

MEGAN J. INWOOD

**HOME INVASION: CRIME WAVE OR MEDIA
CREATION?**

**A STUDY OF MEDIA AGENDA-SETTING IN
NEW ZEALAND**

LLB(HONS) RESEARCH PAPER

MEDIA LAW (LAWS 533)

LAW FACULTY

VICTORIA UNIVERSITY OF WELLINGTON

2000

I 63

INWOOD, M.J.

Home invasion

41
V



VICTORIA
UNIVERSITY OF
WELLINGTON

*Te Whare Wananga
o te Upoko o te Ika a Maui*



LIBRARY

CONTENTS

I	INTRODUCTION	1
II	THE THEORY OF MEDIA AGENDA-SETTING	5
A	History	5
B	The Mechanics of Media Agenda-Setting	7
C	Defining News	10
D	Summary of the Scope of Media Agenda-Setting	12
III	MEDIA AGENDA-SETTING IN NEW ZEALAND – HOME INVASION	13
A	Background	13
B	Phase One: The Moral Panic Erupts	14
	1 The coverage	14
	2 Explaining the coverage	17
	3 The 'home invasion' tag	18
	4 Home invasion – the crime wave	20
	5 Home invasion – the moral panic	23
	6 The home invasion amplification spiral	24
C	Phase Two: From News Theme to Election Issue	25
	1 The Government's reaction to the media coverage	25
	2 The Opposition's reaction to the Government's Bills	26
	3 The media reaction to the political reaction	27
	4 The Select Committee	28
D	Evaluation of the Media's Role in the Passage of this Legislation ...	31
E	Evaluation of the Legislation	32
	1 Deterrence	33
	2 Increasing Penalties	34

a) longer sentences: the Crimes (Home Invasion) Amendment Act 1999.....	34
b) longer non-parole periods: the Criminal Justice Amendment Act (No. 2) 1999	39
3 Public Reassurance	41
F Other Examples of Media Agenda-Setting in New Zealand	44
1 Past Examples	44
2 Future Predictions	46
IV DESIRABILITY OF THE MEDIA AGENDA-SETTING ROLE ...	47
V CONCLUSION	51
APPENDIX A CRIMES (HOME INVASION) AMENDMENT ACT 1999	52
APPENDIX B CRIMINAL JUSTICE AMENDMENT ACT (No. 2) 1999	60
APPENDIX C REFERENDUM 1999	62

ABSTRACT

Media agenda-setting theory postulates that by their choice of which events they select as 'news' and their prominence the news media has the power to set the social and political agenda. This paper seeks to demonstrate the existence of media agenda-setting in New Zealand by analyzing the 1998 home invasion 'crime wave' and the resulting legislation – the Crimes (Home Invasion) Amendment Act 1999 and the Criminal Justice Amendment Act (No. 2) 1999. This paper argues that this legislation was unnecessary and ill-advised, in practice achieving few of its aims and creating sentencing anomalies in the process. The Government simply jumped on the media's 'crime wave' bandwagon without objectively assessing either the reality of home invasion or the best reaction to it. Yet, the media's agenda-setting power is crucial to its role as public watchdog and political adversary. Therefore this paper argues that for this power to be genuinely beneficial, there is an onus on the media, the public and the politicians to recognise the existence and significance of the media coverage in influencing the social and political agenda so as to ensure their reactions are based on reality rather than a media creation.

The text of this paper (excluding contents page, footnotes, and annexures) comprises approximately 12,345 words.

I INTRODUCTION

The Press has become the greatest power within Western countries, more powerful than the legislature, the executive, and the judiciary. One would then like to ask: By what law has it been elected and to whom is it responsible?¹

It is widely accepted by political theorists that the news media are an undeniable part of the Western political system.² However, until relatively recently their role has been conceived at best, as mere re-enforcers of trends of political change which are instigated by a political elite or by leaders of important social groups; at worst, as mere recorders.³ It is only in the past two decades that the news media has become widely recognized as playing a role in setting the political agenda, rather than merely documenting it.⁴

The theory of media agenda-setting postulates that by their choice of which events they select as 'news' and their prominence the news media defines "what is of political concern, of economic importance and of cultural interest to us."⁵ This media role has most frequently been documented in relation to the fate of political candidates or the efforts of wily lobbyists.⁶ However, arguably one of the most interesting and least researched facets of this agenda-setting function is the news media's influence on the setting of governmental policy

¹ Aleksandr Solzhenitsyn in William R. Rivers *The Other Government: Power and the Washington Media* (1982) 7 in Kristine A. Oswald "Mass Media and the Transformation of American Politics" 1994 77 Marq L Rev 385, 385 ["Mass Media"].

² Sidney Kraus and Dennis Davis *The Effects of Mass Communication on Political Behaviour* (Pennsylvania State University Press, USA, 1976), 175 [*Mass Communication*]; John Whale *Journalism and Government* (MacMillan Press Ltd, London, 1972), 29.

³ *Mass Communication* above n 2, 175. This traditional view still advocated by some writers see Denis McQuail *Media Performance: Mass Communication and the Public Interest* (Sage Publications, London, 1992), 273; Edward S. Herman and Noam Chomsky *Manufacturing Consent: The Political Economy of the Mass Media* (Vintage, London, 1994) xi [*Manufacturing Consent*].

⁴ See J. Herbert Altschull *Agents of Power: The Role of the News Media in Human Affairs* (Longman, New York, 1984), 194 [*Agents of Power*]; Roger D. Wimmer and Joseph R. Dominick *Mass Media Research: An Introduction* (5th ed, Wadsworth Publishing Company, California, 1997), 356 [*Mass Media Research*].

⁵ "Preface" in John Downing, Ali Mohammadi, Annabelle Sreberny-Mohammadi *Questioning the Media: A Critical Introduction* (Sage Publications, London, 1990), 12 [*Questioning the Media*].

⁶ See *Mass Media Research* above n 4, 356.

agendas, those items which decisions-makers formally accept for serious consideration.⁷

However, despite the popularity of agenda-setting research in North America, New Zealand currently lacks any specific empirical research in this area therefore this essay is necessarily of an introductory nature. On a much smaller scale than the America research it seeks to examine the role of the news media in setting the political agenda in New Zealand through an analysis of the recent home invasion legislation – the Crimes (Home Invasion) Amendment Act 1999⁸ and the Criminal Justice Amendment Act (No. 2) 1999.⁹ As with most media research this essay focuses only on the print media, and the news print media [the media] in particular.¹⁰

The essay is separated into five main parts beginning with this introduction. Part II presents an overview of international scholarship on media agenda-setting. It observes that while agenda-setting as a research concept is only a recent development,¹¹ it has already become a truism among political scientists.¹² Such is the power of agenda-setting that, as Lord Northcliffe of *The Daily Mail* stated, “[t]he whole country will think with us when we say the word.”¹³ However this power is acknowledged to be limited to telling the public what to think about, rather than actually what to think.¹⁴ Thus, while it is likely that *The Daily Mail* readers may have thought about Lord Northcliffe, precisely what they may have thought of him could have come as rather a rude

⁷ Philip Schlesinger and Howard Tumber *Reporting Crime: The Media Politics of Criminal Justice* (Clarendon Press, Oxford, 1994), 37 [*Reporting Crime*].

⁸ Attached Appendix A.

⁹ Attached Appendix B.

¹⁰ Although broadcast media also plays an important role in influencing public and political agendas, in practical terms the difficulties of maintaining a systematic survey of television and radio would mean that any impression obtained would be generalized and unreliable – see Jane Kelsey and Warren Young *The Gangs: Moral Panic as Social Control* (Victoria University, Wellington, 1982) 5 [*The Gangs*].

¹¹ *Mass Communication* above n 2, 215.

¹² Ben H. Bagdikian *The Media Monopoly* (5th ed, Beacon Press, Boston, 1997) xlvi [*The Media Monopoly*].

¹³ Colin Seymour-Ure *The Press, Politics and the Public: an Essay on the Role of the National Press in the British Political System* (Methuen and Co Ltd, London, 1968) 276 [*The Press*].

¹⁴ *The Media Monopoly* above n 12, xlvi.

shock.¹⁵ Another widely acknowledged constraint on media agenda-setting is that it is not a universal influence affecting all persons on all topics at all times.¹⁶ The limits of agenda-setting are inherent within the media itself, and in the scope of the public and politicians' own knowledge, experience and interests.

Part III considers media agenda-setting in the New Zealand context by examining the role of the media in the passage of the Crimes (Home Invasion) Amendment Act 1999 and the Criminal Justice Amendment Act (No. 2) 1999. The focus of this section is on the media's role in linking a series of unrelated events (home invasions), giving rise to an increased fear of the crime and a public outcry for tougher sentencing of offenders, thus prompting a swift legislative response. In this analysis particular attention is paid to the concepts of 'crime waves', 'amplification spirals', and 'moral panics'. The home invasion legislation itself is also critically assessed in order to determine whether this legislation was an appropriate response to a genuine crime problem or a political public relations exercise based on media-produced panic. From this analysis Part III concludes that this legislation was a misguided and unnecessary knee-jerk reaction to media-driven public concern which clearly illustrates the existence of media agenda-setting in New Zealand. Then, in order to establish that this was not an isolated occurrence, Part III also canvasses such past examples of media agenda-setting as the 1980's gang legislation, and makes predictions as to potential future examples.

Part IV considers the desirability of the agenda-setting role for the New Zealand media. In a democratic society citizens have the right to expect legislation impinging on their rights to be embarked upon only after careful consideration and due process. New Zealand's own home invasion legislation demonstrates that media agenda-setting can result in laws of the most

¹⁵ *The Press* above n 13, 284.

¹⁶ Maxwell McCombs "Agenda-Setting: A New Perspective on Mass Communication", keynote address for conference on Perspectives in Mass Communication, Mohawk Valley Community College, Utica, N.Y., 1-3 April, 1975 in *Mass Communication* above n 2, 222 ["Agenda-Setting"].

significant kind – those which impose restrictions on our personal liberty – with no evidence that such measures will provide an effective solution for the perceived problem, or even whether there is actually a problem at all. Thus, in considering the desirability of media agenda-setting, this section will consider whether there is sufficient public and political awareness of this role and possible implications for the regulation of the media and/or media ownership and education of the parties involved.

Finally, Part V concludes that the media plays a significant role in shaping public and political opinion and, as the knowledge revolution continues, it seems this influence will only increase.¹⁷ In order to protect against future unnecessary legislation this media power requires public acknowledgment and evaluation rather than an injudicious legislative reaction to media-driven public interest.

¹⁷ See Kevin P. Phillips *Mediocracy: America Parties and Politics in the Communications Age* (Doubleday and Co. Inc., New York, 1975) 24, 30 [*Mediocracy*]; Colin Seymour-Ure *The Political Impact of Mass Media* (Constable and Co Ltd, London, 1974) 16.

II THE THEORY OF MEDIA AGENDA-SETTING

A History

Traditionally the media has been viewed as a disinterested objective observer.¹⁸ Their activities were perceived as a mere reflection of events for their audience. The only active role to be assigned to the media was that of a tool for the political elite or leaders of important social groups to use to reinforce desired trends of political change.¹⁹ However, since the early 1970's the theory of an active independent role for the media in the political process has become an increasingly popular topic for scholarship. The influence of the media on voting behaviour, the acquisition of political beliefs, the electoral process, and the dissemination of political information, have all been the subject of extensive research and literature.²⁰ Most recently the media has even been found to play an independent role in setting the political agenda, rather than merely recording it.²¹

It has been said that the theory of media agenda-setting can be traced to Walter Lippman's suggestion in 1922 that the media are responsible for the 'pictures in our heads'.²² However it was Bernard Cohen forty years later who provided what was to become the most well-known explanation of agenda-setting when he observed that the media:²³

may not be successful much of the time in telling people what to think, but it is stunningly successful in telling its readers what to think *about*.

The slow gestation of agenda-setting theory was finally completed in 1972 with the first empirical test of agenda-setting theory in McCombs and Shaw's

¹⁸ *Agents of Power* above n 4, 194.

¹⁹ *Mass Communication* above n 2, 175.

²⁰ See *Mass Communication* above n 2, 4.

²¹ *Agents of Power* above n 4, 194.

²² *Mass Media Research* above n 4, 356.

study of the 1968 presidential election.²⁴ This initial study found strong support for the agenda-setting hypothesis and inspired a host of other studies on this influential media power which have also shown a strong support for the validity of agenda-setting theory.²⁵ While the vast majority of this material is America-focused this can be explained to some degree by America's position as the "the first communications society", apparently on its way to becoming the first mediocracy.²⁶

The impact of media agenda-setting is usually measured by comparing what the media report and its prominence (the media agenda) with the saliency of that report among individuals in various parts of the public (the public agenda).²⁷ The higher the correlation between the media agenda and the public agenda the greater the effect of media agenda-setting is determined to be. However it is only recently that agenda-setting research has moved away from a focus on political campaigns to other aspects of the media's agenda-setting capabilities.²⁸ An aspect of particular interest to legal and political scholars is the relationship between the media and the development of governmental policy agendas, that is those items decisions-makers have formally accepted for serious consideration.²⁹ By examining the formation of governmental policy agendas in light of agenda-setting theory it may be possible to understand more fully why governments make the decisions they do when they do.

In 1981 Linsky, Moore, O'Donnell, and Whitman undertook the first large-scale research on the effects of media agenda-setting on the formation of public policy in America.³⁰ The purpose of this work was threefold.³¹ First, the

²³ Bernard Cohen *The Press and Foreign Policy* (Princeton University Press, Princeton, 1963) 13 in *Mass Communication* above n 2, 216 (emphasis in original).

²⁴ *Mass Media Research* above n 4, 356.

²⁵ *Mass Media Research* above n 4, 356.

²⁶ *Mediocracy* above n 17, v.

²⁷ *Mass Communication* above n 2, 213-4.

²⁸ *Mass Media Research* above n 4, 356.

²⁹ *Reporting Crime* above n 7, 37.

³⁰ The results of this research are published in two books - Martin Linsky, Jonathan Moore, Wendy O'Donnell and David Whitman *How the Press Affects Federal Policymaking* (W.W. Norton and Co, New York, 1986) [*How the Press*] and Martin Linsky *Impact: How the Press Affects Federal Policymaking* (W.W. Norton and Co., New York, 1986), 203 [*Impact*].

