

FROM CHAOTIC TO COPESETIC

LESSONS IN MEDIA RELATIONS FOR COURTS FROM *PEOPLE VS. SCOTT PETERSON*

BY ALEXANDER B. AIKMAN

This is a success story. It's a story about creating new paradigms. It's a story of a non-urban-center court and its sheriff's and police departments successfully getting on top of the media tornado that accompanied one of the country's most notorious cases in recent years. It's a story of some luck, but, to a much greater degree, it's about sound judgment and good leaders not losing sight of their principles when dealing with masses of media. It's also a manual for courts on how to respond should they ever find themselves in the midst of a media storm. Further, there are suggestions about what to do in advance of being faced — normally, unexpectedly — with a notorious case. As a manual, this article complements the National Center for State Courts' *Managing Notorious Trials*.¹

Imagine that you arrive at the courthouse one morning to find the hallways literally packed with television camera operators and still photographers, to the point that the line at the security screening is out the front door and down the stairs. Citizens with court business ot get in or move easily through the halls to get to the proper room or an office. You get inside and look at the criminal division filing counter. The counter, about 12 feet wide, is packed solidly with people — possibly as many as 50 — two and three deep, clamoring for a copy of a complaint that has not yet been filed. Meanwhile, the street in front of the courthouse is filled with television satellite trucks and reporters, effectively blocking both vehicular and pedestrian traffic. This is the situation that greeted Mike Tozzi, court executive officer of the Stanislaus County (Modesto, California) Superior Court on Monday, April 22, 2003, the first Monday after the arrest of Scott Peterson. Tozzi's reaction? "We can't let this happen." His answer: "We have to get all the cameras out of the courthouse, and then we've got to look at creating a Web site."

The previous Thursday night, the night that Scott Peterson was arrested and brought to the jail in Modesto, Kelly Huston, media relations manager for the Stanislaus County Sheriff's Department, faced a similar deluge. Within hours of the arrest, the 100 message slots in his cell phone were full, his pager message files were full, and he had so many calls and messages on his work and home telephones that he had to disconnect his home telephone. Huston was being deluged because the sheriff runs the jail, and the press wanted every scrap of information it could get about Peterson, the jail itself, and what Peterson was experiencing in that jail. Huston's reaction? "There must be another way to handle this." His answer: a Web site to handle the it frequently asked questions so, hopefully, he could regain use of phones and pager.

Within minutes of the presiding judge arriving at the courthouse, Tozzi obtained his order to clear the courthouse of cameras. Late that morning, as Huston was waiting to talk to him, Tozzi turned to his secretary to ask her to contact the court's information technology department about setting up a Web site. Huston was there to start coordination efforts between the court and the sheriff's department. (The sheriff provides court security in Stanislaus County.) Thus began what Tozzi later described as, "A marriage made in one minute that lasted a lifetime."

This is the story of how Stanislaus County and the superior court dealt with its first "notorious case" between April 22 and the day nine months later that the case was transferred for trial to another county. After describing what Stanislaus County did, this article draws on Stanislaus' responses to identify lessons all courts can use when and if such a case ever is filed with them.

THE SCOTT PETERSON CASE AND HOW IT WAS HANDLED

The Case

On Christmas Eve, 2002, a 29-year-old woman who was within weeks of delivering her first child, Laci Peterson, was reported missing by her husband, Scott. Law enforcement in Modesto, California, and her family launched a search that evening that continued on Christmas Day and, eventually, for months thereafter. Law enforcement was joined at first by dozens of Laci's friends and family members, then by hundreds and then thousands of volunteers who did not know Laci but were touched by the story. The national media, primarily the



Photo courtesy Modesto Police Department

24-hour news networks but eventually virtually all national television outlets and newspapers, many national radio talk shows, and national news and gossip magazines, picked up the story. Interest mushroomed across the country and remained high through the discovery of Laci's and her baby's remains in early April 2003. From the outset, the story seemed to touch a collective public nerve; this story, in contrast to so many others, did not die down or go away. This case had the makings of a "notorious case" almost from the beginning. Two things were unknown and unknowable for the court, however: 1) whether anyone would be arrested and charged with the crime and 2) when such an arrest might occur. All the court could do for four months was wait for the answers to these questions.

On Thursday afternoon, April 18, 2003, Laci's husband was arrested 500 miles from Modesto, in his parents' hometown, San Diego. Journalists began reporting he had changed his appearance, was carrying his brother's identification, and had \$10,000 on his person as he drove around in a new car about 20 minutes from the Mexican border. Modesto police went to San Diego and brought Scott back to the Stanislaus County jail just before midnight on Thursday night. Demonstrators carrying signs already condemning him for the murder of his wife and son greeted the police caravan carrying Scott as it drove up to the jail.

A complaint charging two counts of murder in the first degree was filed at 10:05 a.m. on Monday, April 22. The scene at the courthouse that morning, starting when the doors opened at 8:00 a.m., is the one described above.

STANISLAUS COUNTY, MODESTO, AND THE SUPERIOR COURT

To help readers put Stanislaus County, Modesto, and the court into their frame of reference, here are a few brief facts about each.

The County

Stanislaus County is in the heart of California's San Joaquin Valley, the richest agricultural area in the country. It is named for the Stanislaus River, which, in turn, was named for an Indian leader. Its estimated 2002 population was about 480,000, up about 8 percent since the 2000 census. Almost one-third of its population is Hispanic. It is the nation's largest producer of peaches and in the top 10 for tomatoes and poultry.

The City

Modesto, where Scott and Laci Peterson lived, is the county seat of Stanislaus County and the county's largest city. It is home to almost 190,000 people, more than 40 percent of the county's population. Its Hispanic population is about 25 percent, less than the county but still above average for the state. Its unemployment and crime rates are above the state average. It is about a 90-minute drive from Modesto to San Francisco; Modesto is about 300 miles north and east of Los Angeles.

The Court

The superior court is a consolidated court handling both general and limited jurisdiction cases. With 19 judges, four commissioners, and one mental health review officer, it is regarded as a mid-size court in California, ranking 17th in the number of judicial officers. Its judicial



Photo courtesy Modesto Police Department

officers are spread among three locations in Modesto and two branch courts in other communities in the county. The criminal division is in the main courthouse in downtown Modesto. The court receives more than 93,000 filings a year, about 5,700 of which are felonies and another 5,700 are misdemeanors. More than 200 employees serve the 24 judicial officers.

Administrative responsibility resides in a three-member management team, which was created following unification of the municipal (limited jurisdiction) and superior (general jurisdiction) courts in 1998. The committee's membership consists of the former municipal court administrator, the former superior court executive officer, and the deputy court executive officer. The former municipal court administrator and the former superior court executive officer rotate the title of court executive officer every two years. Mike Tozzi held the title for 2003 and 2004.

"Training" Events

Strangely, the Peterson case was not the city's first exposure to a high-publicity case, although it was the court's first. In 1999, a mother and two teenaged girls, one her daughter and the other an exchange student, disappeared while on a trip to Yosemite National Park, which is located in Mariposa County, California. Modesto, the largest city close to Yosemite, although located about 70 miles from the park, became the family's and the media's headquarters for this case. The case became a national media event from the time the search started through the arrest and guilty pleas of their murderer. The legal case stayed in Mariposa County, but this case was the "boot camp" event for the then-public information officer of the Modesto Police Department, Kelly Huston.

In 2000, Huston was promoted to manager of media relations for the sheriff's department; Doug Ridenour replaced Huston as the police department's PIO. In 2001, a young intern (Chandra Levy) of Modesto's representative in the U.S. House of Representatives (Gary Condit) disappeared in Washington, D.C. While Washington, D.C., was the focus of most media attention, that summer was "slow" for news, Condit was reported to have acknowledged an affair with Levy and media attention turned to the hometown of both Levy and Condit: Modesto. Once again, neither local law enforcement nor the court were directly involved in the underlying case, but law enforcement was

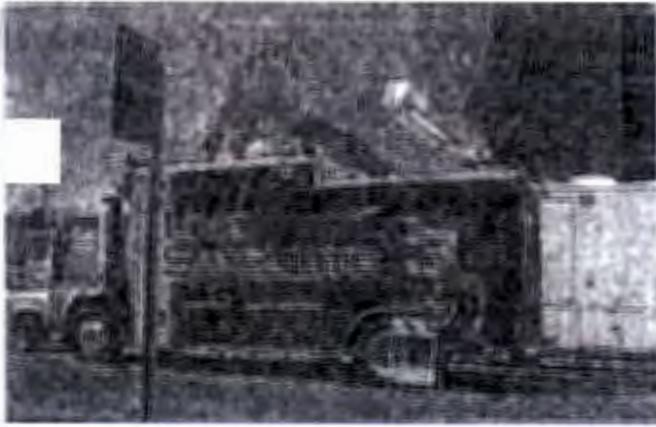


Photo courtesy Modesto Police Department

tested by having to control and protect the media and the citizens of Modesto while the media searched for the hard-to-find congressman and for news about both Levy and Condit. This case, too, was a valuable training ground for both Huston and Ridenour.

