

The Psychiatric Implications of Media Ethics Code Policies Regarding the Publication of Child Abuse Victim Data: A Universal Deontological Model Code

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I. Abstract

This is the second in a series of articles triangulating juvenile law, child and adolescent psychiatry, and different professions' ethical codes of conduct.¹ This article examines several assumptions in dozens of countries' and private corporate and organizational media ethics codes regarding child victims and demonstrates that those generalizations are both false and how they increase child victims' mental health problems. Finally, this article proposes a model universal media ethics code for reporting on child victims which is consistent with the psychiatric literature regarding that vulnerable population.

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¹ The first article in this series discussed how legal ethics concerning conflicts of interest in representing child clients increases children's sense of mistrust, abandonment, breaches of loyalty, and helplessness based upon attorneys' obligations to represent children's best interests rather than competent children's stated preferences. William Wesley Patton, *Viewing Child Witnesses Through a Child and Adolescent Psychiatric Lens: How Attorneys' Ethical Duties Exacerbate Children's Psychopathology*, 16 WIDENER L. REV. 369 (2010), Symposium on Child Witnesses.

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II. Introduction

The concept of a model universal media ethics code, much less a regional, national, state or uniform code for all commercial media, is obviously a conundrum.² Although there is sporadic and episodic interest in a uniform code, many variables make such an enterprise extremely problematic for several reasons.³ First, the “media are not a monolithic force but instead are a very fragmented institution”⁴ Second, no longer do large media sources such as the *New York Times* or the *London Times* sit at the top of an ethical pyramid determining the ethical ethos for all other media sources. In fact, with the advent of the internet and talk radio it only takes a single blogger⁵ or shock jock to

² “[I]t is not surprising that one will observe so much variety in codes of ethics. Codes of ethics are written by specific groups of people for specific groups of people, each having its own purpose for existence and its own means of accomplishing its purpose. Consequently, each group encounters a unique set of ethical challenges.” Andrew Olson, *Authoring a Code of Ethics: Observations on Process and Organization*, CODES OF ETHICS COLLECTION, <http://ethics.iit.edu/ecodes/authoring-code> (last visited Apr. 14, 2012).

³ There are cycles of “renewed calls to construct a pan-European code of ethics, even though all such attempts so far have failed.” Melita Poler Kovačič, *Journalism Ethics in Multinational Family: “When in the EU, Should One Do as the EU Journalists Do?”*, 23 J. MASS MEDIA ETHICS 141, 142 (2008).

⁴ Ted Gest, *Indictment & Trial Of Media’s Crime Coverage*, 2 J. INST. JUST. & INT’L STUD. 1, 2 (2003). “A recent trend has been to treat the media as if it were one large monolithic entity . . . [t]he reality is that there are distinctions between electronic and print media which are not readily apparent. Within each of the various media, there are clear editorial and ideological directions.” David R. Spencer, *When The Media Comes Calling: An Issue Of Private Space*, 46 U. NEW BRUNSWICK L.J. 165, 166 (1997).

⁵ As early as 2005 it was estimated that “[t]he number of bloggers publishing in the U.S. [alone] . . . [was] in the millions, with some estimates exceeding 10 million.” Grant Penrod, *What About Bloggers? The Issue of Bloggers As Journalists Has Stumped Judges and Legislators Nationwide*, 29 NEWS MEDIA & L. 34 (2005), <http://www.rcfp.org/node/102644> (last visited Apr. 14, 2012). There are now internet sites dedicated to publishing intimate profiles of millions of people. For instance, Harrison Tang “is co-founder of a ‘people search’

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publish confidential and/or embarrassing data, which is easily accessible to readers. Once the confidential and/or embarrassing data is published, many media sources that would not have published that data in the first place, may republish that information in their more broadly respected media sources. Third, there is insufficient consensus regarding the choice between preserving cultural distinctiveness and promulgating ethical rules that may result in ethical and/or cultural relativism.⁶ Fourth, except in certain

website called Spokeo, which serves up extraordinarily detailed profiles of pretty much everyone—including you—gleaned from online directories, databases and social networks.” David Lazarus, *Forget Privacy; He Sells Your Data*, L.A. TIMES, June 8, 2010, at B1, B7. Although bloggers, as citizens and/or as media, are entitled to First Amendment protection, some countries, like Britain, do not credential bloggers with British press cards which permit attendance at family court hearings where child victims may testify. Frances Gibb, *Bloggers Excluded As Family Courts Opened*, The Times, Apr. 7, 2009, at 55. However, in the United States some bloggers have been given access to child abuse proceedings where child victims may testify. Robert Ambrogi, *Judge Grants Access to Poutre Testimony*, Media L. (Oct. 1, 2008, 3:00 PM), <http://medialaw.legaline.com/2008/10/judge-grants-press-access-to-poutre.html>. Some have argued that the status of the speaker, credentialed reporter or blogger, is irrelevant because what is important in determining what rights are due based upon the purpose of the speech. Gregg Leslie, *Who Is a “Journalist?”*, 33 NEWS MEDIA & L. 4 (2009), http://www.rcfp.org/news/mag/33-4/who_is_a_journalist_4.html (last visited Apr. 14, 2012). Further, the United States Supreme Court in *Branzburg v. Hayes* rejected a First Amendment analysis based upon the mere status of the speaker and held that it “‘is beyond peradventure that ‘[l]iberty of the press is the right of the lonely pamphleteer who uses carbon paper or a mimeograph just as much as the large metropolitan publisher who utilizes the latest photocomposition methods.’” Penrod, *supra*.

⁶ Kovačić, *supra* note 3, at 142-143. For instance, in response to threats of a possible meta-media regulatory regime in the European Union, the *Alliance of Independent Press Councils of Europe (AIPCE)*, promulgated a policy that “media content regulation, whether national or regional in its coverage, should be based on nations differing cultures.” *About AIPCE*, ALLIANCE OF INDEP. PRESS COUNCILS OF EUR., <http://aipce.net/aboutAipce/> (last visited Apr. 14, 2012). In addition, there are so many different national media organizations that coming to consensus on a complete set of universal ethical principles is highly unlikely. As early as 1995 there were “over 30 national codes of ethics for

totalitarian governments, almost all media ethics codes are self-regulating and are not legally binding on the media.⁷ Finally, in some countries, various forms of regulation by constitutional protections like the First Amendment shields the press, and significant governmental regulation will be adjudicated a prior restraint.⁸

journalism in force in Europe . . . [and][t]he number of codes is greater than that of press councils . . .” Tiina Laitila, *Journalistic Codes of Ethics in Europe*, 10 EUR. J. COMM. 527, 527 (1995). Of course, some argue for cultural relativism because of “its virtue of tolerance . . .” Shakuntala Rao & Seow Ting Lee, *Globalizing Media Ethics?: An Assessment of Universal Ethics Among International Political Journalists*, 20 J. MASS MEDIA ETHICS 99, 103 (2005). For an interesting article regarding the attempted melding of two countries’ media ethics codes, see, Kathryn F. Deringer, *Privacy and the Press: The Convergence of British and French Law in Accordance With the European Convention of Human Rights*, 22 PENN ST. INT’L L. REV. 191 (2003).

⁷ “The obvious difficulty with codes [of media conduct] is that they are voluntary and cannot be consistently enforced.” LEE ANN BARNHARDT, INST. FOR COURT MGMT., ASSESSMENT OF NORTH DAKOTA TRIAL COURT MEDIA RELATIONS POLICIES AND PRACTICES 30-34 (2010), available at <http://www.ncsc.org/~media/files/pdf/education%20and%20careers/cedp%20papers/2010/media%20relations%20policies%20and%20practices.aspx>.

⁸ For instance, “[a]lthough Article 61, the Japanese Juvenile Law, ‘prohibits the publication of information that reveals the identity of suspects or convicted criminals below the age of 20,’ it provides no punishment or fine for violation. ‘The Osaka High Court ruled in 2000 that the Juvenile Law ‘does not take precedence over the constitutional right of freedom of expression.’” Tom Brislin & Yasuhiro Inoue, *Kids and Crime: A Comparative Study of Youth Coverage in Japan and the United States*, 22 J. MASS MEDIA ETHICS 3, 8 (2007). For prior restraint cases involving juveniles, see *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97, 105-06 (1979), *Oklahoma Publishing Co. v. District Court*, 430 U.S. 308, 311-12 (1977), *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496-97 (1975), *In re J.S.*, 438 A.2d 1125, 1130 (Vt. 1981), *In re J. S.*, 640 N.E.2d 1379 (1994), and *In re Brianna B.*, 785 A.2d. 1189 (Conn. 2001). The United States Supreme Court has stated that “the First Amendment tolerates absolutely no prior judicial restraints . . . predicated upon [the] surmise or conjecture that untoward consequences may result . . . [O]nly governmental allegation and proof that publication must inevitably, directly, and immediately cause the occurrence [of the danger identified] can support even the issuance of an interim restraining order.” *New York Times Co. v. U.S. (The Pentagon Papers)*, 403 U.S. 713, 725-27 (1971).

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Many ethicists and journalists have attempted to compile a rudimentary list of universal journalistic principles that include both “proactive” and “restraining” dictates:⁹ Independence in newsgathering¹⁰; “honesty, sincerity, truthfulness, reliability, and justice”¹¹; protection of people’s “fundamental rights to freedom and well-being . . .”¹²; “duties of mutual care . . . negative injunctions against violence and deceit . . . , truth telling, humaneness (avoiding harm), justice, freedom, and stewardship of free expression.”¹³

However, each of those values must also be filtered through dominant journalistic philosophies. For example, the notion of “objectivity”¹⁴ might be defined very differently by adherents of Kant, Mills, and the emerging ethics of care.¹⁵ When competing virtues conflict, how does one decide which

⁹ Stephen J. A. Ward, *Utility and Impartiality: Being Impartial in a Partial World*, 22 J. MASS MEDIA ETHICS 151, 156 (2007).

¹⁰ *See id.* at 156-57.

¹¹ Edward H. Spence & Aaron Quinn, *Information Ethics as a Guide for New Media*, 23 J. MASS MEDIA ETHICS 264, 267 (2008).

¹² *Id.* at 268.

¹³ Rao & Lee, *supra* note 6, at 104-05.

¹⁴ Some have acknowledged that “complete impartiality is impossible within the constraints of one’s subjectivity and may not even be desirable” David A. Craig & John P. Ferré, *Agape As an Ethic of Care for Journalism*, 21 J. MASS MEDIA ETHICS 123 (2006).

¹⁵ There are “three major extant normative moral theories”. First, “virtue theory” as articulated by Plato and Aristotle, maintains “that moral questions are questions regarding what kind of people we must be so as to function as best we can, identifying certain character traits that are necessary for us to function properly.” Second, “utilitarianism” based upon Jeremy Bentham and John Stuart Mill is based on the premise that “states of pleasure and pain . . . are obvious ‘goods’ and ‘bads’ in the universe. We are obliged, then, to take those actions or follow those rules that, if taken or followed, would produce the greatest amount of happiness for the greatest number of sentient beings” Third, deontology “identifies morality with doing one’s duty, and a Kant stated, we “use the dictates of pure reason to discover what duties we owe to other free and reasonable creatures.” William D. Casebeer & Patricia S. Churchland, *The Neural Mechanisms of Moral Cognition: A Multiple-Aspect Approach to Moral Judgment and Decision-Making*, 18 BIOLOGY & PHIL. 169, 172-173 (2003).

to follow? Should one act “according to duty (Kant), maximize . . . aggregate pleasure ([Mills] utilitarian), or act . . . with good character . . . (virtue)”?¹⁶ Some have argued that Kant would require journalists to omit their own biases in their reports.¹⁷ If the utilitarian seeks to produce “the greatest amount of happiness for the greatest number of sentient beings”, then personal bias or subjectivity might improperly imbalance that cost/benefit analysis and result in a less than optimal result.¹⁸ In contrast, an ethics of care recognizes the subjectivity of reporting and the “implications for how journalists choose stories, choose sources, and organize and write their stories.”¹⁹ The ethics of care movement shares many characteristics with the “the public journalism movement,” which “calls for revitalizing civic participation in democratic processes and for reconnecting people to one another, to their government, and to the press”²⁰ A journalistic ethics of care has been described

¹⁶ Aaron Quinn, *Moral Virtues for Journalists*, 22 J. MASS MEDIA ETHICS 168, 178 (2007).

¹⁷ “Journalism’s prevailing normative model, then, draws on narrow Kantian principles. Journalists are exhorted to keep their own philosophical and political positions out of the news, or to hold no positions.” Linda Steiner & Chad M. Okrusch, *Care As A Virtue For Journalists*, 21 J. MASS MEDIA ETHICS 102, 103 (2006).

¹⁸ Casebeer & Churchland, *supra* note 15, at 172-73.

¹⁹ Steiner & Okrusch, *supra* note 17, at 115 (2006). For instance, the *Guidelines for Dealing with Victims by the Press* state that it “must nevertheless be clear that other aspects, such as respect for privacy and human dignity, must always be taken into account, and sometimes they may even be of crucial importance, when it is decided whether or not certain information should be published. Elements that are also taken into consideration are the feelings of the victims and those of their families and friends as well as the possible inconveniences that may be caused if personal data are published.” *Guidelines for Dealing with Victims by the Press*, ETHICNET, http://ethicnet.uta.fi/belgium/guidelines_for_dealing_with_victims_by_the_press (last visited Apr. 14, 2012) (adopted by the Flemish Media Council, July 2003).

²⁰ Steiner & Okrusch, *supra* note 17, at 117. The ethics of care recognizes that the business of the news is not simply an objective telling of history, but rather “news media are not merely neutral vehicles for other sources; they are hybrid organizations—simultaneously political, economical, and

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as a balance between an “*internal view*” in which “moral reasons and motivations originate in the journalist’s thinking . . . “ and between “*external moral guidance* such as institutional norms and principles typified in codes of ethics.”²¹

Although gaining acceptance for a universal code of journalistic ethics may involve insurmountable problems in harmonizing such disparate philosophies of rights, utilitarianism and an ethics of care, this article will demonstrate that all three strands of moral philosophy can consistently support an ethical precept regarding shielding the confidentiality of innocent child victims.

