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Regulating the Media's Coverage of Terrorist Activities, 8 Computer L.J. 227 (1988)

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REGULATING THE MEDIA'S COVERAGE OF TERRORIST ACTIVITIES

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In the battle for survival of the reasonable society the television camera is the supertank—the Queen of the Battlefield. Ordinary mortals are wise to learn her ways and treat her with respect, but those who serve in her entourage have an awful responsibility.

R. Clutterbuck, *The Media and Political Violence*, 1981

Government leaders throughout the world are currently addressing the growing threat of terrorist activity. The leaders recognize the media's role as a conduit for terrorist demands¹ and are taking action. All agree that "media terrorism"² is an evil that should be eradicated, yet, while there has been much serious research on the problem of the media's role in domestic violence,³ the problem of how the media should function in a terrorist-crisis situation has not been systematically studied.⁴ Some observers accuse the news media of inspiring terrorist acts or serving as willing accomplices of the terrorists.⁵ Others allege that the media is responsible for terrorism only to the same degree that civil aviation is responsible for hijackings: "One can stop hijacking by grounding all civil aircraft; perhaps terrorism could be reduced by complete media blackouts."⁶

British Prime Minister Margaret Thatcher has taken a less hostile view. Thatcher has proposed "journalistic self-discipline" to starve future terrorists of "the oxygen of publicity on which they depend."⁷ United States Attorney General Edwin Meese III endorsed the Prime Minister's proposal and took it a step further. Meese proposed that the

1. See Jenkins, *Area of Consensus, Areas of Ignorance*, in *Terrorism: Interdisciplinary Perspectives* 171 (B. Eichelman, D. Soskis, & W. Reid ed. 1983).

2. Charles Krauthammer, senior editor of the *New Republic* and a contributing essayist at *Time*, labels this form of terrorism, created after 1968 by the Palestine Liberation Organization [hereinafter cited as "PLO"], with its random attacks on anyone, as " 'media terrorism,' because it can exist only if there is an interpreter to give it meaning." *Terrorism and the Media: A Discussion*, Harper's Forum, October 1985, 47, 50 [hereinafter cited as Harper's].

3. See e.g., Baron & Reiss, *Same Time, Next Year: Aggregate Analyses of the Mass Media and Violent Behavior*, 50 *Am. Soc. Rev.* 347 (1985); Freedman, *Effect of Television Violence on Aggressiveness*, 96 *Psychological Bull.* 227 (1984); Kessler & Stipp, *The Impact of Fictional Television Suicide Stories on U.S. Fatalities: A Replication*, 90 *Am. J. Soc.* 151 (1984); Krattenmaker & Powe, *Televised Violence: First Amendment Principles and Social Science Theory*, 64 *Va. L. Rev.* 1123 (1978); Phillips & Hensley, *When Violence Is Rewarded or Punished: The Impact of Mass Media Stories on Homicide*, 34 *J. Comm.* 101 (1984).

4. See Alexander, *Terrorism, the Media, and the Police*, in *Terrorism: Threat, Reality*, Response 331, 343-345 (R. Kupperman & D. Trent ed. 1979) for a summary of research activities that have dealt with some aspects of the terrorist problem.

5. See Jenkins, *supra* note 1, at 17.

6. See Jenkins, *supra* note 1, at 17.

7. Apple, *Meese Asserts U.S. Favors Press Code*, *N.Y. Times*, July 18, 1985, 1, at 7, col. 1.

United States Government "ask news organizations to adopt a voluntary code of restraint in reporting terrorist incidents."⁸ Speaking before the American Bar Association, Meese stated that he would oppose legislation restricting news practices. He suggested, however, that newspapers, magazines and broadcasters should agree to "some principles reduced to writing."⁹

This Note attempts to clarify the relationship between terrorism and the media. It evaluates the policy considerations¹⁰ regarding the propriety of media coverage or non-coverage of terrorist activities. The current forms of media regulation, and their applicability to the terrorist problem, are considered. This Note concludes that internal industry standards, if sufficiently effective, would be the most favorable method of regulation in this instance, and suggests industry guidelines to articulate the media's role in combatting terrorism.

I. POLICIES AFFECTED BY MEDIA COVERAGE OF TERRORISM

The policies that might be served by regulating the media's coverage of terrorism, in descending order of the need to regulate, include the following: (1) protecting victims' privacy; (2) preserving domestic order; (3) prolonging the crisis; (4) encouraging future acts of terrorism; (5) sensationalising; (6) ensuring the safety and well-being of target victims; (7) providing a forum of communication; and (8) satisfying the public's need to know.

A. PROTECTION OF PRIVACY

The invasion of a terrorist victim's privacy is the most direct and visible harm from media coverage of terrorism. The invasion of privacy by the media both during and following a terrorist event such as kidnapping, for instance, can be as traumatic to victims and their families as the actual kidnapping itself. If business executives dicker about ransom, for instance, company management will be perceived as insensitive or materialistic in its concern. Thus, publicized ransom decisions can adversely effect executive morale and increase exposure to future terrorist attacks.

In one incident, after hostages were freed, the police warned them not to give interviews to avoid increasing the complexity and difficulty of the prosecutor's task. Hostages complained that some journalists insisted on getting interviews. One network representative asserted that

8. *Id.*

9. *Id.*

10. I will periodically refer to harms from the coverage of terrorism as "anti-speech interests."

the public has the "right to know."¹¹ In declining to grant the interview, one harassed hostage replied, "Is it in the Constitution that the public has the right to invade my privacy, to insist on exposing people already humiliated, to wallow in their pain and misery?"¹²

B. LAW ENFORCEMENT

The public has a valid interest in preserving domestic order.¹³ The media, especially the broadcaster, can often frustrate police management by interfering with on-going operations, compounding the pressure on authorities, and impairing their ability to make decisions.

Full media disclosure of law enforcement activities could hinder the preservation of domestic order and impede counterterrorist efforts.¹⁴ Media coverage of such activities could lead to interference with law enforcement efforts in siege management crises. Or such disclosure could reveal particular law enforcement techniques and strategies of surveillance, investigation, or pursuit, and thus impede counterterrorist efforts in the future.¹⁵

The takeover of three buildings in Washington, D.C., in March 1977, for instance, became a major media event in which the media unknowingly worked at cross purposes with the responsible law enforcement officials.¹⁶ The media gave the Hanifi Muslim terrorists direct intelligence information (adding to the terrorists power) through on-site television coverage. Journalists directly telephoned the terrorists for interviews, thus hindering communication between the terrorists and police negotiators.¹⁷ During this incident, a television journalist publicly announced the lifting of a basket by rope to an upper floor, where some people, unknown to the gunmen, had barricaded themselves in a room. Hence, the gunmen were probably informed of the television reporter's observations by fellow terrorists who were monitoring the news media.¹⁸

During the same incident, a prominent Washington newscaster mistakenly labeled a gunman as a Black Muslim. Because the gunman's family had been murdered by Black Muslims, he flew into a rage, stormed into the hostages' room, and declared that he would kill one of

11. Alexander, *supra* note 4, at 338-39.

12. Alexander, *supra* note 4 at 339.

13. See Mann, *Personnel and Property of Transnational Business Operations*, in *Legal Aspects of International Terrorism* 399, 439 (A. Evans & J. Murphy ed. 1978).

14. *Id.*

15. *Id.*

16. Alexander, *supra* note 4, at 337.

17. Alexander, *supra* note 4, at 337.

18. Alexander, *supra* note 4 at 337-38.

them "in retaliation for the newsman's words."¹⁹

In another incident of media irresponsibility during the siege, a local journalist, reporting live, over both the radio and television, described what he thought were boxes of ammunition being taken into the building in preparation for what he termed an "all-out police assault."²⁰ The boxes, in fact, contained food for the hostages.²¹ The repercussions of such journalistic irresponsibilities could have been devastating.