³¹ *How the Press* above n 30, 1.

researchers wanted to reach out to the general public to increase their understanding about the real impact of the media on governmental decision-making. Second, they aimed to educate future and present public policymakers and journalism professionals about the role of the media. Third, the research was intended to assist faculty interested in developing curricula and teaching in this area. The research involved six case studies ranging from the resignation of Vice-President Agnew to the decision of President Carter not to deploy the neutron bomb. These case studies covered all the variables – different timeframes, administrations, different executive branches, domestic and foreign policy, reaction to and anticipation of media coverage, and manipulation of the media by the government itself.³²

By 1986 the team of six researchers concluded that the media has substantial and specific impacts on policies and policymaking in federal government.³³ They found that both the public and the policymakers were increasingly relying on what was published and broadcast for information about public affairs. Ultimately in all of their research – the cases, the survey, and the interviews – they found evidence of how central the press was to the decision-making process in government.³⁴

The question that must be asked then is how does this central media power work?

B The Mechanics of Media Agenda-Setting

If a tree falls in the forest, and the media are not there to cover it, has the tree really fallen?³⁵

The first thing that must be understood about agenda-setting theory is that no one contends that this media power is a universal influence affecting everyone

³² *How the Press* above n 30, 2.

³³ *Impact* above n 30, 203.

³⁴ *Impact* above n 30, 69.

³⁵ Gary R. Orren "Thinking about the Press and Government" in *Impact* above n 30, 1.

on every topic all the time.³⁶ Media coverage is neither a necessary nor an easily controllable influence on the public or political agenda. Agenda-setting itself is not subject to rigid rules or formulae.³⁷ One journalist could set out with the specific intention of placing a certain issue on the political agenda yet find it goes nowhere, while another may unintentionally achieve this by simply doing their job. In either case the issue's fate rests upon an unreliable interplay of various currents.

We are said to gain the knowledge from which we construct our social reality from four sources – personal experiences, significant others, groups and institutions, and the media – in more or less that order.³⁸ Thus the media is most effective in influencing individuals on those matters for which we lack informal knowledge. Yet, due to the nature of modern society and the range of events and information which most of us encounter on a daily basis,³⁹

the media are often presenting information about events which occur outside the direct experience of the majority of the society. The media thus represent the primary, and often the only, source of information about many ... events and topics.

As such the media are “one of the most available, serious and powerful means by which each of us orders our daily lives.”⁴⁰ They have become the authority for “what is true and what is false, what is reality and what is fantasy, what is important and what is trivial.”⁴¹ Thus the media can make an issue important

³⁶ “Agenda-Setting” above n 16.

³⁷ *Impact* above n 30, 89.

³⁸ Frankie Y. Bailey and Donna C. Hale “Popular Culture, Crime and Justice” in Frankie Y. Bailey and Donna C. Hale (eds) *Popular Culture, Crime and Justice* (Wadsworth Publishing Company, Belmont, 1998) 1, 2.

³⁹ Stuart Hill, Chas Critcher, Tony Jefferson, John Clarke and Brian Roberts “The Social Production of News: Mugging in the Media” in Stanley Cohen and Jock Young *The Manufacturing of News: Deviance, Social Problems and the Mass Media Revised Edition* (Sage Publications, California, 1973) 335, 339-340 [*The Manufacturing of News*].

⁴⁰ Richard V. Ericson, Patricia M. Baranek, Janet B.L. Chan *Representing Order: Crime, Law and Justice* (Open University Press, Buckingham, 1991) 358 [*Representing Order*].

⁴¹ *The Media Monopoly* above n 12, xliv.

simply by blowing it up, or render it unimportant simply by not publicising it.⁴² For, in a society such as ours, "which is dependent upon mass media to circulate information, absence from media products is absence from the public arena and the public agenda of debate."⁴³

For politicians the need to be sensitive to the coverage they receive in the media is an understandable, but scarcely new, concept.⁴⁴ However, more recently, the media has also been recognized as an increasingly crucial political resource. The media is the primary source of information for politicians about what the mass public are thinking and doing.⁴⁵ As the central line of communication between the politicians and the public,⁴⁶ the media are pivotal to the ability of authorities to make convincing claims and access public support.⁴⁷ It is this reciprocal relationship between politicians and the media which means that it is "a rare media bandwagon that has not been pushed along by politicians."⁴⁸

Of course the mere appearance of an event or product in the media does not guarantee public attention will result. Brief isolated news items apparently unconnected and lacking prominent coverage, are unlikely to capture public attention and, as a result, are unlikely to provoke governmental reaction.⁴⁹ On the other hand continuous repetition and emphasis which builds events or ideas into a coherent picture creates high priorities in the public mind and in government.⁵⁰ Altheide suggests that the extent of this impact:⁵¹

⁴² Geoffrey Palmer *New Zealand's Constitution in Crisis: Reforming Our Political System* (John McIndoe Ltd, Dunedin, 1992) 213 [*New Zealand's Constitution in Crisis*]. See also Henry Mayer *Mayer on Media: Issues and Arguments* (Allen and Unwin, New South Wales, 1994) 35.

⁴³ Shirley Leitch "The Media and Politics" in Hyam Gold (ed) *New Zealand Politics in Perspective* (3rd ed, Longman Paul, Auckland, 1992) 40, 50.

⁴⁴ Simon Serfaty "The Media and Foreign Policy" in Simon Serfaty (ed) *The Media and Foreign Policy* (St Martin's Press, New York, 1990) 1.

⁴⁵ *Journalism and Government* above n 2, 29; *The Press* above n 13, 285.

⁴⁶ *Impact* above n 30, 10.

⁴⁷ *Representing Order* above n 40, 8.

⁴⁸ David Wilson and John Ashton *What Everyone in Britain should know about Crime and Punishment* (Blackstone Press, London, 1998) 49 [*What Everyone in Britain should know*].

⁴⁹ *The Media Monopoly* above n 12, 15-6.

⁵⁰ *The Media Monopoly* above n 12, 16.

is most clearly seen by reflecting on the dominant issues of the ... [1960's]: race relations, poverty, war, ecology, and political corruption. All have been presented as news stories. But the most striking thing about them is that they were serially presented even though they existed simultaneously and can still be found. The public was aroused about these issues, but only after each had been treated as news.

This analysis raises the question of what or who defines what is 'news'?

C *Defining News*

It has been suggested that "all human life" is found in the media.⁵² However, in reality every day journalists must determine which of the millions of pieces of information in the world to report and which to omit. This process of news selection is influenced not only by journalists but also by politicians, officials, the public, and forces within the media themselves. The first filter on our news is the method of information collection employed by journalists. Practicality dictates that all the world's potentially newsworthy events could never be collected together or observed first hand thus journalists must often rely upon others to regularly and reliably provide such information.⁵³ In relation to political issues this means government officials, for crime it is the police and the courts and so forth.⁵⁴ This reliance on official sources for information provides an automatic filter on which events have the potential to become 'news' and can therefore result in a certain degree of media manipulation and censorship at this early stage in the news selection process.

The second filter involves the selection of specific items for publication and their ranking according to priority. The criterion for this choice is commonly

⁵¹ David Altheide *Creating Reality: How TV News Distorts Events* (Sage Publications, London, 1974) 26-7 [*Creating Reality*].

⁵² Selwyn Eagle "Introduction" in *Information Sources for the Press and Broadcast Media* (Bower-Saur Ltd, London, 1991) 1,1.

⁵³ *The Gangs* above n 10, 7-8.

⁵⁴ *The Gangs* above n 10, 8; *Manufacturing Consent* above n 3, 2.

described as 'newsworthiness'. There is no set formula for what is newsworthy. Writers variously cite such factors as simplicity, the ability to use shock headlines and the familiar scenario of 'good threatened by evil' or 'order threatened by chaos',⁵⁵ violation of social order, timeliness, political importance, conflict, negative events, visual interest, novelty and human interest;⁵⁶ bad news, violence, status, personalization and dramatic tension.⁵⁷ Therefore clearly at this stage the availability of background information and the ability to associate the current event with a news theme will enhance its newsworthiness as this places the event within a wider context thus enabling the reader to more readily appreciate its significance.⁵⁸ It is at this stage of the news selection process that the public has the strongest influence as the criterion for newsworthiness reflect those factors which the public are interested in presently or generally.

A third filter on news selection concerns the influences within the media itself. News choices necessarily reflect to some degree the competing influences of commercialism and ratings, and competition with other media.⁵⁹ The nature of the organization itself is also a significant factor with its political ties and particular orientation influencing news choices.⁶⁰ Reliance on advertising as their primary source of income is also a discernible influence on many media organizations' news selection.⁶¹ Thus, although in these days of deregulation our media is often perceived as unhampered private enterprises, there are many restrictions inherent in their activities and choices which affect their news selection.

⁵⁵ Sian Hughes "The Reporting of Crime in the Press: A Study of Newspaper Reports in 1985" (1987) 18 *Cambrian LR* 35, 36 ["The Reporting of Crime"].

⁵⁶ *Questioning the Media* above n 5, 283.

⁵⁷ J. McGregor *Crime News as Prime News* (Legal Research Foundation, Auckland, 1993) 27, 30, 31.

⁵⁸ See Mark Fishman "Crime Waves as Ideology" in *The Manufacturing of News* above n 39, 98, 105.

⁵⁹ *Creating Reality* above n 51, 29

⁶⁰ See *Creating Reality* above n 51, 29, 61; *Manufacturing Consent* above n 3, 2.

⁶¹ *Manufacturing Consent* above n 3, 2.

D Summary of the Scope of Media Agenda-Setting

From this analysis it is clear that setting the political agenda is no mean feat. There are inherent restrictions in the media's ability to influence individuals both by the capacity of individuals to be influenced on the topic in question and the news selection process itself. Issues may rise or fall with or without media coverage. In the end whether a particular issue succeeds in being placed on the political agenda seems to depend on the political climate, the nature of the issue, and public receptiveness to it.

4 Background

The term "home invasion" appears to have first been used in the New Zealand media in 1997 when then Deputy Assistant Police Commissioner Brian Duncan claimed that such crimes were becoming common.⁴¹ However, it was not until late 1999 that the phrase entered popular vocabulary when the killing of Beverly Brown in her Reporoa home caught national media attention.⁴² This incident was the spark that lit the fires of New Zealand's home invasion phenomenon.

During the month of December barely a day passed without the reporting of another home invasion or a update on the progress of past incidents. Newspapers heralded each incident of "the latest home invaders"⁴³ and called

⁴¹ *Crime (Home Invasions)* *Amberdown* 265 (Nov. 42-43) *Examiner* Nov. 1.

⁴² "People no longer safe in their own homes - police chief warns" *New Zealand Herald*, Auckland, New Zealand, 18 August 1997, 3.

⁴³ "Quarter badly nightmare night" *Star*, Hamilton, New Zealand, 7 January 1999, 6; "What murder case took their toll" *Star*, Auckland, New Zealand, 7 January 1999, 2.

⁴⁴ "Police on hunt for man who invaded" *Star*, Hamilton, New Zealand, 16 December 1999, 3. See also "Home Invasion Case" *The Press*, Christchurch, New Zealand, 24 December 1999, 3.

III MEDIA AGENDA-SETTING IN NEW ZEALAND – HOME INVASION

In July of 1999 two Acts came into force in New Zealand with the stated aim of providing greater protection for people in their homes – the Crimes (Home Invasion) Amendment Act 1999 and the Criminal Justice Amendment Act (No. 2) 1999.⁶² These Acts were designed to put offenders away for longer and keep them there longer if their offending involved the element of home invasion. The significance of this legislation from an agenda-setting perspective is the manner in which home invasion came to political notice and the nature of the media, public and political reaction to this apparent new crime phenomenon.

A Background

The term 'home invasion' appears to have first been used in the New Zealand media in 1997 when then Assistant Police Commissioner Brian Duncan claimed that such crimes were becoming common.⁶³ However, it was not until late 1998 that the phrase entered popular vocabulary when the killing of Beverly Bouma in her Reporoa home caught national media attention.⁶⁴ This incident was the spark that lit the fires of New Zealand's home invasion phenomenon.

During the month of December barely a day passed without the reporting of another home invasion or an update on the progress of past incidents. Newspapers heralded each incident of "the latest home invaders"⁶⁵ and called

⁶² Crimes (Home Invasion) Amendment Bill (No. 262-1) Explanatory Note, 1.

⁶³ "People no longer safe in their own houses - police chief posts warning" *New Zealand Herald*, Auckland, New Zealand, 18 August 1997, 7.

⁶⁴ "Another family nightmare unfolds" *Waikato Times*, Hamilton, New Zealand, 7 January 1999, 6; "When murder cases took their toll" *Sunday Star Times*, Auckland, New Zealand, 2 January 1999, 2.

⁶⁵ "Police on hunt for latest home invaders" *Waikato Times*, Hamilton, New Zealand, 30 December 1998, 2. See also "Home Invasion Ordeal" *The Press*, Christchurch, New Zealand, 23 December 1998, 3.

for harsher penalties to stem this rising tide of violence threatening the sanctity of New Zealand homes.⁶⁶ By the end of December more than 70 per cent of New Zealanders were very concerned or quite concerned about being burgled or attacked in their homes.⁶⁷ When Parliament reconvened in 1999 (an election year) there were immediate press releases unveiling Government plans to fast-track Bills for harsher penalties “to counter the increase in violent home invasions.”⁶⁸ Although attempts to fast-track the Bills were thwarted, the Bills nevertheless passed through the House with unusual speed, and against the advice of Ministry of Justice officials,⁶⁹ to become law in just four months.⁷⁰

B Phase One: The Moral Panic Erupts

1 The coverage

On November 30 1998 four armed intruders forced their way into a Reporoa farmhouse, stole a shotgun, and credit and debit cards, and killed the woman who was to become New Zealand’s most well-known home invasion victim – 45 year old farmer Beverly Bouma.

When the police released details of this attack to the media the story received prime coverage, within the first few pages of the major dailies complete with a photograph of the victim.⁷¹ These initial stories were based almost entirely upon police information, essentially reporting only the official facts. By the next day the event had developed into front-page news as a fatal home

⁶⁶ “Invasions of our homes” *The Dominion*, Wellington, New Zealand, 8 December 1998, 10; “Hold-up hoodlums using fear to steal people’s trust” *The Daily News*, New Plymouth, New Zealand, 4 December 1998, 6.

⁶⁷ *New Zealand Herald-DigiPoll* discussed below at notes 88-9, 115-6.

⁶⁸ “Invasions prompt look at penalties” *The Evening Post*, Wellington, New Zealand, 8 January 1999, 3.

⁶⁹ See for example text below at note 143.

⁷⁰ The Bills were introduced in February 1998 and received their assent in July 1999.

⁷¹ “Four sought after woman killed in armed robbery” *The Dominion*, Wellington, New Zealand, 2 December 1998, 3; “Police discount rape, stabbing” *The Evening Post*, Wellington, New Zealand, 2 December 1998, 2; “Brutal killing of ‘a great Mum’” *New Zealand Herald*, Auckland, New Zealand, 2 December 1998, 1.

invasion.⁷² With the offenders on the run, and police appealing for public help, the media were provided with ongoing stimulation for reporting. However, what appears to have taken this crime from shocking aberration to public epidemic was the occurrence of a similar attack a few days later.

