stops and ren-

15. *See* Donrey Capital Bureau, *Bill would make Cash's silence illegal*, LAS VEGAS REVIEW-JOURNAL, Aug. 27, 1998, at A4.

16. *See* Steve Chapman, *Should doing nothing about a crime be a crime?*, LAS VEGAS REVIEW-JOURNAL, Aug. 31, 1998, at B7.

17. *See id.*

ders assistance.[18]

The *Review-Journal* itself covered the making of the new Nevada statute at each step in the legislative process, including a searching early story by Caren Benjamin on the problems involved with writing legislation[19] and a trenchant front page account of the legislative debate by Ed Vogel.[20] The paper reported attacks on the bill's constitutionality by one of Strohmeyer's lawyers, defenses of the bill, modifications of the bill by the Nevada legislature, and the bill's signing by Governor Kenny Guinn.[21]

Nevada's new law is basically a reporting statute that, with an exemption for family members, requires citizens to notify authorities within twenty-four hours if they suspect a crime against a child. Failure to report could subject violators to a misdemeanor charge punishable by up to six months in jail and a $1000 fine. Editorially, the *Review-Journal* denounced the statute as "feel good" legislation that "will do no good, is impossible to enforce, and could turn vast crowds of bystanders into criminals if police did try to enforce it."[22] The editorial, written two weeks before Governor Kenny Guinn signed the bill, complained that the law skirted the issue of David Cash's cowardice and failed to "require prompt intervention by a bystander with the ability to stop a murder."[23] Like most newspapers that covered the subject, the *Review-Journal* failed to give its readers access—either in editorials or in news analysis—to many searching arguments against the dominant North American tradition opposing duty-to-rescue laws. Opinion writers and news analysts seemed un-

18. *See Luke* 10:25–37; *Matthew* 22:34–40; and *Mark* 12:28–34. For a detailed explication, see G.B. CAIRD, THE GOSPEL OF SAINT LUKE (Penguin 1963) and Paul B. Rasor, *A Law Teacher Looks at the Good Samaritan Story*, 31 WASHBURN L.J. 71, 71–79 (1991).

19. *See* Caren Benjamin, *Lawyers say care needed in writing good Samaritan law*, LAS VEGAS REVIEW-JOURNAL, Sept. 13, 1998, at B1.

20. *See* Ed Vogel, *Good Samaritan measure attacked*, LAS VEGAS REVIEW-JOURNAL, Mar. 18, 1999, at A1.

21. *See, e.g.*, Benjamin, *supra* note 19, at B1; Vogel, *supra* note 20, at A1; *see also* Ed Vogel, *Panel changes bill calling for child abuse reports*, LAS VEGAS REVIEW-JOURNAL, Apr. 30, 1999, at B7; Ed Vogel, *Crime Reporting Bill Gets Tougher*, LAS VEGAS REVIEW-JOURNAL, May 28, 1999, at B1; Sean Whaley, *Guinn signs bills on mortgages, reporting of various crimes*, LAS VEGAS REVIEW-JOURNAL, June 12, 1999, at B4.

22. *See Veering off track*, LAS VEGAS REVIEW-JOURNAL, May 30, 1999, at E2.

23. *See id.*

aware that legal scholars and philosophers had produced work directly relevant to the Sherrice Iverson case. Journalists failed to tap, interpret, and apply such scholarship, which questions the conventional wisdom that a fair and useful duty-to-rescue statute cannot be written.[24]

There was no in-depth coverage of Alison McIntyre's idea that the behavior of "bad Samaritans" in "especially horrific failures to give assistance" can be legally defined as "homicide by omission."[25] Further, there was no mention of arguments such as Hanoch Dagan's for a "public law" that provides a subsidy to encourage altruistic interventions, or assessments of the economics of adopting a Good Samaritan rule.[26] The point is not that these approaches are unproblematic, but rather that the print media failed to bring them to public attention or to systematically query those in a position to evaluate them from the standpoint of the public interest and public policy.

Using the analytical framework of "literacy," "utility," and "mastery,"[27] it is fair to say that the *Review-Journal*'s readers were given enough information to understand the basics of the legal debate (i.e., literacy). Further, many citizens—provided they were not repulsed into withdrawal by the sordid reality of Strohmeyer's behavior and Cash's inhuman indifference—likely believed that they understood their own stake in whether or how the legislature acted in response to the public anguish over Sherrice Iverson's violent death (i.e., utility).