In some incidents, the media's irresponsibility has resulted in fatal repercussions. For example, journalists directly contributed to the death of a hostage in a hijacking incident. While terrorists on board the hijacked jet were listening to the public radio broadcast, the journalist reported that the jet's "captain was passing valuable intelligence information to the authorities on the ground through his normal radio transmissions."²² The terrorists subsequently executed the captain.²³

When a terrorist incident is covered by the media, an inevitable critical relationship develops between the media responsible for reporting the episode, and the law enforcement personnel handling the incident. A terrorist event can seldom be kept secret. Especially in a siege situation, blocked streets or a surrounded house quickly becomes a honey pot for journalists. Law enforcement officials must realize that some journalists will go to any extreme to get news. The police must therefore decide, case by case, between setting up a complete barricade or being so casual that the media may thwart the chances of a successful rescue.²⁴

C. PROLONG THE CRISIS

Media attention may do more than interfere with law enforcement management during a terrorist crisis. It may actually prolong the crisis by introducing more variables into the equation. During the 1985 TWA hijacking, for instance, the White House considered asking the networks to limit their coverage on the grounds that "emotional pleas [were] making it more difficult to manage the crisis."²⁵

Once begun, media coverage gives the terrorist an incentive to prolong the crisis. For example, the American hostages kidnapped in Iran might not have been held as long as they were had the Iranians not re-

19. Fortunately, the threat was not carried out. Alexander, *supra* note 4, at 338.

20. Alexander, *supra* note 4, at 338.

21. Alexander, *supra* note 4, at 338.

22. Alexander, *supra* note 4, at 339.

23. Alexander, *supra* note 4, at 339.

24. See R. Clutterbuck, *The Media and Political Violence* 133 (1982).

25. Corry, *Must TV Be At The Mercy of Terrorists?*, N.Y. Times, July 21, 1985, 11, at 1, col. 5 [hereinafter cited as Corry].

alized that they had created an effective television stage which gave them immediate access to millions of people. The Iranians exploited the hostage crisis in a manner that would not have been possible without television cameras.²⁶ Speculating about why the Amal seemed reluctant to give up the hostages on the final weekend of the TWA hijacking, Peter Jennings remarked: "They were at the center of the universe—these hostage holders—why should they give them up?"²⁷

D. FUTURE ACTS OF TERRORISM

Media coverage of terrorism may further harm society by encouraging future acts of terrorism. The broadcasting of terrorist acts can lead to future acts because such coverage can (1) give terrorists advantages by providing worldwide publicity for their ideologies and organizational advantages, (2) result in imitated acts, and (3) make victims more vulnerable to repeated attacks.

1. *Advantages to Terrorists*

a. *Publicity Advantage*: By its very nature, terrorism is meant to capture the attention of the public. It is directed at changing the way society thinks. Modern technology, through television and the capabilities of global satellite communications systems, has provided terror groups with a critical communications instrument through which the terrorist receives instantaneous worldwide publicity.²⁸

Terrorists use the media as a form of political advertising.²⁹ Since they cannot buy television time, they gain coverage through commission of terrorist acts. Just as early television sponsors produced shows as vehicles for their commercials,³⁰ media terrorists now provide live drama—murder and kidnapping—in return for "advertising time".³¹

26. Harper's, *supra* note 2, at 58 (quoting Charles Krauthammer).

27. Corry, *supra* note 25.

28. This Note primarily concerns the broadcast media, hereinafter referred to as "media."

29. The media has been labeled as terrorism's "greatest asset" and the terrorist's "best friend". Mann, *supra* note 13, at 437. Televisions have been said to comprise the "universal hearth" over which terrorists can spread their message by capturing the television cameras first. Corry, *supra* note 25.

30. See Harper's, *supra* note 2, at 50.

31. See Alexander, *supra* note 4, at 332. Charles Krauthammer gave an example of how reporters can serve terrorists' propaganda and welfare needs as follows:

In 1979, for example, terrorists attacked the American Embassy in Beirut with grenades. One network correspondent explained that this action was 'perhaps an expression of resentment and frustration' on the part of Palestinians over the Israeli-Egyptian peace treaty. Here we reach a level where an attack on innocents is rationalized as a psychological necessity. Or consider the attack on a bus near Tel Aviv [in April]: it was generally explained as the PLO's assertion that it still existed after its expulsion from Lebanon, a kind of 'I kill, therefore I am.' With-

In 1968, for example, the Palestine Liberation Organization's³² terrorist acts were intended not to demoralize the Israelis, but to publicize political grievances.³³ The intended audience was not the immediate victims, the airline passengers, or even the Israelis, but the entire world.³⁴ Thus, restrictions on media publicity might have prevented these terrorists actions.

The Irish Republican Army³⁵ was also well aware of terrorists' ability to extort publicity. One of the few university graduates who joined the Provisional IRA (though she soon left it) articulated the importance that the group attached to propaganda:

Bombs were frequently timed to coincide with the evening rush hour when they would cause maximum impact. This had the added advantage that they would get a mention in the six o'clock TV news. The same applied to shooting incidents in which the aim was to involve the army; these would be timed so that the IRA's pre-drafted story, amended as necessary, could be issued to the press in time for news bulletin or newspaper deadlines—but carefully calculated to ensure that police or army accounts would be too late . . .³⁶

In July of 1974, an analysis of sixty bomb explosions showed that over eighty percent were timed to obtain maximum coverage on television news.³⁷

It is also a concern that the media loses interest in covering now-mundane hijackings and kidnappings, terrorists will then employ more spectacular methods of attracting publicity. The "fanatical" attack on the U.S. Marine Headquarters in Beirut, Lebanon, is one such example.³⁸

b. *Organizational Advantage*: Media coverage not only serves terrorists' ideological purposes by publicizing their campaign; it also gives them an organizational advantage by allowing a specific group to exhibit

out the press to carry this message, the act would have been meaningless; in fact, since it had no military or political purpose, it probably would not have been committed in the first place.

Harper's, *supra* note 2, at 58. He further stated that "when the point of a terrorist attack is to force the media to function as interpreters, the media have a heavy responsibility not to do the interpreting." *Id.*

32. Hereinafter cited as "PLO."

33. Harper's, *supra* note 2, at 50.

34. Harper's, *supra* note 2, at 50.

35. Hereinafter cited as "IRA."

36. R. Clutterbuck, *supra* note 24, at 91-92 (stating that "most news reporters confirm this") (citing Maria McGuire, *To Take Arms* (1973)).

37. R. Clutterbuck, *supra* note 24, at 91-92 (citing I.D. Evans, *Public Relations Practice within the Army* (unpublished paper, National Defense College, Latimer, 1976)).

38. Wilber, *The Role of the Media During a Terrorist Incident*, FBI Law Enforcement Bulletin 20, 20 (1985).

its strength and audaciousness in comparison with its rivals.³⁹ Any organized "group" must periodically consider its organizational allegiance, effectiveness, and survival.⁴⁰ Terrorist groups willing to sacrifice lives for their cause often engage in acts of terror to insure loyalty to that cause.⁴¹ Terror is also used by such groups to maintain internal discipline and to punish members for disobedience and defection.⁴² Their methods of internal discipline can be as brutal as the lynchings of the Japanese Red Army, or the kneecapping of the IRA.⁴³

Acts of terror can also be used as a tool to prevent the formulation of splinter groups and an instrument of intergroup rivalry.⁴⁴ An example of this "intergroup dynamic" is evident in the words of the Palestine Black September Organization. Responding to the western world's outrage at the Arab group's attack on the Israeli Olympic team,⁴⁵ he stated:

Call us what you may but it's good for our morale, and it may help the moderate elements in the movement to take a more militant position. After all our defeats, this comes as an uplift. We feel we have to do something. What does the world expect of young Arabs these days? We have seen too many defeats.⁴⁶

2. *Imitated Acts*

Worldwide terrorist publicity may also lead to an imitation effect, which, in turn, can become a direct cause of subsequent acts of terrorism. When terrorist techniques are disseminated and stories of daring and success against authorities are created, the success can encourage angry and frustrated groups, even in other countries, to imitate the acts.⁴⁷ An example of such imitation occurred when Argentina's Montoneros stole the body of ex-President Pedro Aramburu to insure that Eva Peron's body would be returned from Spain.⁴⁸ Shortly afterwards, Burmese terrorists stole the body of U Thant to use in negotiating with the Burmese government.⁴⁹

The recurrence of similar kinds of terrorist incidents following (and seemingly related to) particularly graphic reporting of a terrorist event has led some observers to conclude that there is a correlation be-

39. See Mann, *supra* note 13, at 409-10, 438.

40. See Mann, *supra* note 13, at 409.

41. See Mann, *supra* note 13, at 409.

42. See Mann, *supra* note 13, at 409; see also, J.B. Bell, *Transnational Terror* 10-19 (1975); B. Jenkins, *International Terrorism: A New Mode of Conflict* 5-6 (1975).

43. See Mann, *supra* note 11, at 62.

44. Mann, *supra* note 13, at 409.

45. Mann, *supra* note 13, at 409.

46. Mann, *supra* note 13, at 409-10 (citing N.Y. Times, Sept. 20, 1972, at 12, col. 6).

47. Alexander, *supra* note 4, at 337.

48. Alexander, *supra* note 4, at 337.

49. Alexander, *supra* note 4, at 337.

tween the reporting of an event and subsequent similar events.⁵⁰ For instance, some studies assert that people who watch and listen to the exportation of violent techniques on the news media get ideas about doing the same things themselves.⁵¹ The more publicity that the media gives to bomb scares, for instance, the more bomb scares there are likely to be. And reports about plane hijacking appear to have led to additional plane hijackings.⁵² Even if such a relationship exists, however, it would not prove that publicity of terrorist acts caused or encouraged later terrorist acts.