On Thursday 3 December three men forced their way into the home of market gardeners Brenda and Sonny Chan armed with a pistol and a 'slasher'.⁷³ Both Mr and Mrs Chan and their son were assaulted, with Mrs Chan and her son receiving fairly severe head injuries. It was only when two of the offenders left the house that Mrs Chan was able to overpower the remaining offender before he fled from the house. All three victims were kept in hospital overnight.

The Chan attack immediately hit the front pages in conjunction with the Bouma updates as police concerns about a possible link between the current crime with the Bouma murder fueled public and media interest. This constituted big news. Each report was allocated around half of the dailies' front pages complete with a map indicating the proximity of the incidents and a variety of photographs.⁷⁴ *The Evening Post* even included police hints on how to protect your home. The association between the two incidents was marked most strikingly by the cementing of the label 'home invasion' to describe this type of crime. The Chan incident was first "a home invasion similar" to the Bouma murder,⁷⁵ then one of "two central North Island home invasions".⁷⁶ By

⁷² "Home invasion woman killed by shot in neck" *The Dominion*, Wellington, New Zealand, 3 December 1998, 1; "Assault may be linked to slaying" *The Evening Post*, Wellington, New Zealand, 3 December 1998, 1; "Mother shot dead for \$2000" *New Zealand Herald*, Auckland, New Zealand, 3 December 1998, 1.

⁷³ "Manhunt heads south" *The Evening Post*, Wellington, New Zealand, 4 December 1998, 1; "Killers may still be driving victim's car" *The Dominion*, Wellington, New Zealand, 5 December 1998, 1.

⁷⁴ "Manhunt heads south" above n 73; "Woman fights off armed home intruder" *The Dominion*, Wellington, New Zealand, 4 December 1998, 1; "Fugitives may have reoffended" *The Press*, Christchurch, New Zealand, 4 December 1998, 1; "Plane will aid search for armed men in stolen car" *Waikato Times*, Hamilton, New Zealand, 5 December 1998, 1; "Woman tackles intruder during Ohakune robbery" *The Daily News*, New Plymouth, New Zealand, 4 December 1998, 1.

⁷⁵ "Woman fight off armed home intruder" above n 74.

⁷⁶ "Manhunt heads south" above n 73. See also "Victim leaves axe raider a marked man" *New Zealand Herald*, Auckland, New Zealand, 4 December 1998, 1.

using these few words in their opening lines journalists managed to indicate both the nature of the current incident and the specter of a relationship between the two.

Front-page coverage of the incidents continued for another three days. With each publication the incidents were recounted and the current status of the case reviewed.⁷⁷ Another possibly linked burglary near Ashurst was also introduced.⁷⁸ Beyond the front pages journalists surveyed a 'town in shock'.⁷⁹ The "spate of armed holdups and home invasions" was reported to have spawned a fortress mentality.⁸⁰ One editor even predicted that "[s]uch insecurity will lead to anarchy unless the police can bring things back under control and the courts take the toughest line possible."⁸¹ This intensive coverage only ceased when the Bouma killers were arrested; the link between the two attacks dismissed by police; and the limelight captured instead by a nine-and-a-half-hour hostage ordeal involving an MP's secretary and the near fatal heroic efforts of an elderly Napier man in saving his young female neighbour from a stabbing.⁸²

Despite its demotion from the front page, home invasion continued to receive significant media coverage. What would have previously been reported as aggravated burglaries or robberies became "the latest home invasions."⁸³

⁷⁷ See "Capital cops join manhunt" *The Evening Post*, Wellington, New Zealand, 5 December 1998, 1; "Police to fly over forests in car search" *New Zealand Herald*, Auckland, New Zealand, 5 December 1998, 1; "Links between attacks remote - police" *The Press*, Christchurch, New Zealand, 7 December 1998, 1; "Family numbers limit for court appearance" *The Evening Post*, Wellington, New Zealand, 7 December 1998, 1; "Four from Kaingaroa charged over killing" *The Dominion*, Wellington, New Zealand, 7 December 1998, 1.

⁷⁸ "Killers may still be driving victim's car" above n 73; "Capital cops join manhunt" above n 77.

⁷⁹ "How could this happen here?" *The Dominion*, Wellington, New Zealand, 5 December 1998, 17. See also "Rural communities in fear" *New Zealand Herald*, Auckland, New Zealand, 5 December 1998, A17.

⁸⁰ "Hold-up hoodlums using fear to steal people's trust" above n 66. See also "Invasions of our homes" above n 66, "Tougher line on invaders" *The Dominion*, Wellington, New Zealand, 13 January 1999, 6.

⁸¹ "Hold-up hoodlums using fear to steal people's trust" above n 66.

⁸² See "9 1/2 hours at gunpoint" and "Girl's attacker stabs rescuer" *The Dominion*, Wellington, New Zealand, 8 December 1998, 1; "Hostage-taker frequently pestered MPs" *New Zealand Herald*, Auckland, New Zealand, 8 December 1998, 1.

⁸³ See "Police hunt for the latest home invaders" above n 65; "Family held at gunpoint in home invasion" *The Evening Post*, Wellington, New Zealand, 30 December 1998, 4.

Each step in the criminal justice process pertaining to the Bouma accuseds received column inches.⁸⁴ A Los Angeles police officer even predicted that home invasion cases would increase.⁸⁵ As far as the media was concerned this new class of crime was now “a trend that ... [was] destroying the notion that people’s homes are their castles – or at least havens of safety.”⁸⁶ The press cried out in its editorial voice for “these evil criminals ... [to] receive sentences that reflect their chilling and callous deeds.”⁸⁷

This coverage culminated in the publishing of the results of *The New Zealand Herald-DigiPoll* at the end of December. This poll found that “almost three-quarters of the population are worried about becoming victims of crime in the place they should feel safest – home”.⁸⁸ This fear was unlikely to be allied by the inventory of recent ‘home invasions’ which each newspaper felt compelled to accompany the Poll results with.⁸⁹

2 *Explaining the coverage*

To understand why these incidents received such sustained media coverage one must return to the idea of what constitutes ‘news’ discussed in Part II.

The initial coverage of the Bouma murder itself is easily explained by its many newsworthy qualities. As crime news it was already predisposed to

⁸⁴ See “Four from Kaingaroa charged over killing” above n 77; “Family numbers limit for court appearance” above n 77; “Four get name suppression” *The Dominion*, Wellington, New Zealand, 8 December 1998, 3; “Counts over Reporoa case to be settled” *The Press*, Christchurch, New Zealand, 9 December 1998, 9; “Name suppression lifted for Reporoa murder accused” *The Evening Post*, Wellington, New Zealand, 15 December 1998, 4; “No bail for Bouma accused” *The Evening Post*, Wellington, New Zealand, 19 December 1998, 2.

⁸⁵ “Home invasion cases will increase, says top LA cop” *Sunday Star Times*, Auckland, New Zealand, 3 January 1999, A3.

⁸⁶ “Invasions of our homes” above n 66.

⁸⁷ “Invasions of our homes” above n 66. See also “Hold-up hoodlums using fear to steal people’s trust” above n 66.

⁸⁸ “Home invasions worry Kiwis – poll” *The Press*, Christchurch, New Zealand, 31 December 1998, 3.

⁸⁹ “Most Kiwis fear attack in home – survey” *The Evening Post*, Wellington, New Zealand, 30 December 1998, 2; “Spate of home invasions inspires fear” *New Zealand Herald*, Auckland, New Zealand, 30 December 1998, 1.

receiving news coverage.⁹⁰ In New Zealand, crime coverage rates third behind only sports and politics.⁹¹ This crime in particular represented the most extreme violation of social order possible – the taking of a human life. It fitted the familiar scenario of ‘order threatened by chaos’ with a quiet rural home violated by hostile strangers. This picture was enhanced by the fact that this was no anonymous victim. The face of Beverly Bouma, innocent farmer with a loving family, quickly became familiar to every New Zealander as reports of the crime were accompanied first by photographs of Beverly herself and, subsequently, her grieving family. Thus, ironically what made this crime good as news was that it was bad news of the most personal kind, with the added dramatic tension of a manhunt.

Yet this incident may have been a remained nothing more than an appalling deviation had it not been for the occurrence of the Chan incident a mere three days later. It was the similarities and potential link between these two events that transformed home invasion from a one-off affront to law-abiding society into a pattern of continuing violence. Both incidents involved the invasion of a private home, and the seclusion of the female victim. In each case one or more of the gang⁹² was left behind to guard the victims while the others went to the nearest money machines. The attackers even used similar words in both cases. This apparent new crime trend was given the alarming tag of ‘home invasion’.

3 *The ‘home invasion’ tag*

I term ‘home invasion’ a tag because home invasion itself was not then, nor is it now, a crime category. The incidents which have been fixed with this tag since the Bouma murder are usually officially classified as aggravated burglary or aggravated robbery. The evocative ‘home invasion’ tag was adopted by the New Zealand media as part of the news selection process to associate the

⁹⁰ See Steven M. Chermak “Police, Courts, and Corrections in the Media” in *Popular Culture, Crime and Justice* above n 38, 87, 87.

⁹¹ *Crime News as Prime News* above n 57, 12.

⁹² The use of the term ‘gang’ carries its own negative connotations see generally *The Gangs* above n 10.

incidents within a news theme. This process is an integral part of the media's role in providing a context for otherwise apparently random events. The creation of tags such as 'political terrorism', to describe an unexplained bombing incident, and 'home invasion', to describe a violent form of burglary, are forms of this contextualisation.⁹³ These shorthand phrases enable the media to simultaneously contextualise and reinforce the phenomenon with each use. Reporters and editors got to know that this type of crime was news and reported every instance that could be seen as an instance of the theme as such.⁹⁴ The strength of the 'home invasion' tag is best demonstrated by its use in the title and body of the home invasion legislation itself, one of the few amendments applying only to the Crimes Act 1961 to be called more than a simple amendment.⁹⁵ Thus, although the tag 'home invasion' is not New Zealand born,⁹⁶ it provided the New Zealand media with a natural link between a series of unrelated events.

However, in order to flourish news themes require sustenance in the form of further incidents.⁹⁷ For home invasion it seems that it was the close proximity of the first two incidents which created a healthy news theme which in turn prompted public interest. The significance of the development of this news theme is apparent when the home invasion phenomenon is compared with a spate of similar crimes perpetrated against elderly victims in 1997 that received only sporadic media coverage and negligible public or political reaction.⁹⁸

In July 1997 Age Concern New Zealand expressed alarm over the increasing incidence of crime against the elderly.⁹⁹ Examples included a 91-

⁹³ John Hartley *The Creation of the Public in the Age of Popular Media* (Routledge, London, 1992) 143.

⁹⁴ "Crime Waves as Ideology" above n 58, 106. See "Couple held in home invasion" *The Press*, Christchurch, New Zealand, 2 February 1999, 9; "Home invaders strike in Christchurch" *The Evening Post*, Wellington, New Zealand, 8 March 1999, 12.

⁹⁵ Of the 42 other purely Crimes Act amendments only one other amendment has an extended title – the Crimes (Internationally Protected Persons and Hostages) Amendment Act 1998.

⁹⁶ Both America and Australia preceded New Zealand in employing the term home invasion in their media and legislation.

⁹⁷ "Crimes Waves as Ideology" above n 58, 107.

⁹⁸ See "Crackdown on home invasion" *The Dominion*, Wellington, New Zealand, 15 January 1998, 8.

⁹⁹ "Elderly forced to live in fear" *The Dominion*, Wellington, New Zealand, 29 July 1997, 11.

year-old woman who was repeatedly raped and sodomised, a 78 year-old woman who was beaten, raped and murdered, and a 74-year-old woman who was bound and gagged before being raped as she was dying. These incidents featured many of the same characteristics which were seen to justify the outrage over home invasion – private home, innocent victim, and violent attack - yet they failed to receive sufficient media coverage to capture public attention. It seems that a lack of temporal proximity between the incidents prevented a theme emerging and providing the necessary newsworthiness for the incidents to reach the front page. No catchphrase was developed that could easily identify each event within the wider context of the crime type. Thus, with each incident reported largely as a unique event, the crimes failed to receive a sufficiently high profile to create widespread public interest. Instead of a swift legislative response these incidents produced little more than “advice from police to take precautions and a soothing word or two from then police minister Jack Elder....”¹⁰⁰

4 *Home invasion - the crime wave*

An obvious but important feature of the home invasion news theme was that it was a news theme based on crime. This is significant because all news themes based on crime have the potential to become ‘crime waves’.¹⁰¹ Home invasion was one of the few to achieve that metamorphosis. Crimes waves are ordinarily understood as increases in certain types of crime either generally or in a particular area. However, in the criminological sense, a ‘crime wave’ is the bringing of crime to the public consciousness whether there is an actual increase or not.¹⁰² Thus, in relation to home invasion due to the frequency of home invasion reports “New Zealanders could be forgiven for thinking that the

¹⁰⁰ “Tougher line on invaders” above n 80.

¹⁰¹ “The Reporting of Crime” above n 55, 37.

¹⁰² “Crime Waves as Ideology” above n 58, 98.

age-old menace of burglary is metamorphosing into something much darker, much more evil."¹⁰³

Once created, this social awareness has the potential to develop into a major topical issue as media and public pressure for 'something to be done' leads politicians and other officials to become interested in it.¹⁰⁴ This official attention in turn endorses the importance and seriousness of the issue and widens debate.¹⁰⁵ The 'crime wave' then gains momentum as debate opens out into a general discussion of 'violent society' in which the media and 'right-minded' people write in condemnation of crime and criminals and call for harsher penalties.¹⁰⁶ In extreme cases, such as the home invasion situation with an election looming, this can even lead to a legislative reaction.

Home invasion represents a true 'crime wave' as all the evidence suggests that there was no increase in this type of crime in late 1998.¹⁰⁷ Rather, it was the media's failure to provide adequate contextualisation in their early reports on home invasion that created the appearance that coverage was in response to an increase in incidents of this type of crime. Unlike the initial 1997 reporting of home invasion, the 1999 reports contained no mention of the fact that there are actually few cases like this in New Zealand.¹⁰⁸ In fact, home invasion was initially reported as a trend¹⁰⁹ growing in incidence.¹¹⁰ Yet as this type of crime has never commanded a crime category of its own it is nearly impossible to determine whether there was an actual increase in incidents or not.¹¹¹ Parliamentary comments indicate that such crimes have averaged 70 per year

¹⁰³ "Horror in the home" *The Dominion*, Wellington, New Zealand, 4 November 1999, 9.

