

REPORTS OF SPECIAL COMMITTEES

SPECIAL COMMITTEE ON MEDIA, BENCH-BAR RELATIONS

Alexander Wellford, Chair

The areas of friction between media, bench, and bar that surfaced during the past year seem to have been subpoenas to reporters, closure of courtroom proceedings, and trial publicity in the form of lawyer statements to the media. Regarding the latter, Rule 3.6 of the new Virginia Rules of Professional Conduct has adopted a stricter standard governing prohibited statements to the media by lawyers involved in criminal matters that may be tried by a jury. The new standard abandons the former "clear and present danger" test in favor of "substantial likelihood of interfering with the fairness of the trial by a jury." Application of the standard to lawyers' published comments are matters for the trial courts and ethics committees, and are beyond the scope of the activity of the Media-Bench-Bar Relations Committee.

With respect to courtroom closures, it is the committee's observation that in many cases trial counsel ignore the requirement of both the Supreme Court of Virginia and the United States Court of Appeals for the Fourth Circuit that advanced notice of a closure motion be given to the public so that the public, including the media, will have an opportunity to be heard in opposition before closure occurs. Closure motions made without notice during proceedings, or immediately before they begin, do not give busy trial judges a fair opportunity to consider the applicable law, since the side opposing closure is not heard before closure occurs. To partially correct this situation, the committee has made itself available to discuss the considerable body of law on courtroom closures at appropriate judicial functions so that judges who have not been confronted with closure motions will be better prepared to address them. One such presentation was made by committee members at a meeting of Region 3 circuit judges. ❀