3. *Vulnerable Victims*

The media's coverage of terrorism events can also lead to future terrorist attacks by increasing particular victims' vulnerability to terrorist demands. Coverage can increase terrorism victims' vulnerability by (1) initially putting victims in a position where they cannot protect their own interests, and (2) publicizing the concessions that such victims make to terrorists and hence increasing their susceptibility to future attacks.

E. SENSATIONALISM

Media coverage of terrorism is often attacked for "sensationalism."⁵³ While it is unclear exactly what is meant by media sensationalism,⁵⁴ there are probably two primary objections. First, media coverage can justify terrorism by leading its audience to view terrorism in a favorable light. Second, it can offend its audience, or make people uncomfortable by espousing actions and doctrines which to many people are abhorrent.

When the media sensationalises a terrorist event, it seems to superimpose a "different reality" on terrorism. Terrorism has been defined as "an act of theater designed to have a strong psychological impact upon a vast audience. The image becomes as important as the reality,

50. Jenkins, *supra* note 1, at 163. Many studies have examined the relationship between mass communication and terrorism. Various aspects of the interaction have been examined, including even a search for a direct relationship between the number of incidents and the number of newspaper column inches or network minutes devoted to terrorist activity. See Jenkins, *supra* note 1, at 16. *But see* Jenkins, *supra* note 1, at 16 (stating that "[t]here has yet to be an adequate explanation of society's appetite for vicarious violence and of the relationship between the audience, the victim, and the events").

51. See *supra* note 3 and accompanying text.

52. Alexander, *supra* note 4, at 336; cf. Phillips, *Airplane Accident Fatalities Increase Just After Stories About Murder and Suicide*, 201 *Science* 748 (1978).

53. Corry, *supra* note 25.

54. It is also unclear how to purely avoid sensationalising news stories. For example, it is probably not possible to report a mass murder in a nonsensationalised manner.

for the terrorist victim is rarely the ultimate target."⁵⁵ For example, a viewer may intellectually know that the hijacking of a jet is a terrorist act, but television obscures the perception. On television, the 1985 hijacking of the TWA jet, along with the murder of one passenger and the incarceration of others, came across the screen not as a story about terrorism; it was a story about negotiations and how to set the hostages free.

One journalist observed that the media's sensationalising of the story changed its audience's reactions.⁵⁶ The journalist observed that the media's analyses and constant repetition of the hijackers' demands shifted the responsibility for the hostages away from the hijackers and the Amal militia to Israel.⁵⁷ While no psychological studies have attempted to document the effects of this kind of reporting, it could lead viewers to view the terrorist act more favorably than they ought to. An ABC poll taken during the TWA crisis, for example, found that an increased number of Americans than ever before then wanted the United States to distance its foreign policy from Israel.⁵⁸

Similarly, Alan Chalfont, a former minister in the British Foreign Office who writes widely on international affairs, suggests that the media's problem is its tendency to adopt a position of what he terms "magisterial objectivity" between our society and those attacking it.⁵⁹ Chalfont states that "the media subtly excuse certain terrorist acts by implying that they arise out of intolerable social conditions or intolerable oppression."⁶⁰ Sensationalism, under this theory, is undesirable because it does not tailor its coverage to present only the "correct" viewpoint.⁶¹ The fallacy with this theory is that it assumes a purely "right" and "wrong" world.⁶² There are virtually no issues, especially political, that have easily discernible rights and wrongs to justify such paternalism in media coverage.

55. Wilber, *supra* note 38, at 20 (citing A. Miller, *Terrorism, The Media And The Law* 58 (1982)).

56. Corry, *supra* note 25.

57. Corry, *supra* note 25.

58. Corry, *supra* note 25. The fact that media coverage can change Americans' views on foreign policy is not necessarily "bad." The primary argument here is against reporting which presents to the public only biased coverage.

59. Harper's, *supra* note 2, at 56.

60. Harper's *supra* note 2, at 56. Chalfont sees these justifications "in the media's tendency to equate the actions of legitimate governments, such as that in El Salvador, in fighting terrorists and revolutionaries with the activities of the terrorists themselves."

61. See Harper's *supra* note 2, at 56 (asking whether we can "simply accept the fact that we are at war with international terrorism, that there are two sides, ours and theirs?").

62. The media presents distorted pictures of poverty, depressions, farm bankruptcies, trade deficits, and any number of complex phenomena.

I believe that the problem with such sensationalised reporting is that the media is failing to fulfill its role of objective reporting. Although the media is usually considered uninvolved and proper in reporting criminal activity, when terrorists use the media to obtain their own objectives, journalists make, rather than report, the news. Subsequently, the public is unable to form its own opinions based on unbiased reporting.

F. FORUM OF COMMUNICATION

Media coverage can discourage future terrorist acts by providing a forum in which terrorists can ventilate their anger and frustration.⁶³ In some situations, media publicity can calm terrorist outrage by giving terrorists a voice. In one instance, hijackers demanded that a number of newspapers publish propaganda tracts. The simple compliance of several major newspapers to this request contributed to the incident's resolution.⁶⁴ The more media coverage given, the more the terrorist is likely to see himself as part of, rather than outside, the "system."⁶⁵

G. THE PUBLIC RIGHT TO KNOW

The principal drawback of any restriction on media coverage is that it necessarily limits the public's access to information.⁶⁶ Because terrorist acts have a great impact on the public order, the public should be advised of the issues involved, the response of law enforcement authorities, and the outcome of the case.⁶⁷ In addition, the public is just plain interested in terrorist activities—even if only because of the sensationalism aspect.

Some commentators do not give much weight to this right-to-know argument. John O'Sullivan,⁶⁸ for instance, has stated that he would be perfectly prepared to support a ban on interviews with terrorists in Northern Ireland; the only justification advanced for such interviews—namely, that we need to know what the terrorists' viewpoints are—is absurd.⁶⁹ He has concluded that because the public knows what the ter-

63. Alexander, *supra* note 4, at 339.

64. Alexander, *supra* note 4, at 339.

65. Alexander, *supra* note 4, at 339.

66. Journalists claim that because what is "newsworthy" is within the judgment of editors and reporters, the exercise of this decision is a public matter. Alexander, *supra* note 4, at 339 (citing to the Draft Card Burning Cases: *United States v. O'Brien*, 391 U.S. 367 (1968); and *United States v. Kiger*, 297 F. Supp. 339 (S.D.N.Y. 1969), *appeal denied*, 421 F.2d 1396 (2d Cir. 1970), *cert. denied*, 398 U.S. 904 (1970)). *See also* Mann, *supra* note 13, at 439.

67. Alexander, *supra* note 4, at 339.

68. John O'Sullivan is on the staff of the London *Daily Telegraph and Policy Review*.

69. Harper's, *supra* note 2, at 53.

rorists views are before they ever appear on television, their interviews need not be covered.⁷⁰ This is a very weak argument, however, for censoring interviews. Under this rationale, the government could ban interviews with all public figures on the grounds that the public already knows their views. Such a basis for regulation is clearly impermissible.⁷¹

A further extension to the right-to-know argument is that full disclosure by the media may actually be the best approach to solving the terrorist problem. Alexander Solzhenitsyn wrote: "Publicity and openness, honest and complete, that is the prime condition for the health of any society."⁷² Only with full and balanced coverage can the public actually see terrorist acts for what they really are.⁷³

The United Kingdom's *sub judice* doctrine provides for the virtual blackout of further comment on a case when it becomes "*sub judice*."⁷⁴ This form of censorship has greatly assisted terrorists in the United Kingdom.⁷⁵ For example, in the aftermath of "Blood Sunday" in 1972, the IRA and their sympathizers were able to publicize a totally false story of British army parachutists firing upon peaceful marchers because the government and security forces had been barred from refuting the story due to a decision to hold a judicial inquiry.⁷⁶

The events began with a Catholic Civil Rights march.⁷⁷ A group of about 150 boys broke away and attacked one of a series of army road-blocks diverting the entryway into the Protestant area of Londonberry. Meanwhile, the marchers gathered for a meeting about 500 yards away behind high blocks of flats.

When an observer reported that the remainder of the march was safely beyond the buildings, the army reserve (the 1st Battalion of the Parachute Regiment) was ordered to arrest the boys attacking the army road block. The Battalion soldiers chased the boys into an area of open ground and arrested about 70 of the 150. While the Battalion soldiers were catching the boys, the Battalion was fired upon both from the flats

70. Mann, *supra* note 13, at 440.

71. There is further argument for media coverage on the basis that if the government were to destroy, or even abridge, the freedom of speech, such censorship could threaten this nation's democratic system. And since it is a goal of terrorism to undermine authority and cause anarchy, a destruction of this country's democracy would ultimately result in the terrorists' victory. A nation plagued with fear and subject to the harms that occur through the media's coverage of terrorism, however, is probably not in a much healthier state of democratic fitness. See Alexander, *supra* note 4, at 170.