¹⁰⁴ "The Reporting of Crime" above n 55, 37-8.

¹⁰⁵ This type of effect on public fear was foreshadowed by the Ministry of Justice in recommending not to enact legislation. See Ministry of Justice *Further Options for Dealing with "Home Invasion"* (Wellington, 1 February 1999) 22 [*Further Options*]; Ministry of Justice *Measures to Deal with "Home Invasion"* (Wellington, 5 February 1999) 10 [*Measures* (February)].

¹⁰⁶ "The Reporting of Crime" above n 58, 38.

¹⁰⁷ See *Further Options* above n 105, 21-2.

¹⁰⁸ "Police hope \$50,000 reward will bring vital information" *The Press*, Christchurch, New Zealand, 2 September 1997, 7.

¹⁰⁹ "Invasions of our homes" above n 66. See also "Home invasion nasty offence" *Southland Times*, Invercargill, New Zealand, 16 January 1999, 8.

¹¹⁰ "Tougher line on invaders" above n 80.

during the 1990's.¹¹² *The Dominion* later placed the figure at between 20 and 400 a year.¹¹³ Yet generally, at the time actual incidents of crime, including violent crime, were on the decrease.¹¹⁴

The failure of the media to provide proper contextualisation for home invasion even extended to *The New Zealand Herald* DigiPoll intended to provide a representation of the fear home invasion had created. While the DigiPoll did indicate an increase in fear of home invasion crimes when compared with a survey of fear and concern of crime conducted in 1996,¹¹⁵ reports of the DigiPoll failed to provide similar background to the 1996 Report as to what this fear meant. Reports failed to point out that fear of crime "is simply part of a broader pattern of anxieties which arise out of threats and uncertainties of everyday life"¹¹⁶ or compare anxiety levels about home invasion with fear of other crimes. Either of these measures may have provided some measure of balance in light of the apparently escalating crime wave. Rather, like the rest of the initial coverage, the DigiPoll appears to have been presented primarily to stimulate further interest in the issue.

Overall it appears that this period did not contain an identifiable increase in home invasion crimes but rather a cluster of 'high profile' incidents brought to prominence by the media adoption of the new term 'home invasion' to describe old crimes. The new label provided a focusing point for the public concern resulting from the media's representation of an increasing incidence of violent attacks by strangers in New Zealand homes. The result was a legislative reaction to a crime wave that was really only a 'crime wave.'

¹¹¹ See (15 June 1999) 578 NZPD 17303.

¹¹² (2 March 1999) 575 NZPD 15175.

¹¹³ "Home invasion burning 'Just unbelievable'" *The Dominion*, Wellington, New Zealand, 8 November 1999, 1.

¹¹⁴ New Zealand Police "Police commitment maintains downward trend in crime" (12 October 1999) at <http://www.police.govt.nz/media/html/71.html> (last accessed 23 September 2000).

¹¹⁵ Warren Young, Allison Morris, Neil Cameron, Stephen Haslett *New Zealand National Survey of Crime Victims 1996* (Victimisation Survey Committee, Wellington, 1997).

¹¹⁶ *New Zealand National Survey of Crime Victims 1996* above n 115, 117.

5 *Home invasion – the moral panic*

With no clear evidence of an increase in the incidence of home invasions it is apparent that the official and public reaction to this offending constituted a 'moral panic'. A 'moral panic' is a situation in which the reaction to a series of events is out of all proportion to the actual threat offered.¹¹⁷ The media may be either a causal influence in the initial behaviour reported or the vehicle through whose agency such panics are spread and amplified.¹¹⁸ The former 'causal' role was identified in New Zealand by Dickinson, Hill and Zwaga when, in response to a scandal in Lower Hutt over adolescent immorality and to the Parker-Hulme murder trial, the 1954 Mazengarb Report heralded changes in the amendment to the Indecent Publications Act.¹¹⁹ The latter 'amplification' role is frequently observed in relation to crime reporting. Crime, particularly violent crime, is consistently over-reported in the Western media.¹²⁰ For example, a study of one month's news coverage by national newspapers in Britain found that almost 13 per cent was devoted to crime.¹²¹ However 60 per cent of this space dealt with the tiny percentage of crimes involving serious personal violence. A recent New Zealand study placed crime coverage at around 16 percent of the metropolitan press content with a similar overrepresentation of violent offences.¹²² As the media constitute the most influential source by which the public develop opinions about crime and criminal justice,¹²³ one effect of this distorted crime coverage is almost inevitably to increase the public fear of crime.¹²⁴

¹¹⁷ *The Gangs* above n 10, 3.

¹¹⁸ Garry Dickinson, Michael Hill, Wiebe Zwaga *Monitoring Community Attitudes in Changing Mediascapes* (Dunmore Press, Palmerston North, 2000), 18.

¹¹⁹ *Monitoring Community Attitudes in Changing Mediascapes* above n 118, 18.

¹²⁰ See *Crime News as Prime News* above n 57, 32; *Reporting Crime* above n 7, 140; *What Everyone in Britain should know* above n 48, 44-46.

¹²¹ *What Everyone in Britain should know* above n 48, 44-5.

¹²² *Crime News as Prime News* above n 57, 32.

¹²³ Steven M. Chermak "Police, Courts, and Corrections in the Media" above n 90, 87.

¹²⁴ *Reporting Crime* above n 7, 183.

6 *The home invasion amplification spiral*

'Moral panics' and fear of crime can be identified in the wider context as elements of an amplification spiral.¹²⁵ Amplification spirals occur when the media reports an incident which attracts public interest. In response to the public interest the media provides more coverage of this type of incident. The public then becomes sensitized to the prevalence and, in the case of crime, threatening nature of the incident to the extent that Parliament feels the need to take notice of it in punishing the offenders.¹²⁶ This amplification effect is heightened in New Zealand by the role of the New Zealand Press Association (NZPA) news service.

Jointly owned by New Zealand news organizations, the NZPA service provides a pool of stories that journalists can both draw from and add to. New Zealand newspapers rely heavily on the NZPA service to provide stories outside their own locality.¹²⁷ This means that although the rate and degree of crime might differ from community to community, readers of the metropolitan press in New Zealand receive a very similar picture of violent and serious crime.¹²⁸ When this style of syndicated reporting is combined with the inevitable public response to crime stories we find that "a rape in Auckland is reported... and people in Bluff are afraid."¹²⁹ Thus the NZPA itself is a significant instrument of amplification as well as a broker of news.¹³⁰ As staffing numbers decrease and the ability for electronic transfer improves, it seems that this effect will only increase.¹³¹

¹²⁵ See generally Majorie Jones *Crime, Punishment and the Press* (Nacro, London, 1980) 6.

¹²⁶ In relation to home invasion see (2 March 1999) 575 NZPD 15160, 15176, 15177; (22 June 1999) 578 NZPD 17582.

¹²⁷ See "The Media and Politics" above n 43, 45.

¹²⁸ See *Crime News as Prime News* above n 57, 25.

¹²⁹ "Prime Crime" *New Zealand Herald*, Auckland, New Zealand, 23 July 1994, 3:1.

¹³⁰ *Crime News as Prime News* above n 57, 26.

¹³¹ See "The Media and Politics" above n 43, 45; *Crime News as Prime News* above n 57, 26.

C *Phase Two: From News Theme to Election Issue*

It is amazing how sensitive politicians become to public concerns during an election year. You voters could get just about anything you wanted, if there is sufficient publicity and it looked like making an impact at the ballot box.¹³²

The factor that seems to have taken home invasion from mere news theme and public concern to the political agenda is the fact that it became a major social issue on the eve of an election year. As National MP Brian Neeson put it in justifying the home invasion legislation, “[t]he public is not satisfied, the newspapers are full of it.”¹³³

1 *The Government's reaction to the media coverage*

The Government's reaction to the apparent increase in home invasions was swift and decisive – harsher penalties, the sooner the better.¹³⁴ However, as the ‘crime wave’ model suggests, this official attention served only to legitimate public concern about the crime. Reports of the political reaction received prominent press coverage, often accompanied by catalogues of the recent home invasions.¹³⁵ Editors praised this plan to “tweak... the law to reinforce in the judicial mind the gravity attached to violating Mr and Mrs Everyman's castle”, arguing that “[t]he law change is needed to drive the point home.”¹³⁶ Some even went so far as to suggest that the change should extend to bringing back the death sentence “as a deterrent at the very least.”¹³⁷

¹³² “Catching criminals...and votes” *The Southland Times*, Invercargill, New Zealand, 15 March 1999, 2.

¹³³ (22 June 1999) 578 NZPD 17582.

¹³⁴ See “Invasions prompt look at penalties” above n 68.

¹³⁵ See “Invasions prompt look at penalties” above n 68; “Get tough on home invaders judges told” *The Dominion*, Wellington, New Zealand, 12 January 1999, 1; “Government puts crime on election agenda” *The Evening Post*, Wellington, New Zealand, 16 February 1999, 1; “Shipley to get tough on home invaders” *The Dominion*, Wellington, New Zealand, 16 February 1999, 1.

¹³⁶ “Tougher line on invaders” above n 80. See also “Home invasion nasty offence” above n 109.

¹³⁷ “Bring back the death sentence” *Truth*, Auckland, New Zealand, 15 January 1999, 2.

Then, in February 1999, any chance of the panic abating was forestalled as fresh fuel was added to the home invasion fires by the assault and robbery of a 75-year-old widow in her home. The media complained, and MP's agreed, that the Government's announcement of tougher sentences for home invasion "was cold comfort to the woman, whose face was a ribbon of bruises [as shown in the accompanying photograph]."¹³⁸ Although voices of caution in the face of this overreaction also began to appear at this time, their scope was limited to the minor dailies and brief articles.¹³⁹ In any case the damage was already done. The public had spoken and the Government was going to take the fast-track to give them what they wanted. The Bills that were to become the Crimes (Home Invasion) Amendment Act 1999 and the Criminal Justice Amendment Act (No. 2) 1999 were introduced to Parliament on 23 February 1999.

2 *The Opposition's reaction to the Government's Bills*

Following the Government's announcement of harsher sentencing laws the Opposition began an ardent campaign questioning the necessity of this legislation.¹⁴⁰ This included blocking the intended fast-tracking of the Bills, which would have meant they were not seen by a Select Committee,¹⁴¹ and publicizing the inconsistency of these Bills with advice from the Ministry of Justice itself.¹⁴² The Ministry had advised the Justice Minister that there were

¹³⁸ "Widow bashed, robbed in retirement flat" *The Dominion*, Wellington, New Zealand, 18 February 1999, 3. See also "Govt tough talk no comfort as invader strikes" *The Press*, Christchurch, New Zealand, 18 February 1999, 3; (18 February 1999) 575 NZPD 14923.

¹³⁹ See "Law and Order Empty Talk" *Waikato Times*, Hamilton, New Zealand, 14 January 1999, 6; "Features Crime General" *The Timaru Herald*, Timaru, New Zealand, 16 January 1999, 4; "Rushed process makes bad law" *The Nelson Mail*, Nelson, New Zealand, 22 February 1999, 9.

¹⁴⁰ See (17 February 1999) 575 NZPD 14843-4; (2 March 1999) 575 NZPD 15150; (2 March 1999) 575 NZPD 15166, 15171, 15172, 15178; "New crime bill 'vote-catching'" *The Press*, Christchurch, New Zealand, 3 March 1999, 9.

¹⁴¹ "ACT blocks fast track law on home invasion" *The Evening Post*, Wellington, New Zealand, 19 February 1999, 1.

¹⁴² "Protection focus of invasion law" *The Dominion*, Wellington, New Zealand, 3 March 1999, 2; "Home invasion law 'won't work'" *The Dominion*, Wellington, New Zealand, 14 June 1999, 1; "Home invasion law queried" *Waikato Times*, Hamilton, New Zealand 14 June 1999, 2; (22 June 1999) 578 NZPD 17540.

no gaps in the law in relation to home invasion so as to justify legislation.¹⁴³ In particular, any measures to increase punitive sanctions were rejected as an ineffective use of justice sector resources as there was little evidence they would reduce crime and were likely to increase the prison population and, consequently, the estimated costs of the criminal justice system.¹⁴⁴ Rather the Ministry recommended leaving it up to the judiciary to increase penalties within the current scope.¹⁴⁵ However, as the Opposition repeatedly pointed out, this advice seemed to have little impact on the Government's stance.

3 *The media's response to the political reaction*

As home invasion moved from news theme to contested political issue there was a noticeable change in the nature of the media reports. From the sustained coverage decrying the crime which marked the first phase of the home invasion phenomenon the media now changed tack to a more balanced view of the reality of home invasion.¹⁴⁶ Initially for the larger more conservative papers however, this change appears to have been the result of pressure by Opposition MPs and lobby groups, rather than a genuine questioning of the Bills. For example, criticism of the Bills by New Zealand Prisoners' Aid and Rehabilitation Society's director John Whitty received a mere 79 words in *The Evening Post*,¹⁴⁷ yet *The Evening Standard* afforded him more than 300.¹⁴⁸ Furthermore, when opposition to the Bills was reported the tone of the articles and degree of coverage afforded to each side was often less than objective. For example, Justice Minister Tony Ryall's general comments on the protection focus of the Bills filled around 75 per cent of a 300 word *Dominion* article,

¹⁴³ Ministry of Justice *Measures to Deal with 'Home Invasions'* (Wellington, 21 January 1999) 4 [*Measures* (January)]; *Further Options* above n 105, 3, 22.

¹⁴⁴ *Measures* (January) above n 143, 15.

¹⁴⁵ *Further Options* above n 105, 3.

¹⁴⁶ See above n 142; "Laura Norder rides again" *The Press*, Christchurch, New Zealand, 13 March 1999, 11.

¹⁴⁷ "Tougher sentences opposed" *The Evening Post*, Wellington, New Zealand, 23 February 1999, 2.

¹⁴⁸ "'Home invasion' a buzzword, says PARS" *The Evening Standard*, Palmerston North, New Zealand, 24 February 1999, 3.

leaving the specific opposing arguments of both Labour and ACT spokespersons to share the remaining 25 per cent.¹⁴⁹

It was also at this stage that recognition first began to clearly emerge that the home invasion label, and even the perception of an increase in the crime itself, were media creations.¹⁵⁰ The use of the tag in media reports changed from home invasion to 'home invasion'.¹⁵¹ Journalists began to openly acknowledged that.¹⁵²

[m]edia prominence given to the phenomenon of 'home invasion' has induced real fears in the community. [However] [l]ogically, as many politicians privately concede, home invasion has always occurred – every time that a night-time burglary has been aggravated by rape, assault or murder.