These two cases helped these two PIOs learn about dealing with the national mass media, but also helped them to build trust with media representatives. The national media's representatives learned, particularly during the Condit/Levy situation, that the local PIOs could be trusted to treat all media equally and to provide honest information. Huston and Ridenour came to know some of the national media representatives and to be known by them. That provided a unique and important foundation for dealing with the media when the Peterson case came along. Although the court had no involvement in these situations, it benefited as the three entities coordinated and separated during the Peterson case.

RESPONDING TO THE CHAOS

The Controlling Principles of Media Relations

Huston and Ridenour learned several important lessons in 1999 and 2001 that are essential in dealing with the media, especially in high-profile cases. They passed them on to the court. Thereafter, all three tested all responses against these principles.

When dealing with the media in all cases, but most especially in high-profile cases, the following must guide one's actions.

- The information provided must be:
 - Fair
 - Accurate
 - Timely(Tozzi created the acronym FAT.)
- The messenger must build and sustain credibility with all the media.

These rules are critical, because if one adheres to them, the media will play by the rules you establish. If one does not adhere to them, the media *will* get their story and get it any way they can, accurate or not. If a free-for-all for information develops, physical chaos in and around the courthouse may be the least objectionable consequence. Moreover, if one adheres to these rules, the media will adhere to them and self-police their enforcement, so long as the rules are clear, understood, and followed strictly by the information source.

What does it mean to be "fair?" It means all media get the same access to information at the same time. Thus, the local newspaper is not favored with a quote or a document or other information over anyone else. A news outlet that gives a "spin" to your information that you may not like continues to get the same information at the same time with the same courtesy as all other media. Their spin is not your responsibility. The *National Enquirer* and like media are treated the same as the national television networks and nationally-respected newspapers. During the Peterson investigation, when individual Modesto police officers began to leak information, the police chief ordered that only he and Ridenour could talk to any media representative; anyone caught violating that order would be disciplined.

There may be times when the hometown media will exert whatever pressure they can to get an advantage they "deserve." If the PIO (or court administrator) succumbs to this pressure, it is an immediate and possibly irretrievable message to all other media that it's "Katie bar the door."

The value of fairness became clear to Tozzi when a senior executive of a national network sat in the PIO's office and kept asking if he could trust that every document filed would be posted on the Web as quickly as possible. The executive said if Tozzi would give him that assurance, he would take his satellite truck away from the courthouse. Tozzi gave him that assurance; the executive removed his satellite truck.

"Accurate" is fairly self-explanatory. The one element of "accurate" that should be highlighted is that it embraces "complete." When the court shared filed documents, the entire document, as filed, was provided. If there were later misinterpretations or misquotes, it was the news outlet's responsibility, it was not because the court had provided only a portion of a document.²

Information is "timely" when it is provided to all as soon as reasonably possible. The media have to believe you will get the information to them as soon after it is available as possible and that it will be provided to all of them at the same time. In Stanislaus County, one element of this was the case's administrative rule that all filings that came in after 4:00 p.m. in the afternoon would be provided first thing the next morning, unless they related to a hearing to be held the next day, in which case they were provided shortly after being filed.

Many in courts and law enforcement believe the media will not — some say cannot — police themselves, that the economic and ratings pressure to be "first" will lead all to seek an advantage any way they can. As will be discussed below, Stanislaus proved these cynics wrong.

There also are many in the justice system who believe that if the media is not given any information they will go away and the "media circus" will be avoided. This approach might work for a small drug bust or a "run of the mill" domestic or assault case — or even a locally "notorious" case — but Huston, Ridenour, and Tozzi advise that such thinking is wrong for notorious cases. They go back to their experience that if information is not FAT, the media will get what they want any way they can. Rather than avoiding a "circus" in a notorious case, withholding information creates the "feeding frenzy" one is trying to avoid. Being open and applying the FAT principles creates an orderly flow of information to everyone, thereby avoiding the circus.

As you review how Stanislaus responded for the Peterson case, also note how their responses adhered to FAT and the need for credibility. They succeeded because they did not compromise when applying these principles.

SPECIFIC RESPONSES TO THE PETERSON CHAOS

Most of what Stanislaus County did has been done in other notorious cases in large urban courts: parking for the satellite and microwave trucks, managing the television tents, having a media committee, managing media and public access to the courthouse, managing courtroom seating, and the overflow room for the media. Stanislaus' new paradigm for these cases was using the Web, both to distribute court documents and to create a dialogue with the media. But beyond just creating a Web site, Huston and Ridenour drew on their experience with the two earlier cases and Tozzi added his 30-plus years of experience in courts to help Huston create a Web site that was comprehensive. The sheriff's media relations team created a site that was easy to navigate. The dialogue with the media was critical, because it established the rules clearly while saving tremendous staff and management time. Stanislaus did not see the media as an enemy to be avoided and fought. Rather, Stanislaus saw them as professionals who could be treated as adults, as people with a hard and important job to do who would cooperate and assist in the management process, nonetheless, if treated fairly and given accurate, complete, and timely information. Following are the specifics that support these conclusions.

Monday, April 22

Tozzi faced three "immediate attention" situations: 1) citizens could not move freely in the public hallways because of the number of camera people and media representatives; 2) people could not get to or past the criminal division office because of the number of media representatives waiting for a copy of the complaint, many of whom were blocking access to the counter; and 3) fast-track staff training was needed on media requests and phone calls.

The Judicial Council of California³ has a Web site on which all the state's official forms are posted. Tozzi went to this Web site and downloaded the form order regarding cameras in a courtroom. He filled in the blanks to apply to the courthouse and went to see the presiding judge. The judge signed the order, the sheriff's bailiffs and entry security staff then removed all those with cameras. This freed up both the hallways and the building entry security screening area. This order did not pre-judge the issue of cameras in the courtroom; it dealt only with cameras in the courthouse.

To deal with all those at the counter, Tozzi announced that if everyone left, he personally would bring copies of the complaint to them on the street. He and a member of his staff then followed through, taking complaint copies with them and selling them for cash at the statutory rate (\$2.25) on the street to any media representative who wanted them.⁴ This action freed up the criminal division's counter yet assured that everyone got a copy of the complaint roughly at the same time and with minimal disruption. The press began to understand they could trust Tozzi's word.

As noted above, Tozzi and Huston also met on Monday. When Huston overheard Tozzi mention needing a Web site, he told Tozzi he

had started a special media Web site for the sheriff's department. He offered the court use of the sheriff's Web site and advised that the site he was building already had the sheriff's logo and background, "atmospheric" pictures on it. Tozzi desired two things on that first day: 1) to keep the courthouse and criminal division counter as clear of media representatives as possible and 2) to get a Web site started as quickly as possible. Huston agreed that the court's documents would be posted exactly as submitted. With that assurance, Tozzi was not concerned that the site contained the sheriff's logo or was maintained by Huston, and with about a minute's deliberation, Tozzi agreed. It was not until several days later that he obtained the formal approval of the bench of his decision. This decision probably saved the court at least a week and maybe two weeks in development time.

Judge Al Girolami, the judge assigned to the case, later said that if the site had been operated by the investigating or charging agency, the Modesto Police Department or the District Attorney, it would not have been appropriate for the court to share the site. Since the sheriff had no investigative or enforcement responsibility in this case, however, there was no conflict sharing the Web site with the sheriff.⁵

For staff training, Tozzi sent an e-mail to all staff directing them to route any and all telephone calls from media people to his office, informing the media at the same time that he was the court's contact person for information, not the judge, not the bailiff, not others.

The Web site

The decision to use the Web to communicate with the media was pivotal to all that followed. Without the Web, implementing FAT would have been much harder and would have required much more of Tozzi and Huston's personal time, as well as the time of court staff. Plus, the risk of the media becoming suspicious that someone was getting an unfair advantage or was being disadvantaged would have increased materially. Tozzi's decision to use the Web site that already had been started saved critical development time and did not compromise the court's neutrality.

Huston is not a "techie;" he had no idea how to set up a Web site. He had a personal friend, however, who did, and he had some ideas about what a Web site should include. He called his friend Saturday morning, April 20, and explained his problems and his ideas. They spent most of the weekend sketching out and then building the Web site shell, with Huston brainstorming what the site should contain and his friend making it happen. By Monday morning, Huston could tell Tozzi he had a Web site ready to go. Huston estimates that the two men built the Web site in about 40 person hours spread over that Saturday and Sunday and then evenings each night over the next week.