72. Livingstone, *War vs. Terrorism*, 1982 Inst. for Subnatl. Conflicts 76 (1982).

73. Livingstone, *supra* note 72.

74. R. Clutterbuck, *supra* note 24, at 93.

75. R. Clutterbuck, *supra* note 24, at 93.

76. R. Clutterbuck, *supra* note 24, at 93.

77. R. Clutterbuck, *supra* note 24, at 93-94.

and from another IRA barricade. The soldiers returned the fire. During the battle, an eyewitness behind the flats reported the arrival of about 50 more armed IRA reinforcements. Thirteen young men were killed.

As was the practice whenever security forces shot a Catholic insurgent,⁷⁸ the victim's weapons were removed by his comrades as they withdrew. Since the IRA had failed to hit anyone with any of their shots, they instantaneously put out the story that the soldiers had fired upon a crowd of unarmed marchers.⁷⁹ The army immediately denied this. And the evidence later proved it to be a total fabrication.⁸⁰ But the government's decision, the day after the event, to order a judicial inquiry made the case *sub judice*, and thereby banned the publication of their evidence until many weeks later. But the damage was done:

The highly emotive accounts of soldiers firing on the crowd went unanswered apart from the initial bare denials, and so were largely believed, especially amongst the Irish community in the USA, to the enormous benefit of the IRA funds.

...

This effect was increased by a number of British reporters who had themselves heard only one side of the story. Some were avowedly sympathetic to [the IRA's] cause (even though they avoided open support for the IRA) but others were honestly misled, and their reports, repeated by American and European newspapers, were valuable and encouraging for the IRA.⁸¹

As a result, the continuing violence during the 1972 year reached a peak of nearly double that in any other year of the conflict.⁸²

Full disclosure can also serve the public by putting public pressure on government officials to be accountable and act quickly. One aspect of an informed public is that it is informed about the government's activity. And one benefit of an informed public is that it can make more intelligent public decisions.

H. BALANCING THE POLICY INTERESTS

In short, the primary problem with restricting terrorist news coverage is that it implies censorship and suppression. The National News Council warned:

78. R. Clutterbuck, *supra* note 24, at 92.

79. R. Clutterbuck, *supra* note 24, at 92.

80. R. Clutterbuck, *supra* note 24, at 92. Forensic evidence later revealed that the two sides fired a roughly equal number of rounds—a little over 100.

81. R. Clutterbuck, *supra* note 24, at 92.

82. R. Clutterbuck, *supra* note 24, at 94 (citing "Northern Ireland: Is There A Way?", *Washington Review*, April 1978 (stating that deaths in 1972 were 467, compared with 175 the year before and 250 the year after; the next highest figure was 296 in 1976)).

[T]he dangers of suppression should be self-evident: doubts over what the media have withheld and the motives for such a blackout; questions about other types of news which might also have been withheld ostensibly in the public interest; and the greater possible risks involved in wild and reckless rumors and exaggerated, provocative word-of-mouth reports.⁸³

On the other hand, the media's right to report any and all news cannot be asserted when there are equal, if not more compelling public interests. Depending on the circumstances of each terrorist incident, the safety of victims may be enhanced or endangered by the media's publicity. Further, while responsible journalists would probably agree that media coverage of terrorist incidents should not be sensationalised, at the same time they would vigorously defend their journalistic right to determine how any particular incident should be reported. The resulting tension between these opposing concerns and viewpoints raises anew the continuing question of "responsible journalism."

II. EXISTING STANDARDS OF MEDIA REGULATION

The news media have no set policy for reporting terrorist events.⁸⁴ Television journalists claim to use the same judgment and ethics as do print journalists. News reporting is governed by the overall responsibility of the press: "to publish the news, and to use its resources to get the whole truth."⁸⁵ Newspaper editors take responsibility for their coverage by going through an intensive editing process. Their equivalents in television, however, tend to eliminate this decision-making process by providing live coverage of terrorists, captives, or even mediators. Television coverage thus becomes something that "just happens."⁸⁶

For example, in the 1985 hijacking of TWA Flight 847 in Beirut, the terrorists themselves edited the hostage interviews.⁸⁷ The terrorists decided who would appear on the air and the networks then covered the event live.⁸⁸ The networks thus let the terrorists perform their editorial functions for them. In essence, the terrorist beckons, the anchorman responds, the producers listen. The hijackers hold news conferences, the correspondents simply have to attend, and the hijackers take the show from there. But news should not just be something

83. Alexander, *supra* note 4, at 342 (quoting the National NEWS COUNCIL, "Paper on Terrorism," March 22, 1977, unpublished document).

84. Alexander, *supra* note 4, at 342.

85. Alexander, *supra* note 4, at 342 (quoting the *Long Island Press*).

86. See Corry, *supra* note 25. See also Alter, *Lessons for the Networks*, Newsweek, July 15, 1985, at 24 [hereinafter cited as Alter].

87. Alter, *supra* note 86.

88. Alter, *supra* note 86.

that "just happens;" it should be weighed and balanced, and then put into context.

Two distinct regulatory schemes, govern television broadcast communications in general: federal regulation under the Communications Act of 1934,⁸⁹ and self-regulation under the National Association of Broadcasters Television Code.⁹⁰ Before considering the applicability of these regulatory methods to the terrorist problem, I first address the constitutionality of such regulatory methods and the applicability of the principle of "more speech" to federal regulation in particular. I then proceed to the framework of federal regulation under the Communications Act to consider which of the anti-speech interests would be considered constitutionally permissible reasons for the government to regulate the media's coverage of terrorism. And finally, I discuss the media's attempts at self-regulation and the desirability of self-imposed restrictions on terrorism coverage.

A. THE FIRST AMENDMENT

The first amendment to the constitution states, in pertinent part, that "Congress shall make no law . . . abridging the freedom of speech, or of the press."⁹¹ Speech restrictions which are related to the suppression of expression are "presumptively unconstitutional."⁹² Numerous statutes, regulations, and case decisions, however, do regulate both speech and the press.⁹³

The first amendment permits more stringent regulation of the broadcast industry than the print industry. In *FCC v. Pacifica Foundation*,⁹⁴ the Court stated: "We have long recognized that each medium or expression presents special first amendment problems. And of all forms of communications, it is broadcasting that has received the most limited first amendment protection."⁹⁵

The principal rationales for regulating the content of broadcast communications more strictly than printed communications are as fol-

89. Communications Act of 1934, Pub. L. No. 73-416, 48 Stat. 1064 (1934) (codified as amended at 47 U.S.C. sections 151-610 (1982)) [hereinafter cited as Communications Act].

90. National Association of Broadcasters, *The Television Code of the National Association of Broadcasters* (19th ed. 1976) [hereinafter cited as NAB Code].

91. U.S. Const. amend I.

92. *Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575, 585 (1983).

93. See, e.g., *CBS v. Democratic Nat'l Comm.*, 412 U.S. 94 (1973); Copyright Revision Act of 1976, Pub. L. No. 94-553, 90 Stat. 2541 (1976) (codified as amended at 17 U.S.C. sections 101-810); Communications Act, *supra* note 89, at sections 151-610.

94. 438 U.S. 726 (1978).

95. *Id.* at 738 (citing *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 502-503 (1952)).

lows: (1) The scarcity of radio frequencies;⁹⁶ (2) the weightier privacy concerns from television's "invasion" into the home;⁹⁷ and (3) the pervasiveness of broadcasting in almost every aspect of an individual's life.⁹⁸

Unlike publishing a newspaper or opening a cinema, the television programmer must obtain a license from the Federal Communications Commission (FCC) to operate.⁹⁹ The fairness doctrine requires broadcasters to reasonably cover all sides of controversial issues of public importance by airing opposing viewpoints,¹⁰⁰ while editors of print media and movies can be as biased as they wish.¹⁰¹ A broadcaster must also present programming designed to meet the needs and interests of their communities of license, but printed publications need not do so.¹⁰² Furthermore, broadcasters must notify and give free reply time to those whose "honesty, character, or integrity" has been attacked during the discussion of a controversial issue,¹⁰³ whereas a printed publication cannot be required to do so.¹⁰⁴

In addition, Congress has proscribed cigarette advertising over the air.¹⁰⁵ If banned in another medium, the regulations might be considered unconstitutional.¹⁰⁶ The constitutionality of such provisions in broadcasting, however, has been upheld whenever challenged.¹⁰⁷

The first amendment freedom of speech is justified primarily on the basis that the proper remedy for "false" or "bad" speech lies not in

96. See *Red Lion Broadcasting Co. v. FCC*, 395 U.S. at 388 (stating that "[w]here there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unbridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish.")

97. *FCC v. Pacifica Foundation*, 438 U.S. 726, 748-49 (1978).

