



Minnesota News Council
Mock Hearing Project

Hearing Preparation Materials

Incest Survivor v. Small Town Newspaper

Council Member Materials

Student Materials Index

| | |
|------------------------------------------------------------|----|
| Acknowledgments | 1 |
| Introduction | 2 |
| Case Background | 3 |
| Article: <i>Local man sentenced for sexual abuse</i> | 4 |
| Incest Survivor's Complaint | 5 |
| Newspaper's Response | 6 |
| Proposed Corrections | 7 |
| Issues to Consider | 10 |
| Society of Professional Journalists on Privacy | 11 |
| Questions for Voting | 13 |
| About the Authors | 14 |

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Acknowledgments

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THANKS

The Minnesota News Council salutes the courage and integrity of the many individuals and newspapers who have made the mock hearing project — and the work of the Minnesota News Council — possible. The News Council developed the mock hearing project for use in the classroom, with the participation of News Council staff. We have expanded the project to include a teacher’s handbook, allowing the cases to be presented in any classroom and facilitated solely by the teachers and students.

We thank the Target Corporation for a grant in 2003 to make the materials for the mock hearing project widely available in its online form.

The newspapers involved in these cases demonstrated a willingness to meet their readers face-to-face, to grapple with complex ethical issues in public view, and to strive to uphold high ethical standards.

It’s not easy to appear before the News Council to have one’s work publicly reviewed. The papers that agree to do so demonstrate that they are willing to be held accountable for their work. The Council believes that accountability and trust go hand in hand.

The News Council thanks the Star Tribune, then editor Tim McGuire and then managing editor Pam Fine, for granting us permission to use two cases in which they appeared. We thank the Women’s Studies Department at the University of Minnesota and Professor Naomi Scheman for their very able presentation of a most complex case. We thank the St. Louis County Assistant County Attorney for engaging the media in an area of perennial difficulty: fair trial versus free press.

We thank the Duluth News Tribune and its then-editor, Vicki Gowler for the permission to use the Rachael Martin case. We thank Rachael Martin for her permission and assistance in preparing this case.

We thank the unnamed small-town paper in the Incest Survivor case, which appeared before the Council only once, in what was perhaps the most difficult and emotionally challenging case the Council has ever heard. The openness and willingness of the editor to listen and learn was exemplary, and their willingness to let us use this case is greatly appreciated. We particularly thank the anonymous 17-year-old incest victim who truly showed courage in coming before a panel of 24 strangers to plead her case.

The News Council thanks the Society of Professional Journalists for allowing us to reprint various checklists from their book, “Doing Ethics in Journalism.”

Last, we thank all the News Council members, past and present, who dedicate their free time and so much energy in giving careful consideration to the complex issues that come before them.

Quality journalism doesn’t just happen; it’s a joint effort. It requires the support of management, which allocates resources and upholds expectations of excellence. It requires the dedication, energy, talent and high ethical standards of each individual journalist. And it requires a literate and demanding audience that won’t settle for anything less than excellence.

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Introduction

Anyone who wants to report and write news is in for a stimulating career: finding out what's going on, writing about it in an appealing and dramatic way, seeing the fruits of your labor make a difference in your community.

Besides that, there's the pressure of time under which journalists work. They do well to keep in mind the great New York Yankees catcher, Yogi Berra, who was told by his manager to think in the batter's box. Berra replied, "I can't think and hit at the same time." Berra was playing a game; journalists are working at a trade where people's reputations are at stake, so they must think and write at the same time.

Journalism produced without thought or without conscience can produce ethical lapses. Not only can journalists be sued for libel, they may have their integrity questioned. Without integrity, journalists lose public trust, and without public trust, news outlets cannot do what a democracy needs them to do: report accurate, useful information thoroughly and independently.

The scenarios in this handbook challenge you to consider the ethical questions raised by complaints against news outlets. They are actual cases consid-

ered by the Minnesota News Council to promote fairness in the news media by helping the public hold news outlets accountable for their work.

You are asked to read the background material, just as News Council members have done before you, and to work your way through a public hearing process. First, the complainant and respondent present their cases. Then you and other Council members ask questions of the parties to clarify the issues. Next, with the parties silent, you and your fellow Council members deliberate the issues until someone makes a motion to uphold or deny the complaint, in whole or in part. Finally, you vote.