Huston estimates the Web site proper may have cost \$100 to set up: \$70 to register the domain name and another \$30 for miscellaneous items. His friend donated his time, not only that first weekend, but over the next nine months as updates or maintenance were needed that Huston could not do. In order to get the hard-copy documents filed in court onto the site, the sheriff's department bought the court a scanner.⁶

Huston and then Tozzi made a critical tactical decision during the design phase. Huston was trying to help relieve the burden the media were creating for him, and Tozzi wanted to get information to

the media without the melee he witnessed the first day. Plus, Huston put the Web site on a "borrowed" server that had limited capacity; had he made the Web site accessible to anyone in the world curious about the case, the server would have been overwhelmed. Since [redacted] did not want the Web site to be overwhelmed, they decided to create a media-only site, relying on the media to provide the public with all needed — and desired — information. Accordingly, one of the instructions to the media on the site was not to release the Web site address to the public. At first blush, this decision seems to cut against "public access." The purposes of the site and the limitations of the server served the sheriff's department, the police department, and the court well, however. Very few members of the public asked to see a filed document or for a court date, as these were covered well by the media. When someone did call or come to the counter — the court estimates there were no more than a dozen requests over the nine months — they were referred to the Web site. The site was not secret, Huston says, only not publicized. During the months that the case was active in Stanislaus County, the site received almost 58,000 hits. These hits came from almost 600 reporters, news anchors, local and national producers, camera operators, and any other media representative who signed up. Over the course of these nine months, there were a little more than 250 court days. Thus, the Web site "hits" represent an average of more than 225 contacts a court day, either by telephone or by someone at the counter, that were avoided. Given that documents could be downloaded and forwarded to others and someone on the Web site can go to several sections during a single visit, the number of contacts and questions avoided might be substantially higher than 225 a day. Note, too, that documents were [redacted] posted and hearings were not held every court day, so the actual number of hits on days when documents were posted or hearings were held was much higher.

At the end of the first weekend of Web site development, the site contained a few photographs, including Peterson's mug shot, and information about the jail and sheriff's department. Huston started compiling questions he was being asked and built a "Frequently Asked Questions (FAQ) section of the site over the next two weeks. When the court started to post its documents on the site, then "court orders and information" and "court documents" sections were added. The opening page's menu, developed over the first two weeks, reflects



Photo courtesy Modesto Police Department

the multi-agency source of information. A copy of the opening page is provided below.



The Web site contained:

- Agencies (address, telephone number, and Web site address of each involved agency, with map showing location and driving directions)
- FAQ
- Jail Information
- Court dates
- Court rules and information and media guidelines
- Court documents
- Court forms
- "Contact us"
- Photos
- Links (to other relevant Web sites)

The domain name was chosen with some care. Huston had noted that the sheriff's department's domain name (stanislaussheriff.com) led to a number of questions about how to spell it. He wanted as few impediments to reaching the site as possible, including having to call him first to be sure the caller had the correct name and spelling. Huston selected "pressupdate" as descriptive, easy to spell, and separate from the department's domain name. It also was sufficiently generic that should Modesto ever again have to deal with a notorious case, the Peterson case information could be removed and the new case's information inserted.

The site was easy to navigate. The opening page contained a summary of the latest activity(ies) in the case, with links to full documents or other underlying material. Indeed, there were hyperlinks to every document, to state court rules and forms, and to other information referred to on the site. Thus, when the court said Rule XXX or statute YYY governed a decision, a hyperlink was provided so the reader could see the exact language relied upon. The opening page also contained three icons: 1) "subscribe for e-mail updates," 2) "court documents," and 3) "court rules and media guidelines." Photos and court documents were the two sections most-often accessed.

Some of the folders accessible on the Web site deserve an expanded description. Court documents were organized by month, so all court documents filed in April 2003 were collected in an April 2003 folder, for example. For the media, this was preferable to listing the documents by name, as they normally wanted and needed only the latest document(s). The documents also were posted in reverse chronological order, so the newest document was at the top of the list with the words "new document" added in red capital letters. Finally, a tiny "picture" — really a "text box" insert — of the first page of the document was provided for each document, together with its name, the filing party, and the date released (not filed, as that was on the document). The entire document in PDF format could be accessed through a hyperlink. No document was removed from the site, so if there was a need to look at an older document, or if a reporter came into the case in the middle, the entire case history remained available.

The court documents were scanned, rather than requiring electronic filing, in order to make the Web site as much like coming to the counter as possible. Scanning created a copy of the document as filed, just like a photocopy machine. There was no perceived need for the media to be able to "cut and paste" portions of the documents, so electronic versions were not available. Plus, scanning did not raise any formatting and compatibility issues.

The court information and media guidelines section was the vehicle for the court and law enforcement to advise everyone of the rules and to provide forms and information the media needed. It was a "living" site, where changes and new information were posted as the need occurred. The categories of information accessible through this folder, which reflected information that the sheriff, the police department, and/or the court wanted to communicate, were:

- Biography of Judge Al Girolami
- Biography of Judge Marie S. Silveira
- Court-required procedures for fax filings
- Courtroom seating
- News organization access and rules
- Number system (regarding courtroom seating for the media)
- Special media identification
- Cameras in the courtroom, including hyperlinks to the state's rules on the subject
- Photographing jurors
- Media coverage in other (i.e., non-courtroom) areas of the courthouse
- Parking
- Satellite and microwave trucks
- Cables
- Public access to proceedings
- Web site update and information (advising that the Web site was for the media's benefit and was not to be publicized)

The request for courtroom seating was the most important form provided in this folder. Even if a media outlet was selected to have a seat in the courtroom, it had to submit this form for each hearing; failure to submit the form meant the outlet's representative would not be admitted for that hearing.

A color-coded seating chart of the courtroom was provided on the Web site showing the categories of people who would be seated and where they would sit. Diagrams of the street areas for the media tents and for the trucks were provided, too. (While color does not affect the substance of the information, the site uses color throughout to highlight information and to provide visual appeal.)

The court documents section included all documents filed by the prosecutor or the defense plus all the court's orders and rulings. It also contained two additional types of documents that conveyed information while saving the court's administration and staff from numerous calls. The first was the daily minute orders. The judge and his clerk expanded on the usual one- or two-sentence minute entry, however, to provide more detail about what was discussed and the results. The judge reviewed each of these minute orders before they were posted.

The other document was the only one that was not a filed document. Tozzi sat in court each day, took notes, and then provided a narrative summary of what happened and what was going to happen next.⁷ The summary was labeled as coming from Tozzi. The judge reviewed each of these as well before they were posted. They were presented in language that was as descriptive as possible, eschewing editorial opinions or implications. They were posted within 15 minutes of the close of the hearing. (The minute order came much later in the day.) On October 17, 2003, there was a hearing to obtain an update on the status of the preliminary hearing. To illustrate how both documents handled this hearing, the text of each is provided in Figure 1, on page 11.

A member of the public who had known what these documents contained would have recognized that reporters and news anchors used them to describe what happened that day. Legal experts on many news/talk shows then provided their own opinions and thoughts about what those facts/events meant, but the court defined the events in the courtroom.

Reporters could obtain transcripts of hearings for a fee from a contract reporting firm. The Web site provided information about cost and a link and telephone number so orders could be placed.

The "photos" folder contained two pictures of an empty courtroom, twelve "generic" pictures of the exterior and interior of the jail, and Peterson's mug shot.

The "links" folder included the three main agencies, but also the district attorney's office, the city of Modesto, the attorney general of California, the FBI, two law enforcement agencies in Contra Costa County — where Laci's and her son's bodies were found — and the "Laci Peterson Personal Website."

Finally, the site contained a timeline written and released by the police department, starting with December 24, 2002, and continuing through Scott's arrest on April 18, 2003. The timeline included some of the large search events. Readers of this article may recall seeing on national newscasts the pictures that came from the Web site and hearing the timeline provided on the site.

The Web site generated some controversy. First, the district attorney did not support it, because he feared it might taint the jury pool. His wishes did not prevail, however, over the sheriff's and the court's. Given the number of citizen requests for information, his fears

FIGURE 1

EXAMPLE OF A MINUTE ORDER AND TOZZI'S SUMMARY OF A HEARING ON THE STATUS OF THE PRELIMINARY HEARING

UTE ORDER

Case is regularly called for hearing.

Kirk McAllister, Esq. advised the Court that the Preliminary hearing set for October 20, 2003 can not proceed as scheduled. Attorney Mark Geragos, Esq. is still in trial in Los Angeles.

The Court finds good cause to trail the Preliminary to October 28, 2003.

IT IS ORDERED: The Preliminary Hearing of October 20, 2003 is vacated.

Further pretrial hearing on the status of the Preliminary is set for October 24, 2003 at 8:30 a.m. in Department 2.* The parties were asked to inform the Court at that time if witnesses are to be excluded and if so, the names are to be provided to the Court. Also, at that time, the Court will be certifying the transcripts of the prior proceedings.