98. *Id.* at 748.

99. Communications Act, *supra* note 89, at section 301 (requiring the licensing of radio stations). Traditional first amendment law forbids prior restraints or licensing of printed publications. See *Minneapolis Star*, 460 U.S. 575 (1983).

100. Communications Act, *supra* note 89, at section 315; See also *Red Lion Broadcasting*, 395 U.S. 367 (1969).

101. *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 256-58 (1974) (holding that "newspapers are free to publish only one side of a controversial issue and to attack individuals without granting them space to reply").

102. 47 U.S.C.A. section 309(a) (West Supp. 1984).

103. Communications Act, *supra* note 89, at section 315; 47 C.F.R. section 73.1920 (1984); see also *Red Lion Broadcasting*, 395 U.S. 367 (1969) (upholding right-of-reply statutes as applied to broadcasters).

104. *Tornillo*, 418 U.S. 241 (1974).

105. 15 U.S.C. section 1335 (1970).

106. *But cf. Posadas De Puerto Rico Associates v. Tourism Co. of Puerto Rico*, 478 U.S. —, (1986) (upholding a ban on gambling advertising). After the recent Puerto Rico decision, the Court might uphold such a ban.

107. See *Capital Broadcasting Co. v. Mitchell*, 333 F. Supp. 582 (D.D.C. 1971), *aff'd* 405 U.S. 1000 (1972).

its censorship, but in the opportunity to hear more speech. The additional speech serves to answer or correct the preceding speech. Justice Brandeis best stated this principle as follows:

[T]he fitting remedy for evil counsels is good ones If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the process of education, the remedy to be applied is more speech, not enforced silence.¹⁰⁸

The principle of "more speech" rather than "enforced silence" has become, perhaps, the single most significant concept in first amendment jurisprudence.¹⁰⁹ It is only when "more speech" is not possible or practicable that the courts should allow "enforced silence."¹¹⁰ For example, the "clear and present danger" test¹¹¹ permits the government to suppress speech only if "the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion."¹¹²

Because there is no absolute standard to determine whether under any given circumstance an adequate opportunity for more speech to address preceding speech, it is a question of degree. The principle of "more speech" does not eliminate the need to balance speech and anti-speech interests. However, it is an essential, and sometimes decisive, element of the balancing process.¹¹³ Thus, this is the standard against which any governmental restriction of terrorist coverage would have to be assessed.

B. FEDERAL BROADCAST REGULATION AND ANTI-SPEECH INTERESTS

The federal Communications Act¹¹⁴ is based on the notions that the

108. *Whitney v. California*, 274 U.S. 357, 375, 377 (1927) (Brandeis, J., concurring).

109. See e.g., *Bates v. State Bar of Arizona*, 433 U.S. 350, 375 (1977); *Linmark Associates, Inc. v. Willingboro*, 431 U.S. 86, 97 (1977); *Nimmer, Nimmer on Freedom of Speech* 2-37 (1984).

110. *Whitney*, 274 U.S. at 377 (Brandeis, J., concurring).

111. *Brandenburg v. Ohio*, 395 U.S. 444 (1969). See *infra* notes 128-46 and accompanying text.

112. *Whitney*, 274 U.S. at 377 (Brandeis, J., concurring).

113. *Nimmer*, *supra* note 109, at 2-38.

114. Radio regulation began in 1910. Wireless Ship Act, Pub. L. No. 61-262, 36 Stat. 629 (1910). The broadcast media was not subject to direct federal regulation and policing, however, until Congress passed the Radio Act of 1927, Radio Act of 1927, Pub. L. No. 69-632, 44 Stat. 1162 (1927), and the Communications Act. Communications Act, *supra* note 89, at sections 151-610. Through these latter acts, Congress created the independent seven-member Federal Communications Commission. Communications Act at sections 154-55. The acts placed common carriers under the FCC's jurisdiction and established specific statutory guidelines for the FCC to grant and renew operating licenses. Communications Act at sections 201-244, 307. Through this authority the FCC can, in effect, directly influence the content of broadcast programs. In granting an initial license, the FCC must to some degree forecast future performance. To renew a license, however, the broad-

broadcast license is a public trust and the airwaves are a limited natural resource.¹¹⁵ As a publicly owned resource, the argument continues, the airwaves should be used primarily for the listening public's benefit, rather than for the gain of broadcasting entrepreneurs.¹¹⁶ Thus, to broadcast from a radio station, one must obtain a license from the FCC¹¹⁷ and the FCC may grant a license only when it will serve the "public interest."¹¹⁸ Congress gave the FCC this broad mandate along with the discretion for the FCC to develop its own standards and guidelines necessary to carry out its responsibilities.¹¹⁹

"Public interest" has been defined by cynics as "whatever four of the seven FCC commissioners can agree on at any given time."¹²⁰ Statutory and judicial attention, however, delineates the concept with just a bit more clarity. In particular, the public interest standard cannot be applied in a way that would infringe the first amendment rights of broadcasters.¹²¹ Thus, the constitutionality of any attempt to restrict media coverage of terrorism will depend on the constitutionality of the reasons for regulating the media's coverage of terrorism as delineated in Section I.

1. *Protect Victim's Privacy*

There are generally no privacy rights when one is involved in a newsworthy event. In *Cox Broadcasting Corp. v. Cohn*,¹²² for instance, the court discussed the issue of whether a person could claim the right to be free from undesired publicity about his private affairs which, although true, are embarrassing or painful, or would offend a person of ordinary sensibilities.¹²³ In *Cox*, the father of a 17-year-old deceased rape victim sued the newsman and television station for invasion of privacy by the publication of his daughter's name.¹²⁴ The Court recog-

caster's past performance is the FCC's best criterion. Therefore, because a renewal applicant must literally "run on his record," he conforms his performance to what is acceptable to the FCC. *Cf.*, *Office of Communication of the United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir. 1966).

115. *Office of Communication of the United Church of Christ v. FCC*, 359 F.2d 994, 1003 (D.C. Cir. 1986).

116. *Id.*

117. Communications Act, *supra* note 89, at section 301.

118. *Id.* at sections 303, 307 (stating that a license may be granted when it will serve "public convenience, interest, or necessity.")

119. *Id.* at section 154(i); *see also* R. Ellmore, *Broadcasting Law & Regulation* 17-18.

120. Albert, *Constitutional Regulation of Televised Violence*, 64 Va. L. Rev. 1299, 1317 (1978).

121. *Id.*

122. 420 U.S. 469 (1974).

123. *Id.*

124. *Id.*

nized the confrontation between the claim of privacy and the freedoms of speech and press.¹²⁵ It held, however, that the invasion on the plaintiff's privacy faded because the information was available on public record.¹²⁶ The Court stated:

Once true information is disclosed in public court documents open to public inspection, the press cannot be sanctioned for publishing it. In this instance as in others reliance must rest upon the judgment of those who decide what to publish or broadcast.¹²⁷

Under the *Cox* rationale, therefore, the government cannot suppress media publicity regarding victims of terrorism. Hence, the privacy interests of terrorism victims and their families are subject to the "judgment" of the journalists and reporters.

2. *Preserve Domestic Order*

If media coverage of terrorist events actually risks the preservation of domestic order and impedes counterterrorist efforts, its restriction may be constitutional under the "clear and present danger" standard. The standard, as established in *Brandenburg v. Ohio*,¹²⁸ enables the state to proscribe the advocacy¹²⁹ of a course of action if "such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."¹³⁰ The *Brandenburg* exception is probably not applicable to broadcasts over the television, however, because the television message is usually distributed to homes, not to public assemblies. Hence, the television message usually would not satisfy the requisite imminence.¹³¹

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. It is arguable whether media coverage of terrorism actually "advocates" terrorist acts.

130. *Brandenburg*, 395 U.S. at 447.

131. Brenner, *The Limits of Broadcast Self-regulation under The First Amendment*, 28 Fed. Com. B.J. 1, 15 (1975). Broadcasts may be classified into two types: entertainment and non-entertainment. Entertainment broadcasts could arguably entail a "clear and present danger" situation, such as when fictional "panic" broadcasts provoke community chaos. See *id.* (citing H. Cantril, *The Invasion From Mars: A Study in the Psychology of Panic*, Broadcasting, Dec. 23, 1974, at 25 (regarding the FCC inquiry into the hoax kidnapping of a station disk jockey)). Depending on the actual scenario of the broadcast, it might incite such chaos as to qualify for government regulation under the *Brandenburg* standard.

Regarding non-entertainment broadcasts, however, the "clear and present danger" rule might justify one kind of broadcast regulation in a state of national emergency. See *id.* at 15 n. 38 (stating that "even if the Supreme Court should someday find the Communications Act in violation of the First Amendment, the paramount right of the government to acquire access to the airwaves to broadcast relief bulletins to distressed

The applicability of the standard to coverage of terrorist activity, however, is unclear. Coverage of terrorist events for the purpose of preserving domestic order have yet to be censored by the government on the basis of a presenting a "clear and present danger." But assuming the potential for the media's coverage of terrorism to incite a national emergency,¹³² the requisite imminence might be sufficient for the government to regulate such coverage.