Collectively, however, the *Review-Journal*'s news stories, editorials, columns, and analytical articles fell well short of the level at which citizens could "master" the stakes of the contending parties and the reasons behind their judgments. Vogel's exemplary coverage of testimony and debate in committee ran to only 959 words. This is all the more disap-

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24. *See, e.g.*, THE NEW PALGRAVE DICTIONARY OF ECONOMICS AND THE LAW 202-03 (Peter Newman ed., Stockton Press 1998); Michael A. Bedke, *Pro: Good Samaritan*, 22 BARRISTER 37 (1995); Hanoch Dagan, *In Defense of the Good Samaritan*, 97 MICH. L. REV. 1152 (1999); Alison McIntyre, *Guilty Bystanders? On the Legitimacy of Duty to Rescue Statutes*, 23 PHILOSOPHY AND PUBLIC AFFAIRS 157 (1994).

25. *See* McIntyre, *supra* note 24, at 157.

26. *See* Dagan, *supra* note 24, at 1153. *See generally Veering off track*, *supra* note 22, at E2.

27. *See supra* text accompanying note 11.

pointing because the basic arguments in the legislation have a long history, and articles on the subject were widely available in law reviews and other journals.[28]

B. *The* Los Angeles Times

With the exception of an early in-depth story written by the *Review-Journal*'s Caren Benjamin and a later legislative account by her colleague Ed Vogel, the *Los Angeles Times*, a much larger newspaper, showed more sophistication in covering the Nevada and California bills inspired by Sherrice Iverson's murder than did Nevada's largest newspaper.

Showing the larger regional interest in the case, the *Times* combined in one story the news of plans by California Senator Tom Hayden and Nevada Majority Leader Perkins to introduce "Sherrice Iverson" bills.[29] As early as September of 1998, the *Times* published an "op ed" article by Earl Ofari Hutchinson, author of *The Crisis in Black and Black*. He argued in detail that a full-fledged duty-to-report law might: (1) "criminalize" those who witness a crime and fail to report it; (2) "expose them to potential physical harm;" or (3) "force them to testify against family members."[30] However, Hutchinson—a talk show host and friend and advisor to Sherrice Iverson's mother—also argued that those objections could be overcome by a statute drafted narrowly to require reporting of crimes against children.[31]

Maura Dolan, the *Times* legal affairs writer, followed the Hutchinson commentary three days later with a 937-word account of the legislative challenge, based on interviews with six different attorneys. That article quoted John T. Quinn, chair of the executive board of Vermont's county prosecutors, about the history of the Vermont law requiring a citizen who sees another in grave danger to help unless doing so puts the

28. *See, e.g.*, C. Henry Kempe et al., *The Battered Child Syndrome*, 181 JAMA 17 (1962); Margaret H. Meriwether, *Child Abuse Reporting Laws: Time for a Change*, 20 FAMILY L.Q. 141 (1986); Marjorie R. Freiman, Note, *Unequal and Inadequate Protection Under the Law: State Child Abuse Statutes*, 50 GEO. WASH. L. REV. 243 (1982); Givelber, *supra* note 14, at 3169; Jean Peters-Baker, Note, *Punishing the Passive Parent: Ending a Cycle of Violence*, 65 UMKC L. REV. 1003 (1997).

29. *See* Hugo Martin, *Casino Slaying Spurs for New Laws*, L.A. TIMES, Aug. 29, 1998, at A20.