Preliminary Hearing is set for October 28, 2003 at 9:30 a.m. in Department 2. All motions will be heard during the Preliminary hearing.

The defendant is remanded into the custody of the Sheriff. No bail is set.

* Emphasis in original.

TOZZI'S SUMMARY

A hearing was held this morning, October 17th, in Department 2 of the Superior Court, Judge Al Girolami presiding. The results follow:

The case of the *People v. Scott Peterson* was trailed to October 28th at 9:30 a.m. in Department 2 of the Superior Court, Judge Al Girolami, presiding. The case was trailed because defense counsel, Mr. Mark Geragos, remains in trial in Los Angeles. The case in Los Angeles has been delayed longer than expected due to several variables. Motions will be heard during the Preliminary Hearing which is estimated to last five (5) days.

Judge Girolami also scheduled a Pretrial Hearing on October 24th at 8:30 a.m. in Department 2. The judge ordered the prosecution to provide a detailed witness list to the defense and on the 24th ordered both sides to provide the Court with a detailed witness exclusion list, i.e., witnesses who will testify and who will not be permitted in the courtroom prior to their testimony at the Preliminary Hearing.

were misplaced regarding a media Web site, but his concerns might serve as a warning for other courts.

More critically, there were questions regarding whether posting court documents on the site was consistent with a statewide rule of court regarding public access to electronic records. In 2002, the Judicial Council had adopted a set of rules to control public access to electronic records. These rules had been under development for several years; an earlier version that granted virtually unfettered access to all records maintained electronically had been abandoned in the face of numerous complaints about privacy concerns, victim and witness concerns, and implementation difficulties. The rules eventually adopted were much more limited in scope than the original draft and excluded a number of records from electronic public access.

The operative rule was Rule 2073(c), which says that a court "may provide remote electronic access only" to "the register of actions, calendars, and indexes" for "criminal proceedings." Subsection (f) of Rule 2073 limits "bulk distribution" to only those three types of records. Some in California were concerned that posting all the records in the Peterson case violated Rule 2073. But subsection (e) required courts to provide electronic access on a case-by-case basis. In his view, this gave Tozzi the authority to put all case documents on the Web site. Even so, some in the state were skeptical. Because of

the demonstrated success of the Web site, however, and to remove any questions for other cases, the Judicial Council adopted a new, temporary rule, Rule 2073.5, effective February 27, 2004 and made the rule permanent as of January 2005.⁸ This rule specifically authorized what Stanislaus County had done for "extraordinary cases" and, therefore, explicitly sanctioned the carbon-copy Web sites set up by the superior courts in San Mateo County, to which the Peterson case was transferred, and in Santa Barbara County, where Michael Jackson's case is located. This rule requires excising "private information" from the electronic record. Private information is defined to be:

- driver license numbers
- social security numbers
- addresses and phone numbers of parties, victims, witnesses, and court personnel
- financial information
- other personal identifying information
- dates of birth
- Criminal Identification and Information and National Crime Information numbers
- medical and psychiatric information
- account numbers

Even with these protections, the chief justice, as chair of the judicial council, had to cast the tie-breaking vote for rule approval.

Agency cooperation and consultation

The three main agencies involved with media information and management were the court, the Stanislaus County Sheriff's Department, and the Modesto Police Department. Each had clear areas of responsibility. The court had exclusive control of everything in the courtroom in front of the bar plus approval authority over seating and any special arrangements in the courtroom. The sheriff's department was responsible for the jail, of course, plus courthouse and courtroom security and courtroom seating (as an off-shoot of security). The police department controlled the streets. It provided security, enforced all traffic ordinances and laws, and protected citizens desiring access to the courthouse and nearby buildings and businesses.

Tozzi, Huston, and Ridenour communicated and coordinated regularly with each other and, as appropriate, with the judge. Huston and Ridenour had worked together in the police department and for their respective agencies during the Condit/Levy matter. The law enforcement agencies and the court also coordinated regularly on all matters affecting the local criminal justice system, so the three agencies already had a basis for open communication and cooperation.

Media coordinating committee

One feature of "notorious" cases since approval of the first American Bar Association guide to bench-bar-media relations was published in the 1950s has been to have a media liaison person or a coordinating committee in high publicity cases.⁹ Stanislaus County set up such a committee in the first week after Peterson's arrest. Before its formal formation, Huston talked to media representatives he knew to ask what they thought about the committee, its membership, and the scope of its authority. With the court's and police department's approval, Huston set up the committee with one representative of each of the national television networks, including CourtTV, one from the local newspaper, and one from national newspaper agencies. The television networks were disproportionately represented because television coverage poses the greatest challenges in this type of case. Tozzi, Huston, and Ridenour met with this committee twice in the first two weeks and thereafter as needed. Stanislaus County representatives did not select anyone for the committee, only the categories. Huston asked each network or group to identify its representative, which they did. This is one example of the principle stated above, that the media will police itself when the rules are clear and known.

The committee was consulted regarding almost all aspects of managing their impact:

- the rules for and paying for the cost of the overflow room for the media
- the process of allocating tent spaces on the street and spaces for the satellite trucks
- security needs for the media spaces on the street and covering the costs of police coverage
- technical needs such as power lines to the tents and trucks and telephone service
- rules of conduct expected of the media in the courthouse and on the street

- arrangements for pool video, audio, and still cameras in order to minimize disruption

The committee also was the vehicle for questions or requests from the media. For example, when some media representatives thought there should be more press seats in the courtroom, Huston laid out the seating chart, explained why the various groups got the number of seats they did, and then asked the committee to suggest a better allocation, if they could. They could not and still meet his charge that the result be fair to all media, so the matter went away.

Huston's response to the seating issue reflects another important management approach. Huston, Tozzi, and Ridenour had an "open file" policy regarding their decisions. If questioned, they explained fully why they had done something and invited comments. The press came to trust that the information sources were not "playing games" with information or trying to hide information to deflect criticism or somehow gain an advantage.

Organizing and allocating media tent spaces outside the courthouse

Along with the almost 600 reporters, analysts, producers, and camera operators covering this case came trucks, miles of cables, lights, tents to cover everything and everyone, and tables and chairs. Left unattended, these trucks and tents might have ended up scattered on streets near the courthouse wherever the producers decided they could fit. Parking citations and the accompanying fines would just be a cost of doing business. Huston and Ridenour had experience with the issues associated with all these people and their equipment in the two earlier cases. They did not want a circus for the Peterson case.

The courthouse takes up a city block, with the front facing a two-way street. The police department blocked off the street on the entry side of the courthouse to vehicular traffic for each hearing on motions and for the preliminary hearing. The standard television tents are 10-feet-by-10 feet, so Huston and Community Service Officer Leslie Rodriguez of the police department decided on 12-feet-by-12-feet spaces. They measured the street down to the nearest foot, divided by 12, and came up with 30 possible spaces. The spaces were marked off with blue paint and numbered. They were set on the far side of



Photo courtesy Modesto Police Department

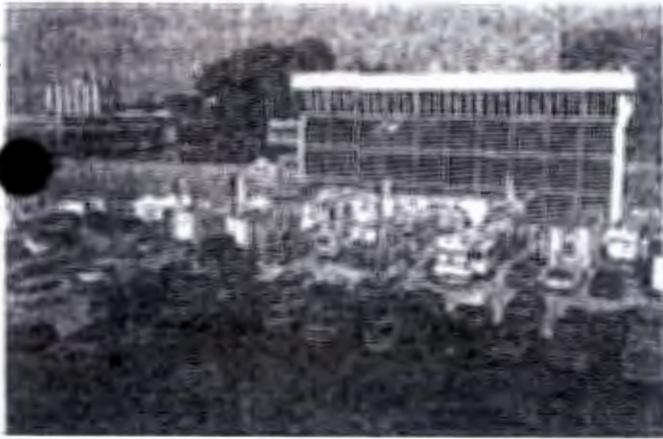


Photo courtesy Modesto Police Department

the street to provide a buffer between the tents and the sidewalk in front of the courthouse. Setting them across the street also opened up a post-appearance press conference area for the attorneys on the street but in front of the front door, so the cameras could get their "atmosphere" shots.

Media outlets desiring tent spaces had to fax a request to the police department. There then was a public drawing, with the drawing done by a member of the media, on the front steps of the courthouse. The first name drawn got the first selection from the 30 spaces, the second name drawn got second choice, and so on through all 30 spaces. Space holders then were allowed to trade spaces if they desired. In this way, local affiliated television stations could seek to trade to be next to their network, which then gave them 24 horizontal to share.

