

Saint John's University, Jamaica New York

From the Selected Works of Prof. Leonard M. Baynes

December 15, 2008

White Women in Peril on Broadcast and Cable Television News

Prof. Leonard M. Baynes



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By

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Leonard M. Baynes¹

I. Introduction

It has been approximately forty years since the U.S. Supreme Court found the Fairness Doctrine constitutional and approximately twenty years since the Federal Communications Commission (the “FCC”) eliminated it. The FCC designed the Fairness Doctrine to ensure that in our American democracy that the public was well informed.² The Fairness Doctrine provided that the broadcasters were required to air important issues and to make sure that the other side of the issue was also covered. If the broadcaster failed to do so, the public could hold the broadcaster accountable and petition the FCC and demand that the broadcasters cover the other sides of an important issue.³ Failure to adhere to these rules could result in sanctions against the broadcaster including the nonrenewal of its license.

¹ Leonard M. Baynes, Professor of Law and Director, The Ronald H. Brown Center for Civil Rights and Economic Development, St. John’s University School of Law, B.S. New York University, J.D.-M.B.A. Columbia University. I presented various iterations of this article at the Annual National Media Reform Conference, at a Town Hall Meeting at George Washington University sponsored by the Lawyer’s Committee for Civil Rights and moderated by PBS host Tavis Smiley, at LatCrit Conference in Miami in 2007, at the University of Connecticut Law School’s Alvin W. Pudlin Fellowship Presentation on Media and First Amendment and at the local Catholic media group. I want to thank my research assistants Benjamin Meiseles, S. Gary Moorely, Danelco Moxey, Michael Schordine, and Rosette Vartanian and Marissa Uneberg for their research assistance with this project.

² Fairness Report of 1974, 48 F.C.C.2d 1 (1974), reconsideration 58 F.C.C. 2d 691 (1976).

³ *Id.*

Some questioned the Doctrine's constitutionality under the First Amendment. However, in 1969 in *Red Lion*, the U.S. States Supreme Court found the Fairness Doctrine constitutional under the First Amendment.⁴ The Supreme Court justified its ruling on the fact that with broadcasting, it had to not only consider the First Amendment rights of the broadcast licensees but also of the audience.⁵ It held that the broadcasters had a fiduciary duty towards the viewing and listening audience.⁶ Most specifically, the Court relied on the fact that there was scarcity of the broadcast spectrum and stated that there were more people seeking a government license, than there are licenses available to distribute.⁷

During the 1980s, the FCC pursued a more deregulatory agenda and one of its goals was the elimination of the Fairness Doctrine. In 1985, the FCC issued its Fairness Report which advocated for the elimination of the Fairness Doctrine based on the FCC's evolving understanding that scarcity no longer existed.⁸ The FCC decided that because of the increase in the number of broadcast stations, cable outlets, magazines, and at that time the potential for the Internet that the audience could get information from a variety of sources, and the Fairness Doctrine was no longer needed.⁹ The FCC also had unsubstantiated worries that the Fairness Doctrine chilled broadcasters' speech because the broadcasters would self censor their broadcast news programming.¹⁰ In *Syracuse Peace Council*, the D.C. Circuit found that the FCC had the power to eliminate the

⁴ *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 367 (1969).

⁵ *Id.* at 390.

⁶ *Id.* at 389.

⁷ *Id.* at 388.

⁸ *The FCC Fairness Report*, Inquiry Into Section 73.1910 of the Commission's Rules and regulations Concerning the general Fairness Doctrine Obligations of Broadcast Licenses, 102 F.C.C. 2d 142 (1985).

⁹ *Id.* at 34.

¹⁰ *Id.* at 9.

Fairness Doctrine, but the Court failed to address the First Amendment issues.¹¹ Since 1987, the Fairness Doctrine has not existed for broadcasters. However, a much less robust and ineffective Fairness Doctrine continues to exist for cable television, which provides that “a cable television system operator engaging in origination cablecasting shall afford reasonable opportunity for the discussion of conflicting views on issues of public importance.”¹²

Since 1987, the media landscape has also distinctly changed by increased consolidation. As result, the major broadcast corporations, ABC, CBS, NBC and Fox are vertically integrated platforms often including production studios, cable stations, broadcast stations, music companies, and book publishers.¹³ Ownership limits have been deregulated to allow broadcasters to have an audience reach of 39% of households.¹⁴ The FCC has also been waging a battle to allow for cross ownership of newspapers by broadcasters.

Local news accounts for 33 percent of a broadcast station’s revenues because they do not have to share advertising dollars with affiliates.¹⁵ To respond to the increased competition from consolidation and cable news, local broadcast stations have increased the amount of broadcast news in the past several years.¹⁶ Although they have increased the length of time that local news is broadcast, the broadcasters failed to increase the staff

¹¹ *Id.*

¹² F.C.C. S 76.209.

¹³ ABC is owned by Disney Corp, Fox is owned by Fox Entertainment, which is owned by Newscorp which includes Fox studios as one of its affiliates, CBS and Viacom split into two separate publicly trade corporations, but both have the powerful media mogul Sumner Redstone in key positions.

¹⁴ 47 U.S.C. § 303 (c)(3)

¹⁵ Eric Klineberg, *FIGHTING FOR AIR, THE BATTLE TO CONTROL AMERICA’S MEDIA*, 97 (Metropolitan Books 2007).

¹⁶ *Id.*

necessary to meet this additional production.¹⁷ Given these cross ownership connections, the increased demand for broadcast content, the concomitant decrease in broadcast news personnel, and the demise of the broadcast fairness doctrine, the broadcasters have increased the airing of tabloid stories. This has occurred because news divisions have become profit centers in which the broadcasters and the cable companies are almost solely interested in increasing ratings of their news shows to increase advertising dollars.¹⁸ Competition division news to seek tabloid celebrity stories and to cover them more intensely for longer periods in order to attract larger audiences.¹⁹

The Fairness Doctrine was not perfect, and it sometimes forced a regulatory regime on the broadcasters that required them to always cover both sides of an issue when there might not be another side or there might be many sides.²⁰ For example, media pundit and founder of the HuffingtonPost.com Arianna Huffington blames the mainstream media for this continued adherence to balance. She has said: “one of the worst things the old media do is present two sides of a story as if the two sides had equal value, creating a false neutrality that often does not exist. They fall back, she said, on ‘the illusion of neutrality instead of ferreting out the truth.’”²¹ With the Fairness Doctrine, often distinctly minority perspectives and nuance were lost from the coverage. However, the Fairness Doctrine did ensure that the public was more informed about the important

¹⁷ *Id.*

¹⁸ Mark Cooper, MEDIA OWNERSHIP IN THE DIGITAL INFORMATION AGE at 69.

¹⁹ *Id.*

²⁰ Thomas Krattenmaker & Lucas A. Powe, *The Fairness Doctrine Today: A Constitutional Curiosity and an Impossible Dream*, 1985 DUKE L.J. 151, 158-62.

²¹ Mark Nikolas, *The Media's Problem Of "False Balance" Showing Itself In Electoral Map Analyses*, Aug. 12, 2008, available at http://www.huffingtonpost.com/mark-nickolas/the-medias-problem-of-fal_b_118420.html (last visited August 12, 2008)(Huffington also said that the old media have "given up the truth for pursuit of a fake neutrality" and cited the example of the debate over global warming where journalists stand in the middle presenting the public with two sides).

issues and the media did not degenerate into the coverage of tabloid trivialities. Almost ½ of the public believed that the government should ensure that there is equal time on radio and television for different political views²² and that congress should bring back the Fairness Doctrine. Some liberals like Massachusetts Senator John Kerry want to bring back the Fairness Doctrine.²³ Conservatives worry that the return of the Fairness Doctrine will diminish the power of conservative talk radio.²⁴ They use their fear of the return of the fairness doctrine as a reason for voting for John McCain for President,²⁵ and in fact some congressmen have introduced legislation to prohibit the FCC from bringing back the Doctrine.²⁶

Almost one-half of the public does not trust the information they receive in the news.²⁷ Although the public may watch and be fascinated by tabloid media coverage, the public blames the media for too much celebrity coverage.²⁸ When the public was asked “who gives celebrity stories” the most coverage?²⁹ Cable news was number one with 34%, network news was number two with 27%, Internet news websites was number three

²² 47% Favor Government Mandated Political Balance on Radio, TV, Rasmussen Reports, Aug. 14, 2008, *available at* http://rasmussenreports.com/public_content/politics/general_politics/47_favor_government_mandated_political_balance_on_radio_tv (last visited Aug. 15, 2008).

²³ John Eggerton, Kerry Wants Fairness Doctrine Reimposed, *Broad. & Cable*, (Jul. 27, 2007) *available at* <http://www.broadcastingcable.com/article/CA6456031.html> (last visited on Aug. 15, 2008).

²⁴ See generally Michelle Malkin, *Fairness Doctrine Watch*, *available at* <http://www.broadcastingcable.com/article/CA6456031.html> (last visited Aug. 15, 2008)

²⁵ George F. Will, *McCain's Closing Argument*, *WASH. POST*, Sept 18, 2008, at A21.

²⁶ *Broadcaster Freedom Act*, *available at* <http://mikepence.house.gov/UploadedFiles/PenceFairnessDoctrineBill.pdf> (last visited Aug. 15, 2008).

²⁷ Make Cooper; *MEDIA OWNERSHIP AND DEMOCRACY IN THE DIGITAL AGE* at 31.

²⁸ *Public Blames Media For Too Much Celebrity Coverage: Cable and Network TV Worst Offenders*, *PewResearch.org*, August 2, 2007, *available at* <http://pewresearch.org/pubs/557/public-blames-media-for-too-much-celebrity-coverage>, (last visited July 11, 2008).

²⁹*Id.*

with 15%, and newspapers were number four with 8%.³⁰ As to who is responsible for the celebrity tabloid coverage, Marlene Dann, senior vice president of daytime programming at Court TV, has described the media coverage as “a reaction to what viewers want,” and not a creation of the interest. Instead, she believed that the media reacted to the public’s interest.³¹ The Pew Research Center conducted a study that showed a difference on who was responsible for the tabloid coverage based on age. Younger people place responsibility on the public for their appetite for celebrity gossip while a majority of those over the age of thirty place the responsibility solely on the media.³² The thinking goes that if there was not a market, the media would focus on other things, instead of celebrities. To this end, Realtruth.org article said that “It is no longer the *magnitude* of the event that draws the media’s attention—it is *public interest* that makes a story “news-worthy.”³³

Since it has been approximately twenty years since the Fairness Doctrine ended, the generational difference in placing blame on the increased tabloid coverage probably arises because those under thirty are too young to remember the news when there was more of an emphasis to report on issues of public importance. In terms of who is responsible, the tabloid media fare is like the choice between cookies and candy and broccoli. The public knows which one is better for them, but the media ecology is now set up in a manner that “nudges” media audiences to consume the tabloid cookies and

³⁰ *Id.*

³¹ Name of author, Name of article, Wash. Post, date, page.

³² *Id.*

³³ *The Anna Nicole Smith Media Frenzy: America’s Priorities Revealed*, RealTruth.org, February 15, 2007, available at <http://www.realtruth.org/news/070215-002-media.html> (last visited July 13, 2008). From February 4-9 Smith’s death was the number three news story.

candy as opposed to the public interest broccoli.³⁴ The Fairness Doctrine “nudged” both the media and the audience to consume information necessary for our democracy.

Without that “nudge” and in fact with a “nudge” in the opposite direction, the media now broadcast and the audience consumes vast amounts of tabloid fare, instead of information that would be healthier for the American democracy.

This article will examine why and how the media cover female celebrities and other women whose tragic stories are thrust into the public consciousness. The article focuses on obvious female celebrities like Britney Spears, Lindsay Lohan, Paris Hilton, and Anna Nicole Smith, as well as those tragic women thrust into the national spotlight that lost their lives to male assailants such as Laci Peterson, Chandra Levy, and Natalee Holloway. The common thread that binds all these women together is that they are young, white and reasonably attractive. The public is already interested in the female celebrities but can also be drawn into the unfortunate dramas that unfold with the unknown women who find themselves in peril.

II. Explanation for the Focus on White Women in Peril

This fascination with white women in peril has long roots in American culture. As Catharine MacKinnon suggests, “[g]ender socialization is the process through which women come to identify themselves as sexual beings, as beings that exist for men....”³⁵

Women generally and white women in particular in the United States have been considered crucial for passing on the culture to the next generation. Women are

³⁴ RICHARD H. THALER AND CASS R. SUNSTEIN, *NUDGE*, at 1-5 (Yale Univ. Press 2008) (describing how the arrangement of food in a school cafeteria encourages and promotes the purchase of some foods over others).

³⁵ See Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 *SIGNS* 515, 531-33 (1982).

considered the great civilizing force for males in society.³⁶ White women are the standard for beauty in the United States whereas women of color have been exoticized and exploited throughout American history.³⁷ Catharine McKinnon describes the “white women stereotype as follows:

The creature is not poor, not battered, not raped (not really), not molested as a child, not pregnant as a teenager, not prostituted, not coerced into pornography, not a welfare mother and not economically exploited. She doesn't work. She is either the white man's image of her—effete, pampered, privileged, protected' flighty, and self indulgent—or the black man's image of her—all that, plus the “pretty white girl” (meaning ugly as sin but regarded as the ultimate in beauty because she is white)... she manipulates white men's very real power with the lifting of her very manicured little finger... She flings her hair, feels beautiful all the time...can't do anything, doesn't do anything, doesn't know anything....³⁸

Given the status of American white women and the fact that the U.S has always been a multiracial society, there has often been extreme anxiety over the protection of white women from the threats of men of color. It was not until 1967 in the Supreme Court case of *Loving v. Virginia* that the Supreme Court overturned state laws that prohibited interracial marriages.³⁹ Despite the fact that white women were denied the right to vote until 1920 and could be discriminated against in employment until the passage of the Civil Rights Act, they were nonetheless placed on a pedestal by society. This pedestal often limited their actions and autonomy, and caused them to be singled out

³⁶ Ntozake Shange, *THREE PIECES* 48 (1981); see also Tessie Liu, *Teaching the Difference among Women from a Historical Perspective: Rethinking Race and Gender as Social Categories*, 14 *Women's Studies International Forum* 265, 270-1 (1991).

³⁷ See, e.g., Camille A. Nelson, *American Husbandry: Legal Norms Impacting the Production of (Re) Productivity*, 19 *Yale Journ. L. & Fem.* 1 (2007); Camille A. Nelson, *Loving The Man: Examining the Legal Nexus of Irony, Hypocrisy, and Curiosity*, 2007 *WISC. L. REV.* 543 (2007); Tanya Kateri Hernandez, *A Critical Race Feminism Empirical Research Project: Sexual Harassment & the Internal Complaints Black Box*, 39 *U.C DAVIS L. REV.* 1235 (2006).

³⁸ Catharine A. MacKinnon, *From Practice to Theory, or What Is a White Women Anyway*, *CRITICAL WHITE STUDIES, LOOKING BEHIND THE MIRROR*, edited by Richard Delgado and Jean Stefanic at 301 (Temple University Press 1997).

³⁹ *Loving v. Virginia*, 388 U.S 1 (1967).

for protection. Those who fell off the pedestal are often routinely condemned and ridiculed, but also might be sympathized with.

We see this anxiety and concern over white women historically in our popular culture. The “Perils of Pauline,” which was a silent film serial, included “archetypal cliffhangers” that involved a leading woman character, Pauline, who each week encountered danger. The serial left audiences wondering what would happen in the next episode.⁴⁰ In these films, Pauline would survive various perils like being stranded on the side of a cliff, trapped in a runaway balloon, or locked in a burning house.⁴¹ Pauline survived attempts on her life in each episode, and she was rescued from pirates, Indians, gypsies, rats, and sharks.⁴² The iconic image from this serial shows Pauline being rescued from being tied to railroad tracks as a speeding train rapidly approaches.⁴³

This narrative is repeated over and over in American popular culture. We see it in all the iterations of the Superman genre where Superman’s girlfriend Lois Lane gets into a life threatening situation, and she has to be rescued by Superman. We see it in children’s television shows like *Underdog* where he has to rescue his girlfriend Sweet Polly Pure Bread. We are programmed culturally and it is reinforced from an early age to be triggered and respond to the narrative of the white woman who needs to be rescued.

As to the celebrity white women in peril, this prism has also been labeled as “The Diana/Whore Complex” by Lakshmi Chaudry.⁴⁴ Chaudry writes that, “In the ten years since Diana's death, female celebrities have indeed come a long way, baby. Whatever the

⁴⁰ Review by Tim Dirks, *The Perils of Pauline*, available at <http://www.filmsite.org/peri.html> (last visited August 2, 2008).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Lakshmi Chaudry, *The Diana/Whore Complex*, *THE NATION*, Aug. 7, 2007, available at <http://www.thenation.com/doc/20070827/chaudhry> (last visited on Aug. 8, 2008).

failings of the brat pack who dominate the tabloid headlines today, they represent a new generation of stars--including the likes of Lindsay Lohan, Nicole Richie and Tara Reid--who no longer feel the need to hide their appetite for pleasure, status and attention behind a giggle or a teary smile.”⁴⁵ Chaudry’s article discusses a *Guardian* article written nearly a year after Diana’s car crash by Joan Smith, who bemoaned our fascination with tragic love goddesses who are willing to bare every detail of their calamitous personal lives to earn our sympathy and regard.⁴⁶ “Our appetite for stories of female misery, it seems, can never be sated...What we want to know about rich, beautiful, successful women is that they are, in spite of all their advantages, lonely and miserable.”⁴⁷ In Chaudry’s eyes,

The Diana/Whore Complex’ is a narrative we continually see playing out before our eyes: The plot line of this fairy tale is always the same: Deprived childhood creates lifelong craving for love, which she seeks in the arms of various unsuitable men and, failing that, in public adulation, which cannot, however, save her from a tragic, usually lonely and always untimely death. Cinderella gets to be princess but never finds Prince Charming, and that’s why we love her. The more she bares her scars--her rejected, needy, self-loathing self--the closer we press her to our hearts.⁴⁸

Vulnerability is the great appeal. The male celebrity who makes a mistake becomes the “Hollywood bad boy,” whereas his female counterpart becomes the tragic white woman in peril.

The media cover these tabloid stories of white women in peril because they resonate with the public on a deep and emotional level. The media know that these stories will increase their ratings. However, they also show these stories because it allows them

⁴⁵ *Id.*

⁴⁶ Joan Smith, *Women: Blonde, Beautiful and on the Edge; They’re Young, They’re Wildly Successful and They Seem to Have the World at their Feet - So Why Does it all go Wrong?* THE GUARDIAN, Jul. 8, 1998, at 6.

⁴⁷ *Id.*

⁴⁸ Lakshmi Chaudry, *The Diana/Whore Complex*, THE NATION, Aug. 7, 2007 available at, <http://www.thenation.com/doc/20070827/chaudry>.

to cross market their products. Each of the celebrity women is commodified. If they are not already a product like Britney Spears, Paris Hilton, Lindsay Lohan, and Anna Nicole Smith, they quickly become one like Laci Peterson, Chandra Levy, and Natalee Holloway. Although the media have this focus on these relatively young, white and attractive women, women of color rarely get this media treatment even when it might help solve a crime.⁴⁹ For the white women celebrities, they cannot lead their lives with privacy; the media frenzy surrounding some of these young women almost forces them into this almost-inescapable white women in peril paradigm. The media provide fuel for some of their publicity seeking behaviors that may cause of their demise.

For the women who are unknown at the time that they get caught up in tragedy, the stories provide candy for a world-weary audience who does not want to focus on war and a bad economy. Tom Rosenstiel, director of the Project for Excellence in Journalism, said: "The morning network shows and cable television have a need for a certain kind tabloid story where the facts of the story are very simple and don't change very much. It's like a soap opera: You can go away for months at a time and you can come back and plug right back into the plot."⁵⁰ "Its titillating details sucked America in: the attractive mother-to-be missing on Christmas Eve, the tight-knit community's anguished search, the stunning revelation that her husband had been having an affair, his lawyers' theory that a Satanic cult was involved and fresh allegations from a jail inmate in Fresno that Scott had tried to hire neo-Nazi gangsters to kill his wife."⁵¹ "Once the public seized on the case,

⁴⁹ Cynthia Tucker, *Media Blackout for this Bride*, ATLANTA JOURNAL-CONST., May 8, 2005, at 6E.

⁵⁰ William Booth, *Forget Bush-Kerry. What About Scott-Laci?*;

A Trial Galvanizes, and Polarizes, the Media, Wash. Post Nov. 2, 2004, at A1.

⁵¹ John Ritter, *Peterson Case Back on Center Stage This Week*, USA TODAY, Oct. 27, 2003, at 4A.

embraced the families' pain and the did-he-do-it aspects," they provide a ratings boost that cost relatively little to cover and produce.⁵² The increase in these tabloid stories occurs because they increase revenues.

"Why the intense spotlight on missing women at a time of terrorist attacks in Iraq and elsewhere, an uncertain economy and a very tight presidential campaign?" Indeed, many explanations have been proffered.⁵³ Some have speculated that this coverage allows the public to escape the bad news and the tough decisions that it has to face with two wars and a bad economy. This tabloid fare may be akin to the glamorous movie musicals of the 1940s which distracted Americans while they fought the Great Depression and the World War II. Whatever the reasons for the tabloidization of the news, the centralized media culture that focuses on these distractions undermines the fundamental principles of American freedom and democracy.⁵⁴

The media companies look for opportunities to market these tragedies across their different media platforms.⁵⁵ Traditional advertising is so pervasive that it is losing its effectiveness.⁵⁶ The media are looking for nontraditional ways to sell their products.⁵⁷ White women in peril become the product. The public is fascinated by their activities and empathizes with their plights. It then allows the media to sell more advertising time because their ratings increase; it also allows the media to sell the actual products of white

⁵² William Booth, *Forget Bush-Kerry. What About Scott-Laci?;*

A Trial Galvanizes, and Polarizes, the Media, WASH. POST, Nov. 2, 2004, at A1.

