

U.S. Supreme Court Rules In Historic *Bartnicki* Case

In the most anticipated media law decision in nearly ten years, the Supreme Court ruled on May 21, 2001 that a news organization cannot be punished for disseminating the truthful contents of an illegally recorded telephone conversation as long as the information is in the public interest and the news organization did not participate in the interception.

The case, *Bartnicki v. Vopper*, began in May 1993 during negotiations between a Pennsylvania school board and a teachers' union. Gloria Bartnicki, a negotiator in the contract dispute, and Anthony Kane, president of the teachers' union, were speaking to one another by cellular phone about the dispute when their call was intercepted and recorded by an unknown person. In the recording, Bartnicki can be heard saying, "If they're not going to move for three percent [referring to a pay raise], we're gonna have to go to their, their homes...to blow off their front porches, we'll have to do some work on some of those guys."

Jack Yocum, president of a group formed to oppose the teachers' union during the negotiation, found the tape of Bartnicki and Kane's conversation in his mailbox. He gave it to Frederick Vopper, the host of a local radio talk show. Vopper played the tape on his show after the union and the school board had come to agreement. Afterwards, Bartnicki and Kane sued in the U.S. District Court for the Middle District of Pennsylvania, citing Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2511, 2520, and the Pennsylvania Wiretapping and Electronic Surveillance Control Act, 18 Pa. Con. Stat. Ann. § 5701 et seq. These acts impose criminal and civil

penalties on anyone who intentionally intercepts a private conversation, or who discloses the contents of a conversation knowing that it was illegally intercepted.

Attorneys for Vopper and Yocum argued that their clients did not violate the electronic surveillance acts because they did not intercept the phone call, nor did they know that the recording had been illegally obtained.

In June 1996, Judge Edwin Kosik denied both parties' motions for summary judgement, and granted an interlocutory appeal to the Third Circuit. Two questions needed to be addressed: first, whether holding the media liable for broadcasting a newsworthy tape violates the First Amendment when the tape was illegally obtained and recorded by an unknown source, and second, whether holding Yocum liable for providing the anonymously intercepted and recorded tape to the media would be a violation of his First Amendment rights.

Sloviter, writing for the majority of the appeals court, cited *Smith v. Daily Mail Publishing Co.* (443 U.S. 97, 61 L. Ed. 2d 399, 99 S. Ct. 2667 (1979)). In *Smith*, the Supreme Court concluded that punishing a publication for printing truthful information dealing with matters of public concern violates constitutional standards.

Although acknowledging that the Federal and Pennsylvania wiretapping acts are generally applicable and content-neutral laws focusing on *how* information is intercepted, rather than on what kinds of information can or cannot be intercepted, Sloviter opined that forcing reporters to track each piece of information to its source would be time

New Florida Law Closes Door on Autopsy Photos

Violation of the
statute constitutes a
third-degree
felony...

On February 18, 2001, while driving the last lap of the Daytona 500, NASCAR racecar driver Dale Earnhardt was killed when his car hit a wall.

The week before his death, the *Orlando Sentinel* had been running a series of articles concerning NASCAR safety. As a part of that series, the *Sentinel* stated that three earlier NASCAR deaths could have been prevented if the drivers had worn head restraint devices known as HANS. When Dale Earnhardt's death followed on the heels of the *Sentinel's* series, the newspaper hired a medical expert to examine Earnhardt's autopsy photos to determine if wearing the HANS device might have saved the racecar driver's life.

However, Dale Earnhardt's widow, Teresa, reacted to the *Sentinel's* request by filing suit in Volusia County Circuit Court on February 22, seeking an injunction to prevent the *Sentinel's* examination of the photographs. Mrs. Earnhardt's lawyer, Thom Rumberger, said that the release of the photos violated the Earnhardt family's privacy. Circuit Court Judge Joseph Will granted a temporary injunction, saying that the family's privacy interest outweighed the public interest in seeing the photographs.

On March 16, Teresa Earnhardt and the *Sentinel* arrived at a settlement, in which an independent medical expert would be allowed to examine Earnhardt's autopsy photos, after which the *Sentinel* could pose three questions relating to Earnhardt's death to the medical expert. Then, the photos would be permanently sealed.