III. We Can All Get Along: Protecting Child Victims’ Identities Is Consistent With All Major Journalistic Philosophical and Ethical Systems

Some have argued that Kant would find the publication of victims’ identities a violation of reporters’ duty to protect individual’s rights. “Kant would require that rape victims be treated as individuals worthy of consideration rather than as vehicles to educate society that rape is not a stigma. He would probably agree with a guideline that victims’ names could be made public only if they were willing.”²² Kant is closer to an ethics of care than to a

cultural—professional institutions—that control access to their channels.” Rousiley Celi Mreiera Maia, *Media Visibility and the Scope of Accountability*, 26 CRITICAL STUD. IN MEDIA COMM. 372, 376 (2009).

²¹ Quinn, *supra* note 16, at 168. “Decisions on identifying victims -- minors . . . should be made on a case-by-case basis . . . Is there a good and compelling reason to publish? And does it outweigh the negative consequences.” *Privacy and Intrusion*, THE DAILY PRESS (2012), <http://www.dailypress.com/services/site/dp-privacy,0,26470.htmlstory> (last visited July 26, 2010).

²² Bastiaan Vanacker & John Breslin, *Ethics of Care: More Than Just Another Tool to Bash the Media?*, 21 J. MASS MEDIA ETHICS 196, 208 (2006) (quoting A. DAVID GORDON & JOHN MICHAEL KITROSS, *CONTROVERSIES IN MEDIA ETHICS* 158 (2nd. ed. 1999). Kant stated, we “use the dictates of pure reason to discover what duties we owe to other free and reasonable creatures.” Casebeer & Churchland, *supra* note 15, at 173.

utilitarian view by focusing on the child victim, rather than upon the societal value of publishing child victims' names. "Kantian duties toward the individual worthy of protection run head-on into Utilitarian concerns for a societal benefit in knowing the full details of the crime—and suspected criminal—to better understand the nature of the crime and prevent its recurrence. It is a flashpoint between and Ethic of Care and an Ethic of Justice. In Kantian terms, protection of the youth's identity is an imperfect duty."²³ An ethics of care focuses on including and protecting "marginalized" and "powerless" individuals who are often ignored or subordinated for utilitarian purposes.²⁴ Therefore, both Kantian and care ethics philosophies are consistent with protecting the identities of child victims.

However, since the utilitarian analysis of the value of publishing child victims' identities involves a balancing of interests using a totality of the circumstances approach, the question regarding disclosure of data is much more complex and nuanced. Some might argue that the answer is easy. If the utilitarian believes that the primary goal is achieving the greatest good for the greatest number, then informing the public about the details of a child victim's life will always trump the individual injury that a child might suffer from the publicity. In other words, under utilitarian analysis, "[i]nvasion of privacy is resolved on technical journalistic grounds, for example, with harm to victims of tragedy excused whenever it is perceived as benefiting the public good."²⁵ When coupled with the journalistic vision of reporters as crusaders for justice, public watchdogs or as investigative journalists, utilitarianism makes the publication

²³ Brislin & Inoue, *supra* note 8, at 5.

²⁴ Steiner & Okrusch, *supra* note 17, at 114. "The more vulnerable a person is, the more the value of compassion should trump values such as objectivity and truth telling." Vanacker & Breslin, *supra* note 22, at 210.

²⁵ Clifford G. Christians, *Utilitarianism in Media Ethics and Its Discontents*, 22 J. MASS MEDIA ETHICS 113, 113 (2007). "Utilitarianism as a single-consideration theory does not simply demand that we maximize general happiness, but renders irrelevant other moral imperatives that conflict with it." *Id.* at 120.

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of details of tragedy almost a moral imperative.²⁶ That perception of reporters as professional watchdogs who bring transparency to the legal system by disclosing information hidden from the public in confidential court proceedings also shapes definitions of newsworthiness²⁷ Justifications for the release of otherwise confidential information about a child victim's identity often posit extraordinary public relevance.²⁸ For instance, it has been claimed that children's names, when added to the sordid facts of a child abuse case, "can add color to stories"²⁹ Perhaps the most extreme example of the

²⁶ "[I]nvestigative journalists have helped to establish a new kind of figure, the crusader for justice. Motivated by public demands or expectations, by what is perceived as a concern for greater transparency, they present themselves as standing up to the highest legal and political authorities." Dominique Marchetti, *The Revelations of Investigative Journalism in France*, 5 GLOBAL MEDIA & COMM. 368, 381 (2009). "As watchdogs, the news media scrutinize government institutions and social organizations of the private sector." Maia, *supra* note 20, at 373.

²⁷ One theory is that stories about child victims are always newsworthy. "If crime can be said to be almost 'naturally' newsworthy, crimes involving children, as victims or offenders, are especially so" Helena Machado & Filipe Santos, *The Disappearance of Madeline McCann: Public Drama and Trial By Media in the Portuguese Press*, 5 CRIME, MEDIA, CULTURE 146, 150 (2009).

²⁸ If one goal of journalism is to help an audience "comprehend a narrative", then the media must consider the "four dimensions of engagement": "narrative understanding", "attentional focus", "emotional engagement", and "narrative presence" which is "the sensation that one has left the actual world and entered the story." Rick Busselle & Helena Bilandzic, *Measuring Narrative Engagement*, 12 MEDIA PSYCHOL. 321, 322, 341 (2009).

²⁹ Jenn Burleson Mackay, *Journalist Reliance on Teens and Children*, 23 J. MASS MEDIA ETHICS 126, 137 (2008). Some argue that the more detailed the description of the victim and the victim's landscape, the more the reader will be affected by the reporting. For example, Moira Peelo describes a type of newspaper commentary described as the "'mediated witness,' [which] frames events in such a way that the newspaper reader is invited to share closely in the story of the crime by 'identifying with the emotions of those who have been hurt.'" Ian Butler & Mark Drakeford, *Booing or Cheering? Ambiguity in the Construction of Victimhood in the Case of Maria Colwell*, 4 CRIME, MEDIA, CULTURE 367, 367 (2008). In addition, "Peelo argues that the 'exploitation and ownership of victimhood' . . . is central to the current public narrative about crime and

utilitarian/watchdog theory in American journalistic history involved a missing girl who was eventually recovered. The newspaper for 28 days published 23 stories by 12 different reporters, many of which used the sexually abused child's name and photograph and disclosed that her captor, pictured in his sado-masochistic torture chamber, was charged with transporting the named girl across state boundaries for sexual purposes.³⁰ The newspaper's editor responded to complaints about continuing to run stories which named the young rape victim by saying, "We're going to keep running the name and we are going to keep running the picture", and that "[t]he important point is that a newspaper is not an agency of government; it is a private information business that can make exceptions to any rule [such as not publishing child victims' names]. If circumstances recommend an exception, it will be made, which has occurred."³¹ Thus, for the Utilitarian child victims' identities add significantly to the emotional and contextual fabric of reports, affect readers' understanding of such deviant behavior, and potentially motivate the public to seek change.³²

concludes that further micro-studies of the way in which 'our social commentary is shaped by *virtual* emotions arising out of manufactured victimhood' . . . will be important in a political and policy context in which the 'uses and abuses of the emotionality surrounding crime' . . . are highly influential." *Id.* at 368. The same theory has been applied to photographs, including those of abused children, which arguably add significant emotional import to stories. "The power of photographs ultimately lies in their ability to simultaneously function on two levels. . . . On the one hand, photographs work denotatively, appearing to 'naturally' display real life events. On the other hand, images work connotatively, drawing on broad symbolic systems, visually representing much larger hidden codes of meaning." Claire Wardle, *Monsters and Angels: Visual Press Coverage of Child Murders in the USA and UK*, 8 JOURNALISM 263, 265 (2006) (discussing media reports of two young girls who had been abducted and murdered).

³⁰ John G. Craig, Jr., *To Name or Not to Name? Sex-Crime Cases Pose a Privacy Problem*, PITTSBURGH POST-GAZETTE, Jan. 20, 2002, at C-3.

³¹ *Id.*

³² The *Montenegro Codex of Montenegrin Journalist* (2002) rejects the importance of using child victims' names. *Section 8.1(d)* provides that "[i]t is not as a rule necessary to identify the victim in order for the

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Utilitarian theory is also pragmatic; unless media remain financially viable, they will not be able to fulfill their watchdog role. “In some respects, the oft-quoted ‘public right to know’ gets confused in the ever-conscious quest for circulation and ratings.”³³ Others have noted that stories about child victims sell. “Fierce commercial competition is one factor leading media to exploit children. The exposure of emotions and sensationalism attract audiences and sell news.”³⁴ However, there is a great potential for the media’s credibility to be significantly tarnished by attempts to exploit child victims. Many commentators have bemoaned the media’s shaping of social commentary through “‘manufactured victimhood’”³⁵ and hyperbolized reporting of crime statistics that have led to allegations of manipulation of people and social agendas through the creation of moral panics.³⁶

audience better to understand the accident or crime.” And *Section 8.1(j)* states that “[v]ictims of misfortune must not be made to suffer a second time by their portrayal in the media.” *Codex of Montenegrin Journalists*, ETHICNET, available at http://ethicnet.uta.fi/montenegro/codex_of_montenegrin_journalists (adopted by Journalists' Associations of Montenegro at the Montenegro Media Institute in 2002).

³³ Spencer, *supra* note 4, at 167. “We must question how long major media chains will continue to support financially marginal publications alongside sleazy tabloids to give the impression that ‘true’ journalism has a place in twenty-first century society.” *Id.* at 165. “The news media are not mirrors, simply reflecting events in society. Rather, media content is shaped by economic and marketing considerations that override traditional journalistic criteria for newsworthiness.” Sara Sun Beale, *The News Media’s Influence On Criminal Justice Policy: How Market-Driven News Promotes Punitiveness*, 48 WM. & MARY L. REV. 397, 401 (2006).

³⁴ John Tobin, *Partners Worth Courting: The Relationship Between the Media and the Convention on the Rights of the Child*, 12 INT’L J. CHILD. RTS. 139, 139 (2004) (citing Aidan White, *Introduction to PETER MCINTYRE, INT’L FED’N OF JOURNALISTS, CHILD RIGHTS AND THE MEDIA: PUTTING CHILDREN IN THE RIGHT 6-7* (2002)).

³⁵ Butler & Drakeford, *supra* note 29, at 368.

³⁶ The media “tend to focus on unusual, dramatic and violent crime stories, in the process painting a picture of crime for the community that overestimates the prevalence of crime in general and violent crime in particular. Thus, public concerns about crime typically reflect crime as

depicted in the media, rather than trends in the actual crime rate.” Justice Geoffrey Eames, *The Media and the Judiciary*, 2 HIGH CT. Q. REV. 47, 50 (2006) (citing KAREN GELB, MYTHS AND MISCONCEPTIONS: PUBLIC OPINION VERSUS PUBLIC JUDGMENT ABOUT SENTENCING 15 (Sentencing Advisory Council, 2006)). It has been suggested that the framing of child victim and/or juvenile delinquency media coverage can lead to moral panic. Moral panic is less likely if the media adopts a “‘child welfare’ frame” rather than a “‘criminal justice’ frame”, and it is less likely if the media report on stories individually without creating a “‘metanarrative’” or dominant symbolic theme. David A. Green, *Suitable Vehicles: Framing Blame and Justice When Children Kill a Child*, 4 CRIME MEDIA CULTURE 197, 201-06 (2008). Media framing of social issues creates “‘media templates’ [that] serve as rhetorical shorthand, helping journalists and audiences to make sense of fresh news stories. They are instrumental in shaping narratives around particular social problems, guiding public discussion not only about the past, but also the present and the future.” Jenny Kitzinger, *Media Templates: Patterns of Association and the (Re)construction of Meaning Over Time*, 22 MEDIA, CULTURE & SOC’Y 61, 61 (2000). The consequences of media templates include: “‘simplification and distortion”, “‘minimal opportunity for alternative readings”, “‘Osmosis”, and often operate as invisible and powerful influences on current issues. *Id.* at 74-76.

Creating a heightened sensitivity to social problems does not come at no cost to society. The media’s inaccurate reporting on crime can lead to a “‘moral panic’” that results in the “‘strengthening [of] the social control mechanism” and “‘a result is a loss of citizen’s rights.” Scott Chenault, *An Overview of the Relationship Between Juvenile School Shooting, and the Media*, 4 J. INST. JUST. INT’L STUD. 101, 105-09 (2004). Examples are zero-tolerance school rules, school metal detectors, the presence of police on campus, and changes in the juvenile delinquency system such as longer sentences, transfer to adult court, eviscerating of juvenile court confidentiality, and a shift from rehabilitation to punishment for juvenile offenders. For excellent analyses of how the media’s hyperbole regarding school violence helped create an environment in which students’ civil rights have been curtailed, see Aaron Kupchik & Nicole L. Bracy, *The News Media on School Crime and Violence: Constructing Dangerousness and Fueling Fear*, 7 YOUTH VIOLENCE & JUV. JUST. 136 (2009), and Richard Lawrence & David Mueller, *School Shootings And The Man-Bites-Dog Criterion Of Newsworthiness*, 1 YOUTH VIOLENCE & JUV. JUST. 330 (2003). Of course, others note that “[m]ass media emphasis does little to shape public opinion about relative incidence of established social problems.” Jeffrey C. Hubbard, Melvin L. DeFleur, & Lois B. DeFleur, *Mass Media Influences on Public Conceptions of Social Problems*, 23 SOC. PROBS. 22, 33 (1975). There are currently a number of different theories regarding the development of moral panics that posit public

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In order to remain relevant and to fulfill the self-defined watchdog role, media must be at least minimally responsive to their customer base. Therefore, one might expect that if a significant percentage of the public clearly opposed the publication of child victims' identifying information that even journalists following a utilitarian theory might reign in such reports.³⁷ As Drechsel has noted, "if the media themselves accept the role as public trustee, it would seem inevitable that the public would also expect the media to play such a role."³⁸ Further, if media reports violate the public's definition of the watchdog or public guardian media role, "the more likely they will be to support legal restrictions aimed at preventing or punishing" media conduct.³⁹ Therefore, public attitude toward the publication of child victims' names is highly relevant, even to purely utilitarian editorial policies. In a major study regarding public's perception of the media's watchdog role, only 6% of respondents supported the media reporting the name of a 17-year-old rape victim even though the media obtained that information from non-confidential sources. Equally important "[n]inety percent of the respondents would uphold the prior restraint on publication of the victim's name, and three-

opinion on factors other than media influence. For a detailed examination of the different theories of moral panic, such as the "elite-engineered model" and the "grassroots model" see Arnold Hunt, "*Moral Panic*" and *Moral Language in the Media*, 48 BRIT. J. SOC. 629, 629 (1997). See also Sean P. Hier, *Thinking Beyond Moral Panic: Risk, Responsibility, and the Politics of Moralization*, 12 THEORETICAL CRIMINOLOGY 173, 176-178 (2008).