⁵³ Peter Johnson, *Missing Women: Why the Hype?;* USA TODAY April 4, 2004, page.

⁵⁴ Al Gore, *THE ASSAULT ON REASON* __ (2007).

⁵⁵C. EDWIN BAKER, *MEDIA CONCENTRATION AND DEMOCRACY: WHY OWNERSHIP MATTERS* at 42 (Cambridge 2007)(showing how ABC's quiz show "Who wants to be a Millionaire" was advertised and cross marketed on all the ABC affiliated local news shows).

⁵⁶ ROBERT W. MCCHESENEY, *THE PROBLEM OF THE MEDIA, U.S. COMMUNICATION POLITICS IN THE 21ST CENTURY* 145-47 (Monthly Review Press 2004).

⁵⁷ *Id.* (These involve direct product placements in the story lines of a television show or infomercials).

celebrity white women. By hyping these women in peril, the media create an echo effect across a variety of media platforms that actually sell these women's tragic stories. These white women in peril become big business dominating coverage in tabloid as well as mainstream media.

These women are powerful products as evidenced by the John McCain presidential commercial in which he dismisses his opponent Barack Obama as a mere celebrity and compares Obama to Britney Spears and Paris Hilton.⁵⁸ The campaign commercial dominated the news coverage the week that the commercial first was broadcast. While we focus on these white women in peril, major and important political events transpire and get little media coverage.⁵⁹

This focus on white women in peril is possible because of deregulation of the media industry and consolidated ownership of different media platforms by one or a few owners. A story is transported along a particular media company's own network.⁶⁰ People magazine is a major node in this celebrity network, selling over 35 million issues per week. It is owned by Time Warner, which also owns CNN. So this is the major "jump off" from tabloid to legitimate news is through the connection between *People* Magazine and CNN. It can begin in a gossip magazine or a celebrity-focused website such as TMZ also owned by Time Warner and then emerge on CNN or other network news shows, be

⁵⁸John McCain TV ad: *Celeb*, available at <http://www.johnmccain.com/Informing/Multimedia/Player.aspx?guid=848322d6-92fe-403e-9cc7-85b6b3ee4011> (last visited August 7, 2008).

⁵⁹ Glenn Greenwald, *The U.S. Establishment Media in a Nutshell*, Salon.com, April 5, 2008, available at <http://www.salon.com/opinion/greenwald/2008/04/05/media/#> (last visited August 7, 2008)(noting how the mainstream media covered trivial matters during the weeks that the essay was published instead revelations about American torture); Richard Perez-Pena, *The War Endures, but Where's the Media*, NEW YORK TIMES, March 24, 2008, at C1.(highlighting the dramatic decline in the coverage of the War in Iraq).

⁶⁰ See generally Alberto-Laszlo Barabasi, LINKED, THE NEW SCIENCE OF NETWORKS at 16-19 (Perseus Publishing 2002)(discussing how networks emerge).

made in a television movie on an affiliated network, or an E! True Hollywood Story and be published as a book. Like a virus, the increased coverage can migrate to rival media networks.⁶¹ Also connected with the commodification of these women is the fact that some of the celebrities also sell products that are advertised on these multiple platforms. Also in this mix are the publicists like Leslie Sloan Zelnick who represents Britney Spears and Lindsay Lohan but also works for a subsidiary of Ogilvy, which also represents Disney, Fox Mobile Entertainment.

III. Britney Spears

Britney Spears became the first woman to have her first four albums debut at number one.⁶² Her record labels have been Jive, BMG, and Zomba.⁶³ These labels are jointly owned by Bertelsmann AG and Sony BMG,⁶⁴ which is the second largest U.S. music company representing 25% of the market.⁶⁵ Spears became a household name and deeply embedded in pop culture. News and media coverage of Spears has been exhausting, consisting of mostly tabloid reports, rumors, and gossip columns. Spears appeared on over forty covers of *People* magazine.⁶⁶ Between January 2006 and July 2007, Spears appeared on the cover of *People*, *US Weekly*, *In Touch*, *Life & Style*, *OK!* or *Star* over 175 times in 78 weeks.⁶⁷ It is estimated that a commodified Britney Spears

⁶¹ *Id.*

⁶² Britney Spears on Yahoo, Yahoo Music <http://music.yahoo.com/read/story/12064351> (last visited Aug. 28, 2008).

⁶³ See *Britney Spears Music Albums*, available at <http://music.aol.com/album/artist/britney-spears/1290171> (last visited August 7, 2008).

⁶⁴ Ryan Nakashima, *Sony to buy Bertelsmann's Sony BMG stake for \$900M*, THOMPSON FINANCIAL NEWS, Aug. 5, 2008, at 43.

⁶⁵ *Id.*

⁶⁶ *People* magazine covers on file with the author.

⁶⁷ Richard Cohen, *Britney Economics*, NEWSWEEK, Jan. 22, 2008, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/01/21/AR2008012101691.html>.

contributes \$110 to \$120 million annually to the U.S economy.⁶⁸ She has remained the leading search subject in six of the past seven years on Yahoo, except for one year that Paris Hilton was number one.⁶⁹

Several events in Spears's life have received considerable media coverage: (1) her marriage to Kevin Federline; (2) driving while her son Preston was sitting on her lap; (3) her divorce from Federline; (4) her Post-Divorce Party Lifestyle; (5) her shaving her head bald and getting a tattoo; (6) her child custody battle with Federline; and (7) her hospitalization.

A. Marriage to Kevin Federline

On September 18, 2004, Spears married fiancé and back-up dancer Kevin Federline.⁷⁰

To avoid the media frenzy, Spears advanced the date of her wedding as scheduled from October 16th to September 18th.⁷¹ The wedding was held at a private residence in Studio City, California.⁷² The twenty-to-thirty guests were surprised to learn that it was the actual wedding and not the planned engagement party.⁷³ Reports highlighted the design and designer of the gown worn by Spears.⁷⁴ Media coverage was expansive on this issue. Google™ searches for Spears more than doubled between September 17th and Sept. 21st

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ See, e.g., Karen Thomas, *She Did it Again, Spears Sneaks Off to Marry*, USA TODAY, Sept. 20, 2004, at 1D; *Britney Spears Quietly Marries Kevin Federline in Small Wedding*, WASHINGTON POST, Sept. 20, 2004, at C09; *Spears takes another stab at marriage*, LOS ANGELES TIMES, Sept. 20, 2004 at E14.

⁷¹ *Quick Takes: Britney Spears' Nuptials a Work in Progress*, LOS ANGELES TIMES, Sept. 23, 2004, at E5.

⁷² *People: Married Again*, ST. LOUIS POST-DISPATCH, Sept. 20, 2004, at A2.

⁷³ *She Did it Again—Britney Spears Marries in Surprise Ceremony*, Chicago Sun Time, Sept. 20, 2004, at 4.

⁷⁴ Karen Thomas, *She Did it Again, Spears Sneaks Off to Marry*, USA TODAY, Sept. 20, 2004, at 1D.

of 2004.⁷⁵ Spears's wedding date coincided with the release of her perfume line *Curious* on Tuesday Sept. 13, 2004, approximately four days before the wedding.⁷⁶ According to the Elizabeth Arden Annual report, *Curious* reached record sales during its first week⁷⁷ and was the number one selling beauty product on Amazon.com.⁷⁸

Her marriage was parlayed into a limited run reality show entitled: *Britney & Kevin: Chaotic* on the then-UPN network.⁷⁹ The show aired private home videos including commentary filmed by Spears and Federline.⁸⁰ The series included six episodes that debuted weekly on UPN from May 17 and June 14, 2005. It was canceled after the first season. Reruns have been shown on MTV and VH1. Both Federline and Spears were executive producers.

B. Spears Driving Vehicle with Son Preston in her Lap

On February 6, 2006, Spears was photographed driving her SUV with her four-month old son in her lap.⁸¹ This practice was in contravention of many state's safety regulations.

⁷⁵ Google Trends, <http://www.google.com/trends?q=britney+spears&ctab=0&geo=all&date=2004-9&sort=1> (last visited (Jun. 17th 2008)

⁷⁶ Karen Thomas, *She Did it Again*, *supra* note __ at 1D.

⁷⁷ "In addition to being the number one selling fragrance launch in 2004-2005 globally curious Britney Spears was honored with numerous industry awards including the 2004 WWD BeautyBiz 'Breakthrough Product of the Year', the CosmoGirl Consumer's Choice Award and the 2005 Mediaweek Award for Best Alternative Media Plan". Elizabeth Arden Annual Report (2005), http://library.corporate-ir.net/library/98/982/98237/items/185268/2005_AR.pdf, at 5

⁷⁸ Elizabeth Arden 12/10/2004 Press Release, <http://phx.corporate-ir.net/phoenix.zhtml?c=98237&p=irol-newsArticle&ID=653668&highlight>, (last visited Jun. 17th 2008).

⁷⁹ Todd Peterson, *Britney and Kevin's Chaotic Show*, PEOPLE, (May 4, 3005) available at <http://www.people.com/people/article/0,,1057182,00.html> (last visited on August 7, 2008).

⁸⁰ *Id.*

⁸¹ Donna Freydkin, *Britney in the hot seat over photos*, Life Feb 08, 2006 at 2d.

Spears excused her behavior by claiming that she was trying to escape the paparazzi. In a statement released to the press Spears stated:

Today I had a horrifying, frightful encounter with the paparazzi while I was with my baby. Because of a recent incident when I was trapped in my car without my baby by a throng of paparazzi, I was terrified that this time the physically aggressive paparazzi would put both me and my baby in danger. I instinctively took measures to get my baby and me out of harm's way, but the paparazzi continued to stalk us, and took photos of us, which were sold to the media. I love my child and would do anything to protect him.⁸²

A LexisNexis search of the transcripts from major news broadcasts between February 6, 2006 and February 14, 2006 yielded over 1,600 hits for Britney Spears. Additionally, between February 6, 2006 and February 8, 2006, Google searches for “Britney Spears” more than doubled.⁸³ Moreover, on February 8, 2006, Google searches for “Britney driving” increased by over ten times the amount of searches on February 6, 2008.⁸⁴

The coverage of Spears driving was so influential that it prompted a regulatory response from the U.S. Transportation Secretary, Norman Mineta. He stated: "Recent photos of Britney Spears driving with her infant son on her lap are troubling. And while Ms. Spears has acknowledged her mistake, her actions still send the wrong message to millions of her fans."⁸⁵ Mineta continued to reprimand Spears; “No matter who you are, there's absolutely no excuse for this display -- not instinct, not fear, not even reckless

⁸² Jennifer Christman, *Nothing Held Back by Spears*, Arizona-Democrat Gazette Feb 12, 2006 styles. The L.A County Sheriffs Department refused to pursue charges against Spears. *Britney: Oops, I did it!*, Newsday, Feb. 10, 2006 at A15.

⁸³ Google Trends, <http://www.google.com/trends?q=britney+spears&ctab=0&geo=all&date=2006-2&sort=0> (Last visited Jul. 8, 2008).

⁸⁴ Google Trends, <http://www.google.com/trends?q=britney+spears+driving&ctab=0&geo=all&date=2006-2&sort=0> (Last visited Jul. 8, 2008).

⁸⁵ Joan Loviglio, *Transportation Secretary Won't Let Britney off the Hook*, CHI. SUN TIMES, Feb. 14, 2006 at 24.

paparazzi, It's irresponsible to compromise the safety of a child for the sake of the moment." ⁸⁶ At the same press conference, Mineta announced \$25 million in new federal funding over the next four years to states that pass and enforce new or tougher booster-seat laws. ⁸⁷

Despite the bad publicity or may be in spite of it, Spears was invited to the first Mardi Gras in New Orleans after the devastation of Hurricane Katrina. Spears's visit was covered by *Good Morning America* on Feb 28, 2006. ⁸⁸ In April 2006, Spears made a guest appearance on the television show *Will & Grace*. ⁸⁹ The show aired on April 30th to lukewarm ratings. ⁹⁰

C. Spears's Divorce from Federline

On Nov 7, 2006, Spears filed for divorce from Federline citing "irreconcilable differences." ⁹¹ Entertainment news website TMZ.com posted copies of the petition for divorce. ⁹² "Sources told TMZ.com that there was no single reason for Spears's ending the marriage; rather it was a string of events." ⁹³ News sources claimed the final blow occurred in New York a week before the divorce was filed. ⁹⁴ The couple reportedly checked into two separate hotels, and a despondent Spears was seen sobbing while eating

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ YouTube, <http://www.youtube.com/watch?v=QrtPssf90k>;
<http://www.youtube.com/watch?v=sAF7T5Nt1c> (last visited Jul. 8, 2008).

⁸⁹ Access Hollywood, *Britney Spears Visits 'Will & Grace'*, (Feb. 28 2006), available at <http://www.msnbc.msn.com/id/11548320/> (last visited Jul. 8, 2008).

⁹⁰ <http://www.durfee.net/will/ratings.htm> (Buy, Buy, Baby) (last visited Jul. 8, 2008).

⁹¹ Julian Kesler, *WHAT WENT WRONG... FROM I DO TO I DON'T*, DAILY NEWS, Nov. 8 2006 at 48.

⁹² http://cdn.digitalcity.com/tmz_documents/110706_spears_petition_1.pdf (last visited Jul. 8, 2008).

⁹³ The Associated Press: *It's over: Britney is K-Fed up: Court filing Specifies 'Irreconcilable Differences' as Motivation for Split*, NEWSDAY Nov. 08, 2006, A04.

⁹⁴ Kate Sheehy, Bill Hoffman and Paula Froehlich, *IT'S SPLITNEY FOR BRITNEY- SHE'S DIVORCING K-FED*, NEW YORK POST, Nov. 8, 2006 at 3.

a meal.⁹⁵ Spears failed to show up to the release party for Federline's album, entitled *Playing with Fire*.⁹⁶

Spears demanded full custody of their two children Sean Preston and Jayden James.⁹⁷ In his response Federline filed for both full legal and physical custody of the two children.⁹⁸ Rumors circulated as to Federline's payout based on the couple's prenuptial agreement.⁹⁹ According to *People*, Spears was granted temporary custody of the children with three days of visitation for Federline.¹⁰⁰ The divorce was finally settled out of court in March of 2007, both Spears and Federline shared custody of the two children, but the exact details of the financial arrangements remained undisclosed.¹⁰¹

The news that Spears sought to divorce Federline was released the same day as the national election results. Although one may think that the national election results would crowd out all other coverage, the news of the divorce still received considerable attention in the media.¹⁰² There was a slight increase in searches for "Britney Spears."¹⁰³ Spears released her *Midnight Fantasy* fragrance in December immediately after seeking

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Karen Thomas, *Signs Were There: Spears Seeks Divorce: Cites Differences with Federline*, USA TODAY, Nov 8th 2006 at 1D.

⁹⁸ *K-Fed Slaps Back at Britney on Custody*, NEWSDAY, Nov. 9, 2006 at A12.

⁹⁹ "According to TMZ's Spederline sources, the celebrity washout is set to get less than 20 percent of the value of their \$10 million Malibu estate, and spousal support - estimated to be less than \$250,000 - for only one year." *Poor Poor K-Fed Brit Pre-Nup Gives Kev ... Not Much*, BOSTON HERALD, Nov 10, 2006 at 13.

¹⁰⁰ Frank Swertlow, *Britney Spears & Kevin Federline Reach Divorce Settlement*, (Mar. 29, 2007), available at http://www.people.com/people/article/0,,20012207_20016486_00.html (last visited Jul. 8, 2008).

¹⁰¹ *Id.*

¹⁰² Teresa Wiltz, *As Usual, It's The Fans Who Suffer Most; Britney and K-Fed Split, Yet Somehow Life Goes On*, WASH. POST, Nov 8, 2006 at D1.

¹⁰³ Google Trends

<http://www.google.com/trends?q=Britney+spears&ctab=0&geo=all&date=2006-11&sort=0>, (last visited Jul. 8, 2008).

the divorce.¹⁰⁴ Analyst found that fragrance sales had a strong start.¹⁰⁵ During the 2006 fiscal year, the Spears's fragrance line increased by 45% in sales.¹⁰⁶ The Spears's fragrance line remained a powerful asset to Elizabeth Arden comprising almost 10% of the Company's net sales in 2007.¹⁰⁷ Although there is no direct ownership connection between Elizabeth Arden and the broadcast media, the broadcast media derive a great deal of value from advertising commercials for Spears's products.

D. Spears's Post Divorce Party Lifestyle

After Spears filed for divorce, rumors that Federline was taking bids for an alleged sex-tape began to circulate. Federline later denied the existence of a sex-tape.¹⁰⁸ A few weeks after filing for divorce, Spears was seen partying in Las Vegas.¹⁰⁹ After the Vegas trip, Spears was spotted partying with soon-to-be best friends Paris Hilton and Lindsay Lohan. The trio was spotted partying almost every day.¹¹⁰ On one such occasion police were called to Hilton's home because of the noise.¹¹¹ Spears was also photographed, by the paparazzi, three times in one week without wearing underwear.¹¹² Google searches for Britney Spears during November nearly doubled the searches for the national election

¹⁰⁴ Holly M Sanders, *BRITNEY'S SCENTS: HAIR TODAY, GONE TOMORROW*, NEW YORK POST, Feb. 21, 2007, available at http://www.nypost.com/seven/02212007/business/britneys_scents_hair_today_gone_to_morrow_business_holly_m_sanders.htm. (last visited Aug. 15, 2008)

¹⁰⁵ *Id.*

¹⁰⁶ <http://library.corporate-ir.net/library/98/982/98237/items/216412/AR06.pdf> at pg 4 (last visited Aug. 16, 2008).

¹⁰⁷ http://library.corporate-ir.net/library/98/982/98237/items/265119/2007_AR.pdf at 5. However, the divorce did not significantly commodify Federline. His album was released the same week the divorce petition was filed, but his album only sold 5,000 copies during its first week. <http://www.exposay.com/k-fed-debut-album-sales-flop-and-show-tickets-are-given-for-free/v/5930/> (last visited Jul. 8, 2008).

¹⁰⁸ *KEVIN: NO BRITNEY SEX TAPE*, NEW YORK POST, Nov 22, 2006 at 12.

¹⁰⁹ Bill Zwecker, *Britney Parties with Vegas Jillionaire*, CHICAGO SUN TIMES, Nov 20, 2006 at 42.

¹¹⁰ http://www.usmagazine.com/britney_paris_bffs_4_evah_y_all, (last visited Jul. 8, 2008).

¹¹¹ Jo Piazza, *OOPS. JUST A LI'L BRIT MISSING*, DAILY NEWS, Nov. 26, 2006 at 2.

¹¹² <http://abcnews.go.com/Entertainment/Story?id=2688382&page=1>

result.¹¹³ Newspaper articles began to question Spears's parenting skills. Media coverage began to shift, casting Spears in a negative light, while praising Federline for his dedication to the children.¹¹⁴ Media outlets claimed that the Los Angeles County Department of Children and Family Services was also investigating Spears because of her reported excessive partying.¹¹⁵

The only product released during this time was Spear's fragrance *Midnight Fantasy*. Although the exact figures of the launch were not released, Spears's Fragrance brand remained one of the highest grossing celebrity fragrance lines for Elizabeth Arden.¹¹⁶ There were some unsubstantiated media stories that Spears's personal life had adverse effects on the fragrance line.¹¹⁷

E. Spears's Shaves her Head Bald

In 2007, Spears checked herself into a rehabilitation facility in Antigua and then checked herself back out that same day and flew back to Los Angeles.¹¹⁸ She was later photographed in a Tanzana hair salon shaving her head bald.¹¹⁹ She also reportedly was tattooed that same day. *Larry King Live* devoted his one-hour show to Spear's haircut with experts arguing on her mental state while looping the film of her cutting her hair

¹¹³ Google trends, available at <http://www.google.com/trends?q=Britney+spears%2C+election+results&ctab=0&geo=all&date=2006&sort=0>

¹¹⁴ Michelle Caruso, *K-FED'S NEW THREADS.CLEANS UP FOR KID FIGHT AS BRIT PARTIES*, DAILY NEWS Dec. 7, 2006 at 20.

¹¹⁵ *Id.*; Karen Thomas, *Entering the Legal Ring: Britney and K-Fed*, USA TODAY, Dec. 21, 2006 at 2d.

¹¹⁶ 2006 Annual Report Elizabeth Arden, available at <http://library.corporate-ir.net/library/98/982/98237/items/216412/AR06.pdf>

¹¹⁷ http://www.nypost.com/seven/02212007/business/britneys_scents__hair_today__gone_tomorrow_business_holly_m__sanders.htm, (last visited Jul. 8, 2008).

¹¹⁸ Jill Culora, *FROM BABY BRIT TO BURNED TART - WOE TOOK ROOT IN TEEN FAME*, NEW YORK POST, Feb 25, 2007 at 21.

¹¹⁹ News Staff Writers, *BRIT FREAKS AGAIN AS TRAIN WRECK ROLLS ON. SMASHES CAR AFTER SHE'S SHUNNED BY K-FED*, Daily News Feb 23, 2007 at 3.

over and over again. She cut her hair because Federline reportedly was trying to stage an intervention told her that he would drug-test her hair.¹²⁰ Two days later, Spears checked into Malibu rehabilitation center called, Promises, only to check herself back out that same day.¹²¹ That tumultuous week culminated in huge scene captured by the paparazzi¹²² in which Spears was filmed hitting an SUV with a green umbrella while shouting profanities.¹²³ Reports speculated that the incident occurred because Federline threatened to file for sole custody of the children and refused to allow Spears to see the children until she was readmitted into a rehabilitation center.¹²⁴ Later that day, Spear checked back into the Promises treatment center.¹²⁵ Federline retained custody of the children after these incidents.¹²⁶

F. Spears on MTV and Loss of Custody Rights to her Children

On September 9, 2007 Spears opened for the MTV Video Music awards.¹²⁷ She performed the single *Gimme More* from her just-then-released *Blackout* album. Critics panned her performance.¹²⁸ She was ridiculed for lip syncing, gaining weight, wearing bad hair extensions, and not dancing well. Seven million viewers tuned in to watch

¹²⁰ *Id.*

¹²¹ Lukas Alpert, *RE-RE-REHABBER SPEARS IN TRY NO. 3*, NEW YORK POST, Feb. 23 2007 at 13.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Lukas I. Alpert, *BRIT'S BAD REHABIT: SHE'S OUT - ANOTHER 24-HOUR 'CURE'*, NEW YORK POST, Feb 22, 2007 at 9.