3. *Expedite Crisis Resolution and Prevent Future Acts of Terrorism*

Regulating terrorist coverage could also be based on a desire to expedite a resolution of the crisis or prevent future acts of terrorism. Whether the government could lawfully regulate terrorist coverage for these reasons would also depend on whether the coverage would satisfy the *Brandenburg* standard. Therefore, the "clear and present danger" analysis above would likewise apply in these instances.¹³³ The effect of coverage on resolution of a current crisis, however, is probably not sufficiently "clear" to pass the "clear and present danger" standard. In addition, the effect of coverage on future acts of terrorism is probably not sufficiently "immediate." In cases of the media releasing specific information about law enforcement plans, however, the test might be sufficient for regulation.

4. *Sensationalism*

The primary objections to the media's sensationalism of terrorism is that it (1) justifies, or promotes, unpopular ideas, and (2) is offensive.¹³⁴ Such objections, however, will not justify suppressing media coverage of terrorism.

The courts have afforded first amendment protection to restrictions on the advocacy of unpopular ideas. In *Winters v. New York*,¹³⁵ a New York statute made it an offense to publish or distribute publications "principally made up of criminal news, police reports or accounts of criminal deeds or pictures or stories of deeds of bloodshed, lust or crime."¹³⁶ The highest state court interpreted the statute as forbidding

communities cannot seriously be questioned"). See *id.*, at 18 n.41. See also Communications Act, *supra* note 89, at sections 606(c), (d).

132. Although the coverage of terrorism is not likely to incite a "national emergency," it is plausible that it could do so by interfering with law enforcement, impeding crisis resolution, or inciting future acts of terrorism. See *infra* notes 13-45 and accompanying text.

133. See *infra* notes 128-46 and accompanying text.

134. See *infra* Section I.E.

135. 333 U.S. 507 (1948).

136. 333 U.S. at 508. Subsection 2 of section 1141 of the New York Penal Law stated, in pertinent part, as follows:

Section 1141. Obscene prints and articles

the "massing" of pictures and stories of bloodshed so as to incite violent and depraved crimes against the person.¹³⁷ The Supreme Court held that, even so interpreted, the statute was unconstitutional because it did not establish a sufficiently definite standard of conduct.¹³⁸

In 1959, after striking down a variety of laws that suppressed counter-majoritarian expressions of ideas,¹³⁹ the Court articulated the principle of the right to express offensive ideas. In *Kingsley Int'l Pictures Corp. v. Regents of the University of the State of New York*,¹⁴⁰ the Court struck down a New York statute that barred the exhibition of the motion picture, "Lady Chatterley's Lover," on the grounds that the picture presented adultery in a favorable light.¹⁴¹ The Court's rejection of the statute *in toto* emphasized its objection to censoring nonobscene content.¹⁴² The Court distinguished "obscenity" (which does not receive first amendment protection) from ideas that may be morally objectionable.¹⁴³ The *Kingsley* principle would not extend the government's authority to restrict the freedom to express unconventional ideas to ideas, sexual or otherwise, whose impact is less disturbing than obscenity.¹⁴⁴ Therefore, because terrorism coverage by the media is not obscene, but merely objectionable, restrictions designed to prevent terrorism from being portrayed in a favorable light would likewise be held constitutionally impermissible.

Recent court decisions have continued to protect offensive speech.¹⁴⁵ The fact that particular speech is thought by many to be of-

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1. A person . . . who,
 2. Prints, utters, publishes, sells, lends, gives away, distributes or shows, or has in his possession with intent to sell, lend, give away, distribute or show, or otherwise offers for sale, loan, gift or distribution, any book, pamphlet, magazine, newspaper or other printed paper devoted to the publication, and principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures, or stories of deeds of bloodshed, lust or crime;
 - . . .
- Is guilty of a misdemeanor."

Id.

137. *Winters*, 333 U.S. at 514.

138. *Id.* at 520.

139. See e.g., *Hannegan v. Esquire, Inc.*, 327 U.S. 146 (1946) (striking down a law prohibiting "massed" descriptions of violence); *Burstyn*, 343 U.S. at 495 (striking down a law prohibiting "sacrilegiousness"); *Superior Films, Inc. v. Dep't of Education*, 346 U.S. 587 (1954) (per curiam) (striking down a law prohibiting "general immorality").

140. 360 U.S. 684 (1959).

141. *Id.* at 685, 690.

142. See *id.* at 686 n.7; See also *Brenner, supra* note 131, at 13 n.30.

143. *Kingsley*, 360 U.S. at 688. The status of obscenity under the first amendment is beyond the scope of this Note, but see *Roth v. United States*, 354 U.S. 476 (1957); *Miller v. California*, 413 U.S. 15 (1973); *New York v. Ferber*, 458 U.S. 747 (1982).

144. *Brenner, supra* note 131, at 14-15.

145. See e.g., *Carey v. Population Services Int'l*, 431 U.S. 678 (1977); *Coates v. Cincinnati*, 402 U.S. 611 (1971).

fensive by espousing political, religious, racial, or other doctrines which may find abhorrent, is not in itself a sufficient basis for abridging speech.¹⁴⁶ Offensiveness per se is therefore an anti-speech interest which does not outweigh the opposing speech interest.¹⁴⁷ Hence, restrictions on terrorism coverage based on the reason that such coverage sensationalises the crimes would be constitutionally impermissible.

C. INDUSTRY SELF-REGULATION

The broadcast industry's self-regulatory efforts historically track the development of federal regulation.¹⁴⁸ The NAB Code was first enacted in 1952 partly as a result of congressional upset over televised hard liquor advertisements.¹⁴⁹

The NAB Code operates through a nine-member Review Board which reports directly to the Board of Directors.¹⁵⁰ The Review Board consists of representatives from subscribing stations and one member from each of the three major networks, ABC, NBC, and CBS.¹⁵¹ The Review Board makes revisions in the Code and reviews Code Authority decisions.¹⁵² The Code Authority is responsible for the day-to-day self-regulatory operations.¹⁵³

Most of the NAB Code is expressed in generalities that have little, if any, content as applied to the choices involved in covering terrorism. For instance, because air time and frequencies on which to broadcast are limited, the NAB Code emphasizes "high standards of professional journalism" and news reporting that is "adequate and well-balanced," is "factual, fair and without bias," and provides "coverage consonant with the ends of an informed and enlightened citizenry."¹⁵⁴ The NAB Code, also provides that the broadcaster may not delegate to others its "responsibility as to judgments necessary in news and public events programming."¹⁵⁵ In keeping with the mandate of the Communications

146. See *Brandenburg*, 395 U.S. 444 (1969).

147. See e.g., *Carey v. Population Services Int'l*, 431 U.S. 678 (1977); *Coates v. Cincinnati*, 402 U.S. 611 (1971). This principle, however, is subject to qualifications such as in the contexts of captive audiences, *Cohen v. California*, 403 U.S. 15 (1971), and obscenity. *Roth v. United States*, 354 U.S. 476 (1957).

148. For a discussion of industry self-regulation beginning with the Radio Act of 1912, 37 Stat. 302, see Brenner, *supra* note 131, at 3 n.6.

149. Brenner, *supra* note 131, at 5.

150. Brenner, *supra* note 131, at 6.

151. Brenner, *supra* note 131, at 6.

152. Brenner, *supra* note 131, at 6.

153. Brenner, *supra* note 131, at 6. Such operations include clearing new network series and controversial episodes. *Id.* at 15.

154. NAB Code, *supra* note 90, at 7.

155. *Id.*; see Mann, *supra* note 13, at 440-41; cf. Brenner, *supra* note 131, at 40-62 (challenging the constitutionality of the NAB Television Code's programming proscriptions re-

Act, the NAB Code also requires news reporting broadcasters to serve the "public interest" while, at the same time, avoiding all forms of government censorship.¹⁵⁶ However, it is unclear what steps a broadcaster must take to fulfill this very general requirement.

The NAB Code also counsels broadcasters to "exercise due care in the supervision of content, format and presentation of newscasts . . . , and in the selection of newscasters, commentators and analysts."¹⁵⁷ For example, broadcasters should avoid "morbid, sensational or alarming details not essential to the factual report, especially in connection with stories of crime."¹⁵⁸ And further, "news should be telecast in such a manner as to avoid panic and unnecessary alarm."¹⁵⁹ However, these generalities offer no help in deciding what forms of terrorist coverage would be unduly "sensational" or cause "unnecessary alarm."