While the case was playing out in Volusia County Circuit Court, Mrs. Earnhardt was simultaneously working in Tallahassee to pass a bill exempting photographs, video and audio recordings of autopsies from release under the state public records law. The bill, drafted by Senate Majority Leader Jim King (R-Jacksonville), was introduced in the Florida Senate on March 8, 2001. Riding a tide of public support that included phone calls and e-mails from Earnhardt's fans and others, the bill was signed into law by Governor Jeb Bush on March 29.

Included in the bill is the following: "The Legislature finds that photographs or video or audio recordings of an autopsy depict or describe the deceased in graphic and often disturbing fashion....As such, photographs or video or audio recordings of an autopsy are highly sensitive depictions or descriptions of the deceased which, if heard, copied or publicized, could result in trauma, sorrow, humiliation, or emotional injury to

the immediate family of the deceased, as well as injury to the memory of the deceased. The Legislature notes that the existence of the World Wide Web and the proliferation of personal computers....promotes and encourages the wide dissemination of photographs and video and audio recordings 24 hours a day and that widespread unauthorized dissemination of autopsy [materials] would subject the immediate family of the deceased to continuous injury. The Legislature further notes that there continue to be other types of available information, such as the autopsy report, which are less intrusive and injurious....and which continue to provide for the public oversight."

The bill, known as the Earnhardt Family Protection Act, SB 1356, allows autopsy photographs or recordings of the autopsy to be examined only by a surviving spouse, parent or child; anyone else must obtain a court order and examine the materials under the "direct supervision of the custodian." There are exemptions for administrative service providers such as the medical examiner and state or federal agencies which are performing official duties. In carrying out these duties, the identity of the deceased must remain confidential.

The Act also states that when issuing a court order permitting an outsider to examine the records, the court must consider whether such disclosure "is necessary for the public evaluation of governmental performance" and bear in mind "...the family's right to privacy." The family is to be notified when there is a petition to view the autopsy records of one of its members.

Violation of the statute constitutes a third-degree felony.

The new law restricts access to information by journalists and others who might wish to investigate a death for any number of reasons. It is particularly troublesome when the door is closed on information that previously had been available as an open and public record. Ironically, the *Orlando Sentinel* stated from the outset of the Earnhardt tragedy that it never had any intention of publishing the photographs; it simply wanted an independent expert to examine them in order to determine an unbiased cause of death so the *Sentinel* could follow up on its series on NASCAR safety.

Several organizations challenged the constitutionality of the Earnhardt Family Protection Act. In addition, the *Independent Florida Alligator*, a student newspaper located at the University of Florida, together with Michael Uribe, who runs Websitcity.com, a site that has already posted other autopsy photos, have sought access to the photos under the new law. However, on June 13, Volusia Circuit Court Judge Will ruled that the statute is constitutional and that the photos will remain sealed.

Other news organizations, including the *Orlando Sentinel*, *The Miami Herald*, *Chicago*

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Silha Center Staff

Jane E. Kirtley
Director and
Silha Professor
Elaine Hargrove-Simon
Bulletin Editor
Jack Breslin
Former Silha Fellow

Access to McVeigh Execution Prompts Ethical, Legal Debate

In the media frenzy over convicted Oklahoma City bomber Timothy McVeigh's last appeals, postponed execution and final hours, one widely-debated aspect of his demise – not unlike those misplaced FBI files – seemed to be lost. Should the government be allowed to control access to one of the most controversial proceedings in our democracy?

News media cameras were banned from McVeigh's execution. But it is conceivable that some day American television may be permitted to air public executions live. Would such a broadcast also be ethical?

McVeigh, convicted of bombing the Alfred P. Murrah Federal Building in Oklahoma City on April 19, 1995, was executed by lethal injection on June 11, 2001. Media cameras were banned from the execution chamber.

The Entertainment Network, Inc., a private Florida-based company, sued for the right to webcast McVeigh's execution. ENI is perhaps best known for its adults-only Internet subscription sites, such as live webcasts from college women's dorm rooms, and a live on-line chat with O.J. Simpson.

ENI stated that execution viewers would be charged \$1.95 by credit card, which, combined with parental blocking software, would prevent those under age 18 from accessing the site. The proceeds would be donated to a charity established for the bombing victims. ENI proposed to cover the execution using a handheld video camera, or, alternatively, by picking up the closed-circuit feed to bombing victims and their families in Oklahoma City as approved by Attorney General John Ashcroft.