¹²⁷ John Maynard, *In VMA Comeback, Britney Makes All The Wrong Moves*, WASH.POST, Sept. 10, 2007; available at <http://www.youtube.com/watch?v=6PCa2cRj9V4> (last visited Aug. 16, 2008).

¹²⁸ Nekesa Mumba Moody, *AT VMAS, BRITNEY GIVES 'EM MORE -- FOR SURE*, PITTSBURGH POST-GAZETTE, Sept. 10, 2007 at C6; *Brit, Don't Call It a Comeback*, NEWSDAY, Sept. 10, 2007 at A10; Dan Aquilante, *BRITNEY A BUST - LARD & CLEAR LOSER AT VMAS*, NEW YORK POST, Sept. 10, 2007 at 3.

Spears's VMA performance¹²⁹ bringing in an additional 2 million viewers from the 2006 VMA award show.¹³⁰ MTV is owned by Viacom.¹³¹ Spears's music label Sony BMG provides the videos to the music video stations to broadcast.

Spears's custody rights were slowly chipped away. In October 2007 Spears was ordered to turn over custody of the two children to Federline. The Court never explained the reasoning behind the drastic decision, but Spears was required to submit to biweekly drug tests. Spears was also charged with a misdemeanor hit and run, and driving with an invalid license.¹³²

This story broke a month before Spear's *Blackout* album was released. *Blackout* sold over 124,000 copies on its first day.¹³³ The album debuted at number two.¹³⁴ The album sold close to 290,000 copies during its first week. The single "Gimme More" landed the number one spot on Billboards Hot 100 downloads.¹³⁵

G. Spears's Hospitalization

On January 3, 2008, Spears was taken away from her home by an ambulance. Police were called to her home when she reportedly refused, after a monitored visit, to return her

¹²⁹ <http://www.digitalspy.co.uk/ustv/a75496/7m-tune-in-for-britneys-vmas.html>, (last visited Jul. 8, 2008).

¹³⁰ <http://www.broadcastingcable.com/article/CA6368436.html>, (last visited Jul. 8, 2008).

¹³¹ <http://cjrarchives.org/tools/owners/viacom.asp>, (last visited Jul. 8, 2008).

¹³² Andrew Blankstein, *Spears Loses Custody of Her Two Sons; The Pop Star, Who Was Being Regularly Tested For Drug and Alcohol Use ,Is Ordered to Hand Over Boys to Ex-Husband Kevin Federline*, LOS ANGELES TIMES, Oct 2, 2007 at 3.

¹³³

http://www.billboard.com/bbcom/news/article_display.jsp?vnu_content_id=1003665998, (last visited Jul. 8, 2008).

¹³⁴ http://new.music.yahoo.com/blogs/chart_watch/2/week-of-nov-5-2007-eagles-black-out-britney, (last visited Jul. 8, 2008).

¹³⁵

http://www.billboard.biz/bbbiz/content_display/industry/e3id267c422b4feb35373800f46f0c893dd, (last visited Jul. 8, 2008).

sons to ex-husband Federline. She was taken by paramedics to Cedars Sinai Hospital, and a court commissioner later granted sole custody of her children to Federline. Authorities failed to fully explain why she was hospitalized.¹³⁶ A conscious Spears was wheeled out of her house on a gurney and transported by ambulance to the hospital. It was reported that she was hysterical and possibly intoxicated. Spears appeared to be smiling and laughing when wheeled out of her home. Aerial footage from KTLA-TV helicopter and CNN showed Spears being lifted on a gurney into an ambulance.¹³⁷ The ambulance left her home escorted by police cars.¹³⁸ At the request of Spears's mother, television psychologist, Dr. Phil, visited Spears while she was in the hospital.¹³⁹ Dr. Phil reported to *Entertainment Tonight*: "My meeting with Britney and some of her family members this morning in her room at Cedars leaves me convinced more than ever that she is in dire need of both medical and psychological intervention. I am very concerned for her."¹⁴⁰ When Dr. Phil announced that he would have a special on the pop starlet, Spears's parents admonished Dr. Phil for attempting to profit from the incident.¹⁴¹ Enraged that her parents sent Dr. Phil, Spears flew to Mexico to escape the media circus.¹⁴²

¹³⁶ *SAVE BRITNEY; Media Circus On Full Tilt After Spears' Hospitalization*, CHIC. TRIB., Jan 7, 2008 at 44.

¹³⁷ <http://youtube.com/watch?v=jfTbsuv-gFU&feature=related>; <http://youtube.com/watch?v=NAsxCn37GyY>, (last visited Jul. 8, 2008).

¹³⁸ <http://www.foxnews.com/story/0,2933,320111,00.html>, (last visited Jul. 8, 2008).

¹³⁹ David K Li, *Britney Can't Breathe Easy: K-Fed Wants Truth*, NEW YORK POST, Jan 12, 2008 at 11.

¹⁴⁰ Hemmy So, Ben Widdicombe, Larry McShane and Rich Schaper, *Dr. Phil Sez Britney Spears Needs 'Psychological Intervention'*, N.Y. DAILY NEWS, Jan. 5, 2008, available at [http://www.nydailynews.com/gossip/2008/01/05/2008-01-\(last_05_dr_phil_sez_britney_spears_needs_psychol.html](http://www.nydailynews.com/gossip/2008/01/05/2008-01-(last_05_dr_phil_sez_britney_spears_needs_psychol.html) (last visited Aug. 11, 2008).

¹⁴¹ David K Li, *Britney Can't Breathe Easy*, *supra* note__ at 11.

¹⁴² Eloise Parker and Corky Siemaszko, *BARELY-THERE BRIT WENT BALLISTIC IN KID SPAT*, N.Y. DAILY NEWS, Jan 12, 2008 at 8.

Google searches for Spears was markedly higher than search for President Bush during this period.¹⁴³ Moreover, according to Google trends during this period, there were considerably more news articles referring to Spears than the President Bush.¹⁴⁴ Spears was the sixth most covered cable news story for the week of January 14 - 20, 2008.¹⁴⁵

¹⁴³ Google Trends, *available at* <http://www.google.com/trends?q=britney+spears%2C+George+Bush&ctab=0&geo=all&date=2008&sort=0> (last visited Aug. 29, 2008).

¹⁴⁴ *Id.*

¹⁴⁵ Project for Excellence in Journalism, *Top Ten Stories By Percent: January 14 – 20, 2008*, *available at* <http://journalism.org/node/9437>. (last visited Aug. 29, 2008).

Although Spears's perfume and album remained on a steady decline during this period,¹⁴⁶ Spears appeared on the March 24, 2008 episode of the CBS situation comedy, *How I Met Your Mother*.¹⁴⁷ An estimated 10.63 million viewers tuned in for Spears's performance, which was more than one million viewers from the prior week and 2.4 million more viewers than the sitcom averaged during the prior season.¹⁴⁸ Spears made two more appearances on the television show.¹⁴⁹ The writers left the role open for Spears to return during the following season.¹⁵⁰ E! Entertainment broadcast an E! True Hollywood Story about Spears in which one of the tabloids magazines indicated that they make a rather large share of the earnings from pictures of Spears.¹⁵¹

¹⁴⁶ Google Trends, available at <http://www.google.com/trends?q=britney+spears+blackout+&ctab=0&geo=all&date=all&sort=0>;

<http://www.google.com/trends?q=britney+spears+believe&ctab=0&geo=all&date=all&sort=0>

¹⁴⁷ Associated Press, *Britney On How I Met Your Mother*, available at <http://www.msnbc.msn.com/id/23563736/>, (last visited Jul. 14, 2008).

¹⁴⁸ Richard Huff, *Britney Spears Boosts' How I Met Your Mother's Ratings*, available at http://www.nydailynews.com/entertainment/tv/2008/03/26/2008-03-26_britney_spears_boosts_how_i_met_your_mot-2.html, (last visited Jul. 12, 2008).

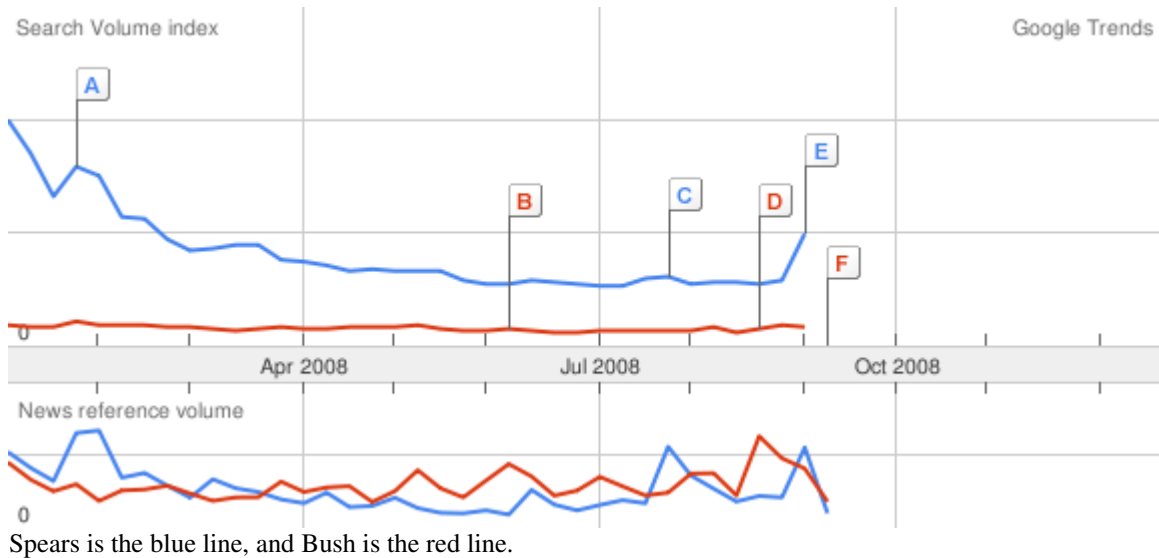
¹⁴⁹ James Hibberd, *Spears May Make Third Appearance on 'Mother'* available at <http://www.msnbc.msn.com/id/24571098/> (last visited Jul. 12, 2008).

¹⁵⁰ Id.

¹⁵¹ Cite needed.

H. Media Coverage of Spears

● Britney Spears ● George Bush



Google searches for Spears was markedly higher than searches for George Bush during the period of Spears's hospitalization. Moreover, according to Google trends during this period, there were considerably more news articles referring to Spears than the Bush.¹⁵²

I. Ownership Connections

Spears's *Blackout* album was released under Zomba records, which is a subsidiary of Jive records.¹⁵³ Jive Records are owned by SONY BMG, which is half owned by the Bertelsmann AG. Bertelsmann AG owns Random House.¹⁵⁴ Random House owns Three

¹⁵² Google Trends,

<http://www.google.com/trends?q=britney+spears%2C+George+Bush&ctab=0&geo=all&date=2008&sort=0>, last visited Sept. 13, 2008

¹⁵³ Official Britney Spears website <http://www.britney.com/> (last visited Jul. 13, 2008).

¹⁵⁴ Home page of Bertelsmann AG,

http://www.bertelsmann.com/bertelsmann_corp/wms41/bm/index.php?ci=99&language=2, (last visited Jul. 13, 2008).

Rivers Press, the publisher of Britney Spears's book *Heart to Heart*.¹⁵⁵ Bertelsmann is also part of the largest independent television distribution company outside the United States.¹⁵⁶

Celebrity news website TMZ.com is owned by Time Warner.¹⁵⁷ Time Warner also owns People magazine and CNN.¹⁵⁸ CBS is owned by the CBS Corporation.¹⁵⁹ CBS was spun off from Viacom which owns MTV and VH1, music networks that play Spears's music videos, but Sumner Redstone plays an important managerial role in both corporations, even though they are now separate corporations. All these media platforms with the interest of promoting their product create an echo chamber that causes a raucous cacophony of media coverage of Spears.

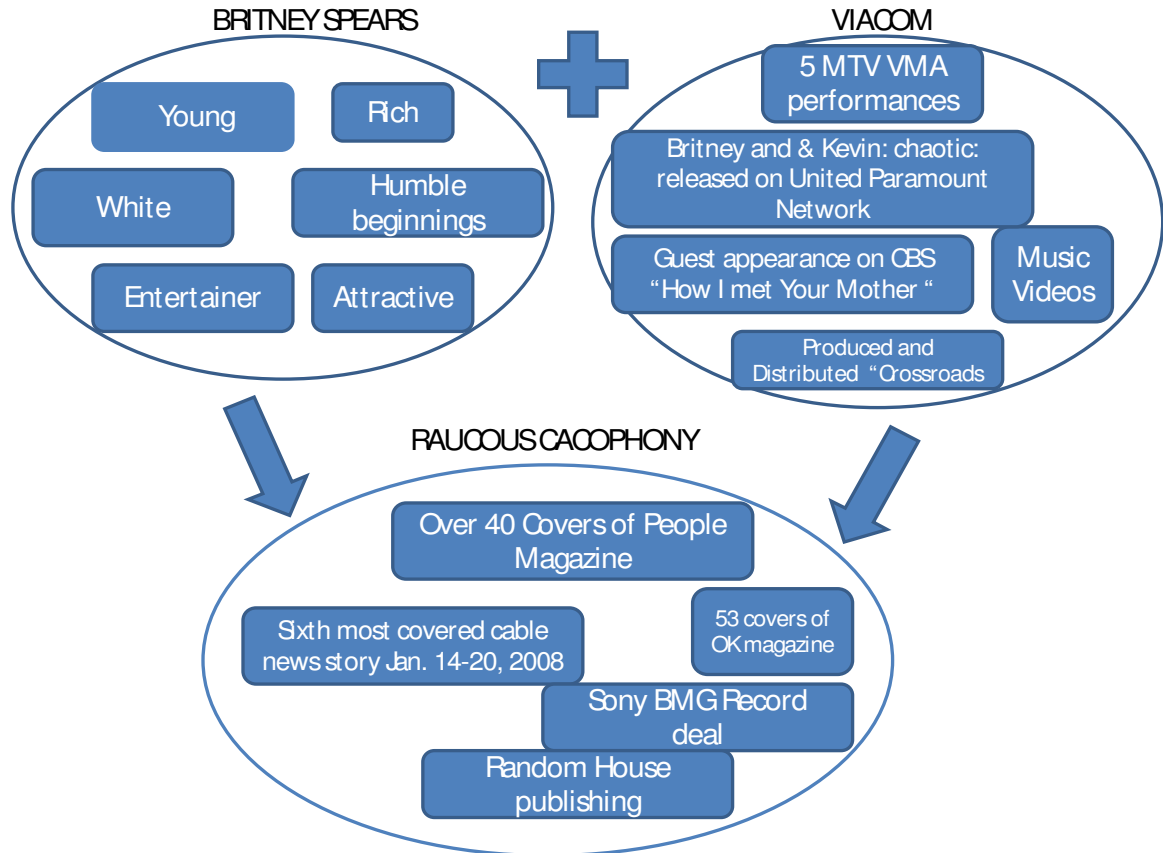
¹⁵⁵ Amazon page http://www.amazon.com/Britney-Spears-Heart/dp/0609807013/ref=sr_1_1?ie=UTF8&s=books&qid=1216044254&sr=1-1, (last visited Jul. 13, 2008); <http://www.randomhouse.com/crown/trp.html>, (last visited Jul. 13, 2008).

¹⁵⁶ COL. JOURNALISM REV., available at <http://cjrarchives.org/tools/owners/bertelsmann.asp>, (last visited Jul. 13, 2008).

¹⁵⁷ COL. JOURNALISM REV., available at <http://cjrarchives.org/tools/owners/timewarner.asp>, (last visited Jul. 13, 2008).

¹⁵⁸ *Id.*

¹⁵⁹ <http://www.cbscorporation.com/> (last visited Jul. 8, 2008).



IV. Lindsay Lohan

Lindsay Lohan began her career as a child actress and model starring in commercials such as the JELL-O advertisement campaign with Bill Cosby.¹⁶⁰ In 1998 Lohan starred in the remake of the film *The Parent Trap*. In a review of this movie, *People* magazine noted how "little Lindsay Lohan almost made us forget Hayley Mills,"¹⁶¹ who starred in the original version of the film. Lohan had box office hits in 2003 co-starring alongside Jamie Lee Curtis in the movie *Freaky Friday*, and another hit in 2004 when she starred in

¹⁶⁰ The Notable Names Database's Lindsay Lohan Profile, NNDB.com, available at <http://www.nndb.com/people/909/000044777/> (last visited on Sept. 19, 2008).

¹⁶¹ *People Magazine*, August 17, 1998, at 27.

the comedy *Mean Girls*.¹⁶² In 2004, Lohan also signed a record contract with Casablanca Records and released her debut album entitled *Speak*, which went platinum followed by her second Album *A Little More Personal*, which went gold.¹⁶³ Lohan's meteoric rise to fame and success would soon fuel a paparazzi frenzy that focused heavily on Lohan's off-screen antics. She confessed to *People* magazine: "I'm 17...I'm learning, and I'd rather make my own mistakes and learn from them than have to be sheltered my whole life."¹⁶⁴ As if predicting the fate that would eventually befall her, Lohan noted the following year that "I feel like a lot of the time the tabloids build you up just to take you down. I think it's because I'm 18, and I could go off the deep end, and they could make up rumors about me doing drugs and going crazy and never acting again. Or I could prove myself and mature into an actor."¹⁶⁵

Lohan's troubles began to intensify in 2006. She had been receiving a lot of media attention about her late-night partying. Rumors began circulating that Lohan was abusing alcohol and endangering her health. *People* Magazine reported that Lohan was attended Alcoholics Anonymous meetings.¹⁶⁶ Then, In July 2008 when shooting the movie *Georgia Rule*, Lohan was taken to the hospital for what her publicists called "dehydration."¹⁶⁷ In fact, it was widely reported that the real reason for her absence from the set was because of her drinking. This incident caused Morgan Creek Productions CEO James Robinson, who was funding the movie, to send a letter to Lohan accusing her

¹⁶²MP3.com's Lindsay Lohan Profile, MP3.com, available at <http://www.mp3.com/artist/lindsay-lohan/summary/> (last visited on Sept. 19, 2008).

¹⁶³We need a better site,

¹⁶⁴PEOPLE MAGAZINE, May 24, 2004 at 79.

¹⁶⁵ GENTLEMAN'S QUARTERLY, Oct. 2004.

¹⁶⁶ PEOPLE MAGAZINE, Dec. 25, 2006 at 23.

¹⁶⁷ E-Online's Profile of Lindsay Lohan, EOnline.com, available at <http://de.eonline.com/celebrities/profile/index.jsp?uuid=27d08ec9-3b99-4654-83b6-3056acd9990b> (last visited on Sept. 19, 2008).

of "all night heavy partying" and making up "bogus excuses."¹⁶⁸ He even threatened to take action to recover any "monetary damages" she caused the studio.¹⁶⁹

In 2007, Lohan went to three separate rehabilitation facilities.¹⁷⁰ Her rehabilitation treatments followed two separate DUI arrests.¹⁷¹ One incident took place in May of 2007 when her convertible struck a curb in Beverly Hills.¹⁷² The other incident took place on July 24, 2007 when Lohan was arrested for a DUI when she was caught chasing a Cadillac driven by her former assistant. In this July incident, Lohan was also found to possess cocaine.¹⁷³ In 2007, Lohan would plead guilty to two counts of being under the influence and spent eighty-four minutes in jail.¹⁷⁴

¹⁶⁸*Id.*

¹⁶⁹*Id.*

¹⁷⁰PEOPLE MAGAZINE, Dec 31, 2007 at 75.

¹⁷¹ *Id.*

¹⁷²WINNIPEG FREE PRESS, May 27, 2007 at A8.

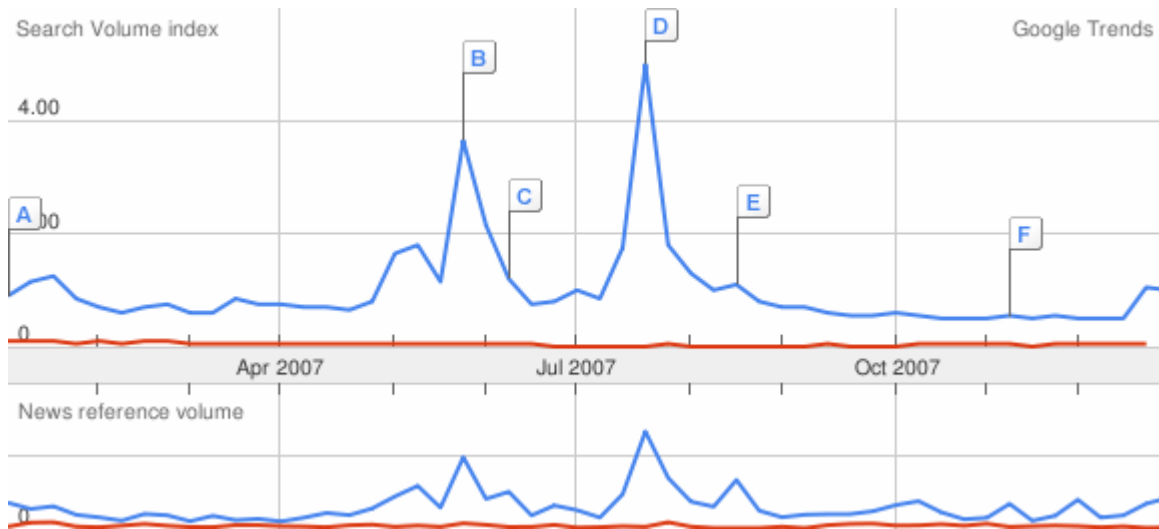
¹⁷³*Id.*

¹⁷⁴PEOPLE MAGAZINE, Dec 3, 2007 at 19.