After you reach your determination, you can compare it with the one the Minnesota News Council reached. If you've reached a different determination, you may feel strongly that yours was the wiser one, and you may be right. Like everyone else, the News Council makes mistakes. But the vote is not as important as the discussion. That's because the purpose of the process is to generate a public discussion, so that people will begin asking news outlets what their standards are and begin holding news people to those standards, or perhaps insisting that they raise them.

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Case Background

On July 12, a small town newspaper ran a page-one story on the sentencing of a 45-year-old man for sexually abusing his minor daughter. The article named the man and indicated the age of the daughter, but did not name her.

The daughter and her mother complained to the newspaper, contending that the information reported clearly identified her because she is the man's only daughter. As a result, they said, the article further victimized her, making her vulnerable to the cruelty of her peers and others in the community. The mother and daughter met with the editor, who offered to publish a notice to the paper's readers, headed "We Apologize to Abuse Victim, Family...But We Feel the Story Had To Be Run."

The mother and daughter were not satisfied with the notice; they wanted the paper to admit that it did not have to publish the father's name and details of the offenses. They also felt that the apology was self-serving. They asked the paper not to publish it, and they filed a formal complaint with the News Council.

Local man sentenced for sexual abuse

Co. Attorney may appeal 'lenient' sentence

A 45-year-old local man was sentenced last Thursday in local County District Court for six counts of Criminal Sexual Conduct in the First Degree in a case involving his minor daughter.

John Smith of rural (town) was sentenced last Thursday to one year in the County Jail and 30 years probation after pleading guilty last month to six of the 12 counts of Criminal Sexual Conduct in the First Degree. Charges that were filed by the local County Sheriff's Department in September 1994, when his daughter was 16 years of age. The jail sentence is actually a condition of Smith's probation.

According to the local County Court Administrator's Office, Smith had sexually assaulted his minor daughter since she was approximately eight years old and that beginning when she was 11 or 12 years old he had had sexual intercourse with her, by her estimation, between 15 or 20 times.

Subsequently, Smith was questioned by authorities about the allegations of the child victim at which time he admitted that he had in fact sexually abused the child and that he had had sexual intercourse with her on at least 12 occasions from the time she was 12 years old.

The case was heard by District Court Judge Lawrence T. Collins.

County Attorney Jim Nordstrom, who prosecuted the case, was disappointed with Collins' downward departure from the rec-

ommended sentencing guidelines, which call for a sentence of 158 months in prison. He said he is considering appealing the sentence, saying it is much too light for the severity of the crimes.

"In my opinion, this is the most serious criminal sexual offense," Nordstrom said. "I feel he should have been sentenced to serve time in prison."

Smith was initially charged with 12 counts of First Degree Criminal Sexual Conduct. Each count is a felony, punishable by up to 30 years imprisonment and/or a \$40,000 fine.

Nordstrom explained that the six counts Smith was sentenced on correspond to the two counts of Criminal Sexual Conduct in the First Degree that Smith pled guilty to for each year during the time frame being investigated: 1991, 1992 and 1993. "He admitted to many other instances, which is why he was initially charged with 12 counts," Nordstrom continued. "But in terms of sentencing, it didn't matter whether he was sentenced for six counts or 12, so long as we (the prosecution) got him over the Criminal History Score of 6... and we did. He is now at 10."

Nordstrom added that, with good behavior, John Smith could be out of jail in as little as eight months.

He said that first time offenders charged on one count usually are sentenced to 86 months in prison and in cases similar to this

one, the standard sentencing procedure calls for a punishment of 158 to 163 months in prison with a maximum of 30 years in prison and a \$40,000 fine, which he added, reflects the seriousness of the crime.

"When a judge chooses a downward departure from standard sentencing, he is required to issue a departure report as to why he didn't follow the guidelines," Nordstrom added. "I will be very interested in learning what he has to say in that document."

However, Judge Collins, in his disposition for probation stated on the record, "I want to conclude by making it clear on this record that the defendant deserves the full measure of sentencing provided for, certainly under the guidelines, if not the full measure under the statute.

"I want it known, and I want it on this record, that he is a hair's breath from getting it, which is simply a preface for stating that there will be no leniency with respect to the consequences in the event of any violation of any of these conditions of probation."

