

The media gag: Order likely to fuel speculation, rumor-mongering

By Dean Nelson

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The recent order prohibiting people involved in the Danielle van Dam murder case to discuss the case publicly illustrates a central tension point of what it means to live in a democratic society. In this case, Superior Court Judge H. Ronald Domnitz said that David Westerfield's right to a fair trial cannot co-exist with the public's right to know how the judicial system will do its business. Judicial secrecy, conducted for the sake of a fair trial, trumps public scrutiny of how the system operates, according to this ruling.

But just last month Judge Cynthia Bashant said virtually the opposite, regarding the unsealing of search warrants issued for Westerfield's home and property. Keeping information from the public, she said, "Leads to distrust of the system, and it leads to innuendo and rumor rather than actual fact."

Members of the news media, including the Society of Professional Journalists, followed the lead of The San Diego Union-Tribune and requested that the information in the warrants be made available to the public. Why? So more newspapers could be sold? Hardly. It was to fulfill the role of the news media in free society, which is to keep the people's government accountable to the people.

When the public's business is conducted in the open, government is held accountable by its citizenry. The way the citizenry is informed is through the news media.

When critics argue that too much coverage in the news media taints potential jurors or prevents fair trials from occurring in local communities, they usually include references to the Sam Sheppard and O.J. Simpson cases as examples of what can happen when the news media get what they want. Those were shameful examples of both media excess and desires of lawyers and judges to become celebrities.

Thousands of other cases have been conducted openly, though, where the judicial system was open to public scrutiny. Both the judicial system and the public's right to know were served. That is how it should be in this case, as well.

Those who argue in favor of keeping the public in the dark often do more harm to their cases than good. In a high-profile case like this one, speculation on talk radio, for instance, covers the spectrum of the plausible to the absurd.

Will a gag order help in this regard? More likely it will further encourage irresponsible rumor-mongering. What impact will this have on a potential juror? Wouldn't open and honest discussion of the facts be an improvement over gossip?

The role of the news media is to set the record straight -- to base its reporting on facts. Without solid information on whether the government is conducting itself properly, rumors rule. Government by rumor usually leads to trouble.

Since the news media were specifically singled out for protection from governmental restriction when the First Amendment was passed, our leaders acknowledged the importance of an informed public. More discussion is better than less. More light shining on a subject in the public interest is better than less.

In the marketplace of ideas, more items are preferred over fewer. That's what the First Amendment has meant for more than 200 years. But occasionally, people in leadership positions forget this, or they hope the public will forget what is already its right. Sometimes judges, lawyers and the police prefer to work in secrecy, afraid of the harsh light of public scrutiny. Who will they be accountable to when they operate out of the public's eye? If the news media don't tell the public how the system is working, who will?

Government conducted in the open is inefficient and messy. But it guarantees freedoms that few others in this world enjoy.

The news media are not filing these petitions for openness for any reason other than to inform the public and to keep government accountable. Freedom is impossible without information.

The gag order is not necessary. In fact, it will do the murder trial, the First and Sixth amendments, and the public's ability to hold government accountable, more harm than good.

Government belongs to the people being governed. Government needs to be trusted by the governed. Government, therefore, needs to be open to the governed. Freedom and trust go hand in hand. But we can't trust what we can't see.

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