Challenging the Federal Bureau of Prisons policies restricting broadcast coverage as unconstitutional, ENI's David Marshlack argued, "The government is sponsoring the killing of a human being who was responsible for this horrendous act. And we believe the people have an absolute right to witness the action."

On April 18, U.S. District Judge John Tinder denied the request, saying that webcasting the execution would not be "... form of news to which the public is entitled but an act of sensationalism." Three days before the execution, a federal appeals court overturned a judge's order that the event be videotaped for use in an unrelated Eighth Amendment case in Pennsylvania.

McVeigh's execution would not have

been the first or most gruesome depiction of violent death via the electronic media. Los Angeles viewers witnessed helicopter camera coverage of a motorist's shotgun suicide on a freeway overpass. Millions of Americans gasped when Jack Ruby shot Lee Harvey Oswald. Documentaries have featured slow motion of the Zapruder film's record of President Kennedy's assassination. Unsuspecting morning TV viewers watched as the Challenger spacecraft exploded and its crew plunged to their deaths.

At one point, McVeigh himself argued that everyone, not just a select on-site or closed-circuit audience, should be allowed to watch his last moments. "Hold a true public execution," he argued in a February letter to the *Daily Oklahoman*. "Allow a public broadcast."

Twenty-four witnesses, including 10 survivors or victims' relatives, as well as eight media representatives, were selected by lottery to watch the execution at the federal penitentiary in Terre Haute, Indiana. Some 230 survivors and family members watched on the closed-circuit feed in Oklahoma City. About 1,400 print and electronic journalists reported from the prison. Eight TV networks broadcast live from the location and featured extensive execution day programming from early morning to prime-time hours.

In April, Ashcroft urged the media to exercise "self-restraint" in their coverage of McVeigh's execution. In the days prior to the execution, the Attorney General barred on-site, video and voice-recorded interviews, permitting only 15-minute telephone contacts with the condemned man. He insisted that the restrictions were imposed out of sympathy for the victims, the survivors and the nation. Members of the news media characterized the restrictions as censorship.

"I would ask that the news media not become Timothy McVeigh's co-conspirator in his assault on America's public safety and upon America itself," Ashcroft said. "Please do not help him inject more poison into our culture. He's caused enough senseless damage already."

But in a letter to Ashcroft, Barbara Cochran, President of the Radio-Television News Directors Association, countered that "the federal government has no appropriate role in determining who or what has access to the 'public podium' that is our nation's press."

Ashcroft's concerns appear to raise three key ethical issues: how to avoid inflicting further harm to the victims of the bombing, validating McVeigh's delusions of martyrdom, and endangering national security. How do those concerns weigh against the resulting restrictions on newsgathering and publication/broadcast? And what about McVeigh's right of free speech? Should law enforcement officials decide that he has already said enough?

McVeigh had enjoyed a global podium for the last six years, highlighted by recent books and high-profile interviews. He displayed no

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McVeigh, continued on page 5

Russian Media Wrestles With Democratization Process

The idea of a free and unfettered press is foreign to the citizens of the former Soviet Union...

As the former Soviet Union continues its struggle with democratization, it is becoming apparent that the struggle is difficult for the independent Russian media as well.

Much attention has been given to Vladimir Gusinsky, a former theater director and now media mogul who made his money by founding a bank that handled government deposits. As his fortune grew, he launched *Segodnya* (also spelled *Sevodnya*), a daily newspaper in 1993. In January 1994, he started a television station, NTV. In its beginning, NTV was primarily a news outlet. The station made its mark with its coverage of the Chechnya war from 1994 to 1996 and later became Russia's only nation-wide independent television station. When Gusinsky's dreams for his company, Media Most, were larger than his pocketbook, he turned to Gazprom, a partially state-owned Russian gas company, for financial help. Gazprom loaned Gusinsky the funds he needed.

During the 1996 Russian presidential election, Gusinsky openly supported Boris Yeltsin, giving Yeltsin's successful campaign much more airtime than that of his opponent, Gennady Zyuganov. But on December 31, 1999, Yeltsin resigned from the presidency and former Prime Minister and former KGB colonel Vladimir Putin took his place.