This recognition of the reality of home invasion was then used to criticize the Government's 'knee-jerk reaction' to the subsequent moral panic, particularly when submissions to the Select Committee become known.¹⁵³

4 *The Select Committee*

The Select Committee received a total of 32 submissions from a range of persons and bodies.¹⁵⁴ Of these submissions only 13 contained any degree of support for the Bills in their current form.¹⁵⁵ Many submissions, including those of the Law Commission, the New Zealand Police Association, and the

¹⁴⁹ "Protection focus of invasion law" above n 142.

¹⁵⁰ See "Shipley presents best side" *Sunday Star Times*, Auckland, New Zealand, 7 March 1999, C2; "Laura Norder" above n 146.

¹⁵¹ See "Terrorised in own home" *The Evening Post*, Wellington, New Zealand, 6 April 1999, 2; "Rushed process makes bad law" above n 139.

¹⁵² "Laura Norder rides again" above n 146.

¹⁵³ See "Simplify bill to stop thugs" *The Dominion*, Wellington, New Zealand, 18 June 1998, 8; "Crime bill proceeds despite opposition" *Waikato Times*, Hamilton, New Zealand, 23 June 1999, 8; "Home invasion law won't work" above n 142; "Home invasion law queried" above n 142.

¹⁵⁴ Select Committee Report, Crimes (Home Invasion) Amendment Bill (No. 262-2), i.

¹⁵⁵ Eight of these were made by individual citizens. The other submissions containing varying degrees of support for the Bills were made by Grey Power Southland, Hamilton Women's Branch of the New Zealand Labour Party, Women's Division Federated Farmers of New Zealand, the New Zealand Police Association and Patient's Advocacy Waikato Inc.

New Zealand Law Society, questioned whether the measures in the Bills would actually have an impact on this sort of offending and identified serious sentencing anomalies that would result from their application.

A major anomaly apparent in the Bills, and now the Acts, relates to the location restriction on home invasion.¹⁵⁶ Home invasion covers only those offences that occur while the offender is unlawfully within an occupied home (dwelling house).¹⁵⁷ This restriction to the physical boundaries of a residential house is in some way explainable by the sanctity which is attached to a person's home.¹⁵⁸ However consider the scenario where you are inside your house, feeling safe and secure with your locks and alarms, when the peace is shattered by a shot entering your home and killing your spouse.¹⁵⁹ The sanctity of your home has been violated and an offence committed but the offence does not attract the home invasion tier of sentencing because the offender did not enter your home. Similarly, consider the case in which an offender enters your home, forces you outside your front door and proceeds to sexually violate you. The sexual violation will not attract the increased sentencing because it occurred outside the confines of the structure which is defined as your home. A few centimetres mark the distinction between mandatory increased judicial censure and a run-of-the-mill crime. The option of remedying this anomaly to some extent by extending the boundaries of one's home to the boundaries of one's

¹⁵⁶ Select Committee Report above n 154, iv, viii-xi. See (24 June 1999) 578 NZPD 17692, 17695; (1 July 1999) 578 NZPD 17855; (13 July 1999) 579 NZPD 17911-12; *Measures* (January) above n 143, 11-13; *Further Options* above n 105, 7, 17; Ministry of Justice *Home Invasion Bills: Issues arising at Select Committee* (Wellington, 21 May 1999) 3-4, Ministry of Justice *Crimes (Home Invasion) Amendment Bill: Inclusion of Household Land* (Wellington, 1 June 1999) 1-3.

¹⁵⁷ Crimes Act 1961, s 17A(1)

¹⁵⁸ See Select Committee Report above n 154, iii-iv; (2 March 1999) 575 NZPD 15160; (22 June 1999) 578 NZPD 17557; (29 June 1999) 578 NZPD 17759, 17763; (1 July 1999) 578 NZPD 17853.

¹⁵⁹ See generally (29 June 1999) 578 NZPD 17762.

property¹⁶⁰ was soundly rejected by first the Minister,¹⁶¹ then the majority of the Select Committee,¹⁶² and then the House.¹⁶³

Beyond the location distinction there is a significant consequence to the requirement that the offender be in your home unlawfully.¹⁶⁴ On the surface this appears logical for why would one ever invite an offender onto the premises? However, consider that 80 per cent of murders are committed by someone legally on the premises.¹⁶⁵ Consider that the same is true of rape and the statistics are likely to be even higher for domestic violence. These offences will therefore not constitute home invasion. Yet can it seriously be said that the betrayal of the victim's trust in someone they know and the destruction of the sanctity of their home is any less worthy of condemnation simply because the offender's presence was lawful? The advice of the Ministry of Justice and submissions provided to the Select Committee suggest not.

Yet, despite the identification of these anomalies, the Government considered them justifiable results in tailoring the law to the particular threat identified.¹⁶⁶ Thus, the only amendments made were to the Criminal Justice Amendment Bill to provide for a mandatory 13-year non-parole period for home invasion murders, and a provision for the section to apply retrospectively – an addition which was to provoke much judicial ire in its application.¹⁶⁷

¹⁶⁰ *Crimes (Home Invasion) Amendment Bill: Inclusion of Household Land* above n 156, 3.

¹⁶¹ See Minister of Justice's handwritten comment on *Crimes (Home Invasion) Amendment Bill: Inclusion of Household Land* above n 156, 3.

¹⁶² See amendment to Crimes (Home Invasion) Amendment Bill (No. 262-2) cl 2, Select Committee Report above n 154, ix, appendix.

¹⁶³ See Crimes Act 1961, s 17A(1).

¹⁶⁴ See Select Committee Report above n 154, vi-ii, xv; (22 June 1999) 578 NZPD 17569; (24 June 1999) 578 NZPD 17680; (1 July 1999) 578 NZPD 17851; (13 July 1999) 579 NZPD 17912, 17918, 17925; *Further Options* above n 105, 11; *Measures* (February) above n 105, 10.

¹⁶⁵ (13 July 1999) 579 NZPD 17913.

¹⁶⁶ See handwritten comment above n 161; (22 June 1999) 578 NZPD 17547, 17550-2, 17554-5, (13 July 1999) 579 NZPD 17909.

¹⁶⁷ See generally *R v Poumako*[2000] 2 NZLR 295 (CA), discussed in the sentencing context below note 221.

D Evaluation of the Media's Role in the Passage of this Legislation

Our government rests on public opinion. Whoever can change public opinion can change the government practically just so much.¹⁶⁸

This type of political reaction is a classic example of how media coverage can affect the process of political policy-making. The clearest impacts are found in the early stages of policy-making as the media influences the likelihood of a policy's adoption and implementation, and the nature and number of options considered.¹⁶⁹ In this case the Government claimed to be responding to public concern over the increase in this violent crime when there was no evidence of an increase beyond that provided by the media. Then the only option seriously considered to respond to this 'crime wave' was the media's choice of harsher sentences rather than a logical criminal initiative.¹⁷⁰

Beyond this initial impact, media coverage has a tendency to speed up the policy-making process and move the decision-making up the bureaucratic ladder.¹⁷¹ This was apparent as media coverage of home invasion throughout December 1998 prompted the progression of official reaction from home safety advice from the police,¹⁷² to the Minister of Police advising judges of the need to increase sentences to reflect public outrage,¹⁷³ to the Minister of Justice introducing legislation to increase sentences.¹⁷⁴

In this case the very fact that the legislation was said to be aimed at counteracting an increase in home invasion at a time when there was no evidence of any increase demonstrates the media's ability to create reality and

¹⁶⁸ Abraham Lincoln, Speech at Chicago, Illinois, December 10 1856 in Robert J. Kurtz "Congress and the Media: Forces in the Struggle Over Foreign Policy" in *The Media and Foreign Policy* above n 44, 65, 67.

¹⁶⁹ *Impact* above n 30, 118.

¹⁷⁰ This is clear from a comparison of news reports and Ministry of Justice advice. See generally "Tougher line on invaders" above n 80; "Burglary terms average less than one year" *The Dominion*, Wellington, New Zealand, 5 April 1999, 3; Select Committee Report above n 154, v; "Home invasion laws 'won't work'" above n 142.

¹⁷¹ *Impact* above n 30, 107.

¹⁷² "Manhunt heads south" above n 73.

¹⁷³ "Get tough on home invaders judges told" above n 135.

¹⁷⁴ "Government puts crime on election agenda" above n 135.

the politicians' ability to jump on the bandwagon. By the time the media backtracked to correct the manifest overreaction to this comparatively rare crime the wheels were already in motion on an evidently unstoppable political process.

E Evaluation of the Legislation

Sentencing decisions, particularly custodial ones, are amongst the most significant powers the state has over an individual....

The public are entitled to an assurance that the considerable powers given to the judicial branch of government are exercised in a fair and equitable manner.¹⁷⁵

As a response to a heightened awareness of vulnerability to violence in the home and the subsequent growing concern that the law may not provide a sufficient deterrent to such offending and, where it did occur, that the offenders were not dealt with severely enough,¹⁷⁶ the home invasion legislation has both deterrent and punitive intentions. Since the conduct concerned was already criminal and the presumption of imprisonment for serious violent offending already existed,¹⁷⁷ the measures in the Acts intended to deter and punish were increased penalties for certain offences involving home invasion¹⁷⁸ and a lowering of the threshold for imposing non-parole periods under section 80 of the Criminal Justice Act 1985.¹⁷⁹ Thus their role is as sentencing tools, to be used or abused by the judiciary as they see fit. However, quite apart from any criminal justice intent, the Acts were also intended to provide a public panacea. On the most pragmatic level this is surely the most significant measure of the Acts' success since it appears to have been their true motivation.¹⁸⁰

¹⁷⁵ Ministry of Justice *Sentencing Policy and Guidance A Discussion Paper* (Wellington, 1997) 4 [*Sentencing Policy*].

¹⁷⁶ Crimes (Home Invasion) Amendment Bill (No. 262-1) Explanatory Note, 1.

¹⁷⁷ Criminal Justice Act 1985 s 5. See generally *Measures* (January) above n 143, 2-4.

¹⁷⁸ Crimes (Home Invasion) Amendment Act 1999, Long Title

¹⁷⁹ Criminal Justice Amendment Act (No. 2) 1999, Long Title.

¹⁸⁰ See Select Committee Report above n 154, v; "Home invasion laws 'won't work'" above n 142.

1 Deterrence

Deterrence is one of the most oft-cited rationales for, and goals of, sentencing.¹⁸¹ Deterrence theory assumes that at least some offenders are aware of changes in the costs associated with crime, and will respond rationally to this knowledge.¹⁸² It therefore endeavors to influence future levels of offending through instilling fear of its consequences in either the individual offender (individual deterrence), society at large (general deterrence), or both.¹⁸³ Potential deterrents include the probability of punishment and its severity.¹⁸⁴ Thus, if deterrence theory is valid, an increase in maximum sentences for home invasion crimes should result in a decrease in their incidence. However, since there is no way of measuring the level of home invasions prior to the legislation there is no way of evaluating whether these crimes have decreased since their enactment. Therefore it is necessary to rely upon general research in evaluating the validity of the deterrent rationale in increasing sentences for home invasion.

Research shows that, while it seems a reasonable assumption that the very existence of increased punishment will have some deterrent value, there is little evidence to support the proposition that longer prison sentences deter crime either specifically or generally.¹⁸⁵ In New Zealand in particular the severity of punishment has been found to have no effect on any offence type.¹⁸⁶ Rather the factors that have been shown to affect crime levels are social and economic.¹⁸⁷

¹⁸¹ *Sentencing Policy* above n 175, 12.

¹⁸² Sue Triggs *Interpreting Trends in Recorded Crime in New Zealand* (Ministry of Justice, Wellington, 1997) 35 [*Interpreting Trends*].

¹⁸³ *Sentencing Policy* above n 175, 12.

¹⁸⁴ *Interpreting Trends* above n 182, 35.

¹⁸⁵ See *Sentencing Policy* above n 175, 12; *Measures* (January) above n 143, 10; *Further Options* above n 105, 22; Select Committee Report above n 154, xv, v.

¹⁸⁶ *Interpreting Trends* above n 182, 35. It is interesting to note that this study was carried out for the period 1979-95, a period in which a number of pieces of legislation increasing sentences were introduced. See generally Greg Newbold *Crime in New Zealand* (Dunmore Press, Palmerston North, 2000) 114-7.

¹⁸⁷ See *Interpreting Trends* above n 182, 11-14.

Thus, there is acknowledged to be only limited scope for back-end responses to crime and, in particular, imprisonment, to reduce crime.¹⁸⁸

On the basis of this evidence therefore the deterrent aim of the home invasion legislation must be rejected as ineffective.

2 *Increasing Penalties*

a) longer sentences – the Crimes (Home Invasion) Amendment Act 1999

In order to increase sentences for home invasion crimes generally, the Crimes (Home Invasion) Amendment Act 1999 increased the maximum sentence available for these crimes.¹⁸⁹ However, since at the time the legislation was enacted the sentencing levels averaged at the lower end of the statutory range, it was questionable whether increasing the maximum penalty alone would result in longer sentences.¹⁹⁰ The measure appears to have been based upon the success of earlier legislation that had increased the maximum penalties for rape following which sentences were seen to increase correspondingly.¹⁹¹ However, the fact remains that in order for penalties to actually increase judges had to make the choice to increase them themselves.

There are a number of factors that judges take into account in sentencing. Usually they begin with the established starting point for that crime, if there is one. Then the judge has a broad discretion to consider any aggravating or mitigating factors that may justify an increase or a decrease in the sentence. Aggravating factors can include violation of a private home, planning, weapons, and the degree of violence involved.¹⁹² Mitigating factors can include a guilty plea (the earlier the better), remorse, personal circumstances, age,

¹⁸⁸ 1999 *Ministry of Justice Post Election Briefing for Incoming Ministers*, Chapter 3 at http://www.justice.govt.nz/pubs/reports/1999/post_elec_brief/chapter_3/html (last accessed 30 September 2000)

¹⁸⁹ Note: an exception to this maximum increase principle is manslaughter. As manslaughter does not have a maximum sentence, the court must instead regard home invasion as a factor that justifies the imposition of a longer sentence than might otherwise be appropriate – Crimes Act 1961, 177.

¹⁹⁰ See (17 February 1999) 575 NZPD 14843; (15 June 1999) 578 NZPD 17302.