A. Nature of the Broadcast and Cable Coverage

Scale is based on the average traffic of **Lindsay Lohan** from United States in 2007.

Lindsay Lohan 1.00 **Condoleeza Rice** 0.05



Lohan is blue line and Condoleeza Rice is the red line.

For the entire year of 2007, Lindsay Lohan received more than double the Google search requests than Secretary of State Condoleeza Rice. There were also more news references for Lindsay Lohan than Condoleeza Rice.¹⁷⁵

¹⁷⁵ Google Trends, available at <http://www.google.com/trends?q=Lindsay+Lohan,+Condoleeza+Rice&ctab=0&geo=US&geor=all&date=2007&sort=0>, (Last visited Sept. 13, 2008)

Media coverage of Lohan can be broken down into five categories. These categories include: (1) sexuality; (2) feuds with other white women; (3) drug abuse and subsequent rehabilitations; and (4) family problems.

1. Sexuality:

Lohan has been marketed in ways that emphasizes her sexuality. An *Advertising Age* article analyzed several magazine covers on which Lohan appeared and concluded that “her fame and marketability is heavily tied to an apotheosis of her sexuality and also, sexual indiscretions.”¹⁷⁶ *Advertising Age* explains that it is obvious what the editors of these magazines thought of Lohan when they posed her on their covers:

Consider the *Los Angeles Confidential* cover picturing the starlet sitting on the edge of a bed, next to the cover line "Lindsay Lohan turns 21!" Or the cover of an old *Rolling Stone* featuring Ms. Lohan, labeled ‘hot, ready and legal!’ *Maxim* once showed her in a white dress, promising ‘stunning photos that will bring you to your knees!’ She, herself, appears already on her knees. *GQ* has returned to the well a few times. One reassuring cover promised that ‘Lindsay Lohan isn't teasing;’ another put her front and center on its second-annual ‘Love Sex Madness Issue.’ A *British GQ* cover headlined her as a “girl gone wild!” *Entertainment Weekly* wasn't so one-dimensional. Its 2004 Lohan cover allowed that she was “surviving stardom” and opening up ‘on fame, family and those nasty rumors.’ She appeared, nonetheless, apparently naked except for pantyhose.¹⁷⁷

In 2008, Lohan appeared nude in *New York* magazine’s Spring Fashion issue recreating Marilyn Monroe’s “last nude photo shoot.” The photographs on New York Magazine website drew record traffic, averaging more than 20 million page views during

¹⁷⁶ ADVERTISING AGE, Feb 25, 2008 at 20.

¹⁷⁷ *Id.*

the very first days that they were published.¹⁷⁸ The *New York Observer* reported a server crash.¹⁷⁹

2. Feuds with Other White Women

The tabloids and other media outlets cross-market the feuds among the white women celebrities; it is a Twenty-first Century's equivalent of the "1950s brat-pack," but of young, spoiled white women in Hollywood who compete for the most media attention. A 2005 *US Magazine* article typifies the coverage of white women feuds. The article entitled, "Lindsay's Feuds," describes Lohan's feuds over men with Hillary Duff, Tara Reid, and Jessica and Ashlee Simpson. The article stated:

Hilary Duff, 17 Still fighting over Aaron Carter?" A source says that Lohan (who was 90 minutes late to the June 4 *Herbie* press conference in L.A.) may have been tardy intentionally - to prevent reporters from making Duff's junket for *The Perfect Man* later that day. After the June 4 press conference ended, Lohan was asked about her party-girl reputation. She answered: "I'm not some crazy Tara Reid-esque party girl. . . . I wanna be in [movies] for the long run. *WHEN JESSICA, 24, AND ASHLEE, 19, hit Lohan's post-MTV Movie Awards bash at L.A.'s Standard hotel, a source tells *US*, "Lindsay flat-out refused to let them in!" Why the No Simpson's policy? One pal claims Ashlee's burgeoning relationship with Lohan's ex Wilmer Valderramda, 25, 'makes Lindsay crazy!'¹⁸⁰

Other headlines from the Tabloids tell a similar story about Lohan's feuds. The *US Weekly* headline on April 24, 2006 reads, "Jessica [Simpson] and Lindsay Late Night Catfight."¹⁸¹ The *US Weekly* headline on June 5, 2006 read: "Paris [Hilton] vs.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ Mara Reinstein and Mark Cina, *US WEEKLY*, June 20, 2005, at 58.

¹⁸¹ Mara Reinstein and Aimee Agresti, *US WEEKLY*, Apr. 24, 2006 at 56.

Lindsay.”¹⁸² The *US Weekly* headline on January 30, 2006 reads, “Lindsay Attacks Scarlett [Johansen].”¹⁸³

3. Drug Abuse

Lohan’s substance abuse problems have been well documented. An E-Online biography describes Lohan’s off-screen struggles as a “Long Island redhead [that] has transformed from the most promised actress of her generation to bar fly/paparazzi bait. She attributes her hospital visits to dehydration, but when a scathing letter from Morgan Creek Productions surfaced on the *Smoking Gun*, Lindsay’s bad rep skyrocketed to a new level.”¹⁸⁴

4. Relationships with Men:

Another facet of the media’s coverage of Lohan has been on her relationships with men. Lohan has been portrayed as sexually promiscuous. The media have portrayed Lohan’s behavior as running counter to typical gender roles. For instance, one of the biggest stories about Lohan focused on her relationship with ex-boyfriend, Riley Giles, who she met while in a rehabilitation clinic. Giles alleged that Lohan was a “sex-addict,” and the media extensively covered the story.¹⁸⁵ News about Lohan’s “sex addiction” made it to the mainstream media, and talking heads pontificated about the dangers of sex addiction. MSNBC discussed how “the wild-child actress craved marathon nights of lust

¹⁸² Gabe Guarente. *US WEEKLY*, June 5, 2006, at 8.

¹⁸³ Gabe Guarente. *US WEEKLY*, Jan 30, 2006. at 78.

¹⁸⁴ E-Online’s Profile of Lindsay Lohan, EOnline.com, available at <http://de.eonline.com/celebrities/profile/index.jsp?uuid=27d08ec9-3b99-4654-83b6-3056acd9990b> (last visited on Sept. 19, 2008).

¹⁸⁵ *Ex Calls Lindsay Sex Addict in Tell-All Interview*, MSNBC.com, Dec. 2, 2007, available at <http://www.msnbc.msn.com/id/22398878/> (last visited on Sept. 19, 2008).

as she broke off her lethal love affair with drink and cocaine.”¹⁸⁶ Blogs had a field day with the notion that Lohan was suffering from a “sex addiction.” For example, the popular blog PopCrunch.com published an article entitled “Lindsay Lohan Sex Addiction.”¹⁸⁷ The blog described in detail how “Cirque Lodge Rehab officials are concerned that cocaine/alcohol-abusing Lindsay Lohan is battling another addiction—this time to sex. The currently blonde-bombshell, who has been accused of romping in the lavatory with a fellow patient, ‘desperately wants to sleep with someone,’ and can’t stop fantasizing about previous lovers and watching semi-pornographic movies.”¹⁸⁸ This blog posting was accompanied by a picture that showed a slightly disheveled Lohan walking the street, making it appear as though she was actually prostituting herself.¹⁸⁹ It is unlikely that the media would cover the sex addiction of male celebrities like Derek Jeter or Leonardo DiCaprio in the same manner. Lohan explained in a *Harper Bazaar’s* article that her media coverage garners so much attention—because she is crossing traditional gender roles: “I’ve become like the guy in relationships.”¹⁹⁰ An article published by *People Magazine* in June 26, 2006 detailed more than twenty men to whom Lohan has been linked.¹⁹¹

5. Family Problems

¹⁸⁶ *Id.*

¹⁸⁷ *Lindsay Lohan’s Sex Addiction, Riley Giles Claims; Riley Giles Calls Lindsay Lohan Sex Addict*, PopCrunch.com, Dec 23, 2007, available at <http://www.popcrunch.com/lindsay-lohan-sex-addiction-riley-giles-claims-riley-giles-calls-lindsay-lohan-sex-addict/> (last visited on Sept. 19, 2008).

¹⁸⁸ *Lindsay Lohan’s Sex Addiction*, PopCrunch.com, Sept 15, 2007, available at <http://www.popcrunch.com/lindsay-lohan-sex-addiction> (last visited on Sept. 19, 2008).

¹⁸⁹ *Id.*

¹⁹⁰ *Lindsay Lohan: “I’ve Become the Guy in Relationships,”* FoxNews.com, Jun 9, 2006, available at <http://origin.foxnews.com/story/0,2933,198933,00.html> (last visited on Sept. 19, 2008).

¹⁹¹ PEOPLE MAGAZINE, Jun 26, 2006 at 140.

The media coverage of Lohan has also focused on her family. Coverage has focused on her parents' divorce, how Lohan was estranged from her father who had served time in jail for securities fraud, how her mother (who is also her manager) parties with Lohan, how her father may have fathered an illegitimate child, and how her father hit her uncle over the head with a shoe. As the Times Online noted,

Who can fail to reel back in horrified wonder at her Hollywood hardcore parents, Dina and Michael, who enrolled [Lindsay] in the Ford Model agency when she was three years old? What must it be like to have a dad who spent most of your preteens in prison for fraud and who is now a proselytizing born-again Christian? A dad who just so happens to be photographed by the paparazzi every time he is with his daughter? What must it be like, having a "momager" like Dina, who goes out clubbing with Lindsay, who has been known to introduce herself as her daughter's PA, rather than her mother, and who is now back at the Lohan residence in Long Island, New Jersey, filming her own reality-television show?¹⁹²

An *US Weekly* article wrote about how Lohan reunited with her father when he visited her at the Cirque Lodge rehab center.¹⁹³ The media blamed Lohan's drug relapses on her hanging with the wrong crowd, and ironically, by the "wrong crowd" they pointed a finger at Lohan's parents. More specifically, the article stated: "Those close to Lohan say a major reason for her possible relapse is that she's rolling with the wrong crowd."¹⁹⁴ "She doesn't have a solid support system."¹⁹⁵

¹⁹² *Lindsay Lohan Talks About her Troubled Life*, TimesOnline.co.uk, Jun 1, 2008, available at http://women.timesonline.co.uk/tol/life_and_style/women/celebrity/article4019937.ece (last visited on Sept. 19, 2008).

¹⁹³ Eric Anderson and Gabe Guarente, *US Weekly*, Oct. 9, 2007

¹⁹⁴ *Gabe Guarente*. *US WEEKLY*. May 21, 2007, at 48.

¹⁹⁵ *Denise Richards Beats Dina Lohan in Reality Series Ratings*, USMagazine.com, May 28, 2008, available at <http://www.usmagazine.com/denise-richards-beat-the-lohans-in-reality-series-ratings> (last visited on Sept. 19, 2008).

B. The Economic of the Broadcast and Cable Coverage of Lohan

The media have capitalized on the reports about Lohan's chaotic family life. In fact, the E! Network created a show called *Living Lohan*, where the sole focus of the show is about how Lohan's mom Dina is trying to make Lohan's younger sister Ali into a star. Lindsay Lohan never appears on the show and still, according to the *US Magazine*, the first episode had 1.45 million total viewers.¹⁹⁶ The E!-Online website describes *Living Lohan* in the following way: "Being a manager's tough. Being a mom's tougher. Follow Dina Lohan as she guides daughter Ali toward a shot at stardom."¹⁹⁷ The tabloid magazine *OK!* hired Lohan's father Michael to create a blog where he responds to each episode of "Living Lohan" where he criticizes Dina for her parenting.¹⁹⁸ In one of his blog posting Michael wrote, "I've had a sneak peek at some future episodes, and I will say that some of the people Dina surrounds the kids with still concerns me — again, I can address that when they appear on the show. I just hope Dina takes the high road — like a Lohan would — and rights these wrongs."¹⁹⁹

Although Lohan's off-screen troubles sell magazines and boost television ratings, her career has suffered. Her performance in the film *Georgia Rule* was largely viewed as a failure, and the movie performed poorly at the box office grossing \$24,786,640 worldwide and \$17,400,000 domestically.²⁰⁰ Unlike Spears whose guest appearance on

¹⁹⁶ *Id.*

¹⁹⁷E-Online Website, available at <http://www.eonline.com/on/shows/livinglohan/index.jsp> (last visited on Sept. 19, 2008).

¹⁹⁸*Michael Lohan Fires Back at Lindsay and Sam*, OKMagazine.com, Aug 28, 2008, available at <http://www.okmagazine.com/news/view/8736/Michael-Lohan-Fires-Back-at-Lindsay-&-Sam> (last visited on Sept. 19, 2008).

¹⁹⁹ *Michael Lohan Blogs About Dina's Reality Show*, OKMagazine.com, May 26, 2008, available at <http://www.okmagazine.com/news/view/6911> (last visited Aug. 12, 2008).

²⁰⁰*Top40Charts.com's Synopsis on Georgia Rule*, available at http://www.top40-charts.info/?title=Georgia_Rule (last visited August 12, 2008).

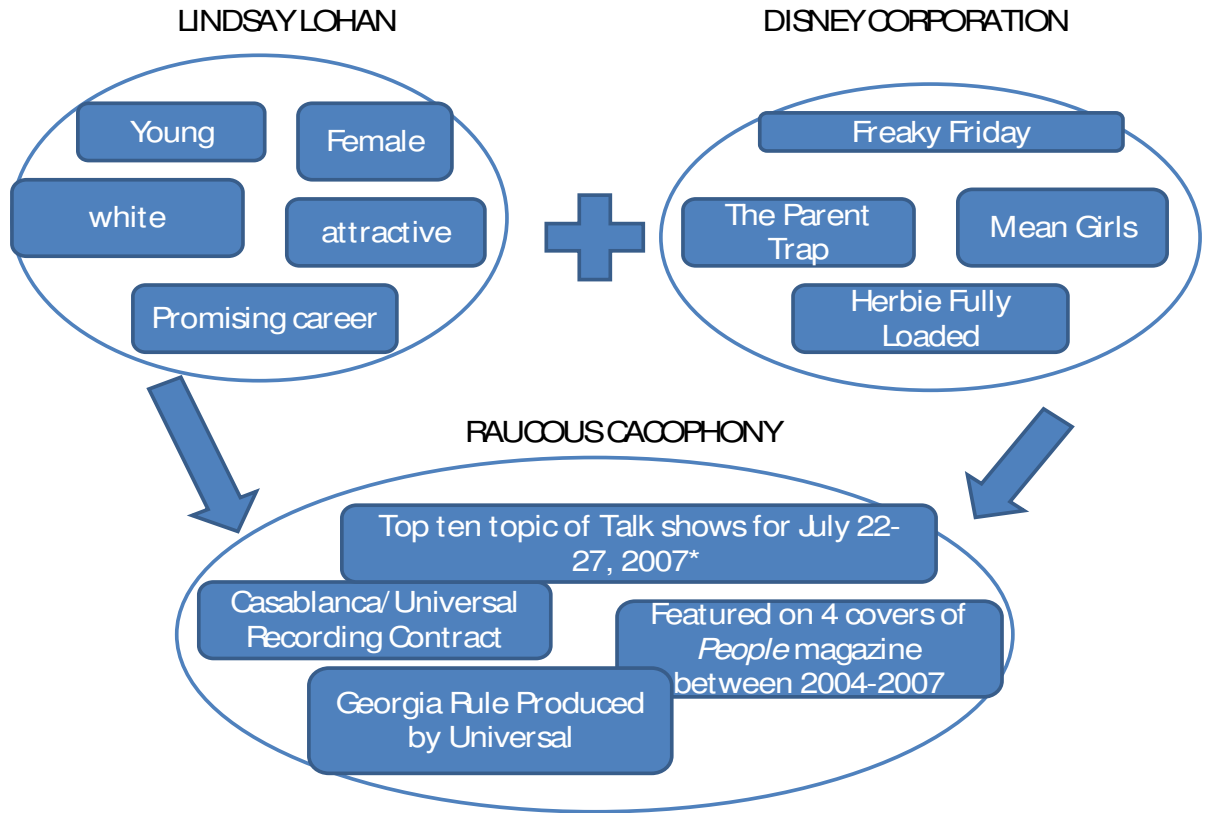
How I Met Your Mother increased ratings, Lohan's guest role on the Golden Globe Award-winning show *Ugly Betty* attracted a meager 8.8 million viewers, an increase of only 300,000 from the previous week's episode but down 16.2 percent from the prior season's final episode.²⁰¹

Celebrity news website TMZ.com is owned by Time Warner.²⁰² Time Warner also owns *People* magazine and CNN.²⁰³ Lohan's early movies—*The Parent Trap*, *Herbie Full Loaded*, *Mean Girls* and *Freaky Friday*--were produced by Disney which owns ABC television. Her last movie *Georgia Rule* was produced by Universal, which was acquired by General Electric in 2004, which is the parent company of NBC. Lohan's record label Casablanca is also part of Universal. Like with Britney Spears, each of these media platforms with the interest of promoting their product create an echo chamber that causes a raucous cacophony of media coverage of Lohan.

²⁰¹ Lindsay Lohan's "Ugly Betty" Season Finale Ratings Flop 8.8 Million, PopCrunch.com, May 29, 2008, available at <http://www.popcrunch.com/lindsay-lohan-ugly-betty-season-finale-ratings-flop-88-million> (last visited Aug. 12, 2008).

²⁰² COL. JOURN. REV., available at <http://cjrarchives.org/tools/owners/timewarner.asp>, (last visited Jul. 13, 2008).

²⁰³ *Id.*



V. Paris Hilton

A. Introduction

Paris Hilton has been a leading search subject in six of the past seven years on Yahoo, and even exceeded Britney Spears as number one for one year.²⁰⁴ Hilton is an heir to the Hilton Hotel chain, an actress, singer, and model. Some may say that she is famous for being famous as opposed to her personal accomplishments. Hilton first became famous with her sister Nikki as a frequent guest at the New York night club

²⁰⁴ *Id.*

scene. Their photographs made many tabloids. Hilton's celebrity accelerated in 2003 when a sex tape of her was released on the Internet. The tape was filmed by her then-boyfriend Rick Salomone. Coincidentally, the sex tape, filmed two years prior to its debut, became public less than a month before Hilton's reality show *The Simple Life* costarring Nicole Richie premiered on Fox.²⁰⁵ The sex tape eventually was sold on DVD, and it became one of the biggest selling videos of that genre that year. As distraught as Paris may have been about the sex tape, it helped introduce the public to Paris Hilton. The public was so intrigued by Paris that 11.8 million viewers tuned in to watch the first episode of *The Simple Life* while only 11 million tuned to watch ABC's "Prime Time" interview with President Bush.²⁰⁶ Hilton's popularity with the public helped her land an advertising campaign with Guess in 2004²⁰⁷ Guess, moving towards a sexier image, successfully grabbed media attention by featuring Paris in their advertisements. Subsequently, Hilton signed a deal to sell a series of signature fragrances for Parlux Fragrances because of her "tremendous U.S and international following."²⁰⁸ She has currently released seven fragrances.

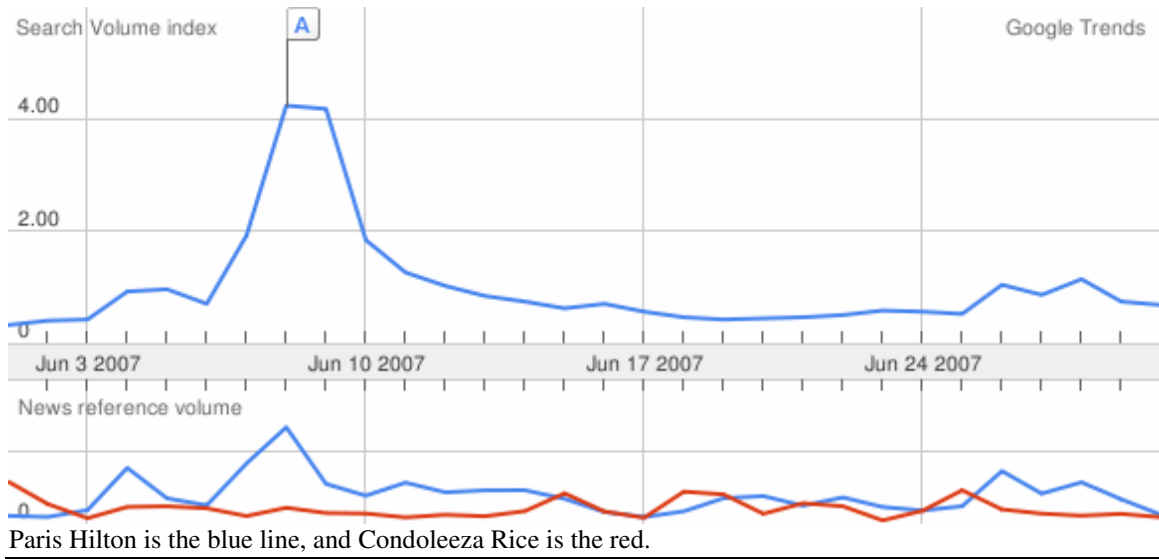
B. Media Coverage of Paris Hilton

²⁰⁵ Mai Dinh and Janet Murphy, *Paris Hilton: Biography*, People.com, available at 2008http://www.people.com/people/paris_hilton/biography, (last visited on July 11, 2008). The sex tape was leaked in November of 2003 while *The Simple Life* was set to air that December 2003.

²⁰⁶ *Paris Hilton Beats President Bush In Ratings*, CNN.com, December 19, 2003, available at <http://www.cnn.com/2003/SHOWBIZ/TV/12/18/offbeat.hilton.bush.reut/>, (last visited on July 11, 2008).

²⁰⁷ *Fall 2004*, Guess.com, available at <http://www.guessadvertising.com/>, (last visited on July 25, 2008).

²⁰⁸ *Paris Prepares To Sell Her Own Fragrance*, People.com, available at <http://www.people.com/people/article/0,633888,00.html>, (last Visited on July 11, 2008).