³⁷ The United Nations has suggested that media " '[e]nsure that the privacy of children is protected at all stages of the [legal] proceedings by ensuring that information leading to the identification of children is not disclosed.'" Carolyn Hamilton & Rachel Harvey, *The Role of Public Opinion in the Implementation of International Juvenile Justice Standards*, 11 INT'L J. CHILD RTS. 369, 383 (2003-2004).

³⁸ Robert E. Drechsel, *Media Ethics And Media Law: The Transformation Of Moral Obligation Into Legal Principle*, 6 NOTRE DAME J.L. ETHICS & PUB. POL'Y 5, 7 (1992).

³⁹ *Id.* at 21.

fourths would support the victim in a privacy action.”⁴⁰ Therefore, there are significant factors militating against a utilitarian cost/benefit conclusion that publishing child victims’ identifying information either will bring the greatest good to the greatest number or that such publication will protect the media from losses of revenue or from more governmental regulation.⁴¹

IV. Specific Examples of Media Reports on Child Victims That Include Identifying and Embarrassing Information

If Kantian, care ethics, and utilitarian theories of journalism support the exclusion of identifying information regarding child victims, why do so many news reports include that information? It is axiomatic that “[c]hildren’s vulnerability must be a prime concern for broadcasters.”⁴² In fact, some United States news organizations and most other countries’ model media codes explicitly state that child sexual

⁴⁰ *Id.* at 30.

⁴¹ “Keep in mind that our readers are growing more and more sensitive to the plight of victims and the families of victims. They will turn quickly on a newspaper they perceive as unfeeling.” *Privacy and Intrusion*, *supra* note 21. Of course, the following analysis of the media’s role as watchdog and as a commercial enterprise that must remain responsive to market forces does not necessarily apply to individual bloggers who may not have a financial reluctance to publish against the grain or who have individual emotional commitments to zealously pursuing issues no matter the public criticism. Therefore, one reason to maintain court confidentiality rules is to prevent those who are not constrained by market forces from obtaining sensitive victim data in the first place.

⁴² Michael de Tombe, “*Get That Camera Out Of My Face!*”: *A Look At Children, Privacy and the Broadcasting Standards*, 31 VICTORIA U. WELLINGTON L. REV. 577, 584 (2000) (citing the *United Kingdom Broadcasting Standards Commission Code on Fairness and Privacy*, DONALD W. REYNOLDS JOURNALISM INST., <http://www.rjionline.org/MAS-Codes-UK-Broadcasting-Fairness-Privacy> (last visited Apr. 23, 2012)). *See also Reporting About People*, REUTERS HANDBOOK OF JOURNALISM, http://handbook.reuters.com/index.php/Reporting_about_people (last visited Apr. 14, 2012) (The “overriding concern must be to avoid exposing a minor to harm and we must do our utmost to minimize the stress of the experience for the subject.”).

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abuse victims shall not be identified in media stories either by name or by including information that can lead to the identification of the child victim.⁴³ However, a 2010 two-year study of newspaper articles published in 36 states in the United States demonstrated that:

1. In 51% of news articles about child abuse and/or neglected victims the media provided “at least one type of identifying information about the child . . .”;

2. The child abuse victim’s name was printed in 21% of cases not involving sexual abuse;

3. Newspaper coverage of non-sexually abused children listed at least one type of identifying information in 78% of the articles;

4. In articles about sexually abused children, the media in 4% of cases listed the child’s street name or address, 3% listed the name of a non-offending family member, in 12% of the articles the offender’s name and the offender’s relationship with the child victim was published, and at least one identifying piece of information was published in 37% of the articles about sexually abused children.⁴⁴

As the following examples from media reports in the United States demonstrate, journalists often do not follow media ethics codes in individual cases, or perhaps those media ethics codes do not sufficiently restrict publication of identifying information regarding child victims.

A. *Connecticut*

Some newspapers in Connecticut have stated that keeping abused children’s identities confidential is a bad idea. For example, the *Hartford Courant* issued an editorial

⁴³ The Radio-Television News Directors Foundation guidelines state, “Juveniles should be given greater privacy protection than adults . . . [and] do unto other people’s kids as you would have them do unto your kids.” Brislin & Inoue, *supra* note 8, at 3.

⁴⁴ Lisa M. Jones, David Finkelhor & Jessica Beckwith, *Protecting Victims’ Identities In Press Coverage of Child Victimization*, 11 JOURNALISM 347, 353-54 (2010).

suggesting that it is not always in abused children's best interest for the press to keep their identities confidential: "Although the impulse to protect the identity of abused children is understandable, it can lead to excess."⁴⁵ Examples of Connecticut media reports on child victims include:

1. Lynne Tuohy, *A Payback for Nightmares; Judge Describes Child Victims' Anxiety, Self-Loathing As He Sentences Giordano To 37 Years*.⁴⁶ In this story, the reporter chronicles the sexual abuse in which a named mother allegedly brought "her 8-year-old daughter and 10-year-old niece" to the named defendant for sex.⁴⁷ Since this reporter revealed the mother's identity, the community could easily also identify the child sexual abuse victims. Many more protective media codes inform reporters to omit the names of criminal defendants if identifying them will lead to the identity of the child victim.⁴⁸

2. Matt Burgard, *After Father's Arrest In Unrelated Case, Allegations Surface That He Tortured And Abused His Wife and Children*. The story gives the father's name and the fact

⁴⁵ Editorial, *Conspiracy of Silence*, HARTFORD COURANT, June 29, 1993, at B12.

⁴⁶ HARTFORD COURANT, June 14, 2003, http://articles.courant.com/2003-06-14/news/0306141726_1_giordano-abuse-nevas (last visited Apr. 14, 2012).

⁴⁷ In contrast, in some countries like Canada, reporters do not list suspects' names if it might lead the reader to identify the child victim. For instance, one Canadian news report stated that: "[a] Fort Erie man is accused of fondling his [15-year-old] mentally disabled stepdaughter . . . The 48-year-old man, whose name is being withheld to protect the victim's identity, is charged with sexual exploitation of a disabled person and sexual assault." *Disabled Girl Abused*, TORONTO SUN, Aug. 17, 2000, at 34. Providing facts that can lead to the identification of a child victim violates the Canadian *Child and Family Services Act*. *Winnipeg Child-Custody Attracts White-Supremacists*, WINNIPEG FREE PRESS, June 23, 2009.

⁴⁸ See *infra* note 62.

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that he “routinely subjected to humiliating acts of ‘corporal punishment’” his “two girls, aged 7 and 10, and two boys, aged 14 and 15”⁴⁹ *Section III A, infra* describes the danger of publicity to physically and emotionally abused children.

3. Jenna Carlesso, *Domestic Violence Death Of A Parent Can Scar Kids For Life*.⁵⁰ In this article in which the author specifically acknowledges that children who witness the murder of a mother by a father have “emotional scars [that] run deep” and that some “children develop anxiety, difficulty sleeping and post-traumatic stress disorder” nonetheless published the full names of the 9-year-old sister and her brother who witnessed the murder. This is a very troubling news report because the reporter expressly noted that these children were emotionally fragile and have emotional scars that run deep, but still published the children’s names.

4. In another article, the Connecticut reporter gave the mother’s name, the names of the mother’s 7-year-old, 13-year-old, 9-month-old, and 17-year-old children and described the details of the mother’s physical abuse of the children. The article, which included a photograph of the mother and three of her children described the mother as she “whipped her 13-year-old son across the face and her [named] 7-year-old daughter on her small frame.” In addition, to add public humiliation

⁴⁹ HARTFORD COURANT, Mar. 17, 2007, available at <http://www.courant.com/news/domestic-violence/hc-domestic-violence-archive-robinson-1-031707,0,5241489.story>.

⁵⁰ HARTFORD COURANT, May 3, 2010, available at http://articles.courant.com/2010-05-03/news/hc-dv-children-0502.artmay02_1_domestic-violence-david-magnano-rosenbeck.

to the [named] 13-year-old son, the reporter stated that he “bowed his head in shame Monday and admitted he’d misbehaved.”⁵¹ One must wonder why this reporter determined that this abused child’s “SHAME” was so newsworthy?

5. A reporter not only described in detail the child abuse resulting in “welts and bruises on the arms of both girls” and that the mother “beat her daughters with a metal broom handle” he also gave the girl’s street and the name of the girls’ high school, apparently so that no reader would be left with insufficient identifying information regarding these two high school students.⁵² Why would a reporter supply an abused child’s street and the name of the abused child’s school?

6. In another article the reporter listed both parents’ names and their full street address, and stated that the couple had neglected their 7, 11, and 14-year-old children by “raising their three daughters in a house where rotting food littered almost every room”⁵³

B. Michigan

Michigan was one of the first states to open its child abuse courts to the press and public. Historically, the

⁵¹ Meredith Carlson, *Parent Jailed After Calling For Help To Stop Child Abuse*, HARTFORD COURANT, Sept. 17, 1991, at B1, http://articles.courant.com/1991-09-17/news/0000211959_1_children-and-youth-services-negron-s-home-called.

⁵² David Owens, *Mother Facing New Counts; Charged Again With Assaulting 2 Daughters*, HARTFORD COURANT, Nov. 12, 2009, at B4, http://articles.courant.com/2009-11-12/news/child-abuse-1112_1_felony-charges-warrant-assault.

⁵³ Kenneth R. Gosselin & Robin Stansbury, *House Found In Squalor; Couple Charged*, HARTFORD COURANT, June 10, 1994, at C5, http://articles.courant.com/1994-06-10/news/9406100662_1_james-howard-officers-court-date.

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Michigan press has published identifying data regarding child victims. “In Michigan, which has had open hearings since 1988, numerous Detroit newspaper articles publish children’s names and photographs”⁵⁴ That trend continues today.⁵⁵ The National Center for State Courts investigation of the Minnesota open pilot project found that many Michigan “news articles revealed that in some cases children’s real names were used, as well as their photographs, when describing cases of foster care abuse, termination of parental rights and child protection matters.”⁵⁶

C. *New York*

New York also has a long history of publishing the identities or identifying information regarding child victims. Perhaps the worst case in recent memory involved the sexual abuse of a son by his mother. That report stated that the child, “Justin, stated that respondent-mother had placed his penis in her mouth. Justin also stated that respondent-mother had placed her mouth on his butt and ‘titties’” and reported that Justin acted out sexually through “acts of exhibitionism and masturbation.”⁵⁷

D. *Oregon*

The Oregon media has historically published identifying information about child victims. One Oregon

⁵⁴ Susan Harris, *Open Hearings: A Questionable Solution*, 26 WM. MITCHELL L. REV. 673, 677 (2000).

⁵⁵ For instance, the press still supplies information in stories that can lead to the child victim’s identity. *See, e.g.*, Ben Schmitt, *Wayne County: Task Force Fans Out To Check For Child Abuse*, DETROIT FREE PRESS, May 17, 2007, at 1.

⁵⁶ Mary Jo Brooks Hunter, *Minnesota Supreme Court Foster Care and Adoption Task Force*, 19 HAMLINE J. PUB. L. & POL’Y 1, 231 (1997).

⁵⁷ *Court Decisions: Signs of Sexual Abuse of Child Are Shown But Mother is Not Proven to be Likely Abuser*, N.Y.L.J., July 11, 2000, at 25. *See also Dad Jailed for Dog-Housed Daughter*, N.Y. TIMES, Feb. 1, 2001; Celia W. Dugger, *Sex-Abuse Case in Harlem Leaves Neighbors Confused*, N.Y. TIMES, May 23, 1991 (stating the 14-year-old daughter of the named father is a special education student and giving her address and details of the father fondling her breasts and inserting “his finger into her vagina”).

newspaper still published the name of a 13-year-old minor even when excluded by the court from a dependency court proceeding. Once the story was published by one newspaper, several other Oregon papers also republished the child's name.⁵⁸ Other stories have published the child's name and details of the abuse and/or neglect.⁵⁹

E. Texas

In one of the worst cases of reporters re-abusing a child victim, a Texas newspaper disclosed the following information about the child sexual abuse victim: (1) the boy had learning and physical disabilities, (2) he was "sodomized . . . with a four-foot long cable as punishment", (3) he was handcuffed to a railing and beaten with a wooden paddle. In addition, the reporter disclosed his conversation with the boy's sixteen-year-old sister in which she said that her brother would have a sock or rag put in his mouth when he screamed.⁶⁰

F. Arizona

Arizona has a press that frequently publishes identifying information regarding child victims. John Johnson discovered many patterns and tropes of that media coverage of child victims in Arizona media in his analysis of 32 years of newspaper articles in *The Arizona Republic* and *The*

⁵⁸ See *State ex rel. Oregonian Pub. Co. v. Diez*, 613 P.2d 23 (Or. 1980) (although this was a court report it was available to the public and on the internet).