¹⁹¹ See *Further Options* above n 105, 4; (15 June 1999) 578 NZPD 17302.

assistance to authorities, and prospects of rehabilitation.¹⁹³ The effect on the victim, as provided in their victim impact statement, and the offender's prior criminal records are factors that can go either way in the sentencing analysis.¹⁹⁴ Once these factors have been weighed up, if there are multiple charges the judge must then decide whether the sentences shall be served cumulatively (i.e. one after the other) or concurrently (i.e. at the same time).¹⁹⁵ New Zealand has virtually no statutory guidance on the application of these two options. However, in practice concurrent sentences usually result when the offences are deemed to be part of a single transaction, while cumulative sentences are more likely to result when the offences relate to separate incidents.¹⁹⁶ To ensure that the total sentence for multiple offences does not become disproportionate to sentences for more serious crimes judges invoke the totality principle to assess the resulting burden on the offender. If the burden is too great, or will result in a disproportionately long sentence, the total sentence may be reduced accordingly.

For almost 20 years the scale for sentencing of aggravated robbery and aggravated burglary was the three-class scheme established by the Court of Appeal in *R v Moananui*.¹⁹⁷ This scheme attempted to provide a sentencing guide for the broad spectrum of offences which fell into the aggravated robbery category.¹⁹⁸ The first class of offences were those involving planned armed robberies carried out on premises such as banks thus endangering the safety of a considerable number of people. These cases were considered to attract sentences from six to eight years with a maximum of 14 years available. These offences then 'shade into' the second class of offences. These offences involved the aggravated robbery of smaller premises with a less extensive risk

¹⁹² *R v Mako* [2000] 2 NZLR 170, 179-180 (CA).

¹⁹³ See *R v Palmer* [2000] 1 NZLR 546, 556 (CA); *R v McLean* [1999] 2 NZLR 263, 265-7 (CA).

¹⁹⁴ *R v Mako* above n 192, 181.

¹⁹⁵ Criminal Justice Act 1985, ss 73(1), 78(1).

¹⁹⁶ *Sentencing Policy* above n 175, 16.

¹⁹⁷ [1983] NZLR 537 (CA).

of injury and sometime the likelihood of smaller amounts of money. The sentences for this class were suggested to range from four to seven years. The final class of offences was that involving the intrusion into dwelling houses in which the safety of fewer people was at risk and the potential proceeds not so large. However, weighted against these features was the "serious element of violation of domestic privacy."¹⁹⁹ Clearly it is this class of offences to which home invasion belongs. The tariff for these offences was said to range from four to six years.

In March 2000 the *Moananui* three-class sentencing guidelines were replaced with a more fluid assessment of the criminality of an offence in *R v Mako*.²⁰⁰ Having found that the three class analysis had led to an over-emphasis on finding the appropriate category for particular offences and an under-emphasis on the true criminality, the Court of Appeal set out a return to the more traditional evaluation of aggravating and mitigating factors, with the location of the premises being given added weight following the home invasion legislation.²⁰¹ To aid in this more fluid sentence setting, the Court affixed a schedule of recent sentencing decisions indicating appropriate sentencing levels. While this did not represent any general change in the sentencing levels for aggravated robbery,²⁰² the decision marked a return to an "assessment of the true culpability in the circumstances of particular offending" and recognised the impact the home invasion legislation was going to have on sentencing levels.²⁰³

The first case to come before the Court of Appeal in which the Crimes (Home Invasion) Amendment Act 1999 was in issue was *R v Palmer*.²⁰⁴ *Palmer* concerned a rape that had occurred in the victim's home in August 1999. The defendant was appealing the original sentence of ten years on the

¹⁹⁸ This sentencing structure has been applied equally to aggravated burglary due to the parallel maximum sentence and merging between the two categories of crime. See *R v Simon* (18 April 2000) unreported, Court of Appeal, CA 10/00; *Further Options* above n 105, 24.

¹⁹⁹ *R v Moananui* above n 197, 542.

²⁰⁰ Above n 192.

²⁰¹ *R v Mako* above n 192, 174, 177-85.

²⁰² *R v Mako* above n 192, 185. The Court having already recognised the significant trend to higher sentences for the more serious cases of aggravated robbery since *Moananui*, 178.

²⁰³ *R v Mako* above n 192, 180.

ground that the Act had been misapplied and that the trial judge had allowed twice for the fact that the offence was committed in the victim's home. Thomas J, delivering the judgment for the Court of Appeal, considered it necessary to examine both the terms of the Act and its intended impact on sentencing principles and practice in determining the appeal.

Thomas J considered that Parliament clearly intended that where "the specified offences involved home invasion the sentencing Judge was to give discrete and concrete recognition to the fact having regard to the maximum term of imprisonment."²⁰⁵ Essentially this requires the Judge to clearly increase the sentence in light of the home invasion element. The Court therefore determined that in sentencing crimes which have an established starting point the required discrete and concrete recognition of the home invasion element would be best achieved by adopting a higher starting point.²⁰⁶ The issue then was how much higher?

Adopting counsel's suggestion, the Court determined that an increase of approximately half the increase in maximum sentence was appropriate. Thus, as the maximum for rape was increased from 14 to 19 years in the event of home invasion, the starting point for contested rape in this situation was increased from eight to 11 years. However the inclusion of the home invasion element at this stage meant that it could no longer be weighted in as an aggravating factor at the next stage in sentence setting. Rather the Court determined that, following this legislation, the element of home invasion must be discretely addressed and the penalty definitely increased.²⁰⁷

Foreseeing the potential for abuse of this increase to justify a reduction in relation to non-home invasion offending, the Court also added the rider that:²⁰⁸

the application of this new legislation is not result in lower sentences being imposed than at present where home intrusion is not involved in the offending....

²⁰⁴ [2000] 1 NZLR 546 (CA).

²⁰⁵ *R v Palmer* above n 204, 550.

²⁰⁶ *R v Palmer* above n 204, 553.

²⁰⁷ *R v Palmer* above n 204, 554.

Sentences for violent crime must continue to reflect the seriousness of the violence involved.

Thus the Court of Appeal has made it clear that in applying the home invasion legislation judges must add a couple of steps to their sentencing procedure.²⁰⁹ First, the judge must be satisfied that the offending involved home invasion. Second, the judge must consider the best method of giving effect to the new legislation, usually by an increased starting point. Third, the judge must consider aggravating and mitigating factors. Finally, the assessment of the overall sentence may occur and, without detracting from the object of the amendment Act, the judge may confirm that in all the circumstances the sentence was appropriate. Although the original sentencing judge had not followed these exact steps in *Palmer* the Court of Appeal considered that, 'while a sentence of 11 years' imprisonment would not have been disturbed', the ten year sentence would be allowed to stand – representing an increase of three years on the probable pre-home invasion sentence.²¹⁰

From this analysis of the home invasion sentencing guidelines it is clear that in many cases the legislation will be effective in increasing sentences.²¹¹ However the important question is whether legislation was necessary to achieve this when judges have always recognised that the commission of offences within a person's home is a serious aggravating factor.²¹² This is a particularly important question since when the home invasion phenomenon first emerged the weight afforded to this factor was increased even more as judges considered that:²¹³

²⁰⁸ *R v Palmer* above n 204, 555.

²⁰⁹ *R v Palmer* above n 204, 555-6.

²¹⁰ *R v Palmer* above n 204, 556, having taken the mitigating and aggravating factors into account.

²¹¹ This has already been demonstrated in *R v Simon* above n 198; *R v Jenkins* (24 May 2000) unreported, Court of Appeal, CA 59/00; *R v Kretschmann and Carroll* (1 June 2000) unreported, Court of Appeal, CA 113/00, CA 116/00.

²¹² See generally *R v Palmer* above n 204, 552.

²¹³ *R v McLean* above n 193, 266.

[j]ustifiable alarm has been sounded at the advent of violence by intruders within the home. In sentencing such offenders the Courts have repeatedly emphasized the importance of recognizing the sanctity of the home and insisted that violence occurring in a person's house is to be treated as an aggravating factor calling for a higher sentence..... This Court will emphasise again that violence committed in a private house will not be tolerated and that violent intruders can expect to receive a severe sentence.

Yet, despite this judicial recognition of public fears, the Government considered that leaving the matter up to the judiciary, or providing them with sentencing guidelines, would not provide sufficient recognition of public concerns.²¹⁴ Legislation was what the people wanted, so legislation they would get.

b) longer non-parole periods – the Criminal Justice Amendment Act (No. 2) 1999

In relation to crimes with an indefinite period of imprisonment offenders are expected to serve at least ten years of their sentence before becoming eligible for parole.²¹⁵ Since 1993 judges have had the discretion to impose even longer minimum periods of imprisonment. The principle aim of the Criminal Justice Amendment Act (No. 2) 1999 was to lower the threshold for the imposition of these longer non-parole periods from that established in *R v Parsons* in 1996.²¹⁶ At the time of the *Parsons* decision the threshold for the imposition of a longer non-parole period was 'exceptional' circumstances.²¹⁷ Since its enactment the section had been consistently employed in around 20 percent of murder cases each year.²¹⁸ However, *Parsons* was perceived as increasing the threshold of what constituted 'exceptional' to such a degree that the number of longer minimum non-parole period imposed dropped off substantially.²¹⁹ With the panic over home invasion Parliament took the opportunity to return the

²¹⁴ See *Measures* (January) above n 143, 11.

²¹⁵ See Criminal Justice Act 1985, s 80.

²¹⁶ [1996] 3 NZLR 129, 131 (CA). See (2 March 1999) 575 NZPD 15182-3.

²¹⁷ Former s 80 Criminal Justice Act 1985.

²¹⁸ (2 March 1999) 575 NZPD 15182.

threshold to the level it desired by changing the requirement from 'exceptional circumstances' to 'sufficiently serious'.²²⁰ However, due to the environment in which it was passed, specific provisions relating to non-parole periods for home invasion murders were also added during the House Committee stage of the Bill. These provisions were first tested in *R v Poumako* – the sentencing of a Bouma offender.²²¹

Having been convicted of murder, a crime carrying the indefinite term of 'life' imprisonment, David Poumako was sentenced to a non-parole period of 13 years. This sentence was based on the Trial Judge's interpretation of the new section 80(2A) of the Criminal Justice Act 1985. This section provides that:

If the Court is satisfied that the commission of an offence of murder involved home invasion, the court –

- a) Must impose ... a minimum period of imprisonment of not less than 13 years:
- b) May impose a longer minimum period of imprisonment if the circumstances of the offence are sufficiently serious....

The focus of the *Poumako* appeal was on another House Committee addition which provides for the retrospective application of this section.²²² However the significance of this case in terms of the home invasion legislations' effect on sentencing is that the majority of the Court did not feel compelled to finally decide the retrospectivity issue because:²²³

even if the Judge had not considered himself bound to comply with the mandatory direction, undoubtedly he would have considered the exercise of the discretionary power to impose a minimum term..... The 13 year term actually imposed would have been fully justified on that basis..... Accordingly we are not

²¹⁹ (2 March 1999) 575 NZPD 15182.

²²⁰ Criminal Justice Act 1985, s 80(2). See also s 80(5A).

²²¹ [2000] 2 NZLR 295 (CA).

²²² Criminal Justice Act 1985, s80(4).

²²³ *R v Poumako* above n 221, 703 as per Richardson P, Gault J and Keith J.

convinced that any different sentence should have been passed; indeed we are satisfied that the sentence was entirely appropriate.

Henry J put it even more clearly in his judgment when he commented that the aggravating features “were such that even if the sentencing process was governed by the law as it stood on 30 November 1998, a minimum period of imprisonment of 13 years would have been justified.”²²⁴

These comments clearly suggest that, in this case at least, the new legislation made no difference to the non-parole period imposed. Unlike *Palmer*'s explicit instructions on how to increase sentences for offences involving home invasion, the Court in *Poumako* remained silent on the practical effect of this legislation on non-parole periods beyond acknowledging that it intended to lower the standard for their imposition.²²⁵ Therefore it remains to be seen whether the aim of the legislation in increasing the length and use of non-parole periods will be effective. Beyond that however the issue of its retrospective application remains a major concern with the legislation.²²⁶

3 Public Reassurance

The New Zealand public is angry. The New Zealand public wants things to be different. The New Zealand public wants people to be punished.... That is what our community expects, and that is what we should be delivering.²²⁷

This response by National party MP Bob Simcock to evidence that the deterrent value of longer sentences is negligible indicates that, despite all the rhetoric about crime prevention, at the very heart of the home invasion legislation was the desire to placate a New Zealand public reeling from a

²²⁴ *R v Poumako* above n 221, 704.

²²⁵ See *R v Poumako* above n 221, 700.

²²⁶ See generally “Patch-up for law on home invasion – Bouma judge worried” *The New Zealand Herald*, Auckland, New Zealand, 16 December 1999, 1.

²²⁷ (2 March 1999) 575 NZPD 15200.

media-driven moral panic. In reality however, evidence suggests that the home invasion legislation actually provided very little public reassurance.

During the passage of the Bills themselves, as evidence emerged concerning the inadvisability of longer sentences, the media had become increasingly critical of the measures.²²⁸ Once passed, the law was not seen as an effective panacea for public concerns. Rather than relying on legislation to protect them, citizens appeared to be turning to guns and security systems.²²⁹ Then in November 1999 the horrific scalding of Barry Cholmondeley during a home invasion in Lower Hutt revived the moral panic that had erupted nearly a year earlier. Public fears and media reports appeared to have been barely affected by the home invasion legislation.²³⁰ As one editor put it at the time:²³¹

[t]he statistics are bad enough, but they fail to express New Zealanders' anger and fear about their homes seemingly being an open range for intrusive criminals, and that nothing significant is being done about it.

This anger and fear is unlikely to have been mollified by the revival of past incidents in media reports as context for the current horrific case.

So you thought you were safe in your own home? Barry Cholmondeley thought so too. So did Delwyn and Keith Bentley, Beverly and Henk Bouma, Pat and Jim White, Sonny and Brenda Chan and other victims of so-called "home invaders".²³²

²²⁸ See above n 153.

²²⁹ "We're not home alone: scared home owners hire 'private cop force'" *Truth*, Auckland, New Zealand, 26 February 1999, 9; "Invasions prompt inquiries for guns" *The Press*, Christchurch, New Zealand, 10 November 1999, 13; "Gun, alarm sales rise" *The Evening Standard*, Palmerston North, New Zealand, 12 November 1999, 1.

²³⁰ See "Home invasion burning: 'Just unbelievable'" above n 113; "Home invasion leaves man beaten, slashed" *The Press*, Christchurch, New Zealand, 8 November 1999, 8; "Get tough on crime, says Grey Power" *The Press*, Christchurch, New Zealand, 10 November 1999, 3.

²³¹ See "Burglars must be busted" *The Press*, Christchurch, New Zealand, 15 November 1999, 4.

²³² "Home owners face onus against home invasion" *The Evening Post*, Wellington, New Zealand, 11 November 1999, 4.