In November 1999, just prior to Yeltsin's resignation, Russian courts froze NTV's bank accounts when Gusinsky was unable to repay his debts. Putin was officially elected President in March, and in June 2000, Gusinsky was arrested on suspicion of embezzlement while working to acquire a television company in St. Petersburg. According to the International Press Institute's 2000 World Press Freedom Review on Russia, Gusinsky supposedly negotiated a deal with Gazprom, Media Most's main creditor. The deal specified that in return for giving Gazprom Media Most's holdings, Gusinsky would receive cash, the forgiveness of his debts, and the state would drop criminal charges against him. Later, Gusinsky left Russia for Spain.

Afterwards, Gusinsky stated that deal was void, claiming he had been forced to sign it under pressure. The Kremlin denied any involvement in the affair. The deal with Gazprom was renegotiated, with Gazprom retaining temporary control over Media Most. But the Media Most shares given

Gazprom as part of the loan agreement either had no assets behind them or were entirely bankrupt. Gusinsky meanwhile maintained that he was seeking a foreign supporter for his company in order to avoid potential governmental restrictions.

Russian officials sought Gusinsky's extradition on charges of fraud. In December 2000, Spanish officials arrested Gusinsky, but Interpol asked Russian authorities for assurance that the charges against Gusinsky were not strictly political in nature.

On April 3, 2001, Gazprom replaced members of NTV's management with its own personnel. Early on the morning of April 14, security forces established control of NTV, and NTV journalists were barred from entering their offices. NTV reporters crossed the street to a smaller cable television station, TNT, also owned by Gusinsky. There the journalists set up operations and began broadcasting news again by 8 o'clock that morning, although they were reaching a much smaller audience than previously.

Two days later, Gazprom, together with Media Most's publishing house, Sem Dnei, announced that *Segodnya* would no longer be published. The following day, the staff of *Itogi*, a weekly magazine founded by Gusinsky and which published in conjunction with *Newsweek*, was fired.

Gusinsky is reportedly negotiating with media giants such as Ted Turner and Rupert Murdoch to regain control of Media Most, *Segodnya* and NTV. Although this scheme may circumvent governmental control, it is not without risk. Putting too much control into the hands of foreign investors can also affect content. Foreign investors may not understand cultural or societal differences, and may thereby – knowingly or unknowingly – exert inappropriate influence on their news organizations.

The idea of a free and unfettered press is foreign to the citizens of the former Soviet Union. Oppression has been the rule rather than the exception. Enduring a thousand years of Mongol rule, following by the Romanovs, and most recently the Communists, the majority of Russians have never experienced a press based on the Western model. In his article, "Russian's Dys-functional Media Culture," which appeared in the August 2000 issue of *Policy Review*, Herman J. Obermayer writes that without Western-type businesses to serve as advertisers, Russian newspapers lack the finances that would help them be independent.

Without money or independence and still bound by a journalistic tradition which dictates that more be concealed than revealed, Russian journalists are discovering that attaining the democratic media ideal is no easy task.

—ELAINE HARGROVE-SIMON
BULLETIN EDITOR

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Tribune, Los Angeles Times, Tampa Tribune, WFLA-TV, the Reporters Committee for Freedom of the Press, the Society of Professional Journalists, the Florida First Amendment Foundation, and the American Society of Newspaper Editors have stated that they oppose the law.

However, there are precedents for the sentiments expressed in the Earnhardt Family Protection Act. In 1997, designer Gianni Versace was murdered outside his home by Andrew Cunanan, who had led police on a multi-state manhunt. Unlike the Earnhardt incident, this was a crime and not merely an accident. Cunanan had previously killed others, and the manhunt for him had generated weeks of news coverage. Nevertheless, Versace's family won a court order to permanently seal his autopsy photos.

The public reaction to the debate surrounding Earnhardt's autopsy photos has been profound. There have been numerous phone calls and e-mails to media outlets as well as the Florida State Legislature, and a web site has been established for people to add their signatures to a petition requesting the autopsy photos be sealed. Subscriptions to the *Sentinel* have been cancelled and some of both the *Sentinel's* and the *Independent Florida Alligator's* advertisers have withdrawn their accounts. The *Independent Florida Alligator* has also reported that its office and newspaper boxes have been vandalized and death threats have been made to its editors, resulting in an increase in security at their Gainesville headquarters.