The next concern was satellite and microwave trucks. Here, the city got lucky. A lot across the street from the entrance to the courthouse has been vacant for several months awaiting construction of a performing arts center. It was fenced and level. Spaces for the trucks were laid out similar to the way the street had been. Spaces were allocated in the same way. The trucks then parked on this lot "for the duration." Individual cars belonging to the media representatives were directed to the city's parking lots for off-street parking.

Spaces assigned to each media outlet, both on the street and in the vacant lot, were drawn on a map that was posted by the police department on the Web site for everyone to see. There also was a warning on the Web site that vehicles parked where they were not authorized to be would be towed.

The city and the media committee jointly agreed on security and other service needs for the street and vacant lot. The police department provided officers 24 hours a day during the preliminary hearing and for the day of a hearing on a motion. The number of officers varied according to what was happening in court. For the 10 days of the preliminary hearing, there were six or seven officers during court hours and one or two at all other times. These officers maintained traffic control, protected and directed citizens, including pedestrians, and provided general security for the area. Everyone agreed that the police officers could not and should not provide security for all of the media equipment; therefore, the media also hired their own private security.

Under the laws of California, services for private parties cannot be provided with city funds. Therefore, the police and media committee agreed on what was needed (portable toilets and electric generators), the city obtained prices and ordered the equipment, and the media outlets with tents and parking spots divided the cost equally. No "service fee" or "administrative fee" was added to the city's estimate of actual costs.¹⁰

There were no charges for the officers provided during pretrial hearings, even though the street in front of the courthouse was closed and multiple officers were on duty, mostly because the hearings could have lasted for two hours or all day, making it hard to estimate costs in advance. For the preliminary hearing, however, duration and needs were more predictable. The fee was between \$1,500 and \$2,000 per media outlet and covered both the services provided and officers' time for the duration of the preliminary hearing. There was a separate charge for when and if a truck needed the generator for recharging.

Courtroom seating

The courtrooms in the courthouse all are the same size, so Judge Girolami stayed in his assigned courtroom. It contains 70 seats. With hundreds of media representatives, including national "stars" who often believe they deserve special treatment, Laci's family and others desired by the prosecutor, Scott's family and those desired by the defense, plus some public seating, allocating those 70 seats became a balancing act. Primary responsibility was assigned to Huston, as an extension of the sheriff's security responsibilities.

The courtroom has a central aisle between rows of seats (not benches), with 14 seats on a side and five rows. Both the prosecutor and the defense were asked how many seats they desired. The prosecutor wanted more than 14 seats while the defense wanted fewer. Huston chose to allocate 14 to each side, putting them in the first row immediately behind the Bar.¹¹ Huston had an understanding with both sides that if they did not need their full allocation on any given day, he could have those seats for the media. As it remained a "public" trial, and recognizing the tremendous local interest in the case, Huston allocated 10 of the 14 seats on one side in the back row to the public, saving four seats in that row for "special" needs. The balance of the seats, 28, were allocated to the media. A color-coded chart of the courtroom seating allocation was posted on the Web site for all to see.

"Special needs" included people such as the student from a local college who was doing a paper on the case or for overflow media when there was a particularly interesting hearing or a special witness during the preliminary hearing. Each time someone unexpected or new was allowed into the courtroom, the judge was advised in advance.

Rather than have a drawing for courtroom seats, Huston allocated one seat to each major outlet: ABC, CBS, NBC (2: network and Newschannel), CNN (2: network and Larry King), Fox News, CourtTV, local and area television stations from Sacramento, San Francisco, San José, and Los Angeles (14 in all), two radio stations, news services (AP, Reuter's, and Knight-Ridder newspapers), and the local newspaper. In a few cases, such as Knight-Ridder, one company had several subsidiaries. Knight-Ridder wanted three seats, one for itself and one each for two area newspapers it owns. Huston suggested they take one seat and work out among the three outlets who would cover for all three on any given day, which is what they did.

Even though there was the general allocation described above, each outlet desiring its seat for a given hearing had to fax Huston two days in advance using a form posted on the Web site.¹² If one of the outlets with a "reserved" seat did not send its fax in, the seat was forfeited to another outlet. Thus, Huston normally got many more than 28 requests for seating for each hearing. Seating requests were numbered in the order received; if a "reserved" outlet did not request its seat on a given day or someone did not appear by the appointed time (not later than 15 minutes before the start of court), the seats were handed out in the order in which the faxed requests were received. Huston would give a numbered admission ticket to each requestor at the courtroom door.¹³ For the first few hearings, almost all of those requesting seats showed up outside the courtroom hoping to be admitted. After a while, they learned that if their number was higher than 35, the odds of being admitted were slim to none, so they stopped coming to the courtroom — another aid to an overcrowded courthouse. Inside the courtroom, specific seats were not assigned, but much as in a classroom, the same people tended to sit in the same seats day after day.¹⁴

The admission ticket showed either "designated" or "open" at the top. The designated tickets were for the pre-assigned media and the people on the prosecutor's and defense lists. The open tickets were for the public, the "extra" media, and any special admittees. Each ticket contained a handwritten date and "validation initials." Each ticket was valid for one day or the duration of a single multi-day hearing. Thus, for a two-day hearing, the admission ticket was good for both days. For the preliminary hearing, one ticket was good for the entire 10 days eventually spent on the hearing.

The tickets were designed on Huston's computer and printed by him on card stock using page layout software. Human nature being what it is, some reporters carried only one admission ticket at a time — the ticket for that day's hearing. Others put each ticket on a lavalier around their necks and displayed the entire set. These tickets did not exactly become collectors' items, but many proudly displayed all the tickets they had received.

The Overflow Room

With 28 media seats in the courtroom and hundreds of media representatives, an "overflow" room became highly desirable. A



Photo courtesy Modesto Police Department

conference room that held up to 100 people was found in a county building across the street from the courthouse and made available.

Through the media committee, Huston and Tozzi worked out that the media would wire the room for video and audio and furnish it. CourtTV volunteered to take the lead in setting up the room. This type of room normally is recommended in high-profile cases because more of the media can be accommodated, the media representatives are not constrained by the decorum of the courtroom, they can come and go as they wish, they can eat while following the proceedings, and, in some states, they can smoke in the room.

Judge Girolami determined relatively early in the case that a television feed would be allowed in the courtroom during pretrial hearings, but there would be no television during the preliminary hearing. Therefore, the overflow room had a television feed during each hearing until the preliminary hearing; for the prelim, only an audio feed was available to the overflow room.

There was only one critical rule for reporters and others who used the overflow room: there would be no recording of the feed or any other electronic capture of the images or sound. If there was, the room would be closed. This latter part of the rule was another example of having the media police itself. Huston knew how important the room was to those who could not get into the courtroom. He did not want to be the "cop," however. The rule and Huston put the onus of enforcement on the media.

In one case, a media representative in the front of the room was seen using a small recorder. A large cameraman from another outlet went up to this person and told him to turn off the recorder. When the offender asked, "Why?" the cameraman said, "because we don't want to lose this room." In another case, Huston noticed a media representative's cell phone was on. Rather than talk to the offender himself, he went to a producer he knew would act and pointed out the offender. Tozzi said he was going to leave the room for a couple of minutes. If the cell phone was still on when he returned, the room would be closed. When he returned, the cell phone was off and put away.

The now-retired court administrator of the former Detroit Records Court, George Gish, who dealt with several high-profile cases, including all of Dr. Kevorkian's trials, had a "serve food" theory of court administration. He always baked cookies and brownies for the media representatives who were using the overflow room in his courthouse. He figured they would be inclined not to say anything bad about the court if they were well fed. It also gave him a chance to meet informally with media representatives and answer questions off the record. Whether or not you subscribe to Gish's rationale, it certainly is a nice gesture if one feels up to baking each day. Neither Huston nor Tozzi baked anything for the media in Modesto, but Huston acknowledges that his mother baked for the media on many days and brought the food to the overflow room. As a result, she was extremely popular with them.

Timely notice

Recall that one of the principles of dealing with the media is "timely" notice. There is an element of that concept, and a solution used in Stanislaus, that was not covered above. In the early days of having all those tents on the street, when a new document or ruling

was posted on the Web site, Tozzi would go out to the courthouse front steps and give the media a "thumbs up," indicating there was something new on the site. It is wise for a court to remember that although this might be — probably is — the court's first notorious trial, the producers, camera operators, and many reporters have covered many notorious trials. Their experience can work to everyone's advantage. In the area of "timely notice," it was a camera operator who noted that most of the media had Blackberry pagers, and if an e-mail was sent to each media representative each time a new document was posted, all would get the message at about the same time and only one e-mail message would need to be sent. (It also would save Tozzi having to give the "thumbs up" each time.) So that's what Huston did. (Pager numbers were part of the contact information sought by a form on the Web site.) It was the resulting e-mail list of almost 600 names that resulted in the court's estimate of 600 media representatives covering the trial. Tozzi cites e-mail notification as one of the best things that the court did in aid of its Web site.