⁵⁹ See, e.g., Emily Tsao, *State's Kids Need More Protection, Audit Says*, OREGONIAN, May 12, 2005; Ruth Liao, *Couple Get Three Years In Prison For Confining, Abusing 4-Year-Old*, STATESMAN J., Mar. 8, 2007, at 1; Pat Knight & Dana Tims, *Stevens Arraigned in Linn Murder, Assault on Girls*, OREGONIAN, Mar. 8, 1998 (giving mother's name and stating that the girls were kidnapped and "sexually molested . . ."); Emily Tsao & Sarah Hunsberger, *Failings Found in Foster Child's Care*, OREGONIAN, Feb. 19, 2005, at B1 (child's name and medical condition disclosed).

⁶⁰ *Police Couple Charged With Child Sexual Abuse*, LUBBOCK AVALANCHE-J., Apr. 13, 2000, available at http://lubbockonline.com/stories/041300/sta_041300017.shtml.

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Phoenix Gazette.⁶¹

In one article the media disclosed that the named parents' neglected their son who "has attention deficit hyperactivity disorder" and described in a manner that can only be horribly embarrassing to an 11-year-old boy, that he was locked in his room that had bars on the windows and "was left a jug of water and a sandwich, a roll of toilet paper and a bucket in which to relieve himself."⁶² In another story the reporter gave the child's name and described the child crying when taken from the mother and was placed in foster care.⁶³ In another case, the reporter gave the child's name, his medical condition, and the fact that he and his sibling were taken into police custody.⁶⁴

G. Florida

The Florida media routinely publishes identifying and extremely embarrassing stories about child victims. Imagine how a 16-year-old boy would feel when the public reads that the mother's attorney has publicly called him a "liar" and an "aggressor" in an abuse case in which it is alleged that he was brutally beaten with "bruises on nearly every part of his body, a broken right forearm and cuts on his buttocks so severe he couldn't sit". The story also states that the mother's boyfriend "ordered him to strip naked"⁶⁵

⁶¹ Johnson found that the "content analysis of child abuse horror stories reveals five distinct properties of the form: (1) evocation of negative emotionality, which is accomplished by the development of either (a) ironic contrast, or (b) structural incongruity; (2) disembodiment of interaction; (3) decontextualization; (4) use of official sources; and (5) individualization of causal agency." John M. Johnson, *Horror Stories and the Construction Of Child Abuse*, in FROM IMAGES OF ISSUES: TYPIFYING CONTEMPORARY SOCIAL PROBLEMS 17 (Joel Best, ed., 2d ed. 2009).

⁶² *Tucson Couple Arrested for Child Abuse*, ASSOCIATED PRESS LOCAL WIRE, Aug. 11, 2008.

⁶³ Rhonda Bodfield Bloom, *Broken Bonds*, ARIZ. DAILY STAR, Oct. 22, 2005.

⁶⁴ Joyesha Chesnick, *Shift in Policy Aims at Keeping Children Out of Foster Homes*, ARIZ. DAILY STAR, July 25, 2005.

⁶⁵ John Frank, *Abuse of Teen Disputed*, ST. PETERSBURG TIMES, Mar. 18, 2009, at 1B. A sample of other media stories about Florida child abuse

It is difficult to determine whether the frequent publication of identifying information regarding child abuse victims is the result of an inadequate normative system of journalistic ethics or whether publication is the result of violations of sufficiently explicit ethical constraints. *Section III* will demonstrate that the current media ethical codes are constructed upon a number of false assumptions about the effects of publicity on child abuse victims and that those assumptions are inconsistent with well-established child and adolescent psychiatric and psychological studies.

V. A View of International and United States Media Ethics Codes Through a Child and Adolescent Psychiatric Perspective: False Assumptions and Their Impact Child Victims' Mental Health

This section will analyze dozens of media ethics codes to help uncover many of the underlying assumptions and generalizations regarding the ambit of reporting on child victims. Those assumptions will be analyzed using contemporary child and adolescent psychiatric data regarding the potential harm to child victims based upon such currently permitted publicity.

A. Many Media Ethics Codes Only Protect Child Sexual Abuse Victims, But Omit Protection for Those Children Who Are Physically and/or Emotionally Abused

The media has a false impression that the only children at serious risk through publication of their identities are child sexual abuse victims. However, data demonstrates that non-sexually physically abused and/or neglected children also suffer significantly from the disclosure of their personal

victims includes: Shannon O'Boye, *Mom Arrested On Child Abuse Count: Exam Reveals Boy's Bruises Are 'Severe'*, SUN-SENTINEL, Jan. 22, 2005, at 2B; Valerie Kalfrin, *Scuffle With Son Brings New Abuse Charge for Dad*, TAMPA TRIB., August 27, 2007, at 4; *Law and Order*, TAMPA TRIB., Feb. 13, 2009, at 15.

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lives.⁶⁶ As early as 1991, the *American Academy of Pediatrics* stated that focus on the danger of publication of information regarding abused children should focus, not just on sexual abuse, but also on physical abuse and neglect:

Media publication of information about child abuse victims and their families may be detrimental to the victims. This is particularly true in cases of sexual abuse, but it may be just as serious in some cases of physical abuse or neglect.⁶⁷

Mental health evidence has determined that “chronic maltreatment of children is associated with a heightened risk” from public disclosure.⁶⁸ In fact, many have argued that a “child victim of physical assault should . . . be granted the same rights to privacy as the victim of sexual assault.”⁶⁹

⁶⁶ Tamerra P. Moeller & Gloria A. Bachman, *The Combined Effects of Physical, Sexual, and Emotional Abuse During Childhood: Long-Term Health Consequences For Women*, 17 *CHILD ABUSE & NEGLECT* 623, 636 (1993).

⁶⁷ *Public Disclosure of Private Information About Victims of Abuse*, 87 *PEDIATRICS* 261 (1991) (this policy statement by the Committee on Child Abuse And Neglect included representatives from the American Academy of Pediatrics, the American Medical Association, the American Academy of Child and Adolescent Psychiatry, and was approved by the Council on Child and Adolescent Health). Child abuse victims have “rates of PTSD [post traumatic stress disorder] of greater than 30%” and “children in foster care are some 16 times more likely to have psychiatric diagnoses, eight times more likely to be taking psychotropic medications and utilize psychiatric services at a rate of eight times greater compared with children from similar socio-economic backgrounds and living with their parents.” Robert Racusin, Arthur C. Maerlander, Jr., et. al., *Psychosocial Treatment of Children In Foster Care: A Review*, 41 *COMMUNITY MENTAL HEALTH J.* 199, 202-03 (2005).

⁶⁸ Gregory C. Elliott, Susan M. Cunningham, Meadow Linder, Melissa Colangelo, & Michelle Gross, *Child Physical Abuse and Self-Perceived and Social Isolation Among Adolescents*, 20 *J. INTERPERSONAL VIOLENCE* 1663, 1665 (2005).

⁶⁹ Chris Goddard & Bernadette J. Saunders, *Child Abuse and the Media*, 14 *Child Abuse Prevention Issues* (2001), <http://www.aifs.gov.au/nch/pubs/issues/issues14/issues14.html>. See also Malgorzata Ligenzinska, et al., *Children’s Emotional and Behavioral*

In addition, the media undervalues the seriousness of emotional abuse, known as the “invisible wound” which becomes “doubly invisible when the media’s framing of abuse as physical [and/or sexual] obscures the impact and pain of their experience.”⁷⁰

Media reports are rarely sufficiently nuanced to distinguish victims’ different kinds of abuse or the seriousness of the effects of publicity on those differently harmed victims. Some child victims are targets of single events, while others suffer persistent patterns of abuse. “[F]or a large proportion of victimized children, victimization is ‘more of a “condition” than an “event”’.⁷¹ In addition, many children suffer “[P]olyvictimization’ [which] lead[s] to more severe outcomes and symptomatology as compared to no or single victimization”⁷² Children who suffer polyvictimization which may involve sexual, physical, and emotional abuse, may develop the “syndrome of complex posttraumatic stress disorder” which involves chronic mental health problems.⁷³ Further, “multiple adverse childhood experiences” increase the risk of suicide.⁷⁴

Reactions Following the Disclosure of Extrafamilial Sexual Abuse: Initial Effects, 20 CHILD ABUSE & NEGLECT 111, 121 (1996).

⁷⁰ Christy-Dale L. Sims, *Invisible Wounds, Invisible Abuse: The Exclusion of Emotional Abuse Newspaper Articles*, 8 J. EMOTIONAL ABUSE 375, 377-78 (2008).

⁷¹ Ann T. Chu and Alicia F. Liebermann, *Clinical Implications of Traumatic Stress from Birth to Age Five*, 6 ANNU. REV. CLIN. PSYCHOL. 469, 472 (2010).

⁷² *Id.* at 472.

⁷³ Carsten Spitzer, Cathrin Chevalier, Michael Gillner, Harald J. Freyberger, & Sven Barnow, *Complex Posttraumatic Stress Disorder and Child Maltreatment in Forensic Inpatients*, 17 J. FORENSIC PSYCHIATRY & PSYCHOL. 204, 204-05 (2006). Complex posttraumatic stress disorder involves “six diagnostic criteria for the formal diagnosis comprise: (a) impairment of affect regulation including impulse dyscontrol and self-destructive behaviour; (b) altered states of consciousness with amnesia and dissociative symptoms; (c) alterations in self-perceptions including intense feelings of guilt and shame; (d) distorted relations to others with isolation and distrust; (e) somatization; and (f) alterations in one’s system of meanings.” *Id.* at 204-05.

⁷⁴ Ana Sfoggia, Marco Antonio Pancheco, & Rodrigo Grassi-Oliveira,

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Unfortunately, most media organizations do not include warnings in their ethics codes about the dangers to abused and/or neglected children from publicity. For example, the Society of Professional Journalists does not in its *Code of Ethics* inform journalists that they should exclude identifying information about physically and emotionally abused children; it only suggests that details of sexual abuse be omitted. “Be cautious about identifying juvenile suspects or victims of sex crimes.”⁷⁵ The Federation of Spanish Press states “journalist shall act with special care in handling issues which deal with sexual crime.”⁷⁶ Similarly, the codes of ethics of the journalists in Lithuania⁷⁷, Belarus⁷⁸, Croatia⁷⁹, and Italy⁸⁰ specifically caution against publishing identifying information of child sex abuse victims, but do not warn against the danger of publishing the names of physically

History of Childhood Abuse and Neglect and Suicidal Behavior at Hospital Admission, 29 *CRISIS* 154, 157 (2008).

⁷⁵ See *Code of Ethics*, SOC’Y PROF. JOURNALISTS, <http://www.spj.org/ethicscode.asp> (last visited Apr. 16, 2012).

⁷⁶ *Code of Ethics for the Journalistic Profession*, CODES ETHICS COLLECTION, <http://ethics.iit.edu/ecodes/node/3520> (last visited Apr. 14, 2012) (adopted by the Federation of Spanish Press on November 28, 1993).

⁷⁷ *Code of Ethics of Lithuanian Journalists*, CODES ETHICS COLLECTION, <http://ethics.iit.edu/ecodes/node/3613> (last visited Apr. 14, 2012) (“The journalist should not publish the names of victims, particularly in the case of sexual aggression.”).

⁷⁸ *Journalists Ethics Code of Belarus*, ETHICNET, http://ethicnet.uta.fi/belarus/journalists_ethics_code (last visited Apr. 14, 2012) (“It is not acceptable to identify children under 16 who are victims of or witnesses to sexual crimes.”).

⁷⁹ *Honour Codex of Croation Journalists*, ETHICNET, http://ethicnet.uta.fi/croatia/honour_codex_of_croatian_journalists (last visited Apr. 14, 2012) (“In cases of sexual abuse, a journalist is not allowed to reveal the identity of the children involved in those cases, regardless of the fact they are witnesses or victims.”).

⁸⁰ *Charter of Duties of Journalists*, ETHICNET, http://ethicnet.uta.fi/italy/charter_of_duties_of_journalists (last visited Apr. 14, 2012) (“The names of victims of sexual violence can be neither published, nor can a journalist give details that can lead to their identification unless it is required by the victims themselves for relevant general interest.”).

and/or emotionally abused children.

The press code, which provides the greatest breadth and depth of protection for children from all forms of abuse, is the *Treviso Charter* of the Order of Journalists' National Council in Italy. In 1998 in its "Work of Children" congress, *Treviso Charter* was revised to include much greater protection of abused children from unreasonable publicity:

Every Child who suffers has the right to be safeguarded, we know that well when we do not publish the names nor the pictures of those who have undergone abuse.⁸¹

In its 2006 session, the *Order of Journalists' National Council* expanded dramatically its protection on children in media publications, including a recognition that "the representation of their life facts may be harmful to them", that "their Psycho-physical, emotional, and relational integrity must be pursued", and that "the anonymity of minors involved in news cases must be guaranteed . . . " in general, and that in child protection legal proceedings involving foster care, adoption or family law "the anonymity of the minor must be safeguarded in these cases in order not to effect on the harmonious development of their persona"⁸²

Media ethics codes' omission of physically and emotionally abused and neglected children from the list of child victims who need to be protected from publicity also runs against the judicial trend in treating all child abuse victims, not just sexually victimized youth, similarly.⁸³ Recently in *In re Tayler F.*, the Connecticut Supreme Court

⁸¹ *The Work of Children*, ETHICNET, http://ethicnet.uta.fi/italy/the_work_of_children (last visited Apr. 14, 2012).

