MEDIA TRIAL AND THE NIGERIAN SOCIETY: A STUDY OF THE SOCIAL MEDIA AS AN ILLEGITIMATE MEANS OF ACHIEVING JUSTICE

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Abstract
Media trial is an affront and antithetical to human rights norms, and human rights are ontological, inherent and intrinsic to all human beings in as much as they are human, irrespective of nationality, sex, ethnicity, origin, colour or any other status. The human rights norms include right to life, right to dignity of human person, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of thought, conscience and religion, right to freedom of expression and the press etc. These rights can be protected in a functional democratic setting that anchors its foundation in the rule of law. Media trial in Nigeria has metamorphosed into a public court, where the victims or the convicts of the public are yet to be charged to a court of competent jurisdiction. Oftentimes it is impossible or difficult for a convict of a public court media trial to be afforded the presumption of innocence guaranteed by the law, as the verdict of the public court of media trial is already in the public domain. This paper discusses some of the constraints on efforts to formulate comprehensive approach required to discourage media trial. It reviews the constitutional position on fundamental human rights, journalistic approach and overbearing powers of security agencies which seems to be inadequate to judicial standpoint of media practice. It calls for a redefinition of the rule of media practitioners and security agencies to be in accordance with the laid down rule and procedure, while discouraging the inadequate trial by media. The paper aims at emphasizing the salient point that the Nigerian media institution, social media users and security agencies in general need to be objectively assessed in its quest of achieving justice through media trial. Doctrinal method was adopted in data collection and analytical approach used in reviewing the extant laws, and judicial decisions and opinions of experts on media trial in text books, articles and internet sources. It is unfortunate through research finding that security agencies and media organization have systematically interfere with justice delivery through media trial of an accused person while trial is still ongoing. In addition, it is imperative that the media and the law enforcement agencies cease from trial of suspects through media channels.

Keywords: Media, trial, Court, Convict, Social Media, Fundamental Rights, Security Agents.

1. Introduction
Nigeria is a circular state comprised of six geo-political zones made up of South – South, South – East, South – West, North – Central, North – East, North – West. It’s a nation of three major ethnic groups and they are: Igbo, Hausa and Yoruba, while Christianity and Islam are the major religion with few traditional worshipers,¹ and with a population index

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of two hundred million, one hundred and two thousand, and eight hundred and ten (200, 102, and 810) people. Nigeria is a country that is very complex, circular in nature and very politically sensitive in terms of dissemination of information via media. Social media handlers have an important role to play for the unity of the nation to further avoid improper media trial which often serve as an instrument of illegitimate means in achieving justice. The media was used in Rwanda to spread hate, to dehumanize people, and even to guide the genocides towards their victims. Three journalists have been found guilty of crime against humanity by the International Criminal Tribunal for the Rwandan genocide. In this regard, some see the Nigeria media as emphasizing those things that divide us than what unite us as a people. The media are said to be partisan and divided along tribal and religious lines. While this allegation may not be easily dismissed with the wave of hand as some have empirical evidence to prove them, it equally lacks objectivity to conclude that the Nigerian media should be held responsible for the current woes of the nation. Media is regarded as one of the pillars of democracy and plays a vital role in molding the opinion of the society and it is capable of changing the whole viewpoint through which people perceive various events. A drop of ink by a media personnel or journalist is more powerful than a bullet from the soldier’s gun.

This paper aims at redirecting attention to the salient point that the Nigerian media institution and social media users in general need to be objectively assessed in its quest of achieving justice through media trial which serves as an illegitimate means, and also its onerous role as regards national development in the context of the multiple challenges facing the industry and daunting circumstance it has surmounted in order to save the ship of Nigeria state from a possible torpedo.

The latest development in media technology brought about the proliferation of a new media form often described as “social media”, however, this catchy descriptor has not been helpful to generate a conversion on whether this technology serves the public interest and how, even though social media have raised a variety of concerns ranging from their impacts on the lives of young people, and to their roles in social and

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2. [https://www.worldometers.info/world-population/nigeria-population/](https://www.worldometers.info/world-population/nigeria-population/) accessed on 23rd June 2020 (based on United Nation estimation)
4. Thomas Anomoaphe Alemoh, Comfort Ojoma Ukwela, Trial and Triumphs of the Nigerian Media in the Quest for National Building, (Published by Redfam, August 12, 2019)
democratic nation like Nigeria. Social media are web-based platform that encourage and facilitate communication, interaction and the creation and circulation of content within virtual communities. Social media also represent ubiquitous technologies that, for youth in particular, are eclipsing the mass media as an information source. To the degree that media representations shape what is ‘socially thinkable’, influence how social issues are constructed and perceived, and to some extent affect the image of the country politically, economically and security architecture if negatively discharged.