For the month of June 2007 when she was arrested, Google searches for Paris Hilton consistently out numbered Google Searches for Secretary of State Condoleeza Rice. Moreover according to Google Trends, there were more references in the News to Paris Hilton than to Condoleeza Rice during this period.²⁰⁹

²⁰⁹ Google Trends, available at <http://www.google.com/trends?q=paris+hilton,+Condoleeza+Rice&ctab=0&geo=US&gcor=all&date=2007-6&sort=0>, (last visited Sept. 13, 2008)

C. Media Coverage of Hilton's Arrest for a Probation Violation

Hilton received the most broadcast and cable media coverage on February 27, 2007 when she was pulled over for violating the terms of a DUI probation by driving with a suspended license and on May 4, 2007 when she was sentenced to serve forty-five days in jail for the violation.²¹⁰ Intense coverage of the incident lasted until June 26, 2007 when Paris was released twenty-two days after she began to serve her jail sentence. The news media became obsessed with Hilton during this time. There were hundreds of reporters in front of the Hilton mansion in Beverly Hills and aerial footage was made available by several of the local broadcast networks.²¹¹

One MSNBC news anchor refused to do any more reports on Hilton, and during the broadcast, she refused to read the teleprompter and tried to burn the script in protest.²¹² The News anchor's behavior was prompted by the disparity in coverage of Hilton as compared to a 22 year-old woman who was missing at the same time of the Hilton incarceration. MSNBC reassigned reporters from the story of the missing woman so they could broadcast from outside the gates of Hilton's home.²¹³

A Pew Research Study found that the "Paris Hilton story was featured much more prominently on cable TV news than on other sectors. In the week she was released and

²¹⁰ *Paris Hilton Timeline*, MSNBC.com, available at <http://www.msnbc.msn.com/id/19098605/>, (last Visited July 25, 2008).

²¹¹ Karen Thomas, *Paris Hilton Back Behind Bars*, USA Today.com, June 6, 2007 available at http://www.usatoday.com/life/people/2007-06-07-paris-hearing_N.htm (last visited August 6, 2008).

²¹² Mike Carney, *Anchor Refuses To Read Story On Paris Hilton*, USA Today.com, June 28, 2007, available at <http://blogs.usatoday.com/ondeadline/2007/06/anchor-refuses-.html> (last visited July 25, 2008).

²¹³ David Ovalle, *Paris*, MIAMIHERALD.COM, June 8, 2007, available at http://miamiherald.typepad.com/crime_scene/2007/06/paris.html (last visited July 11, 2008).

then sent back to jail, Hilton was the number three story on cable TV.”²¹⁴ Networks offered Hilton large amounts of money for a post-jail interview. ABC News offered \$100,000 to interview Hilton, NBC News offered \$1 million, and *People* offered \$300,000.²¹⁵ When news disseminated that such large amounts were being offered, the media began to withdraw their offers. CNN’s *Larry King Live* scooped the first Hilton post-jail interview. Hilton also did an interview with *People* magazine. Time Warner Cable who has remained loyal to Paris over the years owns CNN and *People*.²¹⁶ The coverage itself was drawn out. Cameras followed Hilton as she got out of her car, went to the elevator and went on her way to interview with Larry King.²¹⁷ An interview of Bill Cosby on inner city poverty was interrupted to show Hilton’s arrival at Larry King’s studio²¹⁸ In addition, an interview with Michael Moore about his health care documentary was canceled so Hilton could be interviewed.²¹⁹

²¹⁴ *Public Blames Media For Too Much Celebrity Coverage: Cable and Network TV Worst Offenders*, PewResearch.org, August 2, 2007, available at <http://pewresearch.org/pubs/557/public-blames-media-for-too-much-celebrity-coverage>, (last visited July 11, 2008).

²¹⁵ Eric Deggans, *Curbing Paris Hilton Coverage: Once Again, Public Saves News Media From Itself*, June 25, 2007, HuffingtonPost.com, available at <http://www.huffingtonpost.com/eric-deggans/curbing-paris-hilton-coverage-53627.html> (last visited July 25, 2008).

²¹⁶ *Who Owns What: Time Warner*, COL. JOURN. REV., available at <http://cjrarchives.org/tools/owners/timewarner.asp> (last visited July 11, 2008); HuffingtonPost.com, available at http://www.huffingtonpost.com/2007/06/27/cnn-covers-cnn-covering-p_n_54068.html (last visited July 11, 2008).

²¹⁷ Rachel Sklar, *CNN Covers SNN Covering Paris Hilton: The Breathless Pre-Interview Story*, HuffingtonPost.com, June 27, 2007, available at http://www.huffingtonpost.com/2007/06/27/cnn-covers-cnn-covering-p_n_54068.html, (last visited July 11, 2008).

²¹⁸ *Id.*

²¹⁹ *CNN Dumps Michael Moore For Paris Hilton*, ThinkProgress.com, June 25, 2007, available at <http://thinkprogress.org/2007/06/25/king-paris-moore/?sortBy=toprated> (last visited July 12, 2008).

D. Economics of the Broadcast and Cable Coverage

Parlux Fragrances, which created Hilton's perfumes also manufactured scents for Guess, whom Paris completed an advertising campaign.²²⁰ Of course, Guess also advertised its products on cable and broadcast networks. Hilton also wrote an autobiographical book and designer diary; *Confessions of an Heiress: A Tongue-in-Chic Peek Behind the Pose* and *Your Heiress Diary: Confess It All to Me*, the former of which became a New York Times bestseller.²²¹ The publisher of the book is Fireside Group, which is owned by CBS Corporation.²²² CBS Corporation also co-owned the CW with Time Warner.²²³ Hilton has additional ties to Time Warner. Her image often appears in national and local newspapers, magazines and websites, most particularly in *People Weekly* where a search for "Paris Hilton" reveals over 1,400 hits.²²⁴ *People* is published by Time Inc, the largest magazine publisher in the U.S., which is a subsidiary of Time Warner.²²⁵ *People* began its coverage on Hilton in 2003, a few months before *The Simple Life* was broadcast. Hilton, the recording artist, signed her first record deal with Warner Music Group, subsidiary of Time Warner.²²⁶ Hilton founded Heiress Records in 2004 and

²²⁰ *Id.*

²²¹ *The New York Times Best Sellers List*, Hawes.com, October, 3, 2004, available at <http://www.hawes.com/2004/2004-10-03.pdf>, (last visited on July 11, 2008).

²²² *Who Owns The Media?*, StopBigMedia.com, available at <http://www.stopbigmedia.com/chart.php>, (last visited July 25, 2008).

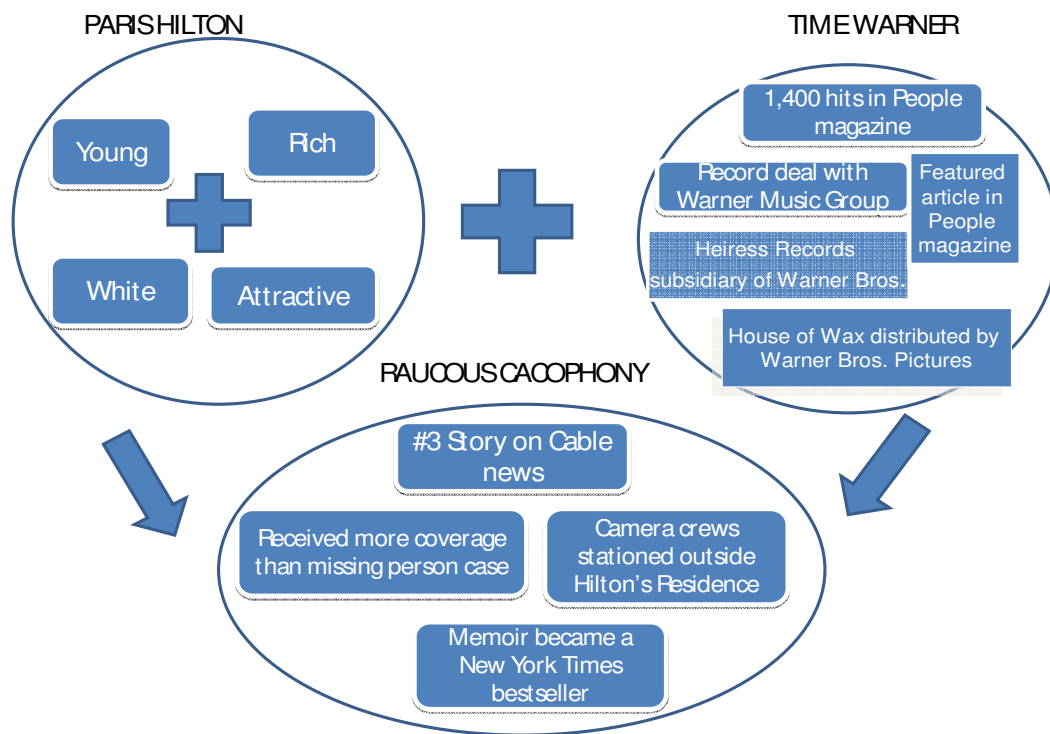
²²³ *Id.*

²²⁴ *People.com*, available at <http://www.people.com>, (last visited on July 11, 2008). *People* magazine was first published in 1974.

²²⁵ *Warner Bros. Entertainment*, TimeWarner.com, available at http://www.timewarner.com/corp/businesses/detail/warner_bros/index.html, (last visited on July 11, 2008).

²²⁶ *Warner Bros. Entertainment*, TimeWarner.com, available at http://www.timewarner.com/corp/businesses/detail/warner_bros/index.html (Last Visited on July 11, 2008).

released her debut album under that label.²²⁷ Heiress Records is a sub-label of Warner Brothers Records, which is a subsidiary of Time Warner.²²⁸ In 2005, Hilton secured a role in the movie *House of Wax*, which was distributed by Warner Bros. Pictures.²²⁹ And Rick Salomone, Hilton's ex-boyfriend who filmed the sex tape, is the son of a former executive vice president at Warner Brothers.²³⁰ Given Hilton's extensive ties to Time Warner, it is no surprise that she did her first post-jail interview with *Larry King Live*, which is broadcast on CNN which is owned by Time Warner and with *People* magazine, which is also owned by Time Warner.



²²⁷ *Heiress Records*, ParisHiltonSite.net, available at <http://www.parishiltonsite.net/recordlabel.php>, (last visited July 25, 2008).

²²⁸ *Warner Bros. Records*, VAGMusic.com, available at http://www.vagmusic.com/articles/Recording-Companies_8530.html, (last visited July 25, 2008).

²²⁹ *Paris Hilton*, ParisHiltonSite.com, available at <http://www.parishiltonsite.net/recordlabel.php>, (last visited July 11, 2008).

²³⁰ *Rick Salomone Biography*, Who Dated Who?, available at <http://www.whosdatedwho.com/celebrities/people/profile/rick-salomon.htm> (last visited Aug. 11, 2008).

VI. Anna Nicole Smith

A. Introduction

Anna Nicole Smith was born Vickie Lynn Hogan and like Paris Hilton has been famous for being famous. Smith first made her debut into the national spotlight in 1991 while working as a stripper when she became involved with Howard Marshall, an oil billionaire, 63 years her senior.²³¹ In 1992, Smith sent nude pictures of herself to compete in *Playboy*'s cover contest, which she won.²³² In 1993, Hugh Hefner named Smith Playmate of the year.²³³ *Playboy* is affiliated with Time Warner Cable and other Satellite providers.²³⁴ Months later Marciano, one of the founders of Guess, saw Smith in *Playboy* and contracted for her to appear in campaign advertisements for Guess.²³⁵ In 1994, 26-year old model Smith married the 89-year-old billionaire, Marshall, which exponentially increased the media attention. Marshall passed away a few months after their marriage in 1995. The media attention was understandable because many wondered what she saw in Marshall, and the subtext was that she was only after his money. Smith attempted to dispel these rumors by confirming her love.²³⁶

Legal battles over the estate ensued. Given that no pre-nuptial agreement was signed, the court case stretched out for over ten years. Smith "won her case twice, but lost

²³¹ *Anna Nicole Smith Biography*, Biography.com, available at <http://www.biography.com/search/article.do?id=183547> (last visited July 25, 2008).

²³² *Biography: Anna Nicole Smith*, People.com, available at http://www.people.com/people/Smith_nicole_smith/biography, available at (last visited July 13, 2008).

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ Anne Maier and Laurel Burbaker Calkins, *From The Archives: Anna Nicole Smith Buries Husband*, People.com, February 9, 2007, available at <http://www.people.com/people/article/0,,20011450,00.html>, (last visited July 13, 2008).

her money on appeals.”²³⁷ Smith then starred in an E! network reality Television show titled, *The Anna Nicole Show*. The show followed Smith in her every day adventures. Smith gained weight since the death of her husband, and before filming began for the second season of *The Anna Nicole Show*, Smith was told to lose weight.²³⁸ Smith used TrimSpa and lost about eighty pounds²³⁹ and became the spokesperson for the dietary supplement. Smith never spoke about being made to lose weight, but in a 2004 interview with CBS, she said that she realized she was fat after people constantly ridiculed her for her weight.

B. Media Coverage of Smith’s Death

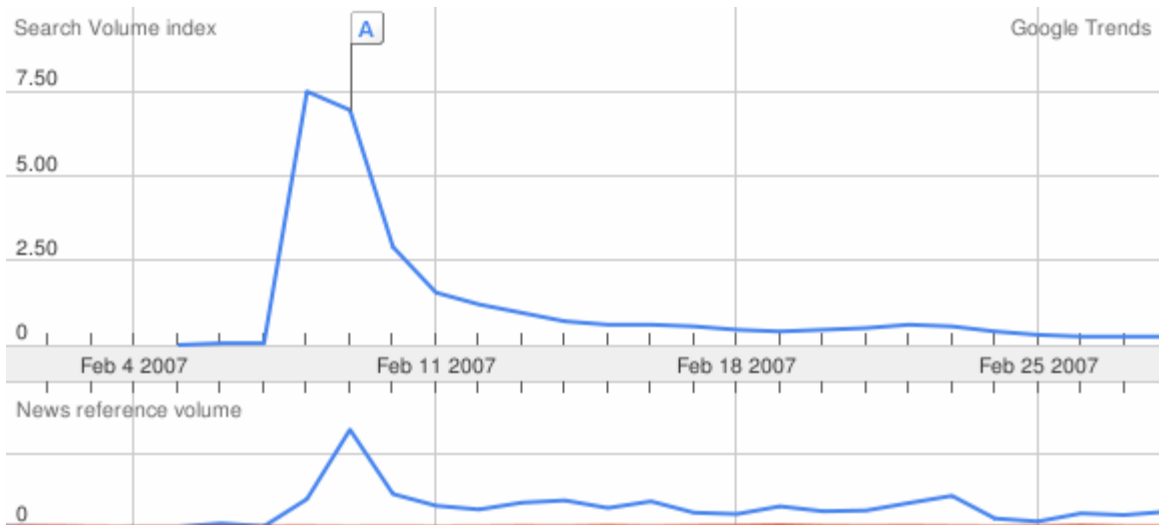
Scale is based on the average traffic of [Anna Nicole Smith](#) from United States in Feb 2007. [Learn more](#)

[Anna Nicole Smith](#)  1.00 [Condoleeza Rice](#) | 0

²³⁷ *Biography: Anna Nicole Smith*, People.com, available at http://www.people.com/people/Smith_nicole_smith/biography, available at (last visited July 13, 2008).

²³⁸ *Anna Nicole Smith*, AskMen.com, available at http://www.askmen.com/women/models/59_anna_nicole_smith.html (last visited July 13, 2008).

²³⁹ *Id.*



Smith is the blue line indicated above, and Rice is the red line.

The month of Smith's death, there was virtually no searches of Condoleezza Rice in comparison of to Ms. Smith. The Anna Nicole Smith Story dominated in the news over Condoleezza Rice.²⁴⁰

²⁴⁰ Google Trends, available at <http://www.google.com/trends?q=Anna+Nicole+Smith,+Condoleezza+Rice&ctab=0&geo=US&geor=all&date=2007-2&sort=0>, (last visited Sept. 13, 2008)

Smith died on February 8, 2007 from an accidental drug overdose.²⁴¹ The media coverage on her death was overwhelming. Even though the U.S. was still at war, the media focused on Smith's untimely death. "NBC's Nightly News devoted 14 seconds to Iraq compared to 3 minutes and 13 seconds to Smith. CNN referenced Smith 522% more frequently than it did Iraq. MSNBC was even worse — 708% more references to Smith than Iraq."²⁴² Cable networks coverage on Smith was much more lopsided than that of broadcast networks. NBC spent three minutes and thirteen seconds on Smith and only fourteen seconds on Iraq.²⁴³ CBS and ABC were not as unbalanced; CBS spent two minutes on Smith and two minutes and seventeen seconds on Iraq while ABC spent two minutes and twenty-one seconds on Smith and two minutes and fifty-eight seconds on Iraq.²⁴⁴ Some celebrity websites even crashed unable to handle the number of visitors to the site.²⁴⁵ The research found that, "During the two days immediately following Smith's death, nearly a quarter of the news from all sectors (24%) was devoted to this story. Public interest did not match the amount of coverage, and 61% of Americans said the story was being over-covered."²⁴⁶

Amidst all the attention Smith's death was receiving, her 5-month-old daughter was receiving as much. The paternity of Smith's little girl was in question. Smith's long

²⁴¹ *Biography: Anna Nicole Smith*, People.com, available at http://www.people.com/people/Smith_nicole_smith/biography, available at (last visited July 13, 2008).

²⁴² *Video Compilation: Anna Nicole Smith And Our National Media Embarrassment*, ThinkProgress.com, available at <http://thinkprogress.org/2007/02/09/anna-nicole-media-embarrassment/> (last visited July 13, 2008).

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.* "During those first two days after Smith's death fully half of cable news coverage was devoted to this story, making it by far the most heavily covered story of the week on cable."

time companion, Howard K. Stern and ex-boyfriend Larry Birkhead fought over paternity rights, and nearly three months after Smith's death, it was determined that Larry Birkhead was the child's father.²⁴⁷ The news media was anxiously awaiting news of the DNA result. Google Trends, "a tool from Google Labs that shows the most popularly searched terms from the beginning of 2004 to now," showed that the public was following this story in increased numbers.²⁴⁸ On April 10, 2007, as the paternity news emerges, Google trends charts spiked.²⁴⁹

C. Connection between Broadcast and Cable Coverage and Smith

When Smith became the spokesperson for TrimSpa, she said that she found out about TrimSpa on her own and was later approached by the company to be their spokesmodel.²⁵⁰ However, TrimSpa's parent corporation, Goen Technologies Corp's creditors and lenders include: DIRECTV Group Inc, Dish Network Corp, E! Network Television, Inc, and Fox Cable Network Inc.²⁵¹ Her television show was on the E! Entertainment Network, which was initially owned by Disney and then was sold to Comcast Cable. Comcast is the largest cable company in the U.S. It has acquired MGM/United Artists.

²⁴⁷ Name of author, name of article, PEOPLE, http://www.people.com/people/anna_nicole_smith/biography/0,,20006329_10.00.html (last visited July 13, 2008).

²⁴⁸ *Google Trends*, Google.com, available at http://www.google.com/search?hl=en&defl=en&q=define:Google+Trends&sa=X&oi=glossary_definition&ct=title (last visited July 14, 2008).

²⁴⁹ *Anna Nicole Smith*, Google.com, April 2007, available at <http://www.google.com/trends?q=anna+nicole+smith&ctab=0&geo=US&geor=all&date=2007-4&sort=0>, (last visited July 14, 2008).

²⁵⁰ *Anna Nicole Smith's New Shape*, CBSNews.com, February 20, 2004, available at <http://www.cbsnews.com/stories/2004/02/20/earlyshow/health/shapeup/main601324.shtml>, (last visited July 13, 2008).

²⁵¹ Dish Network Corp., Businessweek.com, available at <http://investing.businessweek.com/research/stocks/transactions/transactions.asp?symbol=DISH.O>, (last visited July 13, 2008).