⁸² *Journalistic Activity and Protection of Minors: Treviso Charter Revised*, ETHICNET, http://ethicnet.uta.fi/italy/journalistic_activity_and_protection_of_minors_treviso_charter_revised (last visited Apr. 14, 2012).

⁸³ For an extensive analysis of legal prophylactic rules promulgated to protect all child abuse victim witnesses, see Patton, *supra* note 1.

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reaffirmed that “protecting the physical and psychological well-being of children is a compelling state interest.”⁸⁴ The Supreme Court rejected the parents’ argument that only sexually abused children need protection in court proceedings, “[W]e decline to limit the court’s discretion to deem the child unavailable to only cases involving sexual abuse This state’s policies, as reflected in our statutes and rules of practice, support a broader view of the protection of child witnesses.”⁸⁵

Although many international legal documents address children’s human rights, few articulate the danger of publicity to all three types of child abuse victims – sexual, physical, and/or emotional. However, the *U. N. Convention on the Rights of the Child, Article 39*, requires “States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse” Although the *U. N. Convention* does not control private media organizations, it at least provides guidance on the necessity to treat all abused children with care as they undergo “recovery and social reintegration”. The *U.N. Convention, Article 16* also provides a right to reasonable privacy for children: “No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.” Further, the *U.N. Convention, Article 18*, encourages “the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being”

Psychiatric evidence demonstrates not only that all abused children are at risk of increased psychological harm from publicity of their identities and/or the intimate details of their abuse, but it also demonstrates that all child victims, those sexually, physically, and/or emotionally abused suffer from a fear of “disclosure of the event, due to the stigma that may be associated with having the trauma known . . . which

⁸⁴ *In re Tayler F.*, 995 A.2d 611, 624 (Conn. 2010).

⁸⁵ *Id.* at 626.

may lead to self-blame for allowing the trauma to continue.”⁸⁶ Abused children are emotionally conflicted about whether to remain silent or to disclose their abuse since disclosure often results in:

acute shame and embarrassment, misdirected self-blame, and uncertainties about how others might respond to the disclosure . . . , and the disclosure becomes something of a ‘cruel paradox’ . . . ; the desire to share the event with others may be countered by realistic fears that listeners will be unsympathetic and skeptical with respect to the veracity of the abuse⁸⁷

Therefore, media ethics codes should be amended to clarify the danger of publicizing the identity of all abused and/or neglected children, not just those who are victims of sexual abuse.

⁸⁶ Hilit Kletter, Carl F. Weems, & Victor G. Carrion, *Guilt and Posttraumatic Stress Symptoms in Child Victims of Interpersonal Violence*, 14 CLINICAL CHILD PSYCHOL. & PSYCHIATRY 71, 72 (2009).

⁸⁷ George A. Bonanno, Deniz M. Colak, Anthony Papa, Dacher Keltner, Michelle N. Shiota, Jennie G. Noll, & Frank W. Putnam, *Context Matters: The Benefits and Costs of Expressing Positive Emotion Among Survivors of Childhood Sexual Abuse*, 7 EMOTION 824, 826 (2007). One study found that although levels of self-blame do not vary by children’s gender, age at the time of abuse is relevant, and “young children may exhibit higher levels of self-blame than older children because of biased attributional processes.” Jodi A. Quas, Gail S. Goodman, & David P. H. Jones, *Predictors of Attributions of Self-Blame and Internalizing Behavior Problems in Sexually Abused Children*, 5 J. CHILD PSYCHOL. & PSYCHIATRY 723, 723-24 (2003). Unlike guilt, shame does not provide “a multitude of paths to redemption,” and increases other mental and social problems, and in younger children predicts future “risky driving behavior, earlier initiation of drug and alcohol use, and a lower likelihood of practicing safe sex”, and shame disrupts “individuals’ ability to form empathetic connections with others.” June Price Tangney, Jeff Stuewig, & Debra J. Mashek, *Moral Emotions and Moral Behavior*, 58 ANNUAL REV. PSYCHOL. 345, 350, 353-54 (2007).

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B. The Cat Is Out of the Bag; Cumulative Psychological Damage For Child Victims

Media frequently republish information published in other media sources even though they would not have originally published that data because it would violate their code of ethics. This section will demonstrate how this “republishing justification” which often results in “pack journalism”⁸⁸ based on a theory that “the cat is out of the bag” exacerbate child victims’ psychological injuries.⁸⁹ Examples of republication abound. One of the most notorious involved the Kobe Bryant rape allegation. Initially no newspapers published the name of the alleged rape victim. However, after a “nationally syndicated radio talk show host . . . identified the alleged victim . . . by name . . . “ other news sources started to republish her name and to include details about her life.⁹⁰ For instance, in Los Angeles, even though the *Los Angeles Times* decided not to run stories on the alleged rape victim, two other newspapers, *The Daily News* and *The Orange County Register*, ran stories on the alleged rape victim’s life.⁹¹ In another case, the William Kennedy Smith rape trial, the *Sun Mirror* and the *Globe* both published the alleged rape victim’s name.⁹² In a third case in which an 11-

⁸⁸ Ruth Teichroeb, *Covering Children & Trauma*, DART CTR. JOURNALISM & TRAUMA (2006), http://dartcenter.org/files/covering_children_and_trauma_0.pdf (last visited Apr. 14, 2012).

⁸⁹ For legal discussions of the media “cat is out of the bag argument” see *In Re J.D.C.*, 594 A.2d 70 (D.C. 1991), *Edward A. Sherman Pub. Co. v. Goldberg*, 443 A.2d 1252 (R.I. 1982), and *Matter of Ruben R.*, 641 N.Y.S.2d 621 (N.Y. App. Div. 1996).

⁹⁰ Chris Frates, *Radio Host Names Accuser*, PHILADELPHIA DAILY NEWS, July 24, 2003, available at <http://www.philly.com/mld/dailynews/news/local/6371524.htm>.

⁹¹ Bob Barker, *The Internet is Reshaping Bryant Story*, L.A. TIMES, July 26, 2003, at A1, A14; see also Kimberley Keyes, *Kobe’s Legal Legacy: Precedent Likely to Be Cited in Other Prior-Restraint Cases*, 28 NEWS MEDIA & LAW 17 (2004), <http://www.rcfp.org/browse-media-law-resources/news-media-law/news-media-and-law-fall-2004/kobes-legal-legacy>.

⁹² Deborah W. Denno, *Perspectives on Disclosing Rape Victims’ Names*,

year-old and a 13-year-old shot fifteen students, “the managing editor of the *New York Times* took less than five minutes in deciding to print the boys’ names before local police had officially released them. The *Washington Post* followed suit the next day . . . The *Los Angeles Times* held out two days. *Chicago Tribune* editors debated a full three days before breaking their decades-old rule of providing a veil of protection for juveniles under age 17.”⁹³

The American media has tested in court the “cat is out of the bag” justification for publication of identifying information regarding child victims.⁹⁴ In *Edward A. Sherman Pub. Co. and M. Catherine Callahan v. William R. Goldberg, in his Capacity as Judge of the Family Court of Rhode Island*⁹⁵ the media published the name of a juvenile involved in a court hearing. The judge ordered the media who published the child’s name be excluded from future court hearings even though other media sources were admitted as long as they promised not publish the child’s identity. The media argued the “cat is out of the bag” justification for publishing the child’s name since anonymity “serves no purpose and its application to bar petitioners from attending the hearing is arbitrary and completely unconstitutional.”⁹⁶ In

61 FORDHAM L. REV. 1113, 1114, n.7 (1993).

⁹³ Brislin & Inoue, *supra* note 8, at 7.

⁹⁴ For instance, in the Kobe Bryant case, the media sought to publish transcripts of a closed-door hearing that the court “inadvertently” emailed to some media sources. The media argued that since the rape victim’s identity had already been published elsewhere, republication should be permitted. “The court concluded that disclosure would harm not only the accuser’s privacy interest but also the state’s interest in reporting and prosecuting sex crimes.” Keyes, *supra* note 91.

⁹⁵ *Edward A. Sherman Pub. Co. v. Goldberg*, 443 A.2d 1252 (R.I. 1982).

⁹⁶ Although the appellate court did rule that the trial court’s order banning the publisher of the child’s name from the court room was unconstitutional, this case is illustrative of the media ethics that is based upon the concept that child victims are not furthered harmed by republication or repeated publication of their identities. *Id.* at 1257-58. The appellate court found that the trial court should have held a hearing to determine whether the press independently discovered the minor’s name, in which case the ban was unconstitutional, or whether they learned the

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another case, *In re J.D.C.*⁹⁷, a minor moved to close the courtroom after the *Wall Street Journal* identified him by name. In overruling the trial court that denied the minor's motion, the court of appeal rejected the "cat is out of the bag" argument:

We likewise cannot agree with the notion that the cat is already out of the bag and that it would now be futile to attempt to do anything about it. Assuming that the kitten's whiskers (or even its tail) may be showing, the rest of the body remains concealed⁹⁸

In another case involving kidnapped and sexually abused children, the Associated Press articulated the "cat is out of the bag" justification for continuing to use the children's names: "While it is the Associated Press' policy not to identify alleged victims of sexual abuse in most cases, the story of Shawn and Ben has been widely publicized and their names are now well-known. Also, their families have gone public, conducting several media interviews."⁹⁹ Peter Sussman has questioned whether the press should publish identifying data just because it is legally available, and he further questions the Associated Press' decision to publish humiliating details about the boys' abuse: "[I]s it really necessary to public understanding of these events to tell how many times a day each boy was assaulted and (suggesting) in what manner?"¹⁰⁰

The question is not merely whether or not the press

identity in the court hearing, in which case the ban from future hearings might be constitutional. *Id.* at 1259.

⁹⁷ *In re J.D.C.*, 594 A.2d 70, 72 (D.C. 1991).

⁹⁸ *Id.* at 79.

⁹⁹ *When to Name Names*, SOC'Y PROF. JOURNALISTS, <http://www.spj.org/rrr.asp?ref=68&t=ethics> (last visited Apr. 16, 2012).

¹⁰⁰ *Id.* Another question is whether the press should rely on the children's parents' waivers of the child's privacy rights, especially if the press makes an independent determination that further publicity might increase the child victims' mental anguish. For a discussion of the concept of consent to publication, see *infra* Part III.E.

has a legal right to republish identifying information about child victims' identities, but also whether the "cat is out of the bag" justification is consistent with child and adolescent psychiatric data regarding the cumulative effects of trauma on abused children.¹⁰¹ Children's mental health is not only seriously affected by the original abuse, but subsequent trauma cumulates resulting in a loss of children's emotional resiliency.¹⁰² Persistent and cumulative stress suffered by abused children "increase[s] the risk of physical and mental health problems" and "can in fact leave permanent imprints in the neural substrate of emotional and cognitive processes."¹⁰³

¹⁰¹ Neurobiological studies now have determined that the stress that child abuse victims suffer causes troubling changes in those children's brain chemistry. The traumatic events cause brain cell damage from "high levels of glucocorticoids secreted in response to stress" Patricia Lester, Susan W. Wong & Robert L. Hendren, *The Neurobiological Effects of Trauma*, 27 ANNALS ADOLESCENT PSYCHIATRY 259, 265 (2002). "The stress sensitization or 'kindling' hypothesis proposes that individuals become sensitized to the life events that precipitate depression, and to the depressive episodes themselves, such that less stress is required to precipitate recurrences of depression than was required to precipitate the first onset." Kate L. Harkness, Alanna F. Bruce & Margaret N. Lumley, *The Role of Childhood Abuse and Neglect in the Sensitization to Stressful Life Events in Adolescent Depression*, 115 J. ABNORMAL PSYCHOL. 730, 730 (2006).

¹⁰² The most successful psychological treatment for abused children, Cognitive Behavioral Therapy [CBT], involves an attempt to normalize their situation and to place the abused children in a protective environment in which they can attempt to reach some type of emotional equilibrium after the acute and/or chronic abuse episodes. CBT "involves supporting and normalizing the client's experience" Victor G. Carrion & Katherine Hull, *Treatment Manual for Trauma-Exposed Youth: Case Studies*, 15 CLINICAL CHILD PSYCHOL. & PSYCHIATRY 27, 28 (2009); see also Pamela C. Alexander, *The Differential Effects of Abuse Characteristics and Attachment in the Prediction of Long-Term Effects of Sexual Abuse*, 8 J. INTERPERSONAL VIOLENCE 346, 359 (1993); Teresa O'Doherty et al., *Recovery Work With Child Victims Of Sexual Abuse: A Framework For Intervention*, 7 CHILD CARE IN PRACTICE 78, 82 (2001); Richard Tsegay-Spates, *The Mental Health Needs of Victims*, in RAPE & SEXUAL ASSAULT 35, 40-43 (Ann W. Burgess ed., 1985).

¹⁰³ Megan Gunnar & Karina Quevedo, *The Neurobiology of Stress and Development*, ANNUAL REV. PSYCHOL. 145, 146,163 (2007). "[A]dolescents reporting childhood abuse and/or neglect had lower threat

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In addition, “media exposure” is one factor that can “exacerbate . . . risk of PTSD [post-traumatic stress disorder] development . . . even following a high-magnitude stressor”¹⁰⁴ Further, child abuse victims’ mental health is affected by a loss of control over disclosure of their intimate secrets. “Whether, when, and whom sexual assault victims choose to disclose may have important implications for post assault recovery.”¹⁰⁵ The more societal reflections on the child’s abuse, the more difficult it is for the child to begin the rehabilitation process from the trauma. “A child’s long-term reaction and adjustment is likely to be related to ongoing reminders of the trauma and persistent secondary stressors” like public court proceedings or publicity.¹⁰⁶ Further, once abused children’s identities are disclosed they frequently suffer peer bullying which further exacerbates their feelings

levels of independent life events prior to the first depressive episode onset than did those with no history of early trauma. We suggest from these findings that the prior history of trauma may have sensitized these adolescents to the effects of independent events, such that a lower level of threat of events was required to precipitate their very first depression onset than was required for those with no trauma history.” Kate L. Harkness et al., *The Role of Childhood Abuse and Neglect in the Sensitization to Stressful Life Events in Adolescent Depression*, 115 J. ABNORMAL PSYCHOL. 730, 737 (2006).