This general framework thus leaves all the operative decisions to the discretion of individual broadcasters. It is clear that individual broadcasters can (and often do) exercise that discretion by choosing to tailor the news in certain respects. There are times, for instance, when publishing the news is not the media's only role. *Not* publishing a story can be just as important in certain situations, such as when publicity might (1) jeopardize a defendant's right to a fair trial, and (2) endanger a kidnap victim's life.¹⁶⁰

In addition, not *every* aspect of *every* event is covered by a newscast. The media can "tailor" their coverage of every story on a daily basis¹⁶¹ to balance their coverage of terrorist incidents. For instance, the media can avoid sensationalising the story by using their discretion to determine (1) how to allocate limited news time or news space, (2) where to place the story on the program or in the newspaper, (3) whether the item is "newsworthy," and (4) the general manner in which to report it.¹⁶² The media can also present the same event from a variety of different viewpoints and, in so doing, reduce the sensationalised drama or poignancy of the terrorist act.¹⁶³ As an example of its tai-

garding provocative themes in entertainment programming). See *Massachusetts Universalist Convention v. Hildreth & Roth Co.*, 87 F. Supp. 822 (D. Mass. 1949), *aff'd* 183 F.2d 497 (1st Cir. 1950); see also *CBS v. Democratic Nat'l Comm.*, 412 U.S. 94, 105 (1973); *Mark v. FCC*, 468 F.2d 266, 268 (1st Cir.), *aff'g* *Alexandra Mark*, 34 F.C.C.2d 434 (1972) (concern that the FCC had abdicated its programming superintendence to the NAB).

156. See Communications Act, *supra* note 89, at sections 303, 306-307, 326; see also *Mann supra* note 13, at 440; *Brenner, supra* note 131, at 2.

157. NAB Code, *supra* note 90, at 7-8 (ch. V).

158. *Id.*

159. *Id.*

160. [Author omitted citation-*Ed. note*].

161. *Mann, supra* note 13, at 443.

162. *Mann, supra* note 13, at 443; see also *Livingstone, supra* note 72, at 71.

163. *Mann, supra* note 13, at 442.

loring, the media will *ordinarily* not report terrorists' techniques to avoid being instructional.¹⁶⁴ In addition, the media should not disclose law enforcement agencies strategies.¹⁶⁵ At the same time, as will be discussed below, the media should give more marked coverage of the prosecution and sentencing of terrorists. News reports, however, often appear to have been overlooked by this tailoring process. For example, when television correspondents interview terrorists or attend news conferences conducted by terrorists, the correspondents should not gratuitously give the terrorists complete control of the interview with the cameras running on pointlessly and dizzily.¹⁶⁶ Covering interviews of terrorists, captives, or even mediators live is like letting them decide what goes on America's front page.

An example of media self-restraint occurred in the late 1970s when there had been a rash of occurrences where spectators at sporting events invaded the playing fields after the game to capture their few seconds of exposure on national television.¹⁶⁷ After several of these episodes, some of the networks turned their cameras away. Instead, the broadcaster reported: "There's someone running out onto the field, but we won't show him to you because if we do, it will encourage other clowns to do the same thing."¹⁶⁸ When hearing the crowd cheer, the viewer certainly wanted to see what was happening. But it was worth foregoing that pleasure in return for the "greater societal good"—the nondisruption of future ball games.¹⁶⁹ The same type of self-restraint should be applied when covering terrorist events. The "societal good" to be gained in tailoring the coverage of terrorism is the diminished incentive to commit political murder.¹⁷⁰

The very nature of terrorist activities, however, can make balancing terrorism coverage quite difficult. The terrorist, for instance, may have carefully structured the incident to highlight their cause. Such tailoring will not ordinarily reveal the organizations' violent presuppositions.¹⁷¹ In addition, the terrorists seldom reveal alternatives available to them within the existing structures of society through which they could assert their cause and work constructively toward a nonviolent resolution

164. NAB Code, *supra* note 90, at 4 (ch. IV-i); Mann, *supra* note 13, at 442.

165. An exception would be where revealing such strategies is pertinent to understanding "critical social issues, such as abuses of authority or the protection of individual rights." Mann, *supra* note 13, at 442.

166. See *supra* notes 86-88 and accompanying text. This argument, of course, changes when terrorists threaten to kill their hostages unless they get free run of the cameras.

167. Harper's, *supra* note 2, at 58 (quoting Charles Krauthammer).

168. Harper's, *supra* note 2, at 58 (quoting Charles Krauthammer).

169. Harper's, *supra* note 2, at 58 (quoting Charles Krauthammer).

170. Harper's, *supra* note 2, at 58 (quoting Charles Krauthammer).

171. Harper's, *supra* note 2, at 58 (quoting Charles Krauthammer).

of social problems.¹⁷² If only for this reason alone, the media must present a balanced news coverage.

Professional industry standards, however, are not advocated by everyone. The competitiveness of reporters is seen as a detriment to the success of industry self-regulation, as the following analysis suggests:

Iran proved once again, beyond doubt, that terrorism is quintessentially the propaganda that also sells newspapers and increases TV ratings. In April 1977, a major television network issued a series of internal guidelines for the coverage of terrorist incidents. Yet, throughout the Iranian captivity, these guidelines were ignored to a far greater extent than they were observed. All three television networks, taking advantage of the Iranian drama, developed a blind eye to professional, ethical considerations in a fervent competitive quest for audiences. For example, despite policies prohibiting nonspontaneous interviews, all three networks jumped at the chance to broadcast their correspondents' controlled conversations with the Ayatollah. . . .¹⁷³

Ted Koppel further warned that once the media's role is changed by regulated coverage, even for reasons that may seem valid, it may be difficult to change it back when the reasons are no longer valid.¹⁷⁴

Warning heeded, the terrorist problem must still be dealt with. One psychologist suggested that "the media may perform a useful reporting function if their approach serves to stabilize the situation, then gradually confronts the terrorist with the reality and difficulty of their position and, at the same time, prepares the public for possible outcomes of the incident."¹⁷⁵ This view promotes, in a very general way,

172. Harper's, *supra* note 2, at 58 (quoting Charles Krauthammer).

173. Wilber, *supra* note 38, at 20-21 (citing A. Miller, *Terrorism, The Media And The Law* 59 (1982)).

174. Wilber, *supra* note 38, at 20-21. Clarence Mann has stated:

The major difficulty with the concept of self-restraint is that the media, collectively, appear to lack a thoroughly considered view of their role in dealing with terrorism. Considering the importance of publicity to terrorist motivation, it is incumbent on the media to review these issues carefully, to conduct the necessary practical research into the relationship of the media to terrorism and to arrive at some practical guidelines for the industry.

Mann, *supra* note 13, at 444. Ted Koppel further stated:

[I]t is not the job of the media to censor itself Press censorship was never imposed during the Vietnam War because President Johnson was unwilling to pay the political price of a declaration of war. If indeed our leaders believe that we are in a state of war, then let it be declared. Once war is declared, then all kinds of societal pressures, and indeed legal pressures, come to bear on the media to play a different role than the one it plays right now.

Harper's, *supra* note 2, at 58.

175. Wilber, *supra* note 38, at 20 (citing A. Miller, *Terrorism, the Media And The Law* 61 (1982)). Regarding the reality of cooperating with the media, the author proposes the following:

An associate director for programs at the U.S. Information Agency has suggested that a blue-ribbon panel be created to study self-regulation of the media in ter-

"more speech" while at the same time permitting regulation to the extent that it addresses the harms resulting from terrorism coverage. As a general policy for reporting terrorist activity, the media need specific guidelines that address the particular policy issues inherent in such coverage.

If the media are unable to adopt such internal standards, then, as stated in the *FBI Law Enforcement Bulletin*, "it is conceivable that at some future date, assertions of national interest may ultimately take priority over the public's historic rights to be informed."¹⁷⁶ The *Bulletin* continues to state that "[i]t is far better to come to grips with the issue now than to place trust in luck or crisis management."¹⁷⁷

III. LIMITING TERRORIST COVERAGE THROUGH INDUSTRY STANDARDS

The following are possible professional industry standards¹⁷⁸ for the media to deal with terrorist events in a responsible manner.

A. DETERRENCE

Proposed: *Report prosecutions and sanctions imposed on terrorists.*

In many instances, the deterrent value of reporting terrorist's punishment is ignored. Because the sensational value of terrorism for the media's purposes is in the initial terrorist act, only the initial act is treated by the media as newsworthy. Consequently, little or no attention is given to the perpetrators' punishment.¹⁷⁹ The outcome of the lengthy legal proceedings tends to only receive passing notice by the media.¹⁸⁰ For example, a random survey of American and European newspapers showed that reports of the terrorists' punishment received less than five percent the column inches of space as reports of the ac-

rorist situations. The panel would set guidelines to help the media anticipate critical situations where constraints might be necessary. *Terrorist-Media Concerns Grow*, Current news, Special Edition, Terrorism, USAF 32 (1983).