Dealing with "glitches"

No situation as fluid and chaotic as a notorious case is managed without something going wrong. The Peterson case had its glitches, too. The key is how one responds.

An early test combined a local media person trying to get an advantage with a court employee trying to provide good customer service without fully understanding all the implications of doing so. The result was that a motion by the defense that should have been held until posted on the Web site in the morning was given to a local newspaper reporter after 4:00 p.m. Tozzi happened to see the reporter as he was leaving the courthouse and saw that he had a document. This was a test of the fairness part of FAT. The motion happened to be about a charged topic. Had it gotten into the paper's morning edition without the other outlets having had a chance to see the motion, the national and regional media would have thought they were being "home towned" and would have started scrambling for news any way they could get it. And that executive of the national television network would have had his satellite truck back in front of the courthouse the next day.

When Tozzi learned what the reporter was waving at him, he called his secretary, who had left early to care for an ill child, to come back to scan the document and get it onto the Web site. After it was posted, Tozzi personally went out to the tents and told every outlet to check the Web site, as a new document had just been posted. In so doing, Tozzi kept faith with the media about being fair.

Another incident involved an internal matter. As mentioned early in this article, Tozzi agreed to use the sheriff's Web site because Huston agreed all documents would be posted as submitted. Judge Girolami checked the Web site from time to time and noticed that an explanatory text entry on the Web site was different than when he first saw it. After a conversation between the judge and Huston, Huston assured that no other document was changed.

A third incident occurred when a television camera operator photographed Laci Peterson's mother crying during testimony at a hearing. That image, not surprisingly, was rebroadcast across the national news. This violated the judge's order regarding television coverage. The judge immediately talked to Huston and the camera operator,

and no further images of either family were taken by the courtroom camera.

Who cares for the uncared-for?

One surprise in the case was that the defendant's family became unattended. The district attorney and, particularly, the victim-witness unit cared for Laci's family. The team of defense attorneys, however, focused on the defendant and what they had to do in court each day. Scott's parents often got lost in the daily demands on the defense team, including requests by the media for statements. Readers may recall that Scott's mother has a medical condition that frequently requires her to be hooked up to an oxygen tank, which limited both parents' mobility. Tozzi saw this and took responsibility for seeing that Scott's parents could drive up to the front door — as the defense attorneys and Laci's parents were allowed to do¹⁵ — that they had relatively easy access to the courtroom, and that they were able to exit the courthouse easily and, if desired, with expedition.

Some locals criticized Tozzi for this attention to the defendant's parents, suggesting that it impugned the court's neutrality. Tozzi felt the humane and fair response was to facilitate their entrance to and exit from the courthouse, and that the limited assistance provided did not impact the court's neutrality or the appearance of neutrality.

Results

The results from having a Web site and the other management devices were dramatic and exactly what the court and sheriff's and police departments had hoped to achieve.

Traffic at the criminal division counter went from two-to-three deep and citizens unable to get into the room to virtually no one from the media at the counter. Similarly, Tozzi's telephone calls went from a couple of hundred a day in the first week to a couple a day. Most of the calls after the first month were from small media outlets across the country that were not present outside the courthouse and did not have an attorney on staff. They wanted to understand the legal terms and the nature of the proceedings, but did not seek hard-copy documents because they could access the Web site, too.

The street scene on the first day looked like a very busy street fair, with hundreds of people milling around on the street and trucks all over. After the tent area was lined out and spaces allocated and the vacant lot was provided for the trucks, the street looked like a well-organized but quiet farmers market late in the day.

Media egos and ethical challenges

There are constant challenges when one deals with the media. They existed in Stanislaus County, too.

It should not be surprising that national television anchors and personalities have large egos. They also get a natural entrée that they use to put pressure on the court administrator. If the court administrator draws a hard-and-fast line about not going on the record, he or she quickly goes from being the reporter's best friend to "never heard of you."

There were two national news channel anchors who displayed great friendliness to and interest in Tozzi while trying to get him to express an opinion about the case or to give them some kind of exclusive. In both cases, Tozzi made it clear that he would not express an opinion or make a statement on the record ("Who cares what I

think?") or give them an exclusive. One tried for an advantage over the telephone, and that first call also was the last. The show's producers continued to call regularly. When this person came to the courtroom for the first time, Tozzi introduced himself, only to receive a cool response. An anchor who talked to Tozzi in person asked, "You're not going to give me anything, are you?" When Tozzi confirmed he was not, this anchor turned and walked away and did not talk to Tozzi again, even though he continued to spend considerable time on site.

The main producers of the national television outlets and magazines do not show up on site. They stay in New York. The producers on site are "local" producers. While the national producers care only about the story and "exclusives" and have only limited concern about rules, ethics, or other constraints, local producers understand better why a court does what it does and may even be a representative on the media committee. Local producers and reporters are under tremendous pressure from the national producers and their editors, however, and may plead that they've "got to give something to the boss" or their job will be at risk. The court administrator and the court's staff cannot give in without violating the FAT principles and their credibility, but know from the outset that it will be hard.

More dangerous are the illegal and unethical offers that seem to accompany truly notorious cases. For example, one reporter started talking to Tozzi about how much money copies of something in the court's file would be worth. He also suggested that if Tozzi turned his back while the autopsy and other photos entered into evidence were on a table in the courtroom, no one would know. When Tozzi asked if the reporter was trying to bribe him, the reporter immediately claimed that the file material would be worth that much money to someone, but he certainly was not offering that sum to Tozzi. A local producer for a national television show offered Tozzi a trip to New York City in return for a 10-minute appearance on the show. When Tozzi made it clear that he was not interested, the producer offered to come to Tozzi's home so he could do the interview from his home. He then asked Tozzi about the horses on his property, making it clear that he knew where Tozzi lived. That question about the horses may also have been an implied threat, but whatever the intent, Tozzi declined that offer, too. ("If I won't talk to you on the record in my office, why would I do it from my living room?") Other instances could be cited, but suffice to say, when the media regard the stakes as high, they will offer inducements that must be rejected.

GENERAL LESSONS TO BE LEARNED FROM STANISLAUS COUNTY

Except for a very few large urban courts — New York City and Los Angeles come easiest to mind — no court can anticipate being the site of a notorious case. Likewise, however, no court can assume it will never be the site of a notorious case. If in 2002 you had asked the court in Eagle, Colorado,¹⁶ or in 1998 asked Mariposa County, California,¹⁷ whether they expected to have a notorious case within the next 10 years, they and most others would have said, "no." Ninety-nine-plus percent of courts answering "no" would be right. Lightning strikes very few people, and notorious cases happen to very few courts. When they happen, however, they pose tremendous challenges and can very quickly overwhelm a court's capacity to handle them. Therefore, even though a court cannot anticipate having a notorious case,

it can and should do some advance planning, much as a court plans for emergency evacuations even though it hopes and expects never to have to evacuate.¹⁸

The book *Managing Notorious Trials* is an excellent resource for handling these cases from the general jurisdiction arraignment forward. Virtually everything discussed here surfaced long before the arraignment following bind-over, however. In Eagle, Colorado, the court had, perhaps, a dozen hearing days before Kobe Bryant pled not guilty at the general-jurisdiction level. If there is a notorious case, it normally will be notorious from the moment the charging document in a criminal case or the initial civil pleading is filed. Planning has to account for that.

What is a "notorious" case?

Tozzi suggests that defining a "notorious case" may be similar to how U.S. Supreme Court Justice Potter Stewart defined pornography: you know it when you see it.¹⁹ Based on what happened in Stanislaus County, Tozzi offers a test that may prove to be more helpful: look for the trucks and see which reporters are showing up. When satellite and microwave trucks start showing up from the national 24-hour news channels and from the television networks, when well-known television news anchors and personalities start appearing, you probably have a "notorious" case. Surely courts have locally prominent cases, and a case or two a year may garner statewide publicity in urban courts, but for almost all courts in almost every case, the national media is indifferent. It is a very rare case that captures national attention and interest sufficient to prompt the trucks and personalities from the national media.

When a case is notorious, it warrants all the work that Stanislaus County undertook. A court administrator must be careful, however, not to jump too quickly to the conclusion that a case is "notorious." If he or she does, important resources may be devoted to a short-term story. If you do not see all the trucks and the personalities, if hundreds of cameras, local reporters, and producers for national networks and shows do not appear, in the end you may not have a case demanding enough additional resources to justify the time and expense of treating it as notorious.