¹⁰⁴ Christopher A. Kearney et al., *Posttraumatic Stress Disorder in Maltreated Youth: A Review of Contemporary Research and Thought*, 13 CLINICAL CHILD FAM. PSYCHOL. REV. 46, 55 (2010).

¹⁰⁵ “Whether, when, and whom sexual assault victims choose to disclose may have important implications for postassault recovery.” Kenneth J. Ruggiero et al., *Sexual Assault Disclosure in Relation to Adolescent Mental Health: Results From the National Survey of Adolescents*, 36 J. CLINICAL CHILD & ADOLESCENT PSYCHOL. 260, 260 (2007).

¹⁰⁶ Richard Meiser-Stedman, *Towards a Cognitive-Behavioral Model of PTSD in Children and Adolescents*, 5 CLINICAL CHILD & FAM. PSYCHOL. REV. 217, 218 (2002). Until the child can achieve a modicum of equipoise, “cognitions and metacognitions that are formed after a traumatic event may promote the maintenance of PTSD in two ways. First, dysfunctional cognitions and metacognitions produce a sense that the trauma continues to have damaging implications and consequently generate a feeling of apprehension. Second, the thought control strategies that result from these appraisals can discourage emotional processing memories of the traumatic event.” *Id.*, at 221.

of guilt, shame, and acute distress.¹⁰⁷

¹⁰⁷ A longitudinal Canadian study found that “12 percent [of abused children] had been taunted by fellow students . . . [and] [t]hese taunts were often homophobic references or hateful and hurtful comments about incest.” CHILD WITNESS PROJECT, THREE YEARS AFTER THE VERDICT: A STUDY OF THE SOCIAL AND PSYCHOLOGICAL ADJUSTMENT OF CHILD WITNESSES REFERRED TO THE CHILD WITNESS PROJECT 91, 143 (London Family Court Clinic Inc., 1993), *available at* <http://www.lfcc.on.ca/threeyrs.htm>. Peer victimization is substantially increased if the disclosure involves perceptions of lesbian, gay, or bisexual conduct. Craig R. Waldo, Matthew S. Hesson-McInnis & Anthony R. D’Augelli, *Antecedents and Consequences of Victimization of Lesbian, Gay, and Bisexual Young People: A Structural Model Comparing Rural University and Urban Samples*, 26 AM. J. COMMUNITY PSYCHOL. 307, 327 (1998). Abused children have great difficulty with determining interpersonal signals which often leads to more bullying. “[R]esearch has shown that emotion processing difficulties are a possible consequence of early maltreatment and have been explored as a mechanism through which maltreatment exerts its influence on later behavior . . .” Tatyana Leist & Mark R. Dadds, *Adolescents’ Ability To Read Different Emotional Faces Relates To Their History of Maltreatment and Type of Psychopathology*, 14 CLINICAL CHILD PSYCHOL. & PSYCHIATRY 237, 240 (2009). In addition, abused children’s ability to correctly read social signals “implicates dysfunction of the limbic/amygdale system for registering fearful emotional stimuli and learning to avoid aversive consequences . . .” *Id.* at 245; *see also* Renae D. Duncan, *Maltreatment by Parents and Peers: The Relationship Between Child Abuse, Bully Victimization, and Psychological Distress*, 4 CHILD MALTREATMENT 45, 47 (1999); Charles R. Petrof, *Protecting The Anonymity of Child Sexual Assault Victims*, 40 WAYNE L. REV. 1667, 1688 (1993-1994); David A. Cole et al., *Targeted Peer Victimization and the Construction of Positive and Negative Self-Cognitions: Connections to Depressive Symptoms in Children*, 39 J. of CLINICAL CHILD & ADOLESCENT PSYCHIATRY 421 (2010); Rachael D. Reavis, Susan P. Keane & Susan D. Calkins, *Trajectories of Peer Victimization: The Role of Multiple Relationships*, 3 MERRILL-PALMER Q. 303 (2010); Kilit Kletter, Carl F. Weems & Victor G. Carrion, *Guilt and Posttraumatic Stress Symptoms in Child Victims of Interpersonal Violence*, 14 CLINICAL CHILD PSYCHOL. & PSYCHIATRY 71, 72 (2009); R. E. Culp, et. al., *Maltreated Children’s Self-concept: Effects of a Comprehensive Treatment Program*, 61 AM. J. ORTHOPSYCHIATRY 114, 114-1121 (1991); David Pelcovitz, et. al., *Posttraumatic Stress disorder in Physically Abused Adolescents*, 33 J. AM. ACAD. CHILD ADOLESCENT & PSYCHIATRY 305, 305-312 (1994). “Kant would require that rape victims be treated as individuals worthy of consideration rather than as vehicles to educate society that rape is not a stigma. He would probably agree with a

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Thus, the media's "cat is out of the bag" justification for republication of identifying information regarding child abuse victims, with its underlying assumption that subsequent publications either are each less harmful to the child, fails to recognize the cumulative effect of successive or serial publications and is in direct conflict with the child and adolescent psychiatric evidence demonstrating that republication has a cumulative effect on these children's psychopathology. Simply put, republication can cause additional and continuing harm to child victims.

C. The Benefits of Modified Definitions of "Newsworthiness" In Publications Concerning Child Victims

Journalists and media sources obtain much more information than they can publish, and much of the art or craft of the trade is developing a sophisticated and nuanced system for selecting which data to broadcast.¹⁰⁸ Newsworthiness is not an objective postulate or an absolute, but rather is the sum total of variables used by the media to determine whether information should be published.¹⁰⁹ Although the term

guideline that victims' names could be made public only if they were willing." Bastiaan Vanacker & John Breslin, *Ethics of Care: More Than Just Another Tool to Bash the Media*, 21 J. MASS MEDIA ETHICS 196, 208 (2006); "The adolescents may internalize negative comments from peers, which will increase a negative view of self, which in turn can reinforce even more negative experiences of others and a more negative self-view in a vicious circle; both factors will increase internalizing mental health problems . . ." Helene Ybrandt & Kerstin Armelius, *Peer Aggression and Mental Health Problems*, 31 SCHOOL PSYCHOL. INT'L 146, 158 (2010).

¹⁰⁸ Media are not just compilers of data, they also are translators for their target audience. "The media, necessarily, simplify. In order for the knowledge of a complex area of social life to be communicated to a lay audience, matters have to be less technical than would be possible with a professional one. However, describing this practice as one of simplification does not do justice to the process of translation." Richard Nobles & David Schiff, *A Story of Miscarriage: Law in the Media*, 31 J.L. & SOC. 221, 223 (2004).

¹⁰⁹ In fact, the variables that journalists use to determine newsworthiness can lead to oversimplified and/or distorted reports. For example, when the media covers the courts, their decision to only publish some cases that fit into that media's definition of newsworthy can both present "a very

“newsworthy” has constitutional significance in relation to American media jurisprudence, this article addresses the policy decisions used by media to determine what data is of sufficient importance to the public and to the media source to warrant publication, not the legal implications of those choices regarding privileged publication.¹¹⁰ In addition, as the *Journalists Ethics Code of Belarus* notes, “[t]he journalist should differentiate between publicly important information and information that evokes public interest.”¹¹¹ The *Bulgarian Media Code* differentiates between “of public interest” and “interesting to the public.”¹¹² Moreover, finally, the *Code of Ethics or Cannons of Journalism American Society of Newspaper Editors* notes the difference between the public’s

incomplete picture of the courts . . .”, and can provide the public with a distorted vision of what types of cases are actually litigated or the extent of certain types of civil and criminal wrongs that occur in society in general. Cecil Greek & John Cochran, ABUSE, NEGLECT AND THE MASS MEDIA: DISCUSSING THE RELATIONSHIP BETWEEN ABUSE CASES AND MEDIA RESPONSE, at 2-3 (presented at the Dependency Court Improvement Summit For Judges, June 5, 1997), <http://www.fsu.edu/crimdo/abuse.html>. One media study found that on the nightly news approximately 50% of the reports “were dedicated to violent crime, whereas only 6% of actual crimes involved acts of violence.” Richard Lawrence & David Mueller, *School Shootings And The Man-Bites-Dog Criterion Of Newsworthiness*, 1 YOUTH VIOLENCE & JUV. JUST. 330, 331 (2003).

¹¹⁰ For cases discussing the newsworthiness privilege, the reckless disregard standard, and the public versus private figure standards for defamation, see *New York Times Co. v. Sullivan*, 376 U. S. 254 (1964), *Virgil v. Time, Inc.*, 527 F. 2d 1122, 1128-1129 (9th Cir. 1975), *Curtis Publishing Co. v. Butts*, 388 U. S. 130 (1967), *Time, Inc. v. Firestone*, 424 U. S. 448 (1976), *Gertz v. Robert Welch, Inc.*, 418 U. S. 323 (1974), and *Philadelphia Newspapers v. Hepps*, 475 U. S. 767 (1986).

¹¹¹ *Journalists Ethics Code of Belarus*, *supra* note 78. The Belarus code further cautions that “[a]ccount should be taken on what effect a report . . . can have on a victim or his/her close relatives.” *Id.*

¹¹² *Ethical Code of the Bulgarian Media*, ETHICNET, http://ethicnet.uta.fi/bulgaria/ethical_code_of_the_bulgarian_media (last visited Apr. 14, 2012). The *German Press Code, Guideline 8.1 (I)* states that “sensation alone cannot justify the public’s right to be informed.” *German Press Code*, ETHICNET, <http://ethicnet.ujta.fi/germany> (last visited Apr. 14, 2012).

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“right” to know versus the public’s “curiosity.”¹¹³

Several deontological codes modify their definitions of newsworthiness in determining whether to publish information regarding children. Again, even though not required by law to elevate the newsworthiness standard, these media organizations have decided that policy favors placing more weight on the potential damage to children from publicity.¹¹⁴ For instance, according to one English media ethics code “[i]n cases involving children under 16, editors must demonstrate an exceptional public interest to over-ride the normally paramount interest of the child.”¹¹⁵ Another English media code holds that the newsworthiness or “public interest” never justifies an exception to the rule that one cannot report “the names of child victims” in sex cases.¹¹⁶ In Finland, “[t]he identity of a victim of a highly sensitive crime must be protected unless the matter is of considerable public

¹¹³ *Code of Ethics or Canons of Journalism American Society of Newspaper Editors*, CODES OF ETHICS COLLECTION, <http://ethics.iit.edu/ecodes/node/4457> (last visited Apr. 14, 2012).

¹¹⁴ For example, the *United Kingdom Editors’ Code of Practice* recognizes that what is legally publishable is not necessarily socially responsible: “The press must not, even if legally free to do so, identify children under 16 who are victims or witnesses in cases involving sex offences.” *United Kingdom Editors’ Code of Practice*, ETHICNET, http://ethicnet.uta.fi/united_kingdom/editors039_code_of_practice (last visited Apr. 14, 2012) (adopted by the Press Complaints Commission, August 2007).

¹¹⁵ *Id.* Another English formulation of the newsworthiness standard is “[u]nless it is contrary to the public’s right to know, the press should generally avoid identifying relatives or friends of persons convicted or accused of crime.” *British Nat’l Union Journalists, Code of Conduct*, CODES OF ETHICS COLLECTION, <http://ethics.iit.edu/ecodes/node/3594> (last visited Apr. 14, 2012).

¹¹⁶ *Id.* Likewise, the Press Code of Bosnia and Herzegovina has an absolute ban on identifying certain minors: “Newspapers and periodicals must not, under any circumstance, identify children under the age of 15 who are involved in criminal cases as witnesses or defendants.” *PRESS CODE OF BOSNIA AND HERZEGOVINA*, ETHICNET, http://ethicnet.uta.fi/bosnia_and_herzegovina/press_code_of_bosnia_and_herzegovina (last visited Apr. 14, 2012).

interest.”¹¹⁷ The Austrian Press is cautioned, “[b]efore pictures or reports about juveniles are published, special critical consideration shall given to the question of whether such publication is in the public interest.”¹¹⁸

Raising the standard of newsworthiness regarding the publication of stories about child abuse victims increases the odds that they will receive greater protection from the publication of identifying and/or embarrassing details about their lives. An ordinary definition of newsworthiness pushes journalists toward a cost/benefit analysis in which all discrete variables are equally weighted. In such a balancing child victim rights can be easily subordinated to other perceived more important interests without the necessity of specifically articulating how those other variables tipped away from the direction of protection the child. By increasing the level or degree of newsworthiness necessary to justify publication of child victim data, the rule, in effect, creates a much higher threshold, which may operate like a presumption. The presumption is that unless there is a heightened importance to publishing identifying data, the default position is not to publish. In addition, an individual journalist, editorial or ethics board will need to specifically articulate why the case under review justifies deviating from the no publication presumption.¹¹⁹

¹¹⁷ Union of Journalists in Finland, *Guidelines For Good Journalistic Practice*, CODES OF ETHICS COLLECTION, <http://ethics.iit.edu/ecodes/node/3708> (last visited Apr. 14, 2012); *Finland Guidelines for Journalists*, ETHICNET, http://ethicnet.uta.fi/finland/guidelines_for_journalists (last visited Apr. 14, 2012).

¹¹⁸ *Code of Ethics for the Austrian Press*, ETHICNET, http://ethicnet.uta.fi/austria/code_of_ethics_for_the_austrian_press (last visited Apr. 14, 2012) (adopted by the Austrian Press Council, January 1983).