What seems to be lost in the public's reaction, however, is the fact that most media outlets do not publish autopsy photographs. Despite the fact that there have always been gruesome photos – such as those of Princess Diana following her car crash in a Paris tunnel and of JonBenet Ramsey following her murder – mainstream newspapers and magazines generally do not publish them, neither do the tabloids. Although the Earnhardt family's reactions are understandable, restrictions such as those in the Earnhardt Family Protection Act will prevent journalists from investigating events that affect the greater public interest.

—ELAINE HARGROVE-SIMON
BULLETIN EDITOR

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remorse, particularly over the death of 19 children, whom he characterized as "collateral damage." Officials also feared that McVeigh's last podium would encourage other anti-government forces, such as militias and survivalists, to commit further violent acts.

By contrast, critics accused Ashcroft of unconstitutionally preventing access to a notorious death row prisoner, and to a significant newsworthy event. However, an Associated Press

poll found that a majority of those surveyed supported the Attorney General's limitations on access, and that only one in five would watch the execution live if they could.

Until about 65 years ago, public executions were commonplace. An estimated crowd of 20,000 witnessed the nation's last public government execution, the 1936 hanging in Owensboro, Kentucky, of 19-year-old Rainey Bethea, a black man convicted of the rape and murder of his employer, a 70-year-old white woman.

Public proceedings give Americans the opportunity to see their criminal justice system in action. Although cameras are banned from federal criminal trials, most states allow some camera coverage in the courtroom for trial and sentencing. Why not execution of the sentence? Cameras go inside prisons for interviews. Why not for a live execution – justice in action? The government executed McVeigh in the name of all citizens. Why shouldn't everyone who chooses to do so be able to witness the act?

Once, we gathered in the town square to see justice done. Today, we should be able to gather in the electronic global town square as witnesses.

Nobody would be forced to watch. One could watch, listen or look away.

But it should be the individual's choice. Not the government's.

—JACK BRESLIN
PH.D. CANDIDATE AND
FORMER SILHA FELLOW

What seems to be lost...is the fact that most media outlets do not generally publish autopsy photographs.

First Amendment attorney
Lee Levine,
who argued on behalf
of the defendants in the *Bartnicki*
case,
will deliver the Silha Lecture
entitled,
"Newsgathering on Trial:
The Supreme Court
And the Press
In the 21st Century"
on October 2, 2001.

For additional information, see
story on page 8.

Miami Reporter Agrees to Restraining Order

...courts have recognized that patients do have an expectation of privacy when receiving medical treatment....

Investigative reporter Jilda Unruh, who has been called the “Pitbull in Pumps” – a name she first earned as producer and host of “The Jilda Unruh Show” at KTUL-TV in Tulsa – has agreed to a restraining order preventing her and other WPLG-TV Channel 10 (Miami) reporters from interviewing a prominent Florida lobbyist.

According to stories appearing in the *Miami Daily Business Review*, the *Broward Daily Business Review*, the *Palm Beach Daily Business Review*, as well as the Associated Press, the chain of events began with Eric “Rick” Sisser, a lobbyist who had been involved in a Miami-Dade School Board land purchase in Carol City. The deal soured when Native American remains were found on the property.

WPLG-TV reporter Unruh, seeking an interview with Sisser about the deal, reportedly visited Sisser in his hospital room at Mount Sinai Medical Center where he was awaiting treatment for congestive heart failure. Sisser alleges that on May 8, Unruh came to his private room in an area of the hospital designated for “executives.” Assuming she was a nurse, Sisser allowed her to come into his room. According to Sisser, Unruh immediately began asking questions specific to the land purchase deal. Sisser then asked her to leave, requesting she fax her questions to his lawyer. Sisser said that Unruh persisted in her line of questioning for a time, and eventually left. Sisser subsequently required treatment with a nitroglycerine drip to bring his blood pressure under control.

Unruh claims that she came to Sisser’s hospital room after seeking an interview with him for weeks before, which Sisser denies. When Unruh arrived at Sisser’s room, she was alone, without a camera, tape recorder or even a notebook. Unruh said that she identified herself to Sisser as a reporter, and he invited her in. After what has been called a few “cordial questions,” the interview turned to the land deal. When Sisser became agitated and asked her to leave, she did as he asked.