A recently released study from Houston, Texas, gives further clues about cases that might become notorious, at least for newspapers. The Houston study found that:

the most significant factor in determining whether an incident received newspaper coverage was the presence of multiple victims, followed by incidents involving female victims and multiple offenders. Newspapers also covered a high percentage of homicides that involved intimates and family relationships, although those were the rarest incidents. . . . These factors also were the best predictors of the length of an article and number of articles an incident received. Celebrated and feature articles were more likely to cover incidents involving statistically rare victims (female, white, Asian, young, or affluent victims or multiple-victim incidents) . . .²⁰

This study focused on newspaper coverage, not broader "media" coverage. Recent notorious cases (Martha Stewart, Robert Blake, Kobe Bryant, Michael Jackson, Elizabeth Smart, Jayson Williams, and Dani-

elle Vandamme) suggest that the celebrity status of the defendant and child victims also may be important predictors of national television interest.

Rules of survival for the court administrator

The people who cover notorious cases are pros. They have hundreds of obvious and subtle ways to wheedle information from you and of getting you "on the record" in hopes of getting something before others do or that others do not have at all. The only way to survive intact is to follow a few simple, clear rules.

The first and most important rule is to know your role as the court administrator. The court administrator needs a strong sense of self. You are there to represent the court, assist in helping to protect the court's neutrality, and to provide news. It is critical that you park your ego every day to avoid the sirens' calls. Tozzi answered many reporters' questions and offered many explanations, just never on the record. (Again, "Who cares what the court administrator thinks?") The only reason to go on the record is so the reporter can make the court administrator's opinion the focus rather than the information itself.²¹ If an administrator forgets that distinction, he or she only risks his or her own credibility — or the court's. It also may make you "old news," leading to your being marginalized or ignored by that outlet thereafter. The risk is similar if the administrator appears on camera ("face time"). If the administrator seeks or accepts "face time," it is, by definition, going on the record. When offered "face time," the administrator is best advised to decline.

There is some debate about whether one can ever trust the media to keep something "off the record." Some public relations professionals recommend, therefore, that one assume that, "nothing off the record." That was not Tozzi's experience. He assumed he was dealing with professionals who would not identify him as a source if he insisted that he not be identified. Reporters or producers might beg you to let them go on the record with what you said, but if you are firm in staying off the record, they respect that so they can continue to get more information on this story or can come back for information on another case later. Tozzi was quoted, but in terms such as, "a knowledgeable source," or "a source close to the case," or in some other fashion that does not reveal the source's identity.²²

If one deals with a reporter as a professional and then gets "burned" by being quoted by name, it is too late for that reporter and that quote. There is nothing that requires the administrator ever to talk to that reporter again, however. You cannot recall the quote or the attribution, but you can assure that the reporter involved is denied any future access to you and your information.

Two anecdotes about "face time" illustrate both how important it is for television reporters and how insidious some requests can be. In one case, a local producer begged Tozzi to appear on camera because the national producer was really pushing for some new faces. While sympathizing with the local producer, Tozzi declined. The day Judge Girolami ordered transfer of the case to San Mateo County, a reporter with whom Tozzi had developed a good relationship called him on his cell phone while Tozzi and his wife were having dinner at a restaurant.

The reporter begged Tozzi to go on the record and on camera to say that the court had transferred the case. Tozzi agreed because the case was leaving his court, despite the fact that the reporter could quote

the judge's order to the same effect — the reporter admitted the item would be about 10 seconds on the evening news — and even though Tozzi and his wife were eating dinner. The reporter drove 20 minutes to the restaurant, got Tozzi on camera saying the case had been transferred, and went back.

The other rule for the court administrator is to be jealous of your time when called by the media. Tozzi's secretary screens his calls. If a call came in from a media representative about a document that had been posted on the Web, she referred the caller to the Web and declined to put the caller through.²³ It took about two weeks, but once the media learned about the site and came to trust what was posted, the calls dwindled quickly to a trickle.²⁴

Tozzi summarizes his experience with the following suggested "rules":

1. Do not be afraid to field questions from the media. Yes, they are smart, but you know a whole lot more about court operations than they do.
2. Never give an opinion. You can and should share facts (events, dates, what happened, and what will happen), but your opinion is irrelevant and probably will cause far more problems than withholding it.
3. You cannot be bullied, and you won't be bullied. That attitude will come out in your voice and will be sufficient; they will recognize it.
4. "I don't know" is an acceptable answer. It may frustrate them, but it is a good and honorable answer.
5. "That question is premature" also is an acceptable answer. It is appropriate, especially, when talking about what is to happen. (They'll want to know what "might" happen.)
6. Do not worry about trick questions. You can spot them and dodge them.
7. Always respond like an administrator, not a lawyer; it's easier to be understood.
8. Explaining legal terms to the smaller media outlets is okay, so long as it is off the record.
9. Keep the "quotes" short. If you make a mistake, you can back up and start over.
10. Keep a copy of your local criminal laws and procedural rules handy and refer to them as necessary.
11. This case is not your "Andy Warhol" moment, nor your "hour on the stage." You are part of the chorus for this one.
12. All in all, this is a wonderful learning opportunity and should be approached with that attitude.

HOW TO PREPARE FOR MANAGING A NOTORIOUS CASE

Develop a plan

A notorious case is similar in frequency and impact to a lightning strike or a major fire in the courthouse. It is prudent, therefore, to put some advance thought into how your court will respond should it need to do so, just as you plan what to do in the event of a major natural disaster or a significant security problem.

There are two ways to approach this, one much less likely to result in plans being prepared than the other. The one with the low-



Photo courtesy Modesto Police Department

est likelihood of being implemented broadly is to expect each trial court to establish its own plan. Some large urban courts and, perhaps, courts in locales frequented by many celebrities, may develop such plans, but virtually all small courts and courts that, incorrectly, believe "it can never happen here; we're too inconspicuous and quiet for a notorious case to develop" will wait until lightning strikes. Then, like Eagle, Colorado, and Mariposa County, California, they will scramble to respond and lose valuable time and control.

The second way is for the state administrative office to take the lead and form a committee to design the outline of a plan that all courts can use, with appropriate blanks to be filled in by each court. This approach maximizes the use of existing skills and experience, avoids reinvention across the state, allows for a good portion of the needed work to be done in advance, and is the most effective use of resources for an event that even in very large states usually happens only once every several years.

Two elements of the plan are essential: 1) Decide what to do "in the meantime," i.e., until the Web site is ready and the media personnel and trucks are organized, and 2) Create the shell of a Web site. Some thought also might be given in each location to where the media tents and the satellite and microwave trucks might go. The city of Modesto had the good luck to have a fenced vacant lot across the street from the courthouse for the trucks. Most courts will have to search more broadly and be more creative than Modesto had to be. It certainly does not hurt to start looking, however, as that will make the final decision(s) easier when the time comes.

One of the obvious lessons from the Peterson case is that even when a Web site is started almost immediately, it takes some time for the site to be fully operational. Along the way, it also is necessary for the media to learn to trust the site and the credibility of the court and law enforcement PIOs. In Stanislaus' case, it took about two weeks. If a court—or a state committee—has not thought through what a Web site would contain, it will take longer. Fortunately, Stanislaus County now has created a template. Imitation is the sincerest form of flattery. It also is a reflection of the quality of the imitated product. The courts in San Mateo and Santa Barbara, California, and Eagle, Colorado, already have used Stanislaus' template—including a good part of the exact language used in Stanislaus—to cut their development

time. Even so, one must plan on development time and, therefore, on a more manual, people-intensive approach at the beginning.

Finding a public information officer

One position that exists in only a few larger, urban courts is a public information officer. For most courts, then, how does one find a public information officer when that rare notorious case comes along? Tozzi, Huston, and Ridenour have a few thoughts. All three recommend against going out and hiring someone after the case arises. Such a person may not know the community, the agencies involved, or the media well enough to be effective. Therefore, they would have to gain knowledge and establish a rapport with everyone before they could be effective. During that time, valuable liaison and control time would be lost.

Tozzi believes that most court administrators can be their own PIO during a notorious case. No one will know the court better or be better able to access needed information. Most court administrators also develop some ability to talk to the public and, to a lesser degree, the local media during their tenure. They also will have the trust of the judge more than anyone else.

Huston and Ridenour offer another option: look around today to find PIOs in other government agencies who seem to be most effective with and respected by the media. Talk to that person or to several people and line them up on a contingency basis: "If we should get a notorious case at some point, would you be willing to help out the court and serve as our spokesperson?"

Because they previously had experienced the value of cooperation among agencies and also knew of the need for "back up," Huston and Ridenour also recommend regular meetings and training sessions for the PIOs in various agencies. That way, they will get to know each other, develop some knowledge of the issues and concerns of different agencies, and get training they can call on when needed. In Stanislaus County, because of events over the past few years, the PIOs of government agencies meet regularly and always try to build some training into their meetings. Tozzi and Judge Girolami also endorse the local criminal justice agencies meeting regularly so they can build both knowledge and trust before a crisis arises.