30. Earl Ofari Hutchinson, *Protecting Children Always a Good Cause*, L.A. TIMES, Sept. 6, 1998, at M5.

31. *See id.*

first citizen himself in jeopardy. "I have been in this state [twenty] years, and I can't recall a case where we used this statute."[32]

As if to focus public attention sharply on the distinctions at issue in writing Good Samaritan legislation, the *Times*'s Valley edition published a story relating the murder charges against a Pacoima, California wife and sister for failing to intervene to stop a man who beat his son and daughter to death. Deputy District Attorney Dave Mintz, contrasting the sister's situation with that of David Cash in the death of Sherrice Iverson, said, "[t]he difference is that these women were the parents and caretakers of responsibility to care for their children, and not only did they have a moral and ethical responsibility to care for their children, they also had a legal duty to protect the children."[33]

A little more than a month later, the *Times* published a remarkable column in which a disabled man who walked with a cane helped a police officer subdue and arrest a hit-and-run driver who resisted arrest. The story was contextualized by a second paragraph on "sideliners like David Cash," followed by the episode of the hit-and-run driver's comeuppance along with vignettes of five other neighborly deeds in which citizens assisted Fountain Valley, California police.[34]

Collectively, the *Times* carried a critical mass of such stories. They combined human interest and explanation, while distinguishing various levels of either civil liability or criminal neglect. Many of these articles were linked to Strohmeyer's murder of Sherrice Iverson and, especially, to David Cash's neglectful behavior. Notably, they also included viewpoints dissenting from the basic legal tradition of "no duty to rescue." Thus, the *Times* published a commentary by Isabelle R. Gunning, a professor at Southwestern University Law School, in which she argued:

> I disagree with the pundits who oppose such laws with concerns that range from the infrequency with which Vermont uses its law to the suggestion that these laws turn us into "informants on each other." It doesn't matter

32. Maura Dolan, *"Good Samaritan" Laws Are Hard to Enact, Experts Say*, L.A. TIMES, Sept. 9, 1998, at A1.

33. Evelyn Larrubia, *Death Sought for 2 Slain Children*, L.A. TIMES, Sept. 10, 1998, Valley Edition, at 1.

34. *See* Jerry Hicks, *Crime-Watch Pays in Fountain Valley*, L.A. TIMES, Oct. 15, 1998, Orange County Edition, at 1.

> if the new law is rarely used. Ideally, we hope that all criminal laws will rarely be used. What matters is that we believe that the moral obligation to help under certain circumstances is important. If so, then we should have a law for whenever it is needed. And these laws have less to do with us becoming informants on each other and everything to do with what we should already be doing for each other: helping each other out in times of need, regardless of our differences, because we are all part of a community.[35]

In short, the *Times*'s coverage, though less extensive than that of the *Review-Journal*, showed greater sophistication and understanding of the reporting necessary to illuminate the different legal issues of the case.

C. *Issues Not Addressed by Either the* Review-Journal *or the* Times

Neither the *Times* nor the *Review-Journal* did much to suggest how the local police, schools, churches, philanthropic organizations, and non-profit agencies could refresh or deepen whatever current efforts were underway to better prepare citizens to assist one another in the range of exigencies that inevitably are cited during debate over duty-to-rescue or duty-to-report legislation. Further, neither newspaper actively alerted citizens as to where else they could turn for such information. Had such an educational initiative been adopted, there are ways it could have been done without pandering to readers or lapsing into advocacy journalism in the news columns.

IV. PROTECTION OF CHILDREN IN NEVADA CASINOS

The California legislation introduced by Assemblyman Tim Torlakson and State Senator Tom Hayden died in the Assembly Appropriations Committee. However, such duty-to-report or Good Samaritan legislation is not the only substantive problem that surfaced as a result of the Iverson murder. What can and should be done to protect the safety of not only the children of Nevada and California, but also the three million other young people who visit southern Nevada gambling

35. Isabelle R. Gunning, Commentary, *Two Forms of Justice, Iverson Case: Nevada and California Authorities Out to Reexamine David Cash's Actions*, L.A. TIMES, Sept. 29, 1998, at B5.

resorts each year?

A. *Lack of Adequate Adult Supervision of Children in Casinos*

Despite having been warned against it, fifty-seven-year-old LeRoy Iverson, Sherrice's father, permitted Sherrice and her fourteen-year-old brother, Harold, free movement in the casino's arcade while he gambled during the pre-dawn hours of May 25. Primadonna Resorts spokesman Aaron Cohen said security officers at the Primm Valley Hotel and Buffalo Bill's had found Sherrice wandering unsupervised three times during the night.[36] Cohen said the officers warned Iverson each time against allowing Sherrice to roam the hotel unsupervised. The fact that security officers warned Iverson of the risk to his daughter appeared in almost every story of the *Review-Journal* during the first week after the murder.[37]