Conditions of John Smith's probation include:

- Serve one year in the county jail without Huber release, or without STS alternative;
- Obey all federal, state and local laws and ordinances wherever he is during the term of this probation;

- Remain in good standing at all times making satisfactory progress and successfully complete a program of therapy as outlined in the court proceedings;

- Attend and complete a treatment program for male sexual offenders;

- Not be permitted to return to the family home until, at a minimum, he has successfully completed the primary sex offender treatment program and at least begun the family therapy components of the overall rehabilitation program;

- Have no contact with his daughter, directly or indirectly, by himself or by anyone at his request;

- Comply with sexual offender notification obligations.

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Incest Survivor's Complaint

I believe that the small town newspaper was very unfair and unethical in publishing a detailed article of my abuse. I strongly believe that I was re-victimized and my right (to privacy) as a minor was not protected as they identified me as the minor daughter. I am the only daughter in my family and this is a very small community.

I feel that other minor victims of abuse who read the article will have a harder time telling anyone (about their abuse). My main concern was that my abuse, especially my identity and the details, would be confidential. Minor victims don't deserve to have to worry about (their stories) being on the front page of (their) small town paper for everyone to see.

The damage is irreversible. I feel that the small town newspaper owes me a public apology and should admit that although it has a right to print the news, it was wrong and unfair in the manner in which it did it (in my case). I also feel that (the paper) should have a policy in place concerning how to report future abuse cases of minors to prevent the identification of victims.

I want other victims to come forward and not keep their abuse a secret. By reading articles, such as this one, they will not get the help they need.

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Newspaper's Response

It was certainly not our intent to cause Jane further harm, but sometimes that is what happens when one must report difficult news stories.

Neither the publisher or I have had experience with this kind of story before. We tried to be sensitive. We told the story only once — at the sentencing. We made every effort to avoid sensationalism. We reported the facts exactly as they appeared in the public record. Those details we did include were significant because they demonstrated the seriousness of the crime. And less than 1/3 of the story included details about the victimization; the majority of the story was about the sentencing, which we considered very important.

We know this was a difficult story, and when we received a complaint from Jane and her mother, we tried to be responsive. We immediately prepared a letter of apology. Jane's mother, however, was unsatisfied with it... as well as with our revised apology. We could not arrive at an agreement and so the apology did not run.

The publisher and I deeply regret the grief this story has caused Jane and her family. We do not, however, know how this grief could be avoided.

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Newspaper's First Proposed Apology

To Our Readers: Decision to Run Abuse Article Was a Difficult One

For more than two weeks, the publisher and I have intensely discussed our decision to run the article involving the juvenile victim of sexual abuse in the July 12th issue of our newspaper.

The decision to do this was not an easy one, and it certainly was not made quickly. We discussed at length the reasons why the article had to be run, why the graphic details needed to be included, and what the repercussions of that decision would be.

We chose to run the article as we did, with the graphic details of the case printed exactly as they appeared in court documents that were provided us by the Court Administrator's office. We stand by that decision because it appeared clear that our only other choices were to; a) not run the article, or b) to alter the wording of the documents so as to hide the identity of the minor involved ... and unfortunately, the mere nature of the crime reported on did not provide us, again, in our opinion, any means of doing so.

We need to make it clear that we felt compelled to report the case because it is a serious felony, it is a matter of public record, and it does comply to the precedent established in our past reporting practices. Again, the decision was NOT an easy one, believe us.

We do regret that the story has apparently caused the family involved added grief. We are sensitive to this and we would like to apologize for any added stress and grief to the victim and family caused by what is re-victimization by the article.

We would like to encourage victims of sexual abuse, especially minors, to come forward if this happens in their lives. That is the only right decision to make. We have talked to the victim in this case and truly understand the concerns she has. We applaud her decision to finally come forward and we pray that her life can move onward, that her suffering and pain can be put behind her.

We also strongly encourage this community to support the family and to ease their burden by extending themselves to them ... and to let them know we really do care about them and will be there for them.

We would like to reassure everyone that, in the future, this newspaper will make every attempt to consider the feelings of juvenile crime victims. We hope that such a situation never occurs again, but if it should, we can safely say these young people will be given every consideration as to their well-being. You might say it's a case of needing to seek a balance in our obligations and our responsibilities as journalists. We will, in fact, study the need for a policy to deal with such situations.