¹¹⁹ Although some might argue that an absolute ban on the publication of identifying information regarding child abuse victims is a better rule, since it would be much more difficult to gain a consensus for a total ban, that quest may leave many abuse victims without sufficient protection under current ethical regimes.

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D. Should Third-Party Consent Provide A Justification For Publishing Identifying Child Victim Information?

Questions involving minors' consent and waiver of rights involve extremely complex areas of the law, which often balance interests in ways that result in very different conclusions depending upon the activity, enterprise, age, and maturity of the child.¹²⁰ Although the presumptive age of adulthood has been lowered from the common law age of twenty one to eighteen in the majority of states in the United States, children's rights to autonomous decision making vary according to the rights implicated.¹²¹ Commentators have noted the irony that juveniles who lack the right to drink, vote, enter into contracts or make medical decisions, can be tried in adult court and receive sentences up to life without the possibility of parole.¹²² However, journalists lack the training and time to engage in a sophisticated analyses of child victims' capacities to consent to publicity, and an age specific standard for that capacity might be a pragmatic necessity even though "chronological age is an imprecise measure that does not do justice to the intricacies and variations of individual

¹²⁰ The United States Supreme Court has engaged a balancing of rights among parents, children, and the state for more than a century. For instance, see *Meyer v. Nebraska*, 262 U.S. 390 (1923), *Prince v. Massachusetts*, 321 U.S. 158 (1944), *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and *Troxel v. Granville*, 530 U.S. 57 (2000).

¹²¹ See generally Robert L. Stenger, *Exclusive or Concurrent Competence To Make Medical Decisions For Adolescents In The United States and United Kingdom*, 14 J.L. & HEALTH 209 (1999-2000); Kimberly M. Mutcherson, *Whose Body Is It Anyway? An Updated Model Of Healthcare Decision-Making Rights For Adolescents*, 14 CORNELL J.L. & PUB. POL'Y 251 (2005); Joshua A. Douglas, *When Is A "Minor" Also An "Adult"?: An Adolescent's Liberty Interest In Accessing Contraceptives From Public School Distribution Programs*, 43 WILLAMETTE L. REV. 545 (2007).

¹²² Rhonda Gay Hartman, *Adolescent Autonomy: Clarifying An Ageless Conundrum*, 51 HASTINGS L.J. 1265, 1267 (2000). In addition, even without any test to determine capacity in "twenty-four states, certain categories of minors, typically those who are married, pregnant, parents, or in the armed services, are considered emancipated based on that status alone and may make independent decisions about general medical services." Mutcherson, *supra* note 121, at 267.

cognitive development . . . “ of each child subject.¹²³

Media ethics codes have adopted a variety of precepts regarding child victims’ consent that range from a position that consent is not required to a proposition that even with parental substitute consent a journalist must make an independent decision that the publication will not result in significant injury to the child.¹²⁴ For instance, one television show that chronicled the issue of Attention Deficit Disorder [ADD], broadcast footage it filmed of a boy and his mother regarding their difficult life even though “the boy made it blatantly clear that he did not want to be filmed”¹²⁵ Some media organizations, like Reuters, identify specific journalistic activities which carry defined ethical standards for consent related to that activity, such as interviewing children, “In normal circumstances, a reporter needs the permission of the appropriate authority such as a parent, guardian or school authority to interview a child.”¹²⁶

The law has grappled for decades with whether children’s consent should be based upon a presumption of capacity determined by age, or whether consent should be based upon a case-by-case evaluation of the subjective cognitive abilities of each child.¹²⁷ Michael des Tombe has suggested that subjective standards of minors’ consent are

¹²³ Mutcherson, *supra* note 121, at 254.

¹²⁴ Michael des Tombe, “*Get That Camera Out Of My Face!*”: *A Look At Children, Privacy And The Broadcasting Standards*, 31 VICTORIA U. WELLINGTON L. REV. 577, 597 (2000).

¹²⁵ *Id.* at 577.

¹²⁶ *Reporting About People*, REUTERS HANDBOOK OF JOURNALISM, http://handbook.reuters.com/index.php/Reporting_about_people (last visited Apr. 14, 2012).

¹²⁷ For instance, the United States Supreme Court has determined that a child’s waiver of *Miranda* rights is tested by a totality of the circumstances test rather than on a set minimum age of competence to waive *Fifth Amendment* rights. *Fare v. Michael C.*, 442 U.S. 707 (1979). However, statutes regulating children’s choices often specify a minimum age of competence. For instance, California Welfare & Institutions Code section 366.26(c) (B)(ii) provides that a child “12 years of age or older . . . ” can veto a termination of parental rights decision in child protection cases. CAL. WELF. & INST. CODE § 366.26(c)(B)(ii) (West 2012).

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unworkable because the media “are simply not qualified to decide whether a child is actually mature enough to understand and give independent and informed consent. It would be easier to have a set age above which the parent or guardian would not be involved and below which the parent or guardian would.”¹²⁸ For instance, a Victoria court held that eight-year-old children usually lack the capacity to consent to publication with the resultant loss of anonymity, but the court did not establish a bright line age at which children gain capacity to consent.¹²⁹ In contrast, the *United Kingdom Broadcasting Standards Commission Code* selected a specific presumptive age of capacity: “[c]onsent from parents . . . should normally be obtained before interviewing children under 16 on matters of significance.”¹³⁰ The U.K. standard is interesting for several reasons. First, it is age-based. One must wonder what empirical data the Commission relied upon in choosing 16 as the presumptive age at which minors have sufficient capacity to consent.¹³¹ Second, it formally recognizes parental substitute consent regarding publicity of their children who are under sixteen-years-old. However, a presumption of parental substitute consent for children under 16 may violate *U. N. Convention on the Rights of the Child, Article 12*, which requires that a child’s views must always

¹²⁸ des Tombe, *supra* note 124, at 591.

¹²⁹ For example, in Victoria under section 4 (1-A) of the Judicial Proceedings Act of 1958, a court “decided that it was doubtful whether an eight-year-old child could ever have ‘the requisite degree of understanding of the ramifications of a loss of anonymity under s. 4 of the Act for the defence to be made out.’” Goddard & Saunders, *supra* note 69.

¹³⁰ des Tombe, *supra* note 124, at 584.

¹³¹ Also, the *Commission Code* leaves the unguided discretion of the journalist to define “matters of significance”. Does “significance” refer to the newsworthiness of the data or to the importance and/or danger to the child from the publicity? Further, is the “significance” of the event to be balanced with other important or significant factors involved in the editorial decision? The media in the United States define the age at which children presumptively possess sufficient capacity to consent “variously to be between a range of 12 to 18 years old.” See Brislin, *supra* note 8, at 6-7.

“be given due weight in all matters affecting the child.”¹³² One danger of presumptive parental substitute consent is that journalists may not also inquire about the child’s own wishes and/or needs, but will merely act once parents’ consent.¹³³ Another danger of presumptive parental consent is that some parents may not have the capacity to neutrally decide their children’s best interests.¹³⁴ For example, parents charged with child abuse may want to publicly fight the charges in order to clear their names in the community without sufficiently factoring the effects of the publicity on their children.¹³⁵ In addition, in both status offense and juvenile delinquency proceedings parents may grant consent based upon their

¹³² E. Kay M. Tisdall, J. Brown, & M. Docherty, *Children’s Best Interests Versus Public Safety: How Are They Balanced?*, 6 INT’L J. CHILD. RTS. 395, 403 (1998).

¹³³ See also Jonathan Bignell, *Writing the Child in Media Theory*, 32 CHILD. LITERATURE 127, 139 (2002) (“Since the child is defined negatively and retrospectively as a being who is not yet an adult, the issues of how identities are discriminated, represented, and how they may be modified, necessarily arise.”).

¹³⁴ Romanian journalistic ethics are intriguing because although they recognize parental substitute consent, the reporter should only rely upon that substitute consent when it would “protect the superior interest of the minor.” *The Journalists’ Code of Ethics of Romania*, ETHICNET, http://ethicnet.uta.fi/romania/the_journalists_code_of_ethics (last visited Apr. 14, 2012) (adopted by the member organizations of the Media Organizations Convention on July 2004).

¹³⁵ The *Ethical Code of the National Association of Hungarian Journalists* provides that journalists who violate “the personal rights of minors” even with parental consent, may not have a defense to that ethical violation of failing to protect “the personal rights of underaged persons” by “publishing their names, pictures or details that could lead to their being identified” *Ethical Code of the National Association of Hungarian Journalists*, ETHICNET, http://ethicnet.uta.fi/hungary/ethical_code_of_the_national_association_of_hungarian_journalists (last visited Apr. 14, 2012). In addition, the *Treviso Charter Revised* requires that in cases of “foster care or adoption and those of separated or divorced parents . . . the anonymity of the minor must be safeguarded in these cases in order not to affect on the harmonious development of their persona” See also *Journalistic Activity and Protection of Minors: Treviso Charter Revised*, ETHICNET, http://ethicnet.uta.fi/italy/journalistic_activity_and_protection_of_minors_treviso_charter_revised (last visited Apr. 14, 2012).

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frustrations of rearing what they term and incorrigible and uncontrollable child which can result in terms of confinement which the child would certainly oppose.¹³⁶ In other contexts, such as parents' attempts to involuntarily commit their child to a mental health facility, some courts have interceded and held that parental consent cannot strip children of their fundamental rights. For instance, in *In re Roger S.* the California Supreme Court held that "in the area of admission to a state hospital a minor of 14 years or more possesses rights which may not be waived by the parent or guardian."¹³⁷

Therefore, a model media ethics code regarding children's consent to publicity should balance three variables: (1) protection of child victims; (2) recognition of parental rights; and (3) avoidance of unreasonable burdens on the media. The closest contemporary legal instrument to this model is the German statute, which protects minors' contractual rights of publicity. In 1974, the German Federal Supreme Court held that minors are entitled to the protection of a "double consent" rubric before their publicity rights are granted by parental contract.¹³⁸ Germany's publicity rights law holds that parents can consent to the use of their children's personality rights, but that the contracting party

¹³⁶ For one of the earliest recorded cases in which a mother sought state action to rid her of her daughter that she described as an "infant by reason of vicious conduct, has rendered her control beyond the power of said complainant, and made it manifestly requisite that from regard to the moral and future welfare of the said infant she should be placed under the guardianship of the managers of the House of Refuge." *Ex Parte Crouse*, 4 Whart. 9 (Penn. 1839). "Unlike an adult witness, a child-witness most likely cannot give meaningful *consent* to television exposure to a potential audience of millions. Nor can the problem be circumvented, as some states attempt to do, by allowing a parent or state-appointed guardian to consent on behalf of the minor. First, the child-witness may be testifying against that parent . . . ; second, a state-appointed guardian will unlikely know the child-witness well enough to consent meaningfully on the minor's behalf." Kathe Aschenbrenner Pate, *Restricting Electronic Media Coverage of Child-Witnesses: A Proposed Rule*, 1993 U. CHI. LEGAL F. 347, 361-62 (1993) (emphasis added).

¹³⁷ *In re Roger S.*, 19 Cal. 3d 921, 927 (1977).

¹³⁸ J. THOMAS MCCARTHY, *RIGHTS OF PUBLICITY AND PRIVACY* § 6:168 (2d ed. 2010).

must also obtain the minors consent as soon as the “minors are old enough to understand the matter to which they are consenting”, or at least as “soon as minors have reached an age of 14”¹³⁹ The German contract rule protects children’s privacy, provides input from parents, and creates sufficient certainty for publishers regarding when they can and cannot rely on consent to publicize child victim’s stories. A model consent rule based on the German contract law might provide:

Before relying on consent as a justification for publishing information about child victims, the media shall obtain consent from the child’s parent or guardian, shall make a reasonable attempt to obtain consent from children under 14, and shall obtain consent from children 14 or older.¹⁴⁰

¹³⁹ *Id.*

¹⁴⁰ This model consent ethics code leaves one question unanswered. Is there a particular age of majority at which children should be able to consent to publicity in cases in which their parents object? That is a question that should be reserved for each country since the nature and extent of parental rights differs greatly in each jurisdiction. In the United States media sources have not agreed upon the minimum age of consent for children or even on the defined ages between infants, children, and adolescents. Brislin & Inoue, *supra* note 8, at 6-7. The Macedonia journalists code holds that “[t]he journalist must not interview or photograph children under 16 years of age without the agreement of the parents or legal guardians, unless that is in accordance with the children’s rights.” Journalists of the Republic of Macedonia, *Principles of Conduct*, ETHICNET, http://ethicnet.uta.fi/macedonia/principles_of_conduct (last visited Apr. 14, 2012). The *Code of Ethics of Albanian Media (2006)* holds that journalists “should not interview children under 14 on personal issues in the absence of parents or responsible persons, or without their consent.” Albanian Media Institute, *Code of Ethics of Albanian Media*, ETHICNET, http://ethicnet.uta.fi/albania/code_of_ethics_of_albanian_media (last visited Apr. 14, 2012). An argument can be made for lowering the age required for consent since the right being consent to privacy is one understood by many children well younger than 14 years old. In addition, the *Press Code of Kosovo, Sections VI(1)&(2)* (2005) have determined that “[n]ewspapers and periodicals shall not, under any circumstance,

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E. What Does “Identify Child Victims” Mean?

Few media ethics codes specifically address the meaning of “identify child victims.”¹⁴¹ There is a significant difference between a ban on using child victims’ names and a proscription against reporting facts in the story that are likely to lead to a destruction of the child’s anonymity.¹⁴² On a sliding scale of child protective codes, those that merely state that child abuse victims’ “names” shall not be used provide the least protection from publicity.¹⁴³ For instance, the *Malta*

identify children under the age of 15 who are involved in criminal cases as victims, witnesses or defendants.” *Press Code for Kosovo*, ETHICNET, http://ethicnet.uta.fi/kosovo/press_code_for_kosovo (last visited Apr. 14, 2012).