However it was finally the citizens-initiated referendum on changes to the justice system that seems to have demonstrated that New Zealanders' desire for tougher penalties for serious violent offenders was not sated by the home invasion legislation.²³³ However, due to the poor drafting of the referendum question, it is unclear whether the referendum result means that the home invasion legislation failed to reassure the public about the safety of their homes; whether the measures should have extended beyond home invasion; or whether voters were actually supporting the quite separate suggestion of a greater role for victims in the criminal justice system. Overall however it seems that when Bob Simcock stated that this legislation was about expressing community outrage he was right.²³⁴ Unfortunately it turns out that is all it did – express the outrage, not relieve it.

²³³ See Appendix C.

²³⁴ (13 July 1999) 579 NZPD 17924.

F Other Examples of Media Agenda-Setting in New Zealand

1 Past Examples

The home invasion phenomenon was not the first time the media has acted to set the political agenda in New Zealand. The 1954 Mazengarb Report mentioned above represents an early example of media agenda-setting through the creation of moral panics.²³⁵ More recently the media has demonstrated its ability to positively set the official policy agenda with revelations of governmental golden handshakes resulting in a public outcry and, consequently, professed changes to official policy.²³⁶ However the most significant past example of media agenda-setting in New Zealand is that canvassed by Jane Kelsey and Warren Young in their study of the moral panic over gangs which swept New Zealand in 1979.²³⁷

Like home invasion, gangs were not a new phenomenon, however it was only during 1978 and 1979 that gangs became both a law and order problem and a serious social problem that placed them, in many people's eyes, as Public Enemy Number 1.²³⁸ However, again like home invasion, it appears that the image of a rise and fall in gang activity had little basis in reality.²³⁹ Rather Kelsey and Young identified the social reaction to the 'gang crisis' as passing through three vital stages.

The first stage of the 'gang crisis' occurred from 1978 until mid-1979 as a gradual build-up of media attention acted to sensitise the public to the 'growing problem'. Public pressure emerged for immediate answers and received widely publicised official responses which were perceived to justify the public concern. The second stage of the crisis emerged in mid-1979 as media-led public hysteria developed following a high-profile gang incident in Moerewa. As the media fixated on the gang 'problem', the government faced "a rising tide

²³⁵ See text above n 118.

²³⁶ See generally "The year that was" *The Press*, Christchurch, 24 December 1999, 5.

²³⁷ *The Gangs* above n 10.

²³⁸ *The Gangs* above n 10, 1,3.

²³⁹ *The Gangs* above n 10, 134.

of media and public pressure to provide an effective solution to the problem."²⁴⁰ But, like the home invasion legislation, when a solution was provided in the form of the Police Offences Amendment Act 1979 and the Sale of Liquor Act 1979,²⁴¹ it was clear:²⁴²

that the main concern was to placate the demands for action which were being voiced by the media and powerful pressure groups [not evident in the home invasion example] and to act upon their own intuition, without any thorough analysis of the justification for the probable consequences of such measures.

Six years later the Report of the Ministerial Committee of Inquiry in Violence echoed these sentiments in relation to media coverage, recommending that the media review its policy regarding gang activity coverage.²⁴³

The final stage of the 'gang crisis' occurred from late 1979 until at least late 1980 as media and public interest in the gang issue rapidly declined. The crisis was effectively over. Home invasion can be seen to have reached this point following the passage of the home invasion legislation. No longer a 'new' crime, further incidents were deemed to be of little further interest to the public unless they exhibited some unusual characteristic.²⁴⁴ In an observation that could equally be applied to home invasion, Kelsey and Young concluded that,

245

[t]he fact that the official definition and solution to the problem did not tally with what was really happening 'out there' was neither admitted nor even relevant. Success in this case was measured by appearances, not by realities. The

²⁴⁰ *The Gangs* above n 10, 102-3.

²⁴¹ The Police Offences Amendment Act 1979 extended police powers to stop and search vehicles by requiring only reasonable grounds for believing that it contained an offensive weapon. The Sale of Liquor Act 1979 granted to a licensee or bar manager the right to refuse entry into their public bar, or to order from the hotel, any person whom they had reasonable cause to believe would engage in 'violent, quarrelsome, insulting or disorderly conduct or provoke other persons to engage in such conduct on the premises'.

²⁴² *The Gangs* above n 10, 107.

²⁴³ C. M. Roper *Report of the Ministerial Committee of Inquiry into Violence* (Department of Justice, Wellington, 1987) 92.

²⁴⁴ *Reporting Crime* above n 7, 146.

²⁴⁵ *The Gangs* above n 10, 142.

IV essence of the crisis was that it never had to face that reality [of a challenge], for its function was instead to provide society's escape route from it.

2 Future Predictions

With evidence that media agenda-setting occurs generally, and specific examples of its occurrence in New Zealand, there is clearly the potential for it to occur again. The prime candidate for 2000-2001 appears to be child abuse.²⁴⁶ While child abuse itself has long been recognized as a serious public concern, it has recently been brought to the forefront of public consciousness by a number of high profile incidents making their way into the media. Only time will tell whether this placement on the public agenda will result in similar attention on the political.

²⁴⁶ See "Based to death by mother" *The Weekend Herald*, Auckland, New Zealand, 19-20 August 2000, A1; "Swifter justice for our little victims" *The Weekend Herald*, Auckland, New Zealand, 19-20 August 2000, A17; "Law society wants Goff to get tougher with child abusers" *The Dominion*, Wellington, New Zealand, 30 August 2000, 2; "March seeks to halt child abuse" *The Dominion*, Wellington, New Zealand, 30 August 2000, 17.

IV *DESIRABILITY OF THE MEDIA AGENDA-SETTING ROLE*

The media are the public's watchdog, their protector, their advisor and their voice. The media can set the agenda for public debate and influence its outcome. They can manipulate their audience and be manipulated themselves. As such, they are a center of power in our political system.²⁴⁷ Yet in New Zealand the news media remain dangerously under-debated.²⁴⁸ This section seeks to add a small measure to this debate by briefly considering the desirability of an agenda-setting role for the New Zealand media.

As demonstrated in the case of home invasion, media agenda-setting can result in bad law, bad policy, and unnecessary government intervention. Political reaction to home invasion was based on the media portrayal of public concern which had developed from a media-based crime wave. The law was unnecessary and ill-advised, achieving few of its aims and creating sentencing anomalies in the process. However, the quality of this legislation is certainly not something for which the media can be held accountable. The choices about what to put in the legislation lay with the politicians. Furthermore, while the media itself may be linked to the initial moral panic, it also provided critical analysis of the panic itself and the resulting Bills as such evidence came to light. Yet, the very fact that the Bills were created in response to media-driven public concern and were aimed at fulfilling media-portrayed public demands indicates the media's power to set the public and political agenda. The danger is that with criminal justice as one of the public's most easily influenced topics, the media's pet news theme, and the politicians' electoral bandwagon, the media will continue to force the hand of government, and as long as it does "society cannot expect to have a sound, rational penal system which is based on a proper assessment of the best way to deal with offenders."²⁴⁹

²⁴⁷ *New Zealand's Constitution in Crisis* above n 42, 224.

²⁴⁸ Margie Comrie and Judy McGregor "Introduction" in Margie Comrie and Judy McGregor (eds) *Whose News?* (Dunmore Press, Palmerston North, 1992) 1, 9.

²⁴⁹ "The Reporting of Crime" above n 55, 50.

There is of course another side to media agenda-setting in which the media influences governmental policymaking in the best interests of the public. Often this role is related to the media's role as watchdog and adversary to the Government. This positive agenda-setting function may arise through an investigation or disclosure which draws public attention to a particular problem and forces a public response to things such as government corruption, medical malpractice and social distress. Such critical discourse is considered essential to a properly functioning democracy.²⁵⁰ In America it was apparently this influence that helped bring civil rights to the forefront of the nation's consciousness, helped force an end to American involvement in the Vietnam War, and helped topple one President in the course of the Watergate scandal.²⁵¹ In New Zealand we would tend to look more towards revelations of Work and Income New Zealand's financial escapades²⁵² and the disclosure of a variety of 'golden handshakes' mentioned above.²⁵³

Yet, despite this essential positive media role, the ability to set the public and political agenda in combination with the increasing dominance of a small number of media corporations raises concerns about the degree of the power resting in the hands of the few.²⁵⁴ It has been suggested that the more newspapers there are, the more likely their power will work for the interests of democracy rather than against them.²⁵⁵ However considering the trend towards the deregulation of the New Zealand media, requirements for more newspapers or some form of regulation are unlikely. Rather in order to minimize the potentially negative aspects of agenda-setting we must recognise that an onus lies on all the parties involved to be aware of the risks associated with the media's powerful influence and guard against their excesses.

²⁵⁰ See generally "Mass Media" above n 1, 389-90; Geoffrey Palmer and Matthew Palmer *Bridled Power* (Oxford University Press, Auckland, 1997) 194-8.

²⁵¹ "The Media and Foreign Policy" above n 44, 1.

²⁵² See generally "WINZ faces another inquiry" *The Dominion*, Wellington, New Zealand, 7 April 2000, 2.

²⁵³ "The year that was" above n 236.

²⁵⁴ See generally *The Media Monopoly* above n 12, xlv-xlvii.

²⁵⁵ *The Press* above n 13, 302.

The media must strive to fulfill their constitutional obligation to provide the public with information about the functioning of the branches of Government and political parties, the decisions they make, the inputs into those decisions, the public debate surrounding them, and their consequences.²⁵⁶ In order to facilitate the functioning of our democratic society this information should include analysis and comment. Although private companies the media owes these obligations to the New Zealand public since it is their interest in free speech and discourse which provides the media with their power and protection.

In order to promote compliance with these democratic ideals by the media the public also has a duty to provide a check on the media. Kristine Oswald summed up this relationship nicely when she said:²⁵⁷

Ideally, the media should – and occasionally do – contribute to the search for truth in the political process. When they do, they complement and aid the search for truth within the system itself [positive agenda-setting]. When they do not, they magnify the degree of error in justice, because their audience is so wide and their voice is so powerful [negative agenda-setting]. Therefore, the public must be the ultimate check on the media in order for truth to ultimately prevail.... If the media are truly free they will not be completely fair. However, the political process will not be fair either if it is free from the scrutiny of the media *and the public*.

Those with the official power, the politicians, also have a responsibility to become aware that the process of reporting not only transforms events into news, but also influences public conceptions of issues and problems. Then, before acting, politicians have an obligation to ensure that there is a demonstrably valid ground for action rather than just the appearance of one.²⁵⁸

²⁵⁶ *New Zealand's Constitution in Crisis* above n 42, 203.

²⁵⁷ "Mass Media" above n 1, 413-4 (emphasis in original).

²⁵⁸ Compliance with the *Guidelines on Process and Content Report* of the Legislation Advisory Committee (Department of Justice, Wellington, 1987) would go a long way to ensuring this occurred.

Ultimately the ability to deny the negative use of the media's agenda-setting power lies in their hands.

Increasingly the public are relying on the media to inform them of what they need to know and the politicians are relying on it to inform them about the governed.²⁵⁹ The evidence is indisputable and overwhelming by their choice of news coverage and its priority the media have the ability to influence the decisions and actions of the public, politicians, and officials, change their priorities, and even reduce their ability to control events.²⁶⁰ Yet, when it comes to government intervention there is the need for the decision makers to look beyond the media presentation of reality and public opinion to whether there is a rational need for action and, if so, which measures would most effectively address that need. Therefore, since politicians cannot ignore the powerful influence of the media and a free media is necessary for democratic government, it is necessary to educate present and future public policy makers and journalism professionals about the real impact of the media on governmental decision-making. Otherwise, without a realistic perception of the role of the media, a covert mediocracy may again operate to pollute New Zealand's law books with such unguided nonsense as the 1999 home invasion legislation.

²⁵⁹ *Report of the 2002-2003 Australasian and Government Studies 2, 29.*

²⁶⁰ David L. Palmer and Robert M. Stanton *Media Power, Politics* (The Free Press, London, 1981) 249.

V CONCLUSION

Increasingly the public are relying on the media to inform them of what they need to know and the politicians are relying on it to inform them about the governed.²⁵⁹ The evidence is indisputable and overwhelming: by their choice of news coverage and its priority the media have the ability to influence the decisions and actions of the public, politicians, and officials, change their priorities, and even reduce their ability to control events.²⁶⁰ Yet, when it comes to government intervention there is the need for the decision makers to look beyond the media presentation of reality and public opinion to whether there is a rational need for action and, if so, which measures would most effectively address that need. Therefore, since politicians cannot ignore the powerful influence of the media and a free media is necessary for democratic government, it is necessary to educate present and future public policy makers and journalism professionals about the real impact of the media on governmental decision-making. Otherwise, without a realistic perception of the role of the media, a covert mediocracy may again operate to pollute New Zealand's lawbooks with such misguided nonsense as the 1999 home invasion legislation.

²⁵⁹ *Impact* above n 30, 203; *Journalism and Government* above n 2, 29.

²⁶⁰ David L. Paletz and Robert M. Entman *Media, Power, Politics* (The Free Press, London, 1981) 249.

**APPENDIX A CRIMES (HOME INVASION) AMENDMENT ACT
1999**

An Act to amend the Crimes Act 1961 to increase penalties for certain offences involving home invasion

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement--- (1) This Act may be cited as the Crimes (Home Invasion) Amendment Act 1999, and is part of the Crimes Act 1961 ('the principal Act').
- (2) This Act comes into force on the day after the date on which it receives the Royal assent.

2. New heading and sections inserted--- The principal Act is amended by inserting, after section 17, the following heading and sections:

“Penalties for Certain Offences Involving Home Invasion

“17A. Interpretation--- (1) In this section and in sections 17B and 17C, unless the context otherwise requires,--‘Dwellinghouse’ means---

- (a) A building or other structure, or part of a building or other structure, that is used by the occupant principally as a residence; or
- (b) A mobile home, caravan, or houseboat, that is used by the occupant principally as a residence:

‘Home invasion’, when used in the expression ‘the offence involved home invasion’ or in any other provision, means that the person who committed the offence did so---

- (a) While breaking and entering, or otherwise unlawfully entering, an occupied dwellinghouse; or
- (b) While in an occupied dwellinghouse, after having broken and entered, or otherwise unlawfully entered, the dwellinghouse; or
- (c) While breaking out of an occupied dwellinghouse; or
- (d) While otherwise unlawfully in an occupied dwellinghouse:

‘Occupied’, in relation to a dwellinghouse in which a home invasion occurred, means that a person (other than the person convicted of the offence concerned or any co-offender) was lawfully present in the dwellinghouse for all or part of the time that the offender was in the dwellinghouse.

- (2) For the purposes of the definition of the term ‘home invasion’ in subsection (1), the terms ‘breaking’ and ‘entering’ must be construed in a sense consistent with the provisions of section 240; and section 240 applies accordingly.