Bill Pohovey, WPLG-TV’s station manager, said that Unruh was professional and respectful towards Sisser during the hospital interview.

Sisser filed suit against the station,

asking for a restraining order against WPLG-TV and against Unruh. Miami-Dade Circuit Court Judge Norman Gerstein signed the order on May 15, which states that neither Unruh nor any other WPLG-TV employees may approach or attempt to interview Sisser for 30 days.

WPLG-TV attorney Karen Kammer agreed to the restraint on behalf of her clients, but added that her clients make no admission of liability and do not waive any defenses they may have to the claims Sisser raised in his lawsuit. Pohovey said that the station would not challenge the order, saying that Sisser had made it clear he did not want to talk, and therefore the station’s reporters would not pursue him.

Sisser interpreted the station’s lack of formal response as a sign of fear: that Unruh and other station officials knew that the interview clearly invaded his privacy. He called Unruh’s conduct “reprehensible.”

Although such celebrated cases as *Food Lion, Inc. v. Capital Cities/ABC Inc.* (194 F. 3d 505 (4th Cir. 1999)) and *Charter Behavioral Systems v. CBS* (No. 3:99 CV-150-MV (W.D.N.C. 1999)) deal with situations where reporters gain access to private areas and situations by concealing their true identities or purpose, Sisser never claimed that Unruh portrayed herself as a nurse, only that he mistook her for one. For her part, Unruh states that she did identify herself as a reporter before beginning the interview.

However, courts have recognized that patients do have an expectation of privacy when receiving medical treatment. (See *Shulman v. Group W Productions*, (955 P.2d 469 (Cal. 1998)). Voluntary codes of ethics, such as those adopted by the Society of Professional Journalists and Radio–Television News Directors Association, often do not specifically address privacy, but do exhort journalists to treat news subjects with respect, dignity and sensitivity.

—ELAINE HARGROVE-SIMON
BULLETIN EDITOR

consuming, and could have a chilling effect, especially when journalists often have no way of knowing whether the information came from a lawful source, or whether the information has already been made public.

Bartnicki v. Vopper came before the Supreme Court in December 2000. During his oral argument for the media defendants, attorney Lee Levine analogized the interception of the Bartnicki telephone conversation to someone who breaks into a house and steals a diary from the homeowner. “[T]he physical diary is property. Taking that, regardless of what’s inside it, is not the function of the First Amendment to speak to. If you’re talking about the contents of the diary, the information, and you’re then penalizing someone for now knowing that information, having it in his brain and then disseminating it to other people, that is something that the First Amendment is concerned about, especially when you’re talking about speech that is the truth and a matter of public concern.”

Levine’s example drives home the main conflict in the Bartnicki case: the right to disseminate truthful information, particularly when it is a matter of public interest, versus the right of privacy and an individual’s freedom of speech.

Justice John Paul Stevens wrote the opinion for the majority of the court. He reiterated that neither Yocum nor Vopper had participated in the interception of Bartnicki’s phone conversation — that they had obtained the recording lawfully — and that the information disclosed during the Bartnicki conversation was of public concern and had a bearing on public safety. Stevens analogized the delivery of the tape to Yocum to a person giving a handbill to another. Although it may appear to be conduct, it is an action that really involves speech, and as such is protected by the First Amendment. Punishing such an act, Stevens wrote, “...seldom can satisfy constitutional standards.”

Acknowledging that the Court’s ruling might have an effect on privacy, specifically the chilling of personal speech, Stevens focused on Bartnicki’s threat to “blow off their porches.” He wrote, “...privacy concerns give way when balanced against the interest in publishing matters of public importance.”

A concurring opinion by Justice Breyer, joined by Justice O’Connor, observed that Bartnicki and Kane were limited purpose public figures and that the conversation in question did not contain “mundane facts

about a person’s life,” but included a threat of harm to others. Breyer further stated that people who use cellular phones on the street are normally not concerned with the possibility of passersby overhearing their conversations, and that the freedom that comes with using a cellular phone often brings with it a lack of privacy.

Chief Justice Rehnquist, joined by Justices Scalia and Thomas dissented, viewing the majority’s opinion as a violation of individual privacy. Even those who have stepped into public arena, Rehnquist wrote, “...have not abandoned their right to have a private conversation without fear of it being intentionally intercepted and...disclosed.”