¹⁴¹ Many media ethics codes do not have special rules for reporting on child victims. See Nigel Williams, *The Theme Day of the Committee on the Rights of the Child on ‘Children and the Media’*, 5 INT’L J. CHILD RTS. 263, 265 (1997). For example, as late as 1998, the International Federation of Journalists with a membership of approximately 500,000 in 100 countries did not have a proscription against the publication of child victims’ names. See Tobin, *supra* note 34, at 149-50. In Tiina Laitila’s compilation of media ethics duties, the duty to protect child victims was not listed as one of the “61 specific principles of journalistic ethics” in the discussion of the thirty codes of ethics in force in Europe in 1995. See Laitila, *supra* note 6, at 533-34. The absence of ethical rules concerning child victims reflects on the importance journalists place on protecting them. If “codes neglect broad categories of journalistic activities . . . those omissions may indicate that in the culture in which the codes were written, those types of journalism are not seen as being ethically problematic.” Susan Keith, Carol B. Schwalbe & B. William Silcock, *Images in Ethics Codes in an Era of Violence and Tragedy*, 21 J. MASS MEDIA ETHICS 245, 256-57 (2006).

¹⁴² Cf. Damien W. Riggs, Daniel King, Paul H. Delfabbro & Martha Augoustinos, “*Children Out Of Place*”: *Representations of Foster Care in the Australian News Media*, 3 J. CHILD. & MEDIA 234, 236-37 (2009).

¹⁴³ Al Tomkins has identified a number of variables the media should use in determining whether to identify child victims, including: (1) who is served; (2) why does the public need to know; (3) what is the journalistic purpose; (4) what is the level of current public knowledge; (5) what does the minor’s family think; (6) how do names “take the story into a deeper, more contextual level of reporting”; and (7) how will the reporter or media source justify the use of the child victim’s name? Al Tomkins, *Identifying Juveniles*, POYNTER ONLINE, Aug. 25, 2002,

Code of Journalistic Ethics prohibits “the naming of minors.”¹⁴⁴ Other media codes prohibit inclusion of facts that could reasonably indirectly lead to the identification of the child.¹⁴⁵ For instance, the *Code of Professional Ethics of Russian Journalists* prohibits the publication of “the names of the victims of the crime and publishing material of any kind which leads to the identification of the victim.”¹⁴⁶ Several codes have noted that even if the child victim’s name is not published, if the perpetrator is a relative, the child’s identity can easily be established, and thus the defendant’s name must also be omitted in order to protect the abused child’s identity. “[C]are should be taken that nothing in the report implies the relationship between the accused and the child.”¹⁴⁷

<http://www.poynter.org/uncategorized/2118/identifying-juveniles/> (last visited Apr. 14, 2012).

¹⁴⁴ *Malta Code of Journalistic Ethics*, ETHICNET, http://ethicnet.uta.fi/malta/code_of_journalistic_ethics (last visited Apr. 14, 2012) (adopted by the Malta Press Club in 2000). The *Publicistic Principles of the German Press Council* holds that “[v]ictims of . . . crime are entitled to special protection from disclosure of their names.” German Press Council, *German Press Code*, CODES OF ETHICS COLLECTION, <http://ethics.iit.edu/ecodes/node/3682> (last visited Apr. 14, 2102). The *Montenegro Codex of Montenegrin Journalists* provides that “[a]ny publication involving the naming of minors, is prohibited.” *Codex of Montenegrin Journalists*, ETHICNET, http://ethicnet.uta.fi/montenegro/codex_of_montenegrin_journalists (last visited Apr. 14, 2012) (adopted by Journalists’ Associations of Montenegro 2002).

¹⁴⁵ See generally Robert Gellman, *The Deidentification Dilemma: A Legislative And Contractual Proposal*, 21 *FORDHAM INT’L PROP. MEDIA & ENT. L.J.* 33 (2010) (discussing the difficulty of sufficiently redacting information to prevent identification). He notes a study in which even when all “seventeen specific fields of data [under HIPAA’s privacy rule] are removed or generalized,” there was still a 0.04% chance that the subject could be identified. *Id.* at 38.

¹⁴⁶ *Code of Professional Ethics of Russian Journalist*, ETHICNET, http://ethicnet.uta.fi/russia/code_of_professional_ethics_of_russian_journalist (last visited Apr. 14, 2012) (adopted by the Congress of Russian Journalists, June 1994).

¹⁴⁷ British Nat’l Union Journalists, *supra* note 115. See also *United Kingdom Editors’ Code of Practice*, *supra* note 114; *Code of Ethics for the Journalistic Profession*, CODES OF ETHICS COLLECTION, <http://ethics.iit.edu/ecodes/node/3520> (last visited Apr. 14, 2012) (adopted

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Some media codes not only protect the identity of the child abuse victim, but also require that information not identify relatives of the abused child who might also be harmed by their association with the abuse.¹⁴⁸ For instance, abused and non-abused siblings can be emotionally harmed if they are named in an article concerning the abuse and/or neglect of a brother or sister. “Empirical studies have shown that secondary traumatization, or secondary traumatic stress, is prevalent among family members and significant others of violent crime victims in general”¹⁴⁹ The better approach

by the Federation of Spanish Press, November 28, 1993); *Journalists Ethics Code of Belarus*, *supra* note 78 (“It is not allowed to publish the names of victims of sexual violence or details that could result in the disclosure of their identities, unless requested by the victims themselves.”); *Ethical Code of the National Association of Hungarian Journalists*, *supra* note 135 (“Details that might identify the victims even without mentioning their names are to be avoided.”); *Italy Charter of Duties of Journalists*, ETHICNET, http://ethicnet.uta.fi/italy/charter_of_duties_of_journalists (last visited Apr. 14, 2012); *Code of Ethics of Lithuanian Journalists and Publishers*, *supra* note 77 (“It is prohibited to publish the name or other data of an individual exposed to sexual abuse without his/her consent if the identity of the individual may be established from such data.”).

¹⁴⁸ The Malta Code of Journalistic Ethics, section 5 provides that “[i]n reporting accidents and crimes consideration should always be shown to the victims and the next-of-kinThe publication of certain names connected with the events should be avoided if they are potentially harmful to the victims and their relatives.” *Malta Code of Journalistic Ethics*, *supra* note 144. The *Code of Ethics of the Norwegian Press*, rule 4.5 states that a reporter should “[a]lways consider how reports on accidents and crime may affect the victims and next-of-kin.” *Code of Ethics of the Norwegian Press*, ETHICNET, http://ethicnet.uta.fi/norway/code_of_ethics_of_the_norwegian_press (last visited Apr. 14, 2012) (adopted by the Norwegian Press Association in November 2007).

¹⁴⁹ Sharon M. Wasco, Rebecca Campbell & Marcia Clark, *A Multiple Case Study of Rape Victim Advocates’ Self-Care Routines: The Influence of Organizational Context*, 30 AM. J. COMMUNITY PSYCH. 731, 733 (2002). However, many media publish the names of child victims’ siblings. See Steve Jensen, *Arraignment Set for Cocaine Case; Couple Charged With Neglect of Daughter*, HARTFORD COURANT, Jan. 18, 1994, at C1 (“A West Hartford couple is scheduled to be arraigned on felony child-neglect charges today, accused of letting their 6-year-old daughter

is to proscribe both the use of abused children's names and also prohibit or limit the use of collaterally identifying data regarding abused children's identity.

VI. Conclusion: A Model Universal Media Ethics Code For Reporting on Child Victims

This article has chronicled how publicity can exacerbate abused children's psychopathology and make mental health treatment more difficult and prolonged. It has also discussed many media myths about abused children: (1) physically and emotionally abused children need the same protections from disclosure of their identities as sexually abused minors; (2) the "cat is out of the bag" theory that once a child victim's identity is revealed it is safe to republish the child's story is inconsistent with the vast psychiatric literature that demonstrates that republication will cause cumulative psychological harm to the child; and (3) that third party consent is a tenable justification for publishing child victim

ingest a seizure-inducing dose of cocaine."'). That story names the mother and father, and gives their prior address and their current address. It also mentions the girl's two other siblings, 4 and 2. Another example of naming a sibling is, Laurie Willis, *Generations Bred in Despair: Children: Life, Bleak Since Birth for Sierra Swann, Got Grimer in Her Search for Love*. HARTFORD COURANT, May 19, 2004, available at <http://www.courant.com/sports/nationworld/bal-despair0519,0,48085>. The story gives the name of a 17-year-old mother who murdered her month-old twins. It states that the young mother has 5 siblings who the young mother as a sibling helped raise because her mother, the grandmother, was a crack addict and her father was not around to help. It further reported that the mother has an older child who is also named, Nairaa, who was taken by DCF because of "bite marks all over her" and she "weighed less than 20 pounds when she was 2-years-old." *Id.* The report also said that Nairra's front teeth had been knocked out. For a discussion of the psychological relationship and importance of the sibling bond during episodes of abuse and/or neglect, see William Wesley Patton & Sara Latz, *Severing Hansel from Gretel: An Analysis of Siblings' Association Rights*, 48 UNIV. OF MIAMI L. REV. 745 (1994), William Wesley Patton, *The Status of Siblings' Rights: A View Into The New Millennium*, 51 DEPAUL L. REV. 1 (2001), and William Wesley Patton & Amy M. Pellman, *The Reality of Concurrent Planning: Juggling Multiple Family Plans Expeditiously Without Sufficient Resources*, 9 U.C. DAVIS J. JUV. L. & POL'Y 171 (2005).

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identifying information, especially in light of the abused child's strenuous objection. This analysis has also demonstrated the secondary victimization caused by bullies once a child victim's identity and story are disclosed. Finally, this research has spotlighted several ethical innovations that various countries' media have adopted into their media ethics codes to help prevent psychological damage to child victims. The following *Universal Model Media Ethics Code for Reporting on Child Victims* will incorporate those modern media prophylactic measures that are consistent with the child and adolescent psychiatric studies regarding of child victims. As was earlier demonstrated, these ethical precepts are consistent with Kantian, utilitarian, and ethics of care journalistic philosophies, and they will help protect the media from public backlash regarding the media's perceived insensitivity toward this vulnerable population which should also stem efforts to establish more governmental regulatory control over the press.

VII. MODEL UNIVERSAL MEDIA ETHICS CODE: REPORTING ON CHILD ABUSE VICTIMS

Journalists must reasonably attempt to protect children's vulnerability.¹⁵⁰ Child physical, emotional, and sexual abuse victims require equal and special consideration by the press since publicity may seriously exacerbate their mental health condition.¹⁵¹

Section I. Publication of Abused Children's Names:

- (a) The media must not disclose the identity of child abuse victims unless one or more of the exceptions in Section II apply;
- (b) The media must not include data that may likely contribute to the identification of a child abuse victim unless one or more of the

¹⁵⁰ See de Tombe, *supra* note 42, at 584.

¹⁵¹ See *supra* Part III A.

exceptions in Section II apply;¹⁵²

(c) Publication of identifying information regarding child abuse victims is not justified solely on the basis that information has already been published by another media source.¹⁵³

The act of republication requires the same ethical analysis as though the data has not previously been published.

(d) The ethical analysis of whether to publish identifying child abuse victim data should also factor the effect on the child's relatives, especially minor siblings.¹⁵⁴

Section II. Factors and Exceptions to Publishing Identifying Data Regarding Child Abuse Victims:

(a) Consent: Before relying on consent as a justification for publishing identifying information about child victims, the media shall obtain consent from the child's parent or guardian, shall make a reasonable attempt to obtain consent from children under 14, and

¹⁵² See *supra* Part III F.

¹⁵³ See *supra* Part III B.

¹⁵⁴ Some media ethics codes provide that the effects of publication on relatives are an important variable in determining whether or not to publish. Section 5 of the *Malta Code of Journalistic Ethicis* provides that "[i]n reporting accidents and crimes consideration should always be shown to the victims and the next-of-kin . . . The publication of certain names connected with the events should be avoided if they are potentially harmful to the victims and their relatives." *Malta Code of Journalistic Ethicis*, *supra* note 144. The *Code of Ethics of the Norwegian Press*, rule 4.5 provides, "Always consider how reports on accidents and crime may affect the victims and next-of-kin. Do not identify victims . . . unless next-of-kin have been informed. Show consideration towards people in grief or at times of shock." *Code of Ethics of the Norwegian Press*, *supra* note 148. For a discussion of the close psychological bonding between siblings see William Wesley Patton, *The Rights of Siblings in Foster Care and Adoption: A Legal Perspective*, in *SIBLINGS IN ADOPTION AND FOSTER CARE: TRAUMATIC SEPARATIONS AND HONORED CONNECTIONS* 57 (Deborah N. Silverstein & Susan Livingston Smith eds., 2009).

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shall obtain consent from children 14 or older.¹⁵⁵

(b) Newsworthiness: The mere fact that a child victim's identity is of public interest or newsworthy does not ethically justify publication. Usually the child's identification is not necessary for the public's understanding of the events. Data which is "interesting to the public" is not the same as information "of public interest".¹⁵⁶ Identifying data regarding child abuse victims can only be published if based upon "an exceptional and overriding public interest".¹⁵⁷

¹⁵⁵ *See supra* Part III E. This standard is a compromise between providing parents full discretion to permit their abused children's privacy interests to be waived and competent children's exercise of their own judgment regarding protection their own privacy. This standard is more of a shield than a sword for adolescents because although it provides children 14 or older with a veto of parental consent to publication, it does not provide those children with a veto over their parents' refusal to consent to the publication of the abused child's identifying information.

¹⁵⁶ *Ethical Code of the Bulgarian Media*, ETHICNET, http://ethicnet.uta.fi/bulgaria/ethical_code_of_the_bulgarian_media (last visited Apr. 14, 2012).

¹⁵⁷ *See supra* Part III C.