So in conclusion, there are three factors to consider:

- To report the news we must.
- To alter the news we cannot.
- To be sensitive we *need to ... and* certainly *can* be.

Signed, Editor & Publisher

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Editor's Proposed Apology for Publication As Revised by the Juvenile Incest Survivor

To Our Readers: Apology to Abuse Victim

For more than two weeks, the publisher and I have intensely discussed our decision to run the article involving the juvenile victim of sexual abuse in the July 12th issue of our newspaper.

We chose to report the case because it is a serious felony, it is a matter of public record, and it does comply to the precedent established in our past reporting practices.

We regret that the story has caused the family involved added grief. We are sensitive to this and we would like to apologize for any added stress and grief to the victim and family caused by what is re-victimization by the article.

We would like to encourage victims of sexual abuse, especially minors, to come forward if this happens in their lives. That is the only right decision to make. We have talked to the victim in this case and truly understand the concerns she has. We applaud her decision to finally come forward and we pray that her life can move onward, that her suffering and pain can be put behind her.

We also strongly encourage this community to support the fam-

ily and to ease their burden by extending themselves to them ... and to let them know we really do care about them and will be there for them.

We would like to reassure everyone that, in the future, this newspaper will make every attempt to consider the feelings of juvenile crime victims. We hope that such a situation never occurs again, but if it should, we can safely say these young people will be given every consideration as to their well-being. You might say it's a case of needing to seek a balance in our obligations and our responsibilities as journalists. We will, in fact, study the need for a policy to deal with such situations.

So in conclusion, there are three factors to consider:

- To report the news we must.
- To alter the news we cannot.
- To be sensitive *we need to ... and certainly can* be.

Signed, Editor & Publisher

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Editor's Proposed Apology for Publication: Final Draft

To Our Readers:

We Apologize to Abuse Victim, Family... But We Feel The Story Had to Be Run

For more than two weeks, the newspaper's editorial staff intensely discussed our decision to run the article involving the juvenile victim of sexual abuse in the July 12th issue of our newspaper, and we have continued to discuss it after the story was run.

The decision to run it was certainly not an easy one.

Ultimately, we chose to report the case because it is a serious felony, it is a matter of public record, and it does comply to the precedent established in our past reporting practices. We stand by that decision and the decision to include the details of the crime, because we did not feel we could alter or omit information provided on the court document provided us.

We regret, however, that the story has caused the family involved added grief. We are sensitive to this and we would like to apologize for any added stress and discomfort felt by the victim and family caused by what is re-victimization by the article.

We would like to encourage victims of sexual abuse, especially minors, to come forward if this happens in their lives. That is the only right decision to make. We have talked to the victim in this case and truly understand the concerns she has. We applaud her decision to finally come forward and we pray that her life can move onward, that her suffering and pain can be

put behind her.

We also strongly encourage this community to support the family and to ease their burden by extending themselves to them ... and to let them know we really do care about them and will be there for them.

We would like to reassure everyone that, in the future, this newspaper will make every attempt to consider the feelings of juvenile crime victims. We hope that such a situation never occurs again, but if it should, we can safely say these young people will be given every consideration as to their well-being. You might say it's a case of needing to seek a balance in our obligations and our responsibilities as journalists. We will, in fact, study the need for a policy to deal with such situations.

So in conclusion, there are three factors to consider:

- We must report the news.
- We can't alter the news.
- But we can and need to be sensitive.

Again, let us apologize to the family for adding to their burden in this difficult time.

Signed, Editor & Publisher

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Issues to Consider

The news media can publish anything they learn, at the risk of libel suits. But, what is legal is not necessarily ethical. This case illustrates the fine balance between the community's need to know and the individual's need for privacy. This case is made more difficult because the individual is both a minor and a vulnerable person. Carefully weigh the possible value of the information about this crime to the community against the very real harm to the individual.