The *Review-Journal*'s Warren Bates moved quickly to highlight the adult supervision issue.[38] Similarly, John L. Smith's column documented through police that twenty to thirty other unsupervised youngsters were afoot in the video arcade at 3:40 a.m. before Sherrice Iverson was lured into a women's restroom and murdered.[39] Three days after her death, Bates wrote an interpretive article in the course of which he noted wryly, "[a]rcade security is not a topic that casinos are hungry to discuss."[40] It was an article peppered with assessments by national experts on the mentality of those prone to abuse and exploit children.[41]

In arguably the most searching, independent look at child safety in casino arcades published by the *Review-Journal,* Susan Greene opened her account with an excerpt from a 1993 Primadonna Resorts annual report: "[w]e want children to enjoy the Primadonna resort experience as much as their

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36. *See* Susan Greene, *Kids and casinos: A bad mix?*, LAS VEGAS REVIEW-JOURNAL, June 1, 1997, at 1A; Joe Schoenmann & Glenn Puit, *Two questioned in slaying*, LAS VEGAS REVIEW-JOURNAL, May 29, 1997, at 1A.

37. *See, e.g.*, Glenn Puit, *Child slain in Primm*, LAS VEGAS REVIEW-JOURNAL, May 26, 1997, at 1A; Glenn Puit, *Police hunt girl's killer*, LAS VEGAS REVIEW-JOURNAL, May 28, 1997, at 1A; Schoenmann & Puit, *supra* note 36.

38. *See* Warren Bates, *Parents urged to keep an eye on kids*, LAS VEGAS REVIEW-JOURNAL, May 28, 1997, at 2A.

39. *See* John L. Smith, *Sherrice wasn't the only unsupervised child that fateful night*, LAS VEGAS REVIEW-JOURNAL, May 29, 1997, at 1A.

40. Bates, *supra* note 38.

41. *See id.*

parents, so their fun continues in our state-of-the art video arcade featuring the very latest and most exciting games."[42] Among her sources, Greene found Corly Petersen Brook, a professor of human development and family services at Iowa State University, who stated, "[i]t's a recipe for disaster when casinos provide family-friendly amenities that attract children to the premises. What this young girl's death so painfully shows is that casinos have no business catering to families."[43]

Greene reported that about eleven percent of the 29.6 million people who visited Las Vegas in 1996 were under twenty-one years old, an increase of six percent since 1992.[44] Industry officials say the increase stems from the construction of five new resorts in recent years. Although Primadonna officers said that drawing families to their site is not the company's chief goal, Greene called attention to stockholder reports in which management pointed favorably to their ability to attract vacationers by offering free rides on a carousel and a Ferris wheel.[45] Later, reporter Glenn Puit, in an article headlining efforts of casino hotels to upgrade safety, called attention to a September 12, 1997, *20/20* television program in which ABC reporters showed "numerous young children walking around hotels in Las Vegas and Atlantic City unsupervised at all hours."[46]

A count by computerized database identified nineteen Iverson-related stories focused predominantly on security issues, curfews, and regulations affecting children at casinos—fourteen in 1997, two in 1998, and three in 1999. Of these nineteen articles, Greene's account, written less than a week after the murder, was the *Review-Journal*'s only major, in-depth, and independent examination of child-related security at Nevada casinos.

B. *Efforts to Improve Child Safety in Nevada Casinos*

On July 15, 1997, less than two months after the Iverson murder, Clark County, which includes Las Vegas, adopted an

42. Greene, *supra* note 36.
43. *Id.*
44. *See id.*
45. *See id.*
46. Glenn Puit, *Clocks ticking at casinos*, LAS VEGAS REVIEW-JOURNAL, Sept. 14, 1997, at 1B.

ordinance that expanded the county's curfew and prohibited presence of minors under eighteen in casino-related and other arcades, from 10 P.M. to 5 A.M. on weekdays and from midnight to 5 A.M. on weekends.[47] The ordinance also required security guards in arcades and established guidelines for training them on how to spot pedophiles and child stalkers.[48] News stories noted explicitly that attorneys for the Nevada Resort Association helped write the ordinance, which the association endorsed. A rival ordinance, which would have required casinos to offer childcare service, was rejected.[49]