A movie project about Smith's life²⁵² was conceived by a production group including CBS, NBC, ABC and Court TV.²⁵³ Several books have been written about Smith after her death. Her half sister released a book titled *Train Wreck: The Life and Death of Anna Nicole Smith*,²⁵⁴ published by Phoenix books, and journalist Rita Cosby wrote *Blonde Ambition: The Untold Story Behind Anna Nicole Smith's Death* published by Grand Central Publishing, which used to be Warner Books. Both Phoenix Books and Grand Central Publishing are owned by Hachette Livre, which is owned by Lagardere which owns Vivendi, Universal. The Walt Disney Company has a joint venture with Hachette Press called Disney Hachette Press which markets and distributes French Disney comics and Disney owns 39.6% equity interest in E! Networks.²⁵⁵ The Crosby book alleged that Smith's companion Stern and ex-boyfriend Birkhead were secret lovers.²⁵⁶

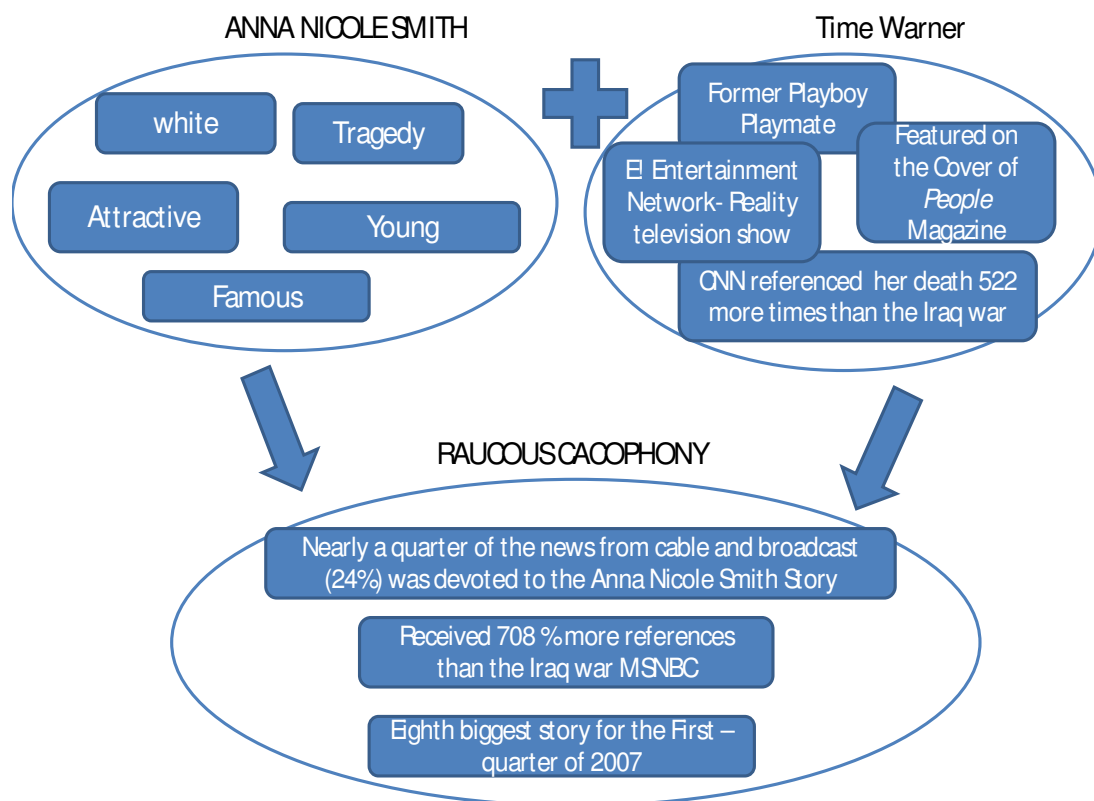
²⁵² *The Anna Nicole Movie Trailer*, JustJared.com, March 5, 2008, available at <http://justjared.buzznet.com/2008/03/05/anna-nicole-smith-movie-trailer/> (last visited July 13, 2008).

²⁵³ Nasser Entertainment, Blueline.com, available at <http://www.theblueline.com/feature/nasserent.html> (last visited July 14, 2008).

²⁵⁴ *Dagger's From Anna Nicole's Half-Sister*, CBSNews.com, April 9, 2007, available at <http://www.cbsnews.com/stories/2007/04/09/earlyshow/leisure/books/main2663734.shtml>, (last visited July 14, 2008).

²⁵⁵ DCW Disney Comics Worldwide available at <http://www.Wolfstad.com/dcw/publishers/disney.hachette-presse/> (last visited on Aug. 22, 2008).

²⁵⁶ Christina Boyle, *Anna Nicole Smith Book Claims Birkhead & Stern Were Lovers; Cut Deal on Baby Estate*, NYDailyNews.com, September 2, 2007, available at http://www.nydailynews.com/gossip/2007/09/02/2007-09-02_anna_nicole_smith_book_claims_birkhead_-3.html (last visited July 14, 2008).



VII. Laci Peterson and Amber Frey

A. Underlying Story

Laci Peterson was a 27 year old substitute teacher who was married to Scott Peterson, a 31 year old fertilizer salesman. Laci was nearly eight months pregnant with her first child when she disappeared on Christmas Eve in 2002. The *Washington Post* described her as “young, female, middle-class and pregnant.”²⁵⁷ Friends and family said there were no indications of discord between her and Scott Peterson, her husband of five years,²⁵⁸ who denied involvement in his wife's death. In fact, he was initially active in the search

²⁵⁷William Booth and Kimberly Edds, *Forget Bush-Kerry. What About Scott-Laci?; A Trial Galvanizes, and Polarizes, the Media*, WASH. POST, Nov. 2, 2004 at A1.

²⁵⁸John Ritter, *Peterson Case Back on Center Stage This Week*, USA TODAY, Oct. 27, 2003 at 4A.

for Laci after she went missing. However, after the woman with whom he was having an affair came forward, Scott became less visible. The “other woman” was 28 year old massage therapist Amber Frey.²⁵⁹ Peterson initially deceived Frey into believing he was unattached, and Frey wound up assisting police and prosecutors build a case against Peterson.²⁶⁰ Frey’s affair with Scott Peterson started a few weeks before Laci disappeared. Given her prior relationships with married men and the existence of her previously taken nude photographs, Frey seemed like she was straight out of “tabloid central casting” and revived cable interest in the story.²⁶¹ Frey was described as the “star witness” for the prosecution in the Peterson trial and explained how, as a single mother, she’d unwittingly fallen for a man who she discovered was a philandering fertilizer salesman who killed his pregnant wife. Frey secretly began recording their telephone conversations at the request of police²⁶² Police wiretaps recorded more than forty telephone calls and eight hours of conversations between Frey and Peterson after Laci disappeared.²⁶³ On April 13-14, 2003, the remains of both Laci and the unborn child washed ashore in the San Francisco Bay, near where Scott Peterson said he was fishing when Laci disappeared.²⁶⁴ Scott Peterson was then arrested in San Diego; he had \$10,000 in cash in his pocket, a freshly grown goatee and brown hair then bleached blond.²⁶⁵ He

²⁵⁹John Ritter, *All the Makings of a Legal 'Epic,'* USA TODAY, Mar. 3, 2004 at 3A.

²⁶⁰ *Id.*

²⁶¹Karen Breslau and Andres Murr, *A New Amber Alert*, NEWSWEEK, June 23, 2003 at 54.

²⁶²Karen Breslau, *She Glitters, But Is She Really Gold?*, NEWSWEEK, Aug. 23, 2004 at 31.

²⁶³ Jill Smolowe, Bull Hewitt, Ron Arias, Vickie Bane, Lorenzo Benet, Lyndon Stambler, Frank Swertlow, *Trapped on Tape? Sensational Phone Calls Between Scott Peterson and His Ex-Lover Give the Prosecution a Sudden Boost*, PEOPLE, Aug. 30, 2004 at 54.

²⁶⁴ Stacy Finz and Diana Walsh, *Prosecutor Lays Out His Case For Jury*, SAN FRAN. CHRON., June 2, 2004 at A1.

²⁶⁵ Howard Breuer and Adam Miller, *Callous Scott Brazen to End: Bleached His Hair In Feeble 'Disguise' Bid*, NEW YORK POST, April 20, 2003, at 5.

also had taken out a \$250,000 life insurance policy on Laci.²⁶⁶ Peterson was charged with the murder of his wife and his unborn child, and after a trial televised on Court TV,²⁶⁷ he was convicted and sentenced to receive the death penalty.²⁶⁸

B. Nature of the Broadcast and Cable Coverage

In describing the murder of Laci Peterson, the *Washington Post* noted that “The story has dominated cable television, employed an army of talking heads, and gone on for what seems like an eternity.”²⁶⁹ Discussing the media frenzy surrounding the murder, The *Boston Globe* remarked, “Armed with lots of photos of the lovely, dark-haired woman with the winning smile, network and cable news shows have covered her murder as if it were a matter of national security”²⁷⁰ and reduced “a family tragedy to a national pastime, a sporting event complete with ‘fans’ cheering Peterson's conviction last month outside the courtroom.”²⁷¹

Laci Peterson’s murder captivated the media, and as a result the nation was held hostage to the story, but learned no lessons from it. The Laci Peterson case offered a compelling opportunity to investigate the sobering fact that murder, according to a 2001 Maryland study later published in the *Journal of the American Medical Association*, is the leading cause of death for pregnant women—however, this opportunity was utterly

²⁶⁶ Brian Anderson, *Peterson Trial; Prosecution Focus Turns to Fishing Boat*, CONTRA COSTA TIMES, July 27, 2004 at A19.

²⁶⁷ Chris Metinko, *Court TV to Send Verdict Notices; 80,000 Have Already Signed Up for Cable Channel's Text Message on Peterson Trial*, CONTRA COSTA TIMES, Nov. 5, 2004 at A3.

²⁶⁸ John Ritter, *All the Makings of a Legal 'Epic'*, *supra* note __ at 3A.

²⁶⁹ William Booth and Kimberly Edds, *Forget Bush-Kerr*, *supra* note ____, at A1.

²⁷⁰ Renee Graham, *Verdict Is In On Peterson Media Circus*, BOST. GLOBE, Dec. 14, 2004 at B7.

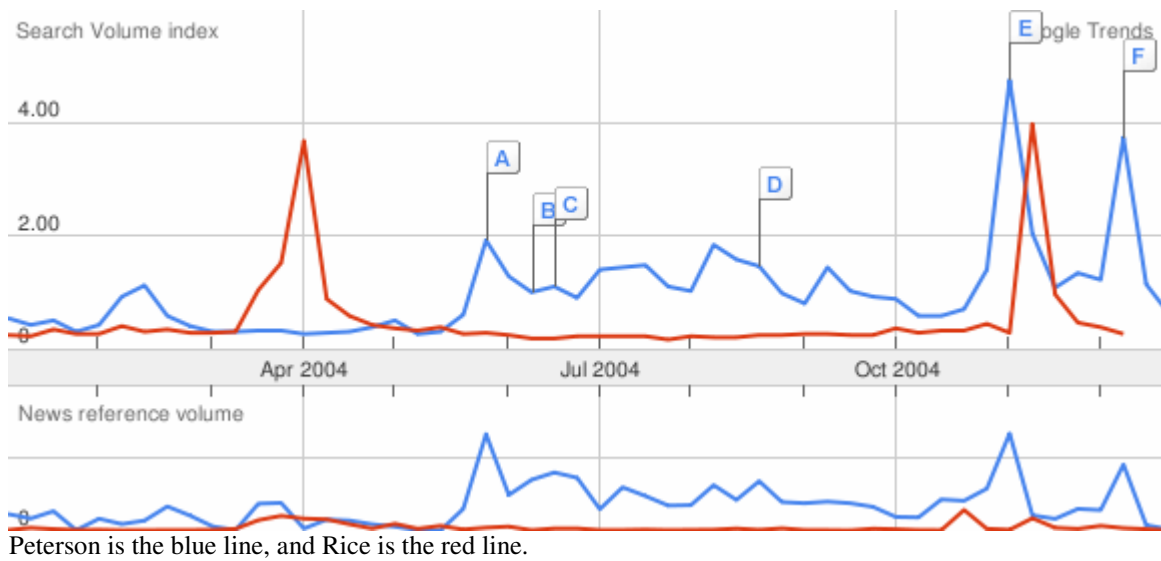
²⁷¹ *Id.*

squandered.²⁷² Marty Kaplan, associate dean of the University of Southern California's Annenberg School for Communication, decried the trial coverage as "pure white sugar, addictive and without nutrition."²⁷³

Scale is based on the average traffic of **Laci Peterson** from United States in 2004.

Laci Peterson 1.00

Condoleeza Rice 0.48



During the trial, the Laci Peterson story dominated Google Searches even though in November 2004 President Bush nominated then National Security Advisor, Condoleeza Rice, to be Secretary of State. News Coverage followed the same trend.²⁷⁴

²⁷² *Id.*

²⁷³ William Booth and Kimberly Edds, *Forget Bush-Kerry*, *supra note* ____, at A1.

²⁷⁴ Google Trends, *available at*

<http://www.google.com/trends?q=Laci+Peterson,+Condoleeza+Rice&ctab=0&geo=US&geor=all&date=2004&sort=0>, last visited Sept. 13, 2008

The media coverage was also described as “the parade of talking-head lawyers behaving with all the aplomb of World Wrestling Entertainment performers. If attorneys have long been saddled with reputations as ambulance-chasing ghouls, the Peterson case has recast them as camera-hogging fools.”²⁷⁵ The lawyers commenting on the case were also described as offering “‘Crossfire’-style smack downs offering more volume than thoughtful perspective.”²⁷⁶ For almost two years, the trial made the cover of *People* magazine and had been a continuously dissected on talk radio, cable and network newscasts, morning news shows, and in the tabloids.²⁷⁷ A Google search found more than 141,000 hits in 0.14 seconds.²⁷⁸ A student newspaper at Penn State compared the Laci Peterson coverage to other pressing world events and found that as of November 10, 2003, a search of CNN’s website found ninety-three articles on the Laci Peterson trial as compared to the Angolan Civil War, which only seventy-six articles.²⁷⁹ When the Scott Peterson was convicted and sentenced to death, the *Boston Globe* sarcastically commented, “Now that a jury has reached a decision on Scott Peterson's fate, can we not see Gloria Allred every blessed day, at least for a little while? Or, if we're lucky, fellow mouth-almighty attorneys Wendy Murphy, Nancy Grace, Dean Johnson, or that awful Dan Abrams, whose show on MSNBC, "The Abrams Report" has lately been all Peterson, all the time...Soon we'll have no more of Abrams's hyperbole on the *Today*

²⁷⁵ William Booth and Kimberly Edds, *Forget Bush-Kerry, supra note* ____ at A1.

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ Keith Stevens, *Media Latch Onto Stories That Detract From Real News Coverage*, THE PENN, Nov. 10, 2003. (The article also noted that the Angolan Civil War has been continuously going on since 1976 whereas the Laci Peterson story only came into existence the prior Christmas. Moreover, the Angolan Civil War caused the loss of countless lives whereas it was only Laci Peterson and her son who passed away,)

show, no know-it-all routine from Grace on *Larry King Live*, no sniping from Murphy across the dial.”²⁸⁰

Dan Abrams, host of *The Abrams Report* on MSNBC dedicated at least one of the six segments on his hour-long weeknight legal show to the Peterson case, remarked:

I think anyone who says this is one of the most important cases of our day is either lying or fooling themselves,...”but I think you can certainly justify coverage of this case because it's interesting. I think anytime we cover a trial, we allow people to see how the criminal justice system works or doesn't work...We get people calling in all the time asking, 'Why do we spend so much time on the Laci Peterson trial?' I get that question. I think that's a fair question. My answer to that is it is an interesting case...The intellectual snobs want to blame the media for covering stories that aren't 'important.' But you just don't find many cases where a 7 1/2-month pregnant woman is killed on Christmas Eve and her husband goes to trial.²⁸¹

Fox News talk show host Bill O'Reilly agreed: "We do Laci Peterson every 15 minutes and see the numbers go up."²⁸² Jim Hemmer, of Fox News, suggested that a racial component existed in the coverage that the Peterson case received. Hemmer explained that “Peterson was the all-American girl...” there could be dozens of dead, poor African American women and nobody's ever heard of them, and I can understand how this trial says if you're white and pretty, you get more attention.”²⁸³

William Powers in the *Congress Daily* linked the popularity of the Laci Peterson story to the need by American society to avert their eyes from the war in Iraq and focus on a fairly simple and, highly emotional domestic issues.²⁸⁴ Powers explained:

²⁸⁰ Need cite

²⁸¹ Name of author, Name of article, Wash. Post, date, at __.

²⁸² Renee Graham, *Verdict Is In On Peterson Media Circus*, BOST. GLOBE, Dec. 14, 2004 at B7.

²⁸³ William Booth and Kimberly Edds, *Forget Bush-Kerry*, *supra note* ____ at A1.

²⁸⁴ William Power, *Baghdad Versus Laci*, NATIONAL JOURNAL, Nov. 13, 2004, at 46 .

[t]hese sensational crime stories are never what they seem to be on the surface, and to dismiss them is to ignore a window into the popular psyche. Laci Peterson disappeared at the end of 2002, when the country was in the throes of the war debate. The case was classified as a murder investigation in March 2003, just as we went to war. The bodies of Peterson and her child washed ashore on April 13 and 14, just days after the fall of Baghdad. In short, the Peterson case runs exactly parallel to the war, and you might say it has served as a kind of populist release valve, a way of escape. On one hand, you've got death and mayhem on a large scale in a strange, faraway place, and no end in sight. On the other, you've got death and mayhem on a small scale — where the characters are simple and somewhat familiar, the judicial process is so familiar it's become a cultural ritual, and the question couldn't be clearer: guilty or innocent?²⁸⁵

C. Economics of the Coverage

Laci Peterson's murder was big business for the media. Court TV had an audience of 2.6 million viewers, its largest audience ever, when the Peterson verdict was announced.²⁸⁶ There were several best-selling books, a popular made-for-television movies, a two hour long *E!-True Hollywood Story*, and the non-stop outside the courtroom coverage. Andrew Tyndall, who tracks network news coverage on his Tyndallreport.com web site, said the Peterson case has been one of the most heavily covered stories of the last two years on daytime cable and the morning network shows.²⁸⁷

Before Scott Peterson was convicted, the USA Network aired a made-for-television movie about the murder entitled: *Perfect Husband: The Laci Peterson Story*. At the time, Jeff Wachtel, USA's executive vice president of original scripted programming, said the movie was not just about "a specific crime, it's also a movie about our culture -- how someone can gain then betray the trust of a woman, a family, a community."²⁸⁸ The movie was widely panned by critics. The USA Today asserted that

²⁸⁵ *Id.*

²⁸⁶ Carol Memmott, *Peterson Case Lives on in Print*, USA TODAY, Mar. 10, 2005 at 7D.

²⁸⁷ William Booth and Kimberly Edds, *Forget Bush-Kerry*, *supra note* ____ at A1.

²⁸⁸ Renee Graham, *Verdict Is In On Peterson Media Circus*, *supra note* ____ at B7.

“the guilty parties here are the people responsible for *The Perfect Husband: The Laci Peterson Story*. I'd say they should be ashamed, but no one with any sense of propriety would be involved in a project this repulsive in the first place.”²⁸⁹ Although television movies of actual trials are a modern invention, usually television usually did not broadcast these types of films until a verdict was rendered. Now the broadcast and cable networks do not wait for an arrest to broadcast the films.²⁹⁰ Despite, the harsh reviews, the movie was a big success for the USA Network. *Variety* Magazine detailed: “USA scored a rare victory over multiple broadcast nets Friday night, topping Fox, the WB and UPN in total viewers with the premiere of the cable’s original movie *The Perfect Husband: The Laci Peterson Story*...Despite a slew of harsh reviews, the Dean Cain-top lined telepic averaged a big 5.1 million viewers and posted a 1.7 national rating/5 share in the key 18-49 category and a 2.0/5 in 25-54, according to Nielsen.”²⁹¹ The Perfect Husband: The Laci Peterson Story was the biggest audience for a USA movie in two years.²⁹²

The Laci Peterson story was also featured in an *E!-True Hollywood* story. The *Boston Globe* remarked, “So skewed was the notion of their ‘celebrity’ that Laci was even the subject of a much-repeated two-hour episode of *E! True Hollywood Story*, the kind of dubious distinction usually reserved for the likes of Jennifer Lopez, Anna Nicole Smith, and Elvis. What could possibly be less Hollywood than a fertilizer salesman and a substitute teacher from a small California city?”²⁹³

²⁸⁹Robert Bianco, *'Peterson Story': Reprehensible on Many Levels*; USA TODAY, Feb. 13, 2004 at 19D.

²⁹⁰ *Id.*

²⁹¹ Denise Martin, *Telepic 'Perfect' for USA: Network Places 4th for Night's Timeslot with Project*, VARIETY, Feb. 17, 2004 at ___.

²⁹² William Booth and Kimberly Edds, *Forget Bush-Kerry, supra note ___* at A1.

²⁹³Renee Graham, *Verdict Is In On Peterson Media Circus, supra note ___* at B7.

Books written about the Peterson trial have become best-sellers.²⁹⁴ These books include: *Witness: For the Prosecution of Scott Peterson* by former mistress Amber Frey, which topped USA TODAY's list the week after its January 5, 200_ release; *Blood Brother: 33 Reasons My Brother Scott Peterson Is Guilty* by half-sister Anne Bird, which reached number seven on USA TODAY's list; *A Deadly Game: The Untold Story of the Scott Peterson Investigation* by Court TV's Catherine Crier;²⁹⁵ *Presumed Guilty: What the Jury Never Knew About Laci Peterson's Murder and Why Scott Peterson Should Not Be on Death Row* by Matt Dalton, who briefly served as a member of Peterson's defense team.²⁹⁶ The reason for the success of the Peterson books noted that the death of Laci Peterson is "[a] great true-crime story," and the books take advantage "of all the media hoopla still going on."²⁹⁷ The Laci Peterson case even had an impact on legislation. In March 2004, the United States Congress saw the Laci Peterson case as an opportunity to pass legislation called "Laci and Conner's Law," which "allows independent charges to be brought against those who hurt or kill an unborn child during an assault on the mother."²⁹⁸

The Laci Peterson murder also made Amber Frey, the woman who had an affair with Scott Peterson, famous. *People Magazine* noted, "[o]nly the media-deprived can be unaware that massage therapist [Amber Frey] is the ex-lover of Scott Peterson."²⁹⁹ Frey wrote a best-selling book based on her ordeal entitled *Amber Frey: Witness for the Prosecution*. Speaking of the book, Frey explained, "[a]t the time of the trial there was a

²⁹⁴Uncredited, *Crime Watch*, PEOPLE, Dec. 12, 2005 at 24.

²⁹⁵Carol Memmott, *Peterson Case Lives on in Print*, *supra note* ____ at 7D.

²⁹⁶ Uncredited, *Crime Watch*, *supra note* ____ at 24.

²⁹⁷Carol Memmott, *Peterson Case Lives on in Print*, *supra note* ____ at 7D.

²⁹⁸ Elizabeth Gettelman, *Roe v. Laci*, MOTHER JONES, Jul/Aug. 2005 at available at http://www.motherjones.com/news/featurex/2005/07/roe_v_laci.html.