Sexual abuse of juveniles is rape. The consensus among news organizations is not to name rape victims. However, some people think that policy is wrong for a couple of reasons:

- a) the social stigma victims generally feel about their experience is not justified, since the stigma should attach to the rapist. (In a notable case, the *Des Moines Register* ran the name of a woman who had been raped and who asked to be identified; she wanted everyone to know that she had been harmed and had done nothing to deserve it.)
- b) if a rape suspect is named, it is only fair to name the accuser.

The news media sometimes does identify juvenile victims/accusers when:

- a) the accused appears especially vulnerable to false charges;
- b) the accused is a prominent figure;
- c) they believe it's important to report a familial relationship to let the community know the crime was not committed by a random predator.

1. What do readers need to know about this situation? Did the article give readers all they needed to know?
2. A court conviction is a matter of public record. Does that mean, then, that a juvenile victim's identity should become part of the ensuing news coverage? What do readers gain by knowing a juvenile victim's identity? What do they lose by not knowing? What do readers gain by knowing the explicit details of the abuse and the age of a victim when it occurred? What do they lose by not knowing?
3. Should a news organization consider a victim's desire for privacy? Does it make a difference if a victim is a juvenile? an adult? a private person? a public figure?
4. What might the paper have done to minimize the impact of the coverage on the girl and her family?
5. When writing your determination of this hearing, how will you refer to the girl: a victim? a survivor? a complainant? If you knew her name, would you use it?

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Excerpt from the Society of Professional Journalists' Handbook, *Doing Ethics In Journalism*

There are few greater conflicts than the need for free information flow versus the rights of individuals to **personal privacy**. The public has a need for much information that others, for a variety of motives, would like to keep private.

There is value in citizens' knowing about certain activities of public officials, even though the officials may wish to restrict flow of that information. There is also value in the public's knowing about meaningful details of accidents, tragedies, and crimes, even though the gathering and distribution of such details might invade someone's sense of privacy. Such stories highlight the journalist's dilemma in balancing the competing ethical principles of truth telling and minimizing harm.

Public discussions that ultimately may bring some benefit often cannot begin without some invasive and harmful disclosure. A story about the spread of AIDS and the failure of society to respond may present this disease as just another abstract threat unless specific names are attached to the story.

Stories that make allegations of criminal activity or unethical behavior, ranging from government corruption to child abuse, are less accurate and potentially unfair if individuals involved go unidentified. To identify individuals is certain to cause some harm, however.

Reports on crime are necessary to inform citizens of both their own safety and to provide them with information on the performance of those responsible agencies of government. On the other hand, coverage of crime is bound to cause some invasion of privacy.

Harm from privacy invasion is almost certain, but it is more difficult for a journalist to fully identify benefits from an intrusion. Thus, it is important to recognize that the primary ethical obligation of journalism is **to inform the public by seeking truth and reporting it as fully as possible**. That obligation must then be balanced against the obligation to respect individuals and their privacy.

The challenge for journalists is to be courageous in seeking and reporting information, while being compassionate to those who are being covered.

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Excerpt from the Society of Professional Journalists' Handbook, *Doing Ethics In Journalism*

Privacy Checklist

1. How important is the information I am seeking? Does the public have a right to know? A need to know? Merely a desire to know?
2. What level of protection do individuals involved in the story deserve? How much harm might they receive? Are they involved in the news event by choice, or by happenstance.
3. How would I feel if I were being subjected to the same scrutiny?
4. Do I know the facts of the story well enough? What else do I need to know?
5. What can I do to minimize the privacy invasion and the harm? Can I broaden the focus of the story by including more "victims," thereby minimizing harm to a select few? Can I postpone the story without significantly jeopardizing information to the public?
6. Do I need to include in the decisionmaking other individuals to gain more perspective?
7. Should I be focusing more on the system failure or the big-issue picture as opposed to focusing intensely on individuals?
8. Can I clearly and fully justify my thinking and decision? To those directly affected? To the public?

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Voting Questions

1. Did the small town newspaper unfairly invade the victim's privacy when it identified her as the convicted man's minor daughter?
2. Did the small town newspaper sensationalize the story by publishing graphic details of the sexual abuse the victim endured?

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Karen Ernst, a Minneapolis/St. Paul middle and high school English teacher, contributed preparation notes and oversight in the preparation of the mock hearing materials. Kellie Sagmoen-Scales, an Apple Valley high school journalism teacher, provided oversight in the preparation of worksheets and project activities.