Two years after the Iverson murder, the Nevada Senate's Judiciary Committee made quick business of a state attorney general's bill that would have imposed a statewide curfew similar to Clark County's and required security guards at arcades.[50] Curfew violators would have been guilty of misdemeanors. The bill was unanimously rejected, ostensibly on grounds that enforcement would be complicated by its exclusion of children traveling from state to state or those staying in a hotel where an arcade is located. Nevada state senators voiced the theme that appeared to dominate many of the day-to-day news stories by the *Review-Journal*—that parents, not government or the casino industry, have the primary responsibility for the safety of children in casinos.[51]

C. *Newspaper Coverage of the Child Safety Issue*

At the national level, two stories published in the *Review-Journal*—both written by the Associated Press—focused more explicitly on what one described as the "public relations nightmare" the Iverson murder had created for the gaming industry.[52] "We've just got to do a better job of being vigilant," Frank Fahrenkopf, president of the American Gaming Association, was quoted as telling a seminar of 100 casino security guards in Las Vegas.[53] Four months later, Fahrenkopf told a

47. *See* Susan Greene, *County imposes arcade curfew*, LAS VEGAS REVIEW-JOURNAL, July 16, 1997, at 1B.

48. *See id.*

49. *See id.*

50. *See* Donrey Capital Bureau, *Senators kill bill setting curfews in casino arcades*, LAS VEGAS REVIEW-JOURNAL, Apr. 8, 1999, at B5.

51. *See id.*

52. *See* Melanie Burney, *Kids in casinos debated*, LAS VEGAS REVIEW-JOURNAL, June 22, 1998, at D3; Angie Wagner, *Gaming group discusses unattended children in casinos*, LAS VEGAS REVIEW-JOURNAL, Feb. 28, 1998, at D1.

53. *See* Wagner, *supra* note 52, at D1.

similar seminar in Atlantic City: "Although parents have the ultimate responsibility for their children, it is also our responsibility as an industry to make sure our patrons are safe."[54]

Two weeks after the *Review-Journal*'s in-depth story by Susan Greene,[55] the *Los Angeles Times* put its travel writer on the job. After a few tough paragraphs raising questions about "whether Vegas is an appropriate place to take children at all," Christopher Reynolds specified in copious detail the hours and operating policies of the major casinos, what services the resorts and baby-sitting services offered, their hours of operation, and the prices for such services.[56]

In summary, the *Review-Journal*'s and the *Times*'s coverage certainly met the "literacy" criterion in covering the curfew issue. The *Times*, with names, places, and telephone numbers of casinos, made possible more direct consumer follow-up than the *Review-Journal*. However, Greene's *Review-Journal* article better met the "utility" standard by giving more useful background than Reynolds in the *Times* article and by providing more interpretive context on the casino security controversy. But, neither of the two articles met the higher "mastery" level of reporting that would have defined the competing stakeholders in the casino security issue and prepared readers to follow and to participate in the discussion of subsequent public policy questions.

V. COVERAGE OF JEREMY STROHMEYER'S TRIAL

The Iverson case posed "free press vs. fair trial" issues from almost the very beginning. Ten days after the murder, a southern Nevada justice of the peace, Janet Smith, issued a temporary gag order after defense attorney Leslie Abramson publicly claimed her client, Strohmeyer, was refused access to counsel while under police interrogation.[57] Richard Wright, Abramson's colleague in defending Strohmeyer, also claimed newspaper, television news, and tabloid television programs were guilty of "flagrant trampling of the defendant's right to a

54. *See* Burney, *supra* note 52, at D3.

55. *See supra* note 36 and accompanying text.

56. *See* Christopher Reynolds, *Travel Insider; What to Do with All Those Kids in the Land of Casinos*, L.A. TIMES, June 15, 1997, at L2.