²⁹⁹ Terry Kelleher, *Amber Frey: Witness for the Prosecution*, PEOPLE, May 30, 2005 at 37.

lot at stake in preserving my testimony and serving justice. Now that there's a verdict, I can set the record straight and tell my story and correct some misconceptions that are out there. This [book] has given me an opportunity to be able to describe in my voice my truth and my life that I have lived.”³⁰⁰ CBS bought the rights to Frey’s book and broadcast a made-for-television movie based, which had 7.46 million viewers.³⁰¹

D. Cross-Marketing the Tragedy

Judith Regan’s Regan Books published Frey’s book as well as *Witness for the Prosecution of Scott Peterson* by Amber Frey, *Blood Brother: 33 Reasons My Brother, Scott Peterson, Is Guilty* by Anne Bird, *A Deadly Game: The Untold Story of the Scott Peterson Investigation* by Catherine Crier. Regan Books is a division of HarperCollins,” which is owned by News Corp. News Corp owns Fox, and the *New York Post*.³⁰² Court TV, now known as TruTV, is owned by Time Warner.³⁰³ Time Warner owns AOL, which owns the gossip website TMZ.com.³⁰⁴ Time Warner also owns *People Magazine*, *Entertainment Weekly*, and CNN.³⁰⁵

³⁰⁰ Karen Breslau, 'I Feel Pain', NEWSWEEK, Jan. 6, 2005 at 0.

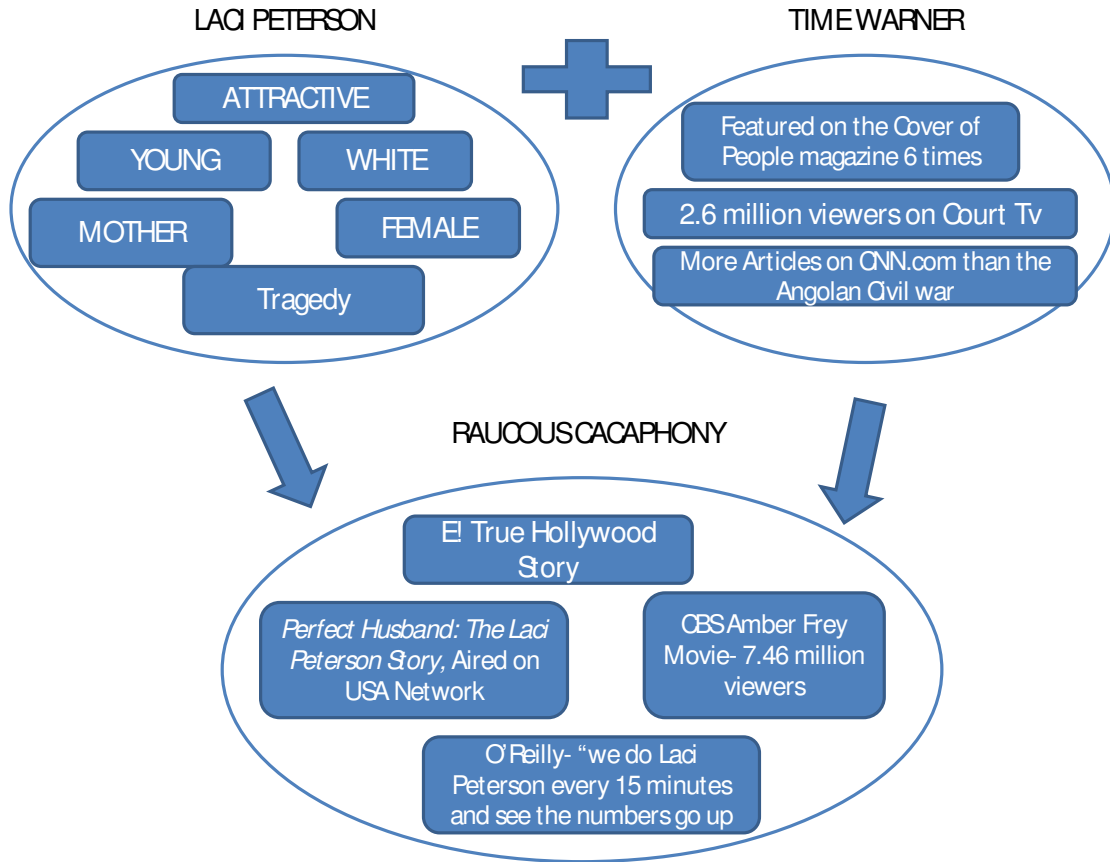
³⁰¹ *Television & Radio; Prime-Time TV Rankings; A Season's Big Finish*, LOS ANG. TIMES, June 3, 2005 at 32.

³⁰² <http://www.harpercollins.com/footer/companyProfile.aspx> (last visited Aug. 15, 2008)..

³⁰³ <http://www.trutv.com/>, (last visited Aug. 15, 2008).

³⁰⁴ <http://www.timewarner.com/corp/businesses/index.html> (last visited Aug. 15, 2008).

³⁰⁵ Charles L Klotzer, *Is it Too Late for Media Reform?*, 37 St. Louis Journ. Rev. 28 (2007).



VIII. Chandra Levy

A. Underlying Facts

Chandra Levy was a graduate student at the University of Southern California from Modesto, California. She worked as an intern in Washington, D.C. for the Federal Bureau of Prisons.³⁰⁶ In 2001, her internship ended shortly after the Federal Bureau of Prisons found out Levy had completed her graduate degree requirements and was thus

³⁰⁶ Peter T. Kilborn, *Lawmakers Press Investigation Into Intern's Disappearance*, NEW YORK TIMES, May 18, 2001 at A12; see also Arthur Santana *Lack of Information Leaves Family Frustrated; Missing Woman's Parents Travel From California to Press D.C. Police About Investigation*, WASH. POST, May 16, 2001 at B8.

ineligible for the internship.³⁰⁷ Levy was scheduled to return to California on May 9, 2001 for her graduation ceremony.³⁰⁸ She was last seen on April 30, 2001, when she cancelled her gym membership at a local health club.³⁰⁹ Levy's parents received a final email communication from Levy on May 1, 2001.³¹⁰

Chandra's father Robert Levy reported Chandra's disappearance to the D.C. police on May 6, 2001 after leaving several nonreturned messages on her voicemail.³¹¹ Detective Ralph Durant was assigned to the case and conducted a preliminary investigation calling the medical examiners office, hospitals and inspecting Chandra Levy's home for evidence of foul play.³¹² Levy's parents analyzed her cell phone bill and noticed that Chandra routinely called the office of U.S. Congressman Gary Condit,³¹³ represented the Levy's Modesto, California district. The Levys called the Representative's office and left a message for Condit to return their call.³¹⁴ Condit returned the call and promised to aid in the investigation and to offer a reward for Chandra's return.³¹⁵

Levy's aunt reported to the police that Chandra had an affair with Congressman Condit.³¹⁶ At first, Condit denied being romantically involved with Levy but later

³⁰⁷ Peter T. Kilborn, *Lawmakers Press Investigation Into Intern's Disappearance*, *supra* note __ at A12.; Arthur Santana *Lack of Information Leaves Family Frustrated*, *supra* note __ at B8.

³⁰⁸ Arthur Santana *Lack of Information Leaves Family Frustrated*, *supra* note __ at B8.

³⁰⁹ *Id.*

³¹⁰ Arthur Santana, *Police Intensify Search for Missing Intern; D.C. Officers Meet With Woman's Parents, Seek Clues in Wooded Area, Rivers*, WASH. POST, May 17, 2001 at B5.

³¹¹ Sari Horowitz, *Who Killed Chandra Levy; A Young Woman Disappears*, available at http://www.washingtonpost.com/wp-srv/metro/specials/chandra/ch1_1.html. (July 13, 2008)(last visited Aug. 15, 2008).

³¹² *Id.*

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ *Id.*

admitted to a romantic relationship.³¹⁷ Condit confirmed that he met Levy in the fall of 2000 when she and a friend visited his D.C. office.³¹⁸ The relationship grew quickly, and Condit later confirmed that Levy would often spend the night at Condit's D.C apartment.³¹⁹ Condit's D.C. apartment was searched, but the police found nothing linking Condit to the disappearance.³²⁰ Condit was reported as driving to a 7-Eleven to throw away some items, moments before the police searched his apartment.³²¹ Condit discarded an empty cardboard box that had contained a wrist watch given to him by a former member of his staff. He claimed he was attempting to dispose of the watch case to avoid media searching his garbage.³²²

Although Condit was never named as a formal suspect in the investigation, the police questioned him several times.³²³ Condit passed a polygraph examination³²⁴ and was never formally arrested or charged with Levy's disappearance. He cooperated with the police investigation but shied away from discussing his affair with Levy.³²⁵

The D.C police formally searched Levy's apartment on May 10, 2001.³²⁶ By examining Chandra Levy's computer, the D.C. police determined that Levy visited the

³¹⁷ Allan Lengel, *Condit Confirms Affair to Police, Sources Say*, WASH. POST, Jul. 8, 2001 at A1.

³¹⁸ Sari Horowitz, *Who Killed Chandra Levy the Gentleman from California*, WASH. POST, Jul. 14, 2008, available at http://www.washingtonpost.com/wp-srv/metro/specials/chandra/ch2_1.html (last visited Aug. 15, 2008)

³¹⁹ *Id.*

³²⁰ Sari Horowitz, *Who Killed Chandra Levy; A Singular Focus*, *supra* note __-at__.

³²¹ Name of Author, *Who Killed Chandra Levy; A singular Focus*, WASH. POST, (date) available at http://www.washingtonpost.com/wp-srv/metro/specials/chandra/ch8_2.html (last visited on Aug. 15, 2008).

³²² *Id.*

³²³ Sari Horowitz, *Who Killed Chandra Levy; Media Frenzy*, WASH. POST., Jul. 22, 2008, available at http://www.washingtonpost.com/wp-srv/metro/specials/chandra/ch9_1.html (last visited Aug. 15, 2008).

³²⁴ *Id.*

³²⁵ Sari Horowitz, *Who Killed Chandra Levy; A Singular Focus*, WASH. POST, Jul. 21, 2008, available at http://www.washingtonpost.com/wp-srv/metro/specials/chandra/ch8_1.html (last visited on Aug. 15, 2008)

³²⁶ *Id.*

Rock Creek Park website on the day she disappeared. The police searched the park and found no evidence of Levy's remains.³²⁷ One year later on May 22, 2002, a hiker discovered Levy's body in Rock Creek Park, a short distance from the area searched by the police.³²⁸ The police determined that Levy was murdered and theorized that Salvadorian immigrant, Ingmar Guandique, was responsible,³²⁹ but to date, the Levy murder remains unsolved.³³⁰ Condit's political career never recovered, and he lost re-election.³³¹ Condit filed a defamation lawsuit against the *National Enquirer* and *Vanity Fair* Columnist Dominick Dunne,³³² which was ultimately dismissed.³³³

B. Extent of Broadcast and Cable Media Coverage

Media coverage of Levy's disappearance was overwhelming. Levy's parents obtained the help of the media savvy non-profit group Carole Sund/ Carrington Memorial Reward Foundation. Based in Modesto, California, the Carole Sund Foundation provides financial assistance to search groups and law enforcement agencies. The Carole Sund Foundation also helped the Levys navigate the media circus and keep coverage of the

³²⁷ *Id.*

³²⁸ Sari Horowitz, *Who Killed Chandra Levy; A Walk in the Woods*, WASH. POST, Jul.24, 2008, available at http://www.washingtonpost.com/wp-srv/metro/specials/chandra/ch11_1.html (last visited Aug. 18, 2008).

³²⁹ Sari Horowitz, *Levy Probe Concentrates on Rock Creek Attacker*, WASH. POST, Sept. 29, 2002, at A1.

³³⁰ Mike Weiss, *Still No Answer; Five Years after Chandra Levy's Remains Were Found in a Park in Washington, D.C.; Her Mother Hopes the Cold Case Will Be Solved*, SAN FRAN. CHRON., May 22, 2007 at A1.

³³¹ CNN.com, *Levy's case opens door on secret life*. <http://www.cnn.com/CNN/Programs/people/shows/condit/profile.html> (last visited Jul. 24,2008)

³³² Mike Weiss, *Still No Answer; Five Years after Chandra Levy's Remains Were Found in a Park in Washington, D.C.*, SAN FRAN. CHRON., May 22, 2007 at A1.

³³³ Need cite

Levy investigation in the forefront.³³⁴ This nonprofit group was created after three hikers were found slain in Yosemite National Park in 1999.³³⁵ According to CNN.com, the Chandra Levy story was the number 10 top story of 2001.³³⁶ The media were severely criticized for the coverage.³³⁷ The cable news channels often broadcasted misleading information or unsubstantiated claims.³³⁸ A study conducted by the Pew Research Center showed that a 49% of the population closely followed Levy's story as compared to 72% that closely followed the Lewinsky Clinton scandal.³³⁹

C. Economics of the Coverage³⁴⁰

The ratings increased for the broadcasters and cable networks as they covered the Levy story. There seems to be fewer connections between the media ownership and the profiteering off the Levy tragedy. However, there were some connections. The Carole Sund Foundation is a privately held non-profit corporation.³⁴¹ One of its funders is the

³³⁴ Donna St. George, *Missing Intern Making Uncommon Impression; Human Interest, Media Campaign Grab Attention*, WASH. POST, May 18, 2001 at A1.

³³⁵ Sari Horowitz, *A Family's Anguish*, WASH. POST, Jul. 16, 2001 at A1.

³³⁶ CNN.com, *Year in Review 2001*, available at <http://www.cnn.com/SPECIALS/2001/yir/stories/overview/index.html>, (last visited Jul. 23, 2008)

³³⁷ Howard Rosenberg, *Television; Hounds Hunt with the Pack*, L. A. TIMES, Aug. 6, 2001 at F1.

³³⁸ Bill Press, *The Summer of Chandra*, Cnn.com, Aug. 13, 2001, available at <http://archives.cnn.com/2001/ALLPOLITICS/08/13/billpress.column/> (last visited Jul. 24, 2008); Don Wyckliff, *Media Coverage on the Lives of 2 Woman*, CHIC. TRIB., Jul. 19, 2001, at —.

³³⁹ Pew Research Center, *Missing Intern Stirs Media Frenzy, Lukewarm Public Interest*, Jul 18, 2001, <http://people-press.org/reports/pdf/7.pdf> at 1 (last visited Aug. 15, 2008).

³⁴⁰ The Chandra Levy story took place before Google Trends could be used to chart searches and coverage of news stories. Even though there are no precise numbers to demonstrate the amount of coverage, my recollection is that the media obsessed over this story.

³⁴¹ Carole Sund Foundation, available at <http://www.carolesundfoundation.com/sections/LaciandConnerFund>, (last visited Jul. 24, 2008).

Modesto Bee, which is part of the McClatchy newspaper chain.³⁴² The Levys never published a book. One book published about Levy's murder was, *Murder on a Horse Trail: The Disappearance of Chandra Levy*, by Ralph Daugherty. The book was published by IUniverse, in 2004. Barnes and Nobles owned 49% of the shares of IUniverse.³⁴³ Barnes and Noble is a publicly traded company with no relevant affiliations.³⁴⁴ The other book is *Sex, Power & Murder: Chandra Levy and Gary Condit--The Affair*. It is published by Media Amer Inc. ("AMI") in 2002. AMI is the fourth largest consumer magazine publisher in the country, and number two in retail magazine sales.³⁴⁵ AMI owns the largest in-store magazine marketing and merchandising company in the industry.³⁴⁶

True Hollywood Investigation produced and broadcast a story on the Chandra Levy investigation on the E! Entertainment Channel. The Liberty Media Corporation owns 10% of the E! Entertainment Channel.³⁴⁷

IX. Natalee Holloway

A. Underlying Facts

³⁴² *McClatchy Earnings Continue Downward Trend*, WICHITA BUSINESS JOURNAL, (Jul.25, 2008) available at <http://www.bizjournals.com/wichita/stories/2008/07/21/daily39.html> (last visited Aug. 15, 2008).

³⁴³ Calvin Reid, Publishers Weekly, available at <http://www.publishersweekly.com/article/CA167991.html?q=iuniverse/> Feb. 21, 2000 (last visited Aug. 15, 2008).

³⁴⁴ Barnes and Nobles, available at http://www.barnesandnobleinc.com/for_investors/for_investors.html. (last visited Jul. 24, 2008) .

³⁴⁵ Amer Media, Inc. Company Overview, available at <http://www.americanmediainc.com/> (last visited on Aug. 15, 2008).

³⁴⁶ *Id.*

³⁴⁷ Columbia Journalism Review, *Who Owns What*, <http://cjrarchives.org/tools/owners/libertymedia.asp> Jul. 24, 2008. (last visited Jul. 24, 2008).

In 2005, Natalee Holloway graduated from Mountain Brook High School in Birmingham, Alabama.³⁴⁸ With 124 classmates and seven chaperones, Holloway went on a five-day trip to Aruba to celebrate her graduation.³⁴⁹ She disappeared on the night of May 29, 2005. The FBI report provided:

Reportedly, on the evening of May 29, 2005, Holloway and a large group of students went to Carlos 'N Charlie's Nightclub in Oranjestad, Aruba. When Carlos 'N Charlie's was closing around 1:00 a.m., some of the group headed back to the Holiday Inn where they were staying, and others in the group gathered at various area bars. Holloway was last seen around 1:30 a.m. leaving the area in a silver Honda with three young males, Joran van Der Sloot, Deepak Kalpoe, and Satish Kalpoe. Holloway did not return to her hotel room, and her personal belongings remained in her room. On the morning of May 30, 2005, when the Mountain Brook group was scheduled to meet in the lobby of the hotel in preparation for their departure from Aruba, Holloway never joined them. The Mountain Brook group returned to the United States; however Holloway's whereabouts remain unknown.³⁵⁰

Holloway was portrayed as the typical American teenager who was planning to pursue an undergraduate degree at the University of Alabama.³⁵¹ Several people were arrested in connection with the disappearance, including two security guards at the hotel. The investigation quickly focused on three suspects Joran Van Der Sloot, Deepak Kalpoe, and Satish Kalpoe.³⁵² Originally the three suspects told police that Holloway met them at Carlos' N Charlie's (a local bar) with about 40 of her classmates.³⁵³ She left around 1:30 a.m. on May 30 with the Kalpoes and Van Der Sloot.³⁵⁴ The men claimed

³⁴⁸ <http://www.fbi.gov/wanted/seekinfo/holloway.htm> (last visited Jul. 8, 2008).

³⁴⁹ <http://www.fbi.gov/wanted/seekinfo/holloway.htm> (last visited Jul. 8, 2008).

³⁵⁰ <http://www.fbi.gov/wanted/seekinfo/holloway.htm> (Last visited Jul. 8, 2008)

³⁵¹ Alex Tresniowski; Jeff Truesdell; Steve Helling, *I WANT MY DAUGHTER BACK'; FIGHTING DESPAIR--AND ANGER-- NATALEE HOLLOWAY'S MOTHER, BETH, WON'T REST UNTIL SHE FINDS OUT WHAT HAPPENED TO HER DAUGHTER IN ARUBA*, PEOPLE, July 4, 2005 at 84.

³⁵² *Id.*

³⁵³ Cite

³⁵⁴ Cite.

they visited a lighthouse on the northwestern tip of the nineteen-mile long and six-mile wide island.³⁵⁵ They told police that they dropped an intoxicated Holloway back to the hotel at around 2 a.m. where a "dark-colored" man in a black T-shirt with a radio helped her.³⁵⁶

During the initial investigation, misinformation was often leaked to the press.³⁵⁷ There were several false news reports that claimed to have new evidence about the disappearance.³⁵⁸ Rumors swirled that Holloway's disappearance may be linked to a pornographic film.³⁵⁹

After lengthy interrogations by Aruban authorities, Joran Van Der Sloot, the main suspect, changed his story three times throughout the investigation.³⁶⁰ In the first story, Holloway was dropped off at the Holiday Inn.³⁶¹ In the second story, Joran left Holloway at the beach by the Marriott.³⁶² In the third story, Joran claimed Deepak dropped him off near his home and disappeared with Holloway.³⁶³ Van Der Sloot was arrested, released and re-arrested several times before the Aruban government closed the case on December 18, 2007.³⁶⁴ Holloway's body was never recovered.³⁶⁵ Beth Holloway blamed the spotty

³⁵⁵ Cite.

³⁵⁶ Karl Penhaul, *Three Arubans to Remain in Custody*, available at http://www.cnn.com/2005/LAW/06/10/missing.teen/index.html?section=cnn_latest&eref=yahoo (last visited Jul. 8, 2008).

³⁵⁷ Fox News Network, *Reports Conflict in Case of Missing Ala. Teen*, Jun. 11 2005, available at <http://www.foxnews.com/story/0,2933,159252,00.html> (last visited on Aug. 15, 2008).

³⁵⁸ *Id.*

³⁵⁹ George Rush, *Aruba Cops Think X May Mark The Spot*, DAILY NEWS, Aug. 5, 2005 at 16.

³⁶⁰ Brian Burrough, *Missing White Female*, Vanity Fair, Jan. 2006. No. 545 pg 126

³⁶¹ *Natalee Holloway*, CBS News, available at http://www.cbsnews.com/elements/2005/06/08/in_depth_us/timeline700368.shtml. (last visited Jul. 8, 2008).

³⁶² *Id.*

³⁶³ *Id.*

³⁶⁴ *Id.*

³⁶⁵ Cite needed.

Aruban police work, while Aruba blamed Beth Holloway and the media for interfering with the investigation.³⁶⁶

³⁶⁶ Brian Burrough, *Missing White Female*, VANITY FAIR, Jan. 2006, at 126, available at <http://www.cbsnews.com/stories/2005/06/28/earlyshow/main704705.shtml> (last visited on Aug. 15, 2008).

B. Extent of the Search

The day of Holloway's disappearance the Aruba's newspaper stopped the presses to issue a front page alert of Holloway's disappearance.³⁶⁷ The Aruban government and tourism organization placed a reward of \$55,000 dollars for information leading to Holloway.³⁶⁸ The Aruban government allowed 4,000 civil servants to leave work early to join the search party for Holloway. An additional, 700 volunteers from the U.S. also joined the search.³⁶⁹ Surveillance of the three suspects started three days after Holloway's disappearance.³⁷⁰ Special agents from the FBI were brought in to interrogate the suspects.³⁷¹ An FBI profile was completed on the suspect Van Der Slot.³⁷² Three Dutch F-16 jets were dispatched to take offshore pictures of the island- to search for Holloway's body.³⁷³ Fifty Dutch marines were sent to search the shores of Aruba.³⁷⁴ Aruban banks raised \$20,000 dollars for a group of volunteers from Texas to continue the search.³⁷⁵ A Texas businessman reportedly spent over a \$1 million to fund a deep sea expedition of the shores surrounding Aruba.³⁷⁶ One year later, the Chief Deputy of

³⁶⁷ Carol Williams, *In Holloway Case, Aruba Also Suffers*, Los Ang. Times (Jun. 4, 2007) available at, <http://travel.latimes.com/articles/la-trw-aruba4jun4?page=2>. (last visited Sept. 2, 2008).