The *Bartnicki* ruling has affected two other pending cases. *Boehner v. McDermott* and *Peavy v. WFAA*. Both involved tapes of intercepted telephone conversations that were later used in news reports. However, unlike *Bartnicki*, *Peavy* involved a news organization that was aware that unlawful activity had led to the recording of the tapes; in *Boehner*, the source who passed the tape to the media was aware of the circumstances of its interception. On May 29, 2001, the Supreme Court ordered the U.S. Court of Appeals (D.C. Circuit) decision in the *Boehner* case to be vacated and remanded, and denied review of the *Peavy* case.

The ruling in *Bartnicki* is very narrowly drawn, turning on the fact that neither Vopper nor Yocum participated in the interception of the Bartnicki phone call, nor did they know that it had been illegally recorded. Although the *Bartnicki* decision relieves the journalist of the legal obligation to establish a “pedigree” for his or her sources of information, it leaves open the question of whether a journalist has an ethical obligation to determine the source of a tape before publishing its contents, or to eschew the use of such tapes entirely.

—ELAINE HARGROVE-SIMON
BULLETIN EDITOR

“...privacy concerns give way when balanced against the interest in publishing matters of public importance....”

—JUSTICE STEVENS

Bartnicki Attorney To Deliver 2001 Silha Lecture

Lee Levine, a prominent First Amendment attorney who successfully represented the media defendants in *Bartnicki v. Vopper* before the United States Supreme Court, will present the 2001 Silha Lecture on Tuesday, October 2, 2001, entitled, "Newsgathering on Trial: The Supreme Court and the Press in the 21st Century." The Lecture will begin at 7 p.m. in Cowles Auditorium on the West Bank of the Minneapolis campus of the University of Minnesota. A reception will follow in the atrium outside the auditorium.

The *Bartnicki v. Vopper* case has been one of the most closely monitored cases in recent history. The Supreme Court's decision holds that the First Amendment protects journalists who disclose the contents of an illegally intercepted telephone call involving an issue of public importance as long as they did not participate in the interception. This relieves journalists of the legal requirement of proving that their source obtained information legally, but raises a variety of ethical issues.

In addition to *Bartnicki v. Vopper*, Levine also argued *Harte-Hanks Communications, Inc. v. Connaughton* (1989) before the United States Supreme Court. He has litigated

in the courts of more than 20 states and the District of Columbia, and has appeared in most federal courts of appeal and in the highest courts of ten states. Levine is one of the authors of the textbook, *Newsgathering and the Law*, and has written several articles, among them, "Branzburg Revisited: Confidential Sources and First Amendment Values" and "The Myth of Pre-Trial Publicity."

Levine is a founding partner of the Washington, D.C. law firm Levine Sullivan & Koch, LLP and is an adjunct professor of law at Georgetown University Law Center. He is a past chair of the American Bar Association's Forum on Communications Law, the principal national association of attorneys practicing in the fields of media and communications law, and is recognized in *The Best Lawyers in America* as a leading expert in media law.

Levine is also a past chair of the Editorial Board of *The Communications Lawyer*, a quarterly publication of the American Bar Association, and is a member of the Advisory Board of the *Media Law Reporter*. He received his law degree from Yale University, where he was the managing editor of the *Yale Law Journal*. He received his B.A. and M.A. degrees from the University of Pennsylvania.

The Silha Lecture is free and open to the public. The sixteenth annual lecture is sponsored by the Silha Center for the Study of Media Ethics and Law, which was established in 1984 with an endowment from former publisher of the *Minneapolis Star* and the *Minneapolis Tribune*, Otto Silha and his wife Helen.

Housed in Murphy Hall on the East Bank of the Minneapolis campus of the University of Minnesota, the Center's mission has been to analyze the intersection of media ethics and law as well as the ethical responsibilities and legal rights of the mass media in a democratic society. For additional information about the 2001 Silha Lecture or the Silha Center itself, please visit the Silha Center web site at www.silha.umn.edu or contact Elaine Hargrove-Simon by e-mail at silha@tc.umn.edu or by phone at (612) 625-3421.

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Silha Center for the Study of Media Ethics and Law
School of Journalism and Mass Communication
University of Minnesota
111 Murphy Hall
206 Church Street SE
Minneapolis, MN 55455
(612) 625-3421

Silha Center

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