In my opinion, such an idea could be instituted at the military installation level or local level and could serve as a good 'icebreaker' for the public affairs representatives to meet with the media on counterterrorist issues. . . . The idea would be for all to learn who the key 'players' would probably be in a terrorist incident and for them to develop a working rapport with each other.

176. *Id.* at 443 (citing comments of R. Mulder at Seminar of International Press Institute, Christian Science Monitor, May 18, 1976, at 16).

177. *Id.*

178. Voluntary acceptance of a professional code by the media ownership, even though for reasons of public service to the community, could entail antitrust implications which will not be addressed in this Note. Sherman Act of 1890, 26 Stat. 209 (1890) (codified as amended at 15 U.S.C. sections 1-7 (1982)). For a discussion of mass media and monopoly, see Overbuck & Pullen, *Major Principles of Media Law* 360 (2d ed. 1985).

179. Livingstone, *supra* note 72, at 71.

180. Livingstone, *supra* note 72, at 71.

tual terrorist acts.¹⁸¹ This proposal addresses primarily the problem from the media's coverage of terrorism encouraging future acts of terrorism by deterring such acts.

B. LAW ENFORCEMENT

Proposed: *Cooperate with appropriate law enforcement officials during a terrorist incident.*

This proposal addresses the problem of the media's coverage of terrorism interfering with law enforcement. Compliance with this standard may entail, for example, editing reports so as to not disclose details of law enforcement strategies that might seriously jeopardize the present or future efficacy of law enforcement by instructing terrorists, or by endangering the lives of the public, law enforcement officers, or others.¹⁸²

Those in the law enforcement industry have also recognized that they "must work with the media with the view of establishing mutually acceptable, realistic, and workable standards to be applied by both sides during terrorist incidents."¹⁸³ The *FBI Law Enforcement Bulletin* states that "[a]n early goal is to establish a relationship with the media that does not foster the idea of 'sides.'"¹⁸⁴

While compliance with this standard does not necessarily require reporters to do whatever law enforcement officers want, it should serve as a general guideline to at least ensure that reporters are not recklessly or intentionally working at odds with law enforcement.

C. NEWS TIMING

Proposed: *Delay coverage until the incident is resolved.*

In many instances, the United States, as well as other democratic societies, have withheld publishing a kidnapping or extortion threat until the incident was resolved.¹⁸⁵ In such kidnapping cases, the media agrees to postpone coverage, but usually with an understanding that the media's "blackout" is voluntary and that they will be kept well informed of important developments.¹⁸⁶ An example of a democratic government requesting a news ban involved a threat of terrorism so grave that the West German government requested the media to silence themselves. After the incident was resolved, the government published,

181. Livingstone, *supra* note 72, at 71.

182. Paust, *Private Measures of Sanction*, in *Legal Aspects of International Terrorism* 607 (A. Evans & J. Murphy ed. 1978).

183. Wilber, *supra* note 38, at 21.

184. Wilber, *supra* note 38, at 21.

185. Mann, *supra* note 13, at 441.

186. Mann, *supra* note 13, at 441.

as it had promised, a detailed account of the event.¹⁸⁷ The rationale for the media's cooperation in such instances depends on the circumstances of each case, varying from the victim's safety to support of law enforcement investigation.¹⁸⁸

The same policy could be utilized for terrorist activities. To be effective, however, the press might have to pool its releases and interview responses. Otherwise, reporters more concerned with their ratings than the societal good may not comply with the delay standard.

An attorney for a large transnational business enterprise also notes that in cases of highly visible terrorist attacks, such as bombings, the victim (in this case, the business enterprise) may have to cooperate with the media, in return for delayed coverage, by keeping the media advised of new developments.¹⁸⁹ In cases such as the kidnapping of a corporate official, the company may decide it best to avoid all comment and, in addition, remove the official's family from the area, out of reach of reporters until the case is resolved.¹⁹⁰ He further notes, however, that the victim company, of course, can only attempt to moderate the terrorists' demands for publicity. It cannot control them. Neither can the company force a victim's spouse or family to move or avoid statements to reporters if they decide otherwise.¹⁹¹

Delaying the coverage of terrorist events can lessen the harm from media coverage in each of the concerns addressed in Section I of this Note. Victims would not be harassed for interviews when they are the most vulnerable, law enforcement would encounter less interference; and the crisis could be resolved more expeditiously. Reporting the terrorist event somewhat after-the-fact would lessen the drama and sensationalism value of the reporting. Further, because publicity is a major motivating factor for terrorists,¹⁹² future acts of terrorism may decline for lack of publicity. On the other hand, since publicity is such a significant factor for terrorism, news suppression might not have a substantial preventative effect. Terrorists might resort to even more visible forms of terrorism. For instance, terrorists could engage in more frequent bombings of public places, public assassinations, attacks against critical

187. See Alexander, *supra* note 4, at 342.

188. See Mann, *supra* note 13, at 441. Although the rationale for delayed coverage may vary, there is probably a good rationale for such delay in each terrorist incident.

189. Mann, *supra* note 13, at 442.

190. Mann, *supra* note 13, at 419-20, 439, 442 (where the failure of the company and media to follow this approach in response to the kidnapping of William Niehous "reinforced media preoccupation with the incident, and may have exacerbated the relationship between [the company] and the Venezuelan government").

191. Mann, *supra* note 13, at 442.

192. See *infra* notes 28-46 and accompanying text; see also Mann, *supra* note 13, at 438.

public facilities and corporate institutions.¹⁹³

D. REPETITION

Proposed: *Once is enough.*

The current practice of mindless repetition serves no purpose.¹⁹⁴ During the 1985 TWA hijacking, television ignored the editorial process by showing whatever it could whenever it could.¹⁹⁵ While it may be permissible to show one news conference as demanded by hijackers and hostageholders, it is irresponsible to allow coverage to run pointlessly and dizzily on.¹⁹⁶

This proposal addresses primarily the objections to the media's sensationalism of terrorist events. Like the problem, however, the solution is relatively ambiguous.¹⁹⁷ At the least, the guideline should serve to increase broadcasters' accountability regarding the repetition of broadcasts.

E. PUBLIC EDUCATION

Proposed: *Educate the public as to the import of terrorism on society.*

The media must make clear that even legitimate grievances cannot justify the taking of innocent lives—especially where such grievances can be espoused through democratic processes.¹⁹⁸ This proposal thus addresses the concern that terrorism coverage encourages future terrorist acts. The media should fulfill its "public interest" role¹⁹⁹ by discussing the impact of terrorist violence on democratic institutions, including law enforcement's dilemma of being effective and at the same time securing due process rights. Through such education, the media can rally public sentiment against unnecessary violence and curb future acts of terrorism.²⁰⁰ Public education can further lessen the impact from me-

193. Such as occurred at the Munich Olympiad.

194. See Corry, *supra* note 25.

195. See Corry, *supra* note 25.

196. See Corry, *supra* note 25.

197. Should news broadcast at 6:00 pm. be broadcast again at 11:00 pm? At 6:00 am. the next day? An hour later with further developments?

198. Mann, *supra* note 13, at 443-44. Public education should serve to strip terrorism of its "romantic veneer, and its violent underpinnings must be exposed to public scrutiny." *Id.* at 444 (citing *Terroristic Activity, International Terrorism: Hearings Before the Subcomm. to Investigate the Administration of the Internal Security Laws of the Senate Comm. on the Judiciary, 94th Cong., 1st Sess., at 206 (1975)* (testimony of Brian Crozier)).

199. See *supra* notes 115-17 and accompanying text.

200. The media can "channel demands, identifications, and expectations away from the coercive, fear-ridden message of terrorist events (and thus counterpose the support of a terrorist challenge as well as the strategy itself)." Paust, *supra* note 182, at 582.

The following warning, however, should be heeded:

dia sensationalism by putting individual terrorist acts into unimpassioned perspective.

IV. CONCLUSION

When reporting on terrorism, the media function as a two-edged sword. They assure terrorists that their grievances will receive public attention; yet they also can mobilize public opinion against the arbitrary use of violence by stripping terrorism of its "romantic veneer" and exposing its violent underpinnings to public scrutiny.²⁰¹ The proposed general industry guidelines should minimize the harms from publicizing terrorist events while maximizing the speech interests vital to a democratic society.

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While the media have great power to mobilize public opinion against terrorism, in specific incidents this power must be exercised with great care. A miscalculation could endanger the lives of hostages or hamper the efforts of law enforcement authorities. At the same time, to use this power only to suppress the news would ignore the constructive potential of the media during the course of a terrorist incident and over the longer term. Perhaps, more importantly, any injudicious or prolonged suppression of the news could ultimately undermine the media's credibility.

Mann, *supra* note 13, at 444.

201. Mann, *supra* note 13, at 444.