



Open government...why it's important

Editor's Note: The following article was written to celebrate Sunshine Week 2010, March 14-20, and is provided to you by the Nebraska Press Women. Sunshine Week focuses on the importance of government conducted in the open and emphasizes the public's right to know.

By DIANE WETZEL
The North Platte Telegraph

As members of the only profession protected by the U.S. Constitution, journalists carry a heavy responsibility.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

That is why reporters sit in city council meetings and spend hours in court hearings, challenge local boards to open their meetings and attempt to shine a light on the actions of those tasked with making decisions that impact the public. Journalists are on the front lines in the skirmishes and the battles for the people's right to know.

Constitutional scholars note that the 1976 U.S. Supreme Court decision *Nebraska Press Association v. Stuart* ranks as one of the most significant free-press cases in First Amendment law. NPA executive director Allen Beermann told the First Amendment Center that the case "represents probably the most significant of all First Amendment cases as it relates to the press and open courts."

Robert O'Neil, founder of the Virginia-based Thomas Jefferson Center for the Protection of Free Expression said he would rank the case as one of the top three cases, along with *New York Times v. Sullivan* and *New York Times Co. v. United States*.

Nebraska Press Association v. Stuart is taught in journalism and law schools throughout the country.

"The amazing thing is that it started right here on a small town paper," said *North Platte Telegraph* veteran reporter Sharron Hollen, who covered the Kellie murders and the subsequent court case and contributed to this article. "It didn't come out of some big city newspaper."

It began on a blood-soaked autumn night in the small town of Sutherland, Neb. Six members of the Kellie family were discovered murdered in their modest home. The dead were Henry Kellie,

66, his wife Audrey, 57, their son David, 52, his children Deanna, 7, and Daniel, 5, and another granddaughter, Florence, 10.

The next day, a 29-year old unemployed farm worker named Erwin Charles Simants, who had been living with family members next door to the Kellie home, surrendered to the police. There were rumors of necrophilia and sexual assault. He was held in the Lincoln County Jail in North Platte.

“Fear permeated the darkness of Saturday night and Sunday morning,” *The North Platte Telegraph* reported. “Sutherland huddled behind locked doors while a murder suspect roamed the night.”

Local, regional and national media descended, expecting to report on a horrific crime but quickly found themselves “in a courtroom confrontation between the conflicting rights of a free press and of a defendant to a fair trial,” *TIME* magazine reported on Monday, May 3, 1976, after the Supreme Court decision.

The day after the discovery of the bodies, Simants was arrested. His attorney and the prosecuting attorney asked Lincoln County Court Judge Ron Ruff to issue a gag order prior to Simants’ preliminary hearing. They argued that if the media were allowed to publish or broadcast information about his confession, details about a note he wrote on the night of the murder and aspects of alleged sexual assaults of the victims related to the case, Simants would not receive a fair trial. Simants’ right to a free trial superseded the freedom of the press, the Judge said, granting the order.

Several days later, members of the media, which included publishers, reporters, and press and broadcast news organizations asked the county court to remove the gag order. Arguments were heard in District Court, and Judge Hugh Stuart upheld the order. He found that “because of the nature of the crimes charged in the complaint that there is a clear and present danger that pre-trial publicity could impinge upon the defendant’s rights to a fair trial.”

In an interview before his death in 2006, Stuart said he was “trying to achieve a balance between the First Amendment right to a free press and the Sixth Amendment right to an impartial jury.”

The NPA appealed the decision to the Nebraska Supreme Court, which modified Stuart’s order, prohibiting reporting on the confession, any confessions or statements made to third parties, except members of the press and other facts “strongly implicative of the accused.”

In the meantime the case went to trial on January 5, 1976, and Simants was found guilty of murder and sentenced to death. Stuart had declined to move the trial but agreed to isolate the jurors. He barred the news media from a suppression hearing and refused to allow the public and press to attend jury selection.

Five months after Simants’ conviction, the U.S. Supreme Court issued a unanimous ruling that struck down Stuart’s gag order. Writing the ruling, Chief Justice Warren Burger said, “there is nothing that proscribes the press from reporting events that transpire in the courtroom.” The thread running through all the cases is that prior restraint on speech and publication are the most serious and least tolerable infringements on First Amendment rights, Burger wrote.

Simants had been on death row for two years; two execution dates were set, then stayed. Then a new motion was filed saying that Stuart had visited jurors while they were sequestered and that

the county sheriff, who was a witness for the prosecution, had played cards with them. Simants was granted a new trial.

On October 1, 1979, Simants went on trial for the second time, this time in Lincoln, where he plead not guilty by reason of insanity. One day shy of the fourth anniversary of the murders, Simants was acquitted. He was committed to the Lincoln Regional Center where he remains today.

The Nebraska case, which asked the Supreme Court to determine whether Stuart's gagging of the media was constitutional, in effect forced the high court to weigh in on the sometimes conflicting rights of First Amendment free press and Sixth Amendment fair trial. In reality, they were also weighing in on the public's right to know.

The problems presented by the case are almost as old as the Republic, Burger wrote. "It is inconceivable that the authors of the Constitution were unaware of the potential conflicts between the right to an unbiased jury and the guarantee of freedom of the press."

Since the U.S. Supreme Court decision, prior restraints on the press are now viewed with suspicion, O'Neil said.

In 2001, Will Norton Jr., then dean of the College of Journalism and Mass Communications at the University of Nebraska-Lincoln, wrote that "the nation is indebted to Nebraska journalists for their sense of responsibility and personal investment in freedom of expression."