Review existing rules and statutes

The issues in California regarding the impact of Rule 2073 on Stanislaus County's Web site and the eventual decision to amend the existing rule about electronic access to records to accommodate "extraordinary cases" suggests another step that can be taken in advance. The state administrative office of the courts or a committee of trial court administrators should review all existing rules and statutes with an eye to how they would affect the management of a notorious case. If there is some ambiguity or a prohibition that would inhibit a Web site or what could be posted on such a site, amended or new rules should be put in place as soon as possible.

Build a photo gallery

When Huston and his friend built the Web site that first weekend, Huston already had file copies of jail photographs. Courts should develop a similar set of generic pictures of the courthouse, courtrooms possibly public hallways and perimeter security locations, the local



Photo courtesy Modesto Police Department

jail(s), and, perhaps, the facades of other criminal justice agencies. These could be built into the shell Web site now so they will be ready when and if needed later. Or, they could be kept handy in digital or hard copy form to be added as appropriate if a notorious case ever comes along. Specific additional photos, such as a defendant's mug shot and a photo of the assigned judge, could be added quickly as the final version of the Web site is put together.

Write biographies for all judges

Judicial biographies can be developed today and then used whenever needed. These should be more than just a statement of the judge's current assignment and when he or she went on the bench the first time. In Stanislaus, the biographies of the two judges that were posted provided details about their legal and full judicial careers plus civic organizations to which they belong. Each bench may have different views about how much detail to provide, but once there is a consensus, it is easy to develop the template and fill it in for each judge so it will be ready should it be needed.

Consider how to handle providing services and fees

Service fees were not a significant issue in Stanislaus County, but could be. Stanislaus County did not charge for access to the Web site, but there were clear accounting costs — although very limited out-of-pocket costs — in developing and maintaining the site. It would not hurt to address the issue of fees in advance so there is one less item to address when a notorious case actually appears in your court.

Can your court charge anything for setting up and maintaining a Web site? If so, can it charge only its actual costs or can it recover more than its documented costs? Are accounting, billing, and collection time part of the jurisdiction's costs? Do you desire to recapture actual costs or also a premium? Can you charge a premium under the law?

Likewise with the parking and tent spaces. Stanislaus County did not charge the media for the hearing days other than during the 10-day preliminary hearing. Yet the city of Modesto incurred police costs on those other days. Prior to actually having a notorious case, we cannot estimate costs. What you could do, however, is determine whether to charge, for which events to charge, and the components of the charge (law enforcement officers only, accounting staff time, and a "service fee" for the community's inconvenience in being unable to

use the street for vehicular traffic). Is there any basis for distinguishing the media from a local neighborhood party or a street fair? Does your court or community want to get into the business of ordering and collecting the fee for portable toilets and generators or would you rather leave that to the media? If the media is allowed to obtain portable toilets and other rented items for single-day hearings, would they have to remove them in between hearing days or be allowed to rent them for X number of days at a time and put them in a place where they could remain?

Conclusion

In designing and using its Web site, Stanislaus County has invented a "better mousetrap" for handling the dissemination of information in notorious cases. The rest of us now have to build on its experience in two ways: resist the impulse to assume "it can't happen here" and, therefore, develop contingency plans about what you would do should a notorious case arise in your jurisdiction, including getting a head start on a Web site. If you can get the state administrative office to assist with the latter and with a basic plan for all courts, so much the better. The plan should be informed by the kinds of things Stanislaus County did and the topics covered in this article. The plan will not be able to address every contingency or every event that actually arises in a notorious case, but it will provide an invaluable starting point. Having that starting point might save a court two to three weeks of response time and also provide staff and management with a comfort level that will be very important should lightning strike. Developing a plan and the shell of a Web site will take time and resources for something that might never happen, however, the same is true for disaster recovery plans and emergency evacuations and fire drills. If and when you have a notorious case, the forethought will prove to be invaluable.

One final thought. It might serve your court well if you were to keep one eye on notorious cases in other jurisdictions. Glean what you can from public reports about the information that the court releases, how it is released, how it organizes the media and crowds outside the courthouse, and things that may go wrong. Most especially, make a note of the court involved and get its mailing and Web address and any telephone numbers you can. Keep these in a folder and perhaps create a list of ideas to which you can refer should you need to. It is much easier to obtain one idea at a time from time to time and gather them all in one place for future reference than to have to "invent" them all at once under pressure.

If the above suggestions are followed, you may or may not experience the travails of a notorious case, but you will be ready if you do. Being ready, you are likely to get on top and stay on top of the management challenges, thereby avoiding your lack of management becoming another element of the case's notoriety.

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NOTES

1. Timothy R. Murphy et al. (Williamsburg, VA, National Center for State Courts, 1998 ed.)
2. But see, below, the restrictions on releasing some information now imposed in California by rule of court.
3. The Judicial Council is the policy-making body for the judicial branch of California. Its administrative arm is the Administrative Office of the Courts.
4. The cash went into the cash register as "copy sales" as soon as they returned to the office.
5. Both Judge Girolami and Mike Tozzi recommend a separate court Web site if the only other option is to share a site with the investigating or charging agency. Tozzi points out that if the court has to create its own Web site, it should do so with a separate Web address and server so that its regular Web site is not overwhelmed by the media accessing needed information. Regarding the cost of a new server, Tozzi notes that the cost of servers today is quite low, both absolutely and compared to the cost of handling one of these cases using solely staff time.
6. The court chose not to require the electronic filing of documents. Tozzi's secretary scanned the documents and e-mailed them to Huston (or his friend, in Huston's absence) for posting. Tozzi had his secretary do the scanning for two reasons: 1) he could assure he knew everything that was going onto the site, and 2) his secretary then also knew everything that was on the site so if a caller asked for something that was on the Web site, she knew it was there and could refer the caller to the site rather than put the call through to Tozzi.
7. Tozzi estimates that these summaries normally took about 15 minutes to prepare.
8. Rule 2073.5 was temporary to allow the formal rule-making process to be followed for a revision of Rule 2073 itself. The final rule was adopted in October 2004 for implementation as of January 2005.
9. See also, Timothy R. Murphy et al., *supra* note 1, pages 40-41.
10. There also was no fee for access to the Web site. In hindsight, Huston thinks that a fee of \$15 per outlet might have been appropriate.
11. The district attorney was not happy to get an allocation less than he desired, but the judge approved Huston's plan.
12. The fax rules created a bit of a "race to the fax." Two mornings before the next hearing, at 8:00 a.m., the fax machine was plugged in. The fax machine, as it turned out, was the lowest tech equipment used. It worked, however.
13. Huston developed a "mail box" system, but delivered notification of an outlet's admission ticket number via e-mail.
14. Ironically, this proved to be helpful. When the judge saw someone he did not recognize sitting in a specific seat, he would ask Huston who that person was and whether they were supposed to be in the courtroom.
15. To avoid defense counsel having to "walk the gauntlet" of photographers and cameras from the covered parking garage a block away and to facilitate their getting boxes of materials and large briefcases into the courthouse, Tozzi and Ridenour allowed them to drive to the front of the courthouse, i.e., down the closed street, to unload and reload their car(s) each day. They would call Tozzi when they were leaving their hotel, Tozzi would advise the police and the media that they were about 15 minutes from arrival, and then they would drive up and unload. This accommodation may not have been necessary, but it facilitated the process and reduced the mayhem.
16. The county of Eagle has a population of a little less than 45,000; 48 percent of its population lives in cities, the balance in the county.
17. Mariposa County had a population in 2000 of a little more than 17,000.

18. Likewise, notorious cases often come with no warning. The court in Dallas, Texas, did not know about the Andrea Yates case until she called the police to tell them her five children were dead. There was no warning or hint of the Bryant case until the event and arrest shortly thereafter. Even in the Elizabeth Smart case, the abduction was "notorious," but the arrest of her alleged abductors — and therefore the arrival of a notorious case for the court — was totally unexpected.

19. The same definition is offered in *Managing Notorious Trials*, *supra* note 1, page 3.

20. This quotation is from a summary of an article by Derek J. Paulsen that appeared in the November/December 2003 *National Criminal Justice Reference Service Catalog*, page 13: "Murder in Black and White: The Newspaper Coverage of Homicide in Houston," in *Homicide Studies*, vol. 7, no. 3, pages 289-317 (August 2003).

21. Tozzi believes that in the media's hierarchy of people to quote, the judge is best, followed by the prosecutor, and then the court administrator. The media cannot get to the judge, so the court administrator is a prized interview for many reporters.

22. A personal note in this connection. When I was a court executive officer in California, I approached reporters as Tozzi did. My experience was similar to his.

23. See note 6, *supra*.

24. Tozzi's approach is not unlike dropping a manual work process once it has been computerized and the software has been tested. If you maintain the manual process "just in case," the manual process will remain in use forever. Likewise, if calls about items posted on the Web are allowed through, the calls won't stop; the reporters will talk to the administrator "just in case" they can get something that others will not get.