(3) Without limiting the circumstances in which a person may be regarded as being unlawfully in a dwellinghouse, if a person has entered a dwellinghouse under an express or implied licence, that licence must be regarded as having been revoked if the person commits an offence specified in section 17B or section 17C in circumstances that render the person who could revoke that licence unable to ask the other person to leave.

(4) Sections 17B and 17C do not apply to an offence committed by an offender against a co-offender in circumstances described in any of paragraphs (a) to (d) of the definition of the term 'home invasion' in subsection (1)

“17B. Maximum terms of imprisonment for offences involving home invasion: offences otherwise carrying maximum term of 5, 7, or 10 years imprisonment---

(1) If a person is convicted of an offence against any of the following provisions of this Act and the sentencing court is satisfied that the offence involved home invasion, the person is liable to imprisonment for a term not exceeding 8 years:

- (a) Section 189(2) (injuring with intent to injure)
- (b) Section 197 (disabling)
- (c) Section 202(1) (setting traps):
- (d) Section 202C (assault with a weapon)

(2) If a person is convicted of an offence against any of the following provisions of this Act and the sentencing court is satisfied that the offence involved home invasion, the person is liable to imprisonment for a term not exceeding 10 years:

- (a) Section 134 (sexual intercourse or indecency with girl between 12 and 16)
- (b) Section 135 (indecent assault on woman or girl over 16)
- (c) Section 138 (sexual intercourse with severely subnormal woman or girl)
- (d) Section 239 (indecent act between woman and girl)
- (e) Section 140A (indecency with boy between 12 and 16)
- (f) Section 141 (indecent assault on man or boy)
- (g) Section 142 (anal intercourse): being an offence to which subsection (3)(b) of that section applies:
- (h) Section 188(2) (wounding with intent to injure)
- (i) Section 191(2) (aggravated injuring)
- (j) Section 198(2) (discharging firearm or doing dangerous act with intent)
- (k) Section 210 (abduction of child under 16)

- (l) Section 237 (assault with intent to rob)
- (m) Section 239 (demanding with intent to steal)
- (n) Section 306(1)(a) (threatening to kill or do grievous bodily harm).

“(3) If a person is convicted of an offence against any of the following provisions of this Act and the sentencing court is satisfied that the offence involved home invasion, the person is liable to imprisonment for a term not exceeding 13 years:

- (a) Section 129 (attempt to commit sexual violation or assault with intent)
- (b) Section 132 (2) (attempt to have sexual intercourse with girl under 12)
- (c) Section 133 (indecent with girl under 12)
- (d) Section 140 (indecent with boy under 12)
- (e) Section 189(1) (injuring with intent to cause grievous bodily harm)
- (f) Section 198B (commission of crime with firearm)
- (g) Section 234 (robbery)

“17C. Maximum terms of imprisonment for offences involving home invasion: offences otherwise carrying maximum term of 14 or 20 years imprisonment---

(l) If a person is convicted of an offence against any of the following provisions of this Act and the sentencing court is satisfied that the offence involved home invasion, the person is liable to imprisonment for a term not exceeding 19 years:

- (a) Section 129A(1) (a) or (b) (inducing sexual connection by coercion)
- (b) Section 132(1) (sexual intercourse with girl under 12)
- (c) Section 142 (anal intercourse) being an offence to which subsection (3)(a) of that section applies:
- (d) Section 142A (compelling indecent act with animal)
- (e) Section 173 (attempt to murder)
- (f) Section 188(1) (wounding with intent to cause grievous bodily harm):
- (g) Section 191(1) (aggravated wounding):
- (h) Section 198(1) (discharging firearm or doing dangerous act with intent)
- (i) Section 199 (acid throwing)
- (j) Section 200(1) (poisoning with intent):
- (k) Section 201 (infecting with disease)
- (l) Section 208 (abduction of a woman or girl):
- (m) Section 209 (kidnapping)
- (n) Section 235 (aggravated robbery):
- (o) Section 236 (compelling execution of documents by force)
- (p) Section 240A (aggravated burglary).

“(2) If a person is convicted of an offence against section 128 (sexual violation) and the sentencing court is satisfied that the offence involved home invasion, the person is liable to imprisonment for a term not exceeding 25 years.

‘17D. Parties, attempts, and accessories---(1) If a person is convicted of an offence specified in section 17B or section 17C, and the sentencing court is satisfied that the commission of the offence involved home invasion by another party to the offence, the person is liable to the maximum penalty specified for that offence in section 17B or section 17C.

(2) If a person is convicted of an attempt to commit an offence specified in section 17B or section 17C, and the sentencing court is satisfied that the attempt involved home invasion, the maximum penalty for the purpose of section 311 is the maximum penalty specified in section 17B or section 17C.

(3) if a person is convicted of being an accessory after the fact of an offence specified in section 17B or section 17C, and the sentencing court is satisfied that the commission of the specified offence involved home invasion, the maximum penalty for the purpose of section 312 is the maximum penalty specified in section 17B or section 17C.

“17E. Maximum penalties for offences involving home invasion do not affect jurisdiction of trial court--- The provisions of sections 17B and 17C apply in relation to sentencing only.’

3. Punishment of manslaughter--- Section 177 of the principal Act is amended by adding the following, subsections:

“(2) In determining the length of the sentence to be imposed on a person to whom this subsection applies, the court must regard home invasion as a factor that justifies the imposition of a longer sentence than might otherwise be appropriate.

(3) Subsection (2) applies to a person if---

- (a) The person is convicted as a party to an offence of manslaughter; and
- (b) The sentencing court is satisfied that the commission of the offence involved home invasion.

(4) For the purposes of subsection (3) (b), sections 17A and 17D apply as if manslaughter were an offence specified in section 17C.”

4. Consequential amendments to principal Act--- The principal Act is consequentially amended in the manner set out in the Schedule.

SCHEDULE

Section 4 - Consequential Amendments to Principal Act

Provision	Amendment
Section 128B	By adding the following subsection: (3) This section is subject to section 17C(2) (which sets out a higher maximum penalty for an offence against this section involving home invasion).
Section 129	By adding the following subsection: (2) This section is subject to section 17B(3) (which sets out a higher maximum penalty for an offence against this section involving home invasion).
Section 129A	By adding the following subsection: (3) This section is subject to section 17C(1) (which sets out a higher maximum penalty for an offence against this section (except subsection (1)(c)) involving home invasion).
Section 132	By adding the following subsection: (5) This section is subject to sections 17B(3) and 17C(1) (which set out higher maximum penalties for of fences against this section involving home invasion).
Section 133	By adding the following subsection: (4) This section is subject to section 17B(3) (which sets out a higher maximum penalty for an offence against this section involving home invasion).
Section 134	By adding the following subsection: (8) This section is subject to section 17B(2) (which sets out a higher maximum penalty for an offence against this section involving home invasion).
Section 135	By adding the following subsection: (2) This section is subject to section 17B(2) (which sets out a higher maximum penalty for an offence against this section involving home invasion)
Section 138	By adding the following subsection: (3) This section is subject to section 17B(2) (which sets out a higher maximum penalty for an offence against this section involving home invasion).
Section 139	By adding the following subsection: (4) This section is subject to section 17B(2) (which sets out a higher maximum penalty for an offence against this section involving home invasion).

Section 140	By adding the following subsection: (4) This section is subject to section 17B(3) (which sets out a higher maximum penalty for an offence against this section involving home invasion).
Section 140A	By adding the following subsection: (7) This section is subject to section 17B(2) (which sets out a higher maximum penalty for an offence against this section involving home invasion).
Section 141	By adding the following subsection: (2) This section is subject to section 17B(2) (which sets out a higher maximum penalties for offences against this section involving home invasion).
Section 142	By adding the following subsection: (11) This section is subject to sections 17B(2) and 17C(1) (which set out higher maximum penalties for offences against this section involving home invasion).
Section 142A	By adding the following subsection: (2) This section is subject to section 17C(1) (which sets out a higher maximum penalty for an offence against this section involving home invasion).
Section 173	By adding the following subsection: (2) This section is subject to section 17C(1) (which sets out a higher maximum penalty for an offence against this section involving home invasion).
Section 188	By adding the following subsection: (3) This section is subject to sections 17B(2) and 17C(1) (which set out higher maximum penalties for offences against this section involving home invasion).
Section 189	By adding the following subsection: (3) This section is subject to section 17B(1) and (3) (which provisions set out higher maximum penalties for offences against this section involving home invasion).
Section 191	By adding the following subsection: (3) This section is subject to sections 17B(2) and 17C(1) (which set out higher maximum penalties for of fences against this section involving home invasion).
Section 197	By adding the following subsection: (2) This section is subject to section 17B(1) (which sets out a higher maximum penalty for an offence against this section involving home invasion).
Section 198	By adding the following subsection: (3) This section is subject to sections 17B(2) and 17C(1) (which set out higher maximum penalties for of fences against this section involving home invasion).
Section 198B	By adding the following subsection: (2) This section is subject to section 17B(3) (which sets out a higher maximum penalty for an offence against this section involving home invasion).

Section 199	By adding the following subsection: (2) This section is subject to section 17C(1) (which sets out a higher maximum penalty for an offence against this section involving home invasion).
Section 200	By adding the following subsection: (3) This section is subject to section 17C(1) (which sets out a higher maximum penalty for an offence against subsection (1) involving home invasion).
Section 201	By adding the following subsection: (2) This section is subject to section 17C(1) (which sets out a higher maximum penalty for an offence against this section involving home invasion).
Section 202	By adding the following subsection: (3) This section is subject to section 17B(1) (which sets out a higher maximum penalty for an offence against subsection (1) involving home invasion).
Section 202C	By adding the following subsection: (2) This section is subject to section 17B(1) (which sets out a higher maximum penalty for an offence against this section involving home invasion).
Section 208	By adding the following subsection: (2) This section is subject to section 17C(1) (which sets out a higher maximum penalty for an offence against this section involving home invasion).
Section 209	By adding the following subsection: (4) This section is subject to section 17C(1) (which sets out a higher maximum penalty for an offence against this section involving home invasion).
Section 210	By adding the following subsection: (4) This section is subject to section 17B(2) (which sets out a higher maximum penalty for an offence against this section involving home invasion).
Section 234	By adding the following subsection: (3) This section is subject to section 17B(3) (which sets out a higher maximum penalty for an offence against this section involving home invasion).
Section 235	By adding the following subsection: (3) This section is subject to section 17C(1) (which sets out a higher maximum penalty for an offence against this section involving home invasion).
Section 236	By adding the following subsection: (2) This section is subject to section 17C(1) (which sets out a higher maximum penalty for an offence against this section involving home invasion).
Section 237	By adding the following subsection: (2) This section is subject to section 17B(2) (which sets out a higher maximum penalty for an offence against this section involving home invasion).

Section 239	By adding the following subsection: (2) This section is subject to section 17B(2) (which sets out a higher maximum penalty for an offence against this section involving home invasion).
Section 240A	By adding the following subsection: (2) This section is subject to section 17C(1) (which sets out a higher maximum penalty for an offence against this section involving home invasion).
Section 306	By adding the following subsection: (2) This section is subject to section 17B(2) (which sets out a higher maximum penalty for an offence against subsection (1)(a) involving home invasion).

APPENDIX B **CRIMINAL JUSTICE AMENDMENT ACT (NO. 2)**
1999

An Act to amend the Criminal Justice Act 1985 to lower the threshold for imposing non-parole periods

BE IT ENACTED by the Parliament of New Zealand as follows:

1 Short Title and commencement

1. Short Title and commencement--- (1) This Act may be cited as the Criminal Justice Amendment Act (No. 2) 1999, and is part of the Criminal Justice Act 1985 ("the principal Act").
- (2) This Act comes into force on the day after the date on which it receives the Royal assent.

2 Minimum periods of imprisonment

2. Minimum periods of imprisonment---(1) Section 80 of the principal Act is amended by repealing subsection (2), and substituting the following subsections:

"(2)The court may impose a minimum period of imprisonment under subsection (1) if satisfied that the circumstances of the offence are sufficiently serious to justify a minimum period of imprisonment of more than 10 years.

(2A) Despite any other provision of this section, if a court is satisfied that the commission of an offence of murder involved home invasion, the court---

- (a) Must impose under subsection (1) a minimum period of imprisonment of not less than 13 years:
- (b) May impose a longer minimum period of imprisonment if the circumstances of the offence are sufficiently serious to justify a minimum period of imprisonment of more than 13 years.

- (2)Section 80 of the principal Act is amended by repealing subsection (5), and substituting the following subsections:

"(5) The court may impose a minimum period of imprisonment under subsection (4) if satisfied that the circumstances of the offence are sufficiently serious to justify a minimum period of imprisonment that is longer than the period otherwise applicable under section 89 or section 90, as the case may be.

(5A) For the purposes of this section, the circumstances of an offence may be regarded as sufficiently serious if the court is satisfied that the circumstances take the offence out of the ordinary range of offending of the particular kind, but the circumstances need not be exceptional.

(3) Section 80 of the principal Act is amended by adding the following subsection:

(8) For the purposes of subsection (2A), sections 17A and 17D of the Crimes Act 1961 apply as if murder were an offence specified in section 17C of that Act.

(4) Section 80 of the principal Act (as amended by this section) applies in respect of the making of any order under that section on or after the date of commencement of this section, even if the offence concerned was committed before that date.

3 Consequential amendments to Criminal Justice Regulations 1985

3. Consequential amendments to Criminal Justice Regulations 1985---(1) Form 11A of the First Schedule of the Criminal Justice Regulations 1985 is consequentially amended by omitting the words "so exceptional, and substituting the words "sufficiently serious".

(2) Form 11A of the First Schedule of the Criminal Justice Regulations 1985 is consequentially amended by inserting, immediately before the paragraph beginning "I am satisfied that" the following provision:

[In the case of an offence of murder that involved home invasion, it is sufficient that, instead of the following statement, there be a statement that indicates which provision of section 80 (2A) applies.]

APPENDIX C REFERENDUM 1999

The Question

Should there be a reform of our justice system placing greater emphasis on the needs of victims, providing restitution and compensation for them and imposing minimum sentences and hard labour for all serious violent offenders?

The Result

Most voters agreed with the referendum question, 1,663,755 voting yes (almost 92 percent). Just 147,009 said no.

	<p>LAW LIBRARY A Fine According to Library Regulations is charged on Overdue Books.</p>	<p>VICTORIA UNIVERSITY OF WELLINGTON LIBRARY</p>	

VICTORIA UNIVERSITY OF WELLINGTON LIBRARY



3 7212 00641590 3

e

AS741

VUW

A66

I63

2000