57. *See* Glenn Puit, *Gag order issued in slaying*, LAS VEGAS REVIEW-JOURNAL, June 5, 1997, 1A [hereinafter Puit, *Gag order issued*].

fair trial."[58] Wright cited news reports that Strohmeyer had confessed that he kidnapped, sexually assaulted, and killed Sherrice Iverson.[59]

The *Review-Journal* asked the court to rescind Smith's gag order. Editor Thomas Mitchell accused the defense attorneys of misunderstanding the U.S. Constitution's guarantee of a fair trial. He said the defense attorneys' request for a gag order was "based on the premise that somehow knowledgeable people can't make fair jurors," adding, "[i]t is ludicrous and psychobabble."[60] Even as she vacated the order three days after its issuance, Smith invoked a Nevada Supreme Court rule disallowing contending parties from making or releasing statements "which will have a substantial likelihood of materially prejudicing future adjudicative proceedings" in the Strohmeyer case.[61] However, Judge Smith did allow photographs of the defendant to be taken. An attorney unrelated to the case described it as a "gag order that is not a complete gag order."[62] Yet the defense continued to bemoan the "notorious irresponsibility of journalism," a charge editor Mitchell called "totally baseless."[63]

As the case was transferred upward to District Judge Don Chairez, Wright and Abramson continued to press, unsuccessfully, for suppression of a confession police said Strohmeyer gave them voluntarily. They also failed to have the case dismissed on grounds of prejudicial publicity and lost requests to restrict television coverage of the trial.[64] Judge Chairez prohibited live television coverage of the Strohmeyer case,[65] only to have the ban lifted five months later by a new

58. Letter from Richard Wright, Attorney for Jeremy Strohmeyer, to Justice Court of Goodsprings Township, Nevada (June 4, 1997) (visited May 26, 2000) <http://www.lvrj.com/lvrj_home/news/packages/ june4letter.html> (requesting a gag order).

59. *See id.*

60. *See* Puit, *supra* note 57.

61. Caren Benjamin, *Gag order is followed, dropped, debated*, LAS VEGAS REVIEW-JOURNAL, June 10, 1997, at 3B.

62. Carri Geer, *Teen's lawyer raises questions about gag order*, LAS VEGAS REVIEW-JOURNAL, July 10, 1997, at 3A (quoting Dominic Gentile, a lawyer unrelated to the Strohmeyer case).

63. Caren Benjamin, *Judge restricts out-of-court comment in Strohmeyer case*, LAS VEGAS REVIEW-JOURNAL, July 23, 1997, at 1A.

64. *See* Caren Benjamin, *Strohmeyer's bid to dismiss denied*, LAS VEGAS REVIEW-JOURNAL, Oct. 14, 1997, at 5B.

65. *See* Caren Benjamin, *Judge prohibits live Court TV coverage of Strohmeyer trial*, LAS VEGAS REVIEW-JOURNAL, Feb. 18, 1998, at 2B.

judge, Myron Leavitt, who permitted coverage with some minimum restrictions.[66]

These decisions in the Strohmeyer case were broadly consistent with the majority view on press access in federal and most state courts.[67] The American Bar Association's Standards for Criminal Justice, Fair Trial, and Free Press stipulate that a lawyer should not "make or authorize the making" of extrajudicial statements likely to be communicated to the public if he knows, "or reasonably should know," that they will cause a "substantial likelihood of prejudicing a criminal proceeding."[68] This explicitly includes the type of pre-trial confessions or admissions of guilt by defendants that were an issue in the Strohmeyer case. Strohmeyer's attorneys argued unsuccessfully that their client's confession had been obtained illegally and were critical of the fact that information was made public from witnesses that they had not been able to cross-examine.

A detailed account of whether, and the extent to which, the ABA rule was breached by attorneys in their relationship to police, journalists, and principals in the Sherrice Iverson case would be an important exercise in ethical reflection. Such research, which is beyond the scope of this essay, would also need to include the more challenging and slippery task of assessing whether such disclosures, including admission of pornography evidence from Strohmeyer's computer, prejudiced the pre-trial criminal proceedings. Las Vegas police publicly reported Strohmeyer's confession within five days of the murder, reporting he had "implicated himself in each and every step."[69] His attorneys said Strohmeyer was interrogated while having his stomach pumped in a hospital.[70] In any event, the nineteen-year-old Long Beach, California honors student switched his innocence claim, pleaded guilty, and was sentenced to life in a Nevada prison.[71]

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66. *See* Caren Benjamin, *Judge permits live Court TV broadcast of Strohmeyer trial*, LAS VEGAS REVIEW-JOURNAL, Aug. 4, 1998, at 4B.