³⁶⁸ *Natalee Holloway*, CBS News, available at http://www.cbsnews.com/elements/2005/06/08/in_depth_us/timeline700368.shtml (last visited Jul. 8, 2008).

³⁶⁹ *Id.*

³⁷⁰ *Id.*

³⁷¹ *Id.*

³⁷² *Id.*

³⁷³ *Some Arubans Angry at Holloway's Mom*, MSNBC (Jul. 6, 2005) <http://www.msnbc.msn.com/id/8484217/> (last visited on Aug. 15, 2008).

³⁷⁴ Martin Savidge, *Aruba Gripped by Mystery Over Missing Teen*, (Jun. 6 2005) <http://www.msnbc.msn.com/id/8118094> (last visited Aug. 15, 2008).

³⁷⁵ *Some Arubans Angry at Holloway's Mom*, supra note__.

³⁷⁶ Cynthia Cisneros, *Holloway Searchers Need Help*, Feb. 9, 2008, available at <http://abclocal.go.com/ktrk/story?section=news/local&id=5988951> (last visited on Aug. 15, 2008).

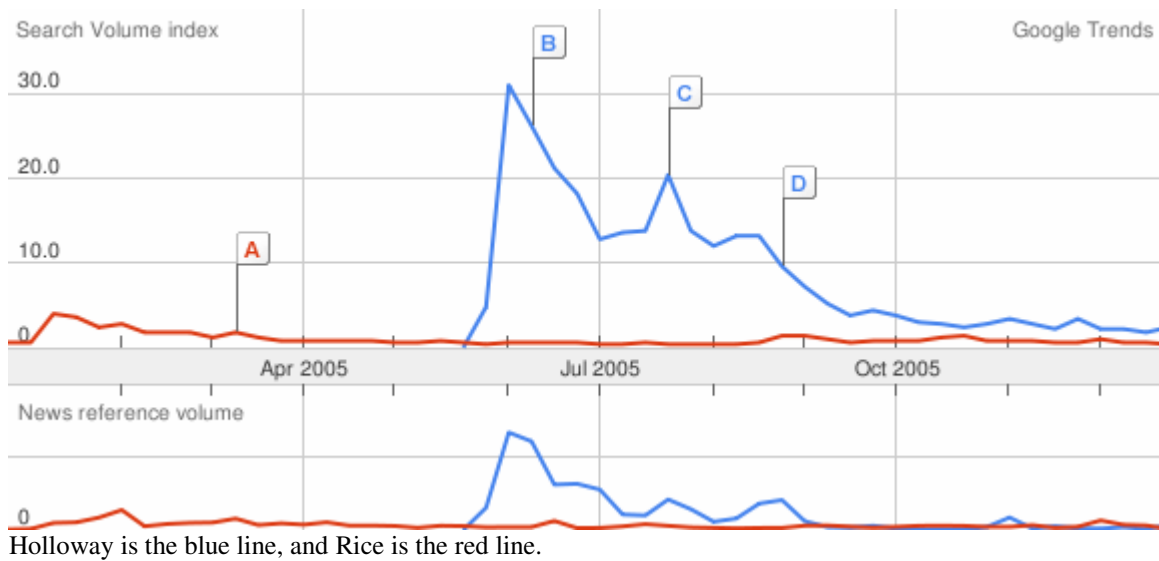
Police, Dompig, claimed that Aruba invested \$3 million into the investigation of Holloway's disappearance, which is roughly 40% of its budget.³⁷⁷

C. Extent of the Broadcast and Cable Media Coverage

Scale is based on the average traffic of **Condoleeza Rice** from United States in 2005.

Natalee Holloway  5.40

Condoleeza Rice  1.00



During the month after Holloway's disappearance, the story generated 30 times the amount of Google searches as Condoleeza Rice. For the rest of the year, Google Searches for Natalee Holloway were consistently higher than searches for Secretary of State Condoleeza Rice.³⁷⁸ There was also more new references for Natalee Holloway than for Condoleeza Rice.

³⁷⁷ *Natalee Holloway: New Clues, 48 Hours*, available at http://www.cbsnews.com/stories/2006/03/22/48hours/main1430644_page2.shtml (last visited Aug. 15, 2008).

³⁷⁸ Google Trends, <http://www.google.com/trends?q=Natalee+Holloway,+Condoleeza+Rice&ctab=0&geo=US&geor=all&date=2005&sort=1>, last visited Sept. 13, 2008

Networks reportedly paid upwards of \$1,500-a-day for freelance cameramen, \$300 to \$400 for hotel rooms for producers and crew, and \$3,000 for satellite feeds.³⁷⁹ During the month of June 2005 Google searches for Holloway were more than double the amount for the Iraq War.³⁸⁰ Moreover, news references for Holloway were equal to the news reference for the Iraq War.³⁸¹ During the week of Nov 25-30, 2007, Holloway disappearance was one of the top ten stories on network and cable television.³⁸² In January 2008, the Holloway disappearance occupied 1% of the cable newshole.³⁸³ It also made the top ten stories list for the week of Feb 4-10 of 2008.³⁸⁴ During the height of the investigation ratings for the Fox News show *On the Record* increased by almost 60 percent over the previous year.³⁸⁵ Daily media coverage of the search continued for over one month even though new information was rarely revealed.³⁸⁶ The story was in the top ten “most talked about news in 2005” according to a Lexis Nexis report.³⁸⁷ ABC

³⁷⁹ David Adams, *From Paradise to Paradox in Aruba*, ST. PETERSBURG TIMES (Florida), Aug. 22, 2005, at 1A.

³⁸⁰ Google trends, available at <http://www.google.com/trends?q=natalee+holloway%2C+Iraq+war&ctab=0&geo=US&geor=all&date=2005-6&sort=1> (last visited Jul. 8, 2008).

³⁸¹ Google trends, available at <http://www.google.com/trends?q=natalee+holloway%2C+Iraq+war&ctab=0&geo=US&geor=all&date=2005-6&sort=1> (last visited Jul. 8, 2008).

³⁸² Project for Excellence in Journalism, *Top Ten News Stories by Percent: November 25 – 30, 2007*, available at <http://www.journalism.org/node/8754> (last visited Jul. 8, 2008).

³⁸³ *Id.*

³⁸⁴ Project for Excellence in Journalism, *Top ten News Stories by percent: February 4 – 10, 2008*, <http://www.journalism.org/node/9712> (last visited Aug. 28, 2008).

³⁸⁵ Adams, *From Paradise to Paradox in Aruba*, supra note__.

³⁸⁶ CNN.com, *ANDERSON COOPER 360 DEGREES*, (Aug. 11, 2008), available at (last visited Aug. 28, 2008).

³⁸⁷ Natalee Holloway was one of the top ten most talked about news stories in 2005, available at <http://www.lexisnexis.com/about/releases/0856.asp> (last visited Sept. 16, 2008).

broadcast two primetime specials devoted entirely to Holloway's disappearance,³⁸⁸ and CBS ran a *48 Hour* special on Holloway's disappearance.³⁸⁹

D. Effect of the Coverage

There are conflicting reports as to the stories effect on Aruba's economy. Some stories stated that a 4% decrease occurred in travel bookings to Aruba.³⁹⁰ Other reports claimed the story had very little effect on the Aruban tourism industry.³⁹¹ The media received harsh criticism for its disparate coverage of minorities and other missing people cases.³⁹² CNN's Anderson Cooper ran a segment about the media coverage and called it "ridiculous."³⁹³ Others lamented the coverage given to Holloway and the disregard for other missing person stories.³⁹⁴ Some reporters addressed the insufficient of coverage for minorities.³⁹⁵

³⁸⁸ABC News, *Exclusive: Joran Van der Sloot Talks About Night with Natalee Holloway*, (Feb. 22, 2006).

³⁸⁹ Natalie Holloway, CBS News.com, http://www.cbsnews.com/elements/2005/06/08/in_depth_us/timeline700368.shtml (last visited Jul. 8, 2008).

³⁹⁰ *Natalie Holloway: New Clues* CBS.News.com http://www.cbsnews.com/stories/2006/03/22/48hours/main1430644_page2.shtml (last visited Jul. 8, 2008).

³⁹¹ *Travel Business News*, AirGuideOnline.com & AirGuideBusiness.com, Jan 21, 2008, Business & Industry News ISSN: 1939-666X

³⁹² Laura Johnston, *Media Coverage of High-Profile Disappearances Faces Scrutiny*, PLAIN DEALER, July 1 2007, at A10, available at

<http://www.cnn.com/CNN/Programs/anderson.cooper.360/blog/2006/03/diagnosing-missing-white-woman.html>; Alex Johnson, *Damsels in Distress*, MSNBC (July 23, 2004) available at <http://www.msnbc.msn.com/id/5325808>; Eugene Robinson, *(White) Women We Love*, Wash. Post, June 10, 2005 at A23 available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/06/09/AR2005060901729.html>; Josh Monkiewicz, *Why Do We Care About Natalie, Laci, Jennifer?* MSNBC.com Aug. 5, 2005 available at, <http://www.msnbc.msn.com/id/8667821/> (last visited Jul. 8, 2008).

³⁹³ Anderson Cooper 360 Degrees, CNN.com available at, <http://transcripts.cnn.com/TRANSCRIPTS/0508/11/acd.01.html> (last visited Jul. 8, 2008).

³⁹⁴ Alex Johnson, *Damsels in Distress*, *supra note* ____.

³⁹⁵ Eugene Robinson, *(White) Women We Love* *supra note* ____ (last visited Jul. 8, 2008).

E. Economics of the Coverage

Several of the key players in the story released books. On April 11, 2006, David Holloway (Natalee's father) released a book entitled *Aruba: The Tragic Untold Story of Natalee Holloway and Corruption in Paradise* which was published by Thomas Nelson.³⁹⁶ Thomas Nelson is a privately held Christian based publishing company.³⁹⁷ Joran Van Der Sloot released a book in his native Dutch entitled: *De ZAAK Natalee Holloway* (the case of Natalee Holloway).³⁹⁸ Dutch investigative journalist De Fries completed an investigative report on Van der Sloot.³⁹⁹ For two years, De Fries had a decoy pose as Van der Sloot's friend to gain his trust.⁴⁰⁰ Eventually Van der Sloot confided in the decoy and explained what happened that night.⁴⁰¹ On a hidden camera, Van der Sloot admitted that during a tryst on the beach, Holloway began to convulse and died.⁴⁰² He also reported that he called a friend to dump Holloway's body into the ocean.⁴⁰³ Van Der Sloot denied the confessions, and the Aruban authorities failed to re-arrest him.⁴⁰⁴ The decoy (Van Der Eem) also released a book in Dutch called:

³⁹⁶ Amazon, <http://www.amazon.com/Aruba-Natalee-Holloway-Corruption-Paradise/dp/1595550631> (last visited Aug. 28, 2008).

³⁹⁷ Thomas Nelson, http://www.thomasnelson.com/consumer/dept.asp?dept_id=1118914&TopLevel_id=100000, (last visited Aug. 28, 2008).

³⁹⁸ Joran van der Sloot, *DE ZAAK NATALEE HOLLOWAY*, (2007) ISBN9789021800141.

³⁹⁹ Jessica Velmans, *Reporter Claims to Crack Natalee Holloway Case*, ABC News available at <http://abcnews.go.com/TheLaw/Story?id=4230840&page=1> (last visited Aug. 28, 2008).

⁴⁰⁰ Michael James, *Holloway Suspect: 'I know What Happened'*, ABC News, Feb. 3, 2008 available at <http://a.abc.news.com/TheLaw/story?id=4222253&page=1>.

⁴⁰¹ *Id.*

⁴⁰² Associated Press, *Court Blocks Dutch Student's Arrest in Holloway's Disappearance*, Fox News, <http://www.foxnews.com/story/02933.330754.00.html> (last visited Jul. 8, 2008).

⁴⁰³ Dutch News.nl, *Holloway Tapes: Van der Eem Used Cocaine*, available at http://www.dutchnews.nl/news/archives/2008/06/holloway_tapes_van_der_eem_useep hp (last visited Jul. 8, 2008).

⁴⁰⁴ <http://www.foxnews.com/story/0.2933.330754.00.html> (last visited Jul. 8, 2008).

OverBoard.⁴⁰⁵ Holloway's mother, Beth Holloway, released a book entitled; *Loving Natalee: A Mother's Testament of Hope and Faith*, published by Harper One on Oct. 2, 2007.⁴⁰⁶ Harper One is owned by Harper Collins, which is a subsidiary of the News Corporation.⁴⁰⁷ The News Corporation also owns the Fox News network.⁴⁰⁸ During the height of the investigation, Fox News Network show *On the Record* increased its ratings by over 60 percent because of its extensive coverage of Holloway's disappearance.⁴⁰⁹

⁴⁰⁵

http://www.dutchnews.nl/news/archives/2008/06/holloway_tapes_van_der_eem_use.php (last visited Jul. 8, 2008).

⁴⁰⁶ Harper Collins, available at

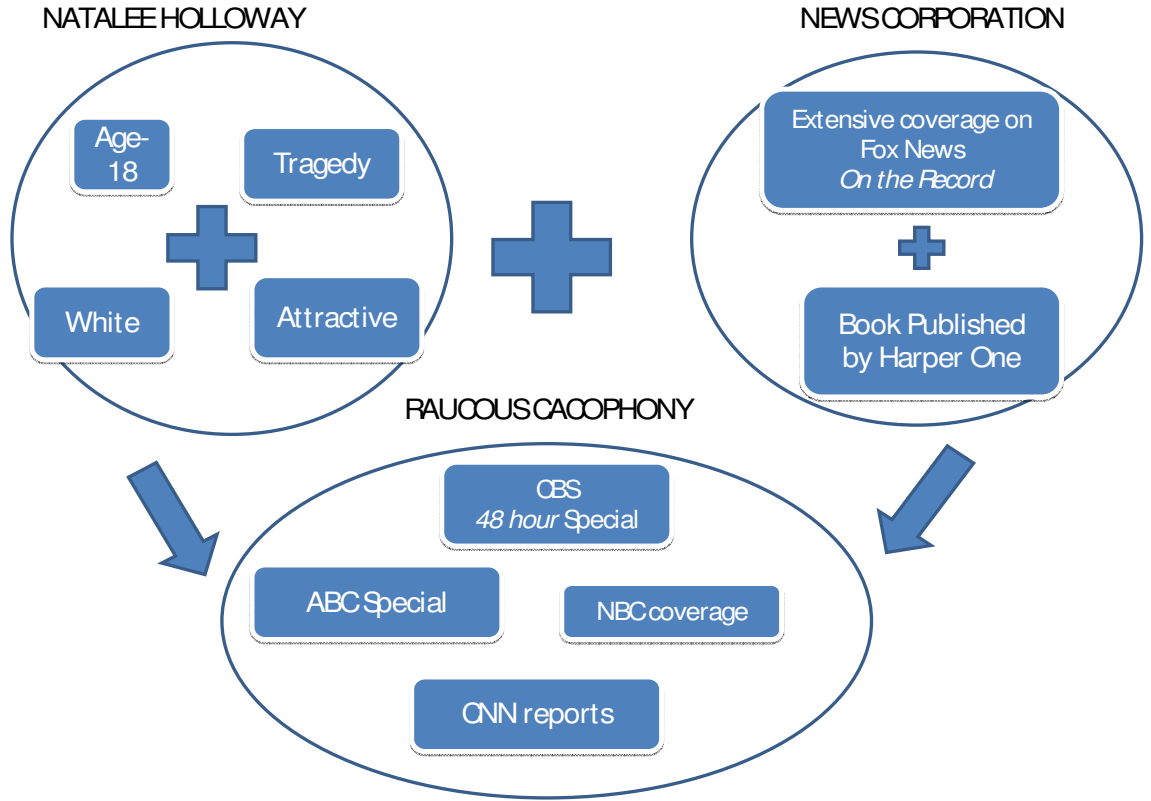
http://www.harpercollins.com/books/9780061452277/Loving_Natalee/index.aspx (last visited Aug. 28, 2008).

⁴⁰⁷ Who owns what: News Corporation available at

<http://cjrarchives.org/tools/owners/newscorp.asp> (last visited Jul. 8, 2008).

⁴⁰⁸ Id.

⁴⁰⁹ Adams, *From Paradise to Paradox in Aruba*, ST. PETERSBURG TIMES (Florida) August 22, 2005, at 1A.



X. Conclusion

It has been approximately forty years since the U.S. Supreme Court found the Fairness Doctrine constitutional and approximately twenty years since the FCC eliminated it. The FCC designed the Fairness Doctrine to ensure that in our American democracy that the public was well informed. In *Red Lion*, the Supreme Court justified its ruling on the fact that with broadcasting, it had to not only consider the First Amendment rights of the broadcast licensees but also of the audience.⁴¹⁰ It held that the broadcasters had a fiduciary duty towards the viewing and listening audience.⁴¹¹ Since

⁴¹⁰ *Id.* at __

⁴¹¹ *Id.* at __.

Red Lion, the Supreme Court has not addressed the constitutionality of this provision..⁴¹²

Although the *Syracuse Peace Council* found that the FCC could repeal the Fairness Doctrine, it failed to address its underlying constitutionality. In that case, one of the dissenting judges wanted to preserve the Fairness Doctrine prong that required the broadcasters to broadcast important issues. The constitutional precepts established in *Red Lion* are still good law

During the 1980s, the FCC pursued a more deregulatory agenda and one of its goals was the elimination of the Fairness Doctrine. Although there has been an increase in the number of broadcast stations, cable outlets, magazines, and the Internet since the Fairness Doctrine was terminated, there also has been an unprecedented increase in media consolidation. Few independent media owners exist, and the public is deprived of robust discussion of important issues necessary for a functioning democracy. Instead, the public gets a steady diet of news and information about white women in peril—celebrity bad girls in trouble and other white women caught up in unfortunate tragedy. The public knows more about these women celebrities than it does about Secretary of State Condoleeza Rice, and there are more news references and coverage of these women celebrities than for Secretary of State Rice—arguably one of most the most powerful women in Washington.

The increase in tabloid stories has occurred because news divisions have become profit centers in which the broadcasters and the cable companies are almost solely interested in increasing ratings of their news shows to increase advertising dollars. Almost ½ of the public believes that the government should bring back the Fairness

⁴¹² *Red Lion Broadcasting*, 395 U.S. 367.

Doctrine.⁴¹³ This excessive coverage of white women in peril and the lack of coverage of real issues on news suggests that the Fairness Doctrine should be revived; the media had betrayed their public trust and obligation to inform the public about real issues. Instead, they look for opportunities to just make profits from their government license.⁴¹⁴

Although the public may watch and be fascinated by this media coverage, the public blames the media for too much celebrity coverage.⁴¹⁵ The media ecology is now set up in a manner that “nudges” media audiences to consume the tabloid cookies and candy as opposed to the public interest broccoli.⁴¹⁶ When the Fairness Doctrine existed, it “nudged” both the media and the audience to consume information necessary for our democracy. Without that “nudge” and in fact with a “nudge” in the opposite direction, the media now broadcast and the audience consumes vast amounts of tabloid fare, instead of information that would be healthier for the American democracy.

The mix of personal drama and celebrity fame causes a raucous cacophony of media coverage across combined media platform. The common thread that binds all these women together is that they are young, white and reasonably attractive. The public is already interested in the female celebrities but can also be drawn into the unfortunate dramas that unfold with the unknown women who find themselves in peril.

⁴¹³ 47% Favor Government Mandated Political Balance on Radio, TV, Rasmussen Reports, Aug. 14, 2008, available at http://rasmussenreports.com/public_content/politics/general_politics/47_favor_government_mandated_political_balance_on_radio_tv (last visited Aug. 15, 2008).

⁴¹⁴ John Eggerton, *Kerry Wants Fairness Doctrine Reimposed*, *Broad. & Cable*, (Jul. 27, 2007) available at <http://www.broadcastingcable.com/article/CA6456031.html> (last visited on Aug. 15, 2008).

⁴¹⁵ *Public Blames Media For Too Much Celebrity Coverage: Cable and Network TV Worst Offenders*, *PewResearch.org*, August 2, 2007, available at <http://pewresearch.org/pubs/557/public-blames-media-for-too-much-celebrity-coverage>, (last visited July 11, 2008).

⁴¹⁶ RICHARD H. THALER AND CASS R. SUNSTEIN, *NUDGE*, at 1-5.

The media cover these tabloid stories because they resonate with the public on a deep and emotional level, and the stories will ratings. These stories also allow the media to cross market their products and commodifying these while women celebrities. Although the media have this focus on these young, white and attractive women, women of color rarely get this media treatment even when it might help solve a crime. For the women who are unknown at the time that they get caught up in tragedy, the stories provide candy for a world-weary audience who does not want to focus on war and a bad economy.

The media companies look for opportunities to market these tragedies across their different media platforms. Traditional advertising is so pervasive that has lost effectiveness. The media are looking for nontraditional ways to sell their products. White women in peril become the product. The public is fascinated by their activities and empathizes with their plights. It then allows the media to sell more advertising time because their ratings increase; it also allows the media to sell the actual products of white celebrity white women. By hyping these women in peril, the media create an echo effect causing raucous cacophony across a variety of media platforms that actually sell these women's tragic stories. These white women in peril become big business dominating coverage in tabloid as well as mainstream media. Meanwhile real stories of importance dealing with energy independence, economic strategies, or foreign policy are not covered in depth and putty our democracy in actual peril.