67. For an excellent, up-to-date summary of trends in decisions of federal and state courts on access, pre-trial coverage and televising legal proceedings, see S.L. ALEXANDER, COVERING THE COURTS: A HANDBOOK FOR JOURNALISTS 13–25 (1999).

68. *See id.* at 129.

69. *See* Glenn Puit, *Police convinced teen is Primm killer*, LAS VEGAS REVIEW-JOURNAL, May 30, 1997, at 1A.

70. See Puit, *Gag order issued*, *supra* note 57.

71. *See* Tim Dahlberg, *Guilty Plea Halts Casino Slay Trial*, LAS VEGAS

VI. MEDIA COVERAGE OF DAVID CASH'S ROLE IN SHERRICE IVERSON'S MURDER

Strohmeyer's confession returned media attention swiftly to David Cash. Calling Cash a "good-time Charlie" and a co-consumer—with Strohmeyer—of child pornography, a *Los Angeles Times* editorial invited authorities to examine contradictions in sworn testimony about Cash's behavior.[72] Cash said he left the stall where Sherrice Iverson was killed before Strohmeyer strangled her. But two high school classmates said Cash told them he saw Strohmeyer molest the girl. Moreover, Cash failed to swiftly report the fact that Strohmeyer had admitted killing Sherrice Iverson right after he left the murder scene. Editorially, the *Times* expressed "disgust and outrage" at Cash's explanation, "I didn't want to be the person who takes away his last day, his last night of freedom . . . he didn't do anything to me."[73] Leslie Abramson, Strohmeyer's attorney, called Cash a "co-perpetrator" of the murder.[74] California Assemblyman Thomas Torlakson, author of a duty-to-report bill, flatly declared, "[t]he horror of the crime was compounded because David Cash could have prevented it."[75] Yet, despite prodding by the press and others, the Clark County District Attorney held his ground. "Cash should have taken some action," Bell said, "but not taking action is a moral transgression that is not against the criminal laws of the state of Nevada."[76]

VII. CONCLUSION

Of all the opining set on paper by printer's ink in this case over almost thirty-four months, perhaps the most gripping was written by Stephanie Salter of the *San Francisco Examiner* more than a month after Strohmeyer's guilty plea. The article was headlined, "Who can possibly reach David Cash's heart of darkness?" In her column, Salter wrote, in

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REVIEW-JOURNAL, Sept. 8, 1998; *cf.* Caren Benjamin, *Teen-ager says he is innocent*, LAS VEGAS REVIEW-JOURNAL, Aug. 26, 1997, at 1B.

72. *See* Editorial Writer's Desk, *Troubling Questions in Murder*, L.A. TIMES, Sept. 17, 1998, at 8.

73. *See id.*

74. *See* John L. Smith, *Justice not completely served in Sherrice Iverson murder case*, LAS VEGAS REVIEW-JOURNAL, Sept. 13, 1998, at B1.

75. Stacy Finz, *Killing of Girl, 7, in Casino Spurs Good Samaritan Bills*, S.F. CHRONICLE, Dec. 9, 1998, at A-21.

76. Editorial Writer's Desk, *supra* note 72.

part:

> A civilized, healthy society comprised not just of human animals, but of civilized human beings, needs for David Cash to comprehend the enormity of his moral breach and to stagger under the burden of that understanding. We need to witness this more than we need any physical punishment (legal or vigilante) that might now be exacted on him. We certainly need it more than we need for him to "put this behind him," masquerade as a normal person and take an undergraduate degree in nuclear engineering.
>
> But who will help Cash? . . . Is Cash's best hope for comprehending what he has done tucked away in organized religion? In legitimate psychotherapy? Somewhere in the great public University of California? Isn't there someone among us, some group of people, who understands what is wrong with David Cash, Jr. and has the experience or expertise to attempt to reach him?
>
> God knows, any member of the human race has the moral authority to try.[77]

I cite Salter not because I agree with all of her sentiments or her framing of questions, but because her column fairly begs for the kind of cohesive and concerted moral dialogue that newspapers in our culture are uniquely equipped to provide for their communities.

77. Stephanie Salter, *Who can possibly reach David Cash's heart of darkness?*, S.F. EXAMINER, Oct. 4, 1998, at B15.

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