Media trial is definitely an undue interference in the process of justice delivery. While trial is a word which is associated with the process of justice, the essential component on any judicial system is that the accused should receive a fair trial. In the general sense, media trial is a situation where the medial does a separate investigation; build a public opinion against the accused even before the court takes cognizance of the case. By so doing, it prejudices the public and sometimes even the judges, and as a result the accused that should be assumed innocent, is presumed as a criminal leaving all his rights and liberty unpressed.

Social media can further be expressed as communication technologies that enable the maintenance of the link between individuals and the personal and cultural networks to which they wish to belong. This definition encompasses ‘old’ mass media such as radio and television, ‘old inter-personal media such as telephone, and contemporary ‘new’ media, such as the mobile internet applications (example: Instagram, Twitter, Facebook, YouTube etc.)

If excessive publicity in the media about a suspect or an accused person before trial prejudices a fair hearing or results in characterizing him as a person who had indeed committed the crime, it amounts to undue interference with the ‘administration of

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6 Amit M. Schejter, Noam Tiroh, “Seek the Meek, Seek the Just”: Social Media and Social Justice, Ben-Gurion Tel Aviv University, Israel, Penn State University, P.A Press, United States, 2017.
11 ibid
13 Noam Tirosh and Amit Schejter, Information is like your daily bread: The Role of Media and Telecommunication in the Life of Refugee in Israel, ( Wilson Publication 2017)
justice’’, which as a result will amount to contempt of court to social media handlers or media firm as case may be. However, the media have the fundamental human rights specifically enshrined in the Constitution of Federal Republic of Nigeria 1999 as amended, and also in other international conventions, examples, African Charter on Human and Peoples Rights 1981, International Covenant on Civil and Political Rights, and Universal Declaration of Human Rights etc. These rights are discussed in sequence as follows:

2. Protection of Right of The Press

The chapter four (4) of the 1999 constitution of federal Republic of Nigeria as amended, African Charter on Human and Peoples Rights, and International Covenant on Civil and Political Rights, all made a fundamental provision in guidance of human rights, specifically, right to the freedom of the press. For a better understanding of the subject matter, it’s very important to have an elaborate discussion and close perusal of what the law said.

The right to freedom of expression and the press is guaranteed and protected by section 39 of the 1999 constitution as amended in 2010, and it provides as follows:

1. Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference,

2. Without prejudice to the generality of sub section (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions provided that no person, other than the government of the federation or a state, or any other person or body authorized by the president on fulfillment of a condition laid down by an Act of National Assembly, shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.

It is important to note that Nigeria is signatories to some international convention on Human rights protection and that of the press, as guaranteed under Article 9 of the African Charter on Human and Peoples Rights also provided for the protection of the right to freedom of expression in the following terms:

a. Every individual shall have the right to receive information.

b. Every individual shall have the right to express and disseminate his opinion within the law.

In addition, Article 19 of the Universal Declaration on Human Rights provided as follows:

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14 Hereinafter Referred to as 1999 Constitution
15 Nigeria State is a signatory to African Charter on Human and Peoples Rights, on 17th day of March 1983 (under the Ratification and Enforcement) Act Chapter A9, No. 10 LFN 1990, No. 2 of 1983)
www.nigeria-law.org
Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinion without interference and to seek, receive and impart information, and ideas through any media and regardless of frontiers. In a similar order, Article 19 of the International Covenant on Civil and Political Rights stated infra:

1. Everyone shall have the right to hold opinion without interference.
2. Everyone shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print in the form of art or through any other medium of his choice.

Free speech and free press are instruments of self-governance by the people because they enable the people to be informed and educated about the affairs of government, thereby enabling them to form and express intelligent opinions on such matters, and further discussion of ideas and opinions is indispensable to democratic government. That notwithstanding, there is an exception to right to freedom of expression which are well restricted by any law that is reasonably justifiable in a democratic nation. In most time such exception are mainly for the purpose of preventing the disclosure of information received in confidence or for the purpose of maintaining the authority and independence of the courts.

Furthermore, sections 45 (1) of the 1999 constitution as amended in 2010 further gives a clear view on restriction and curtailment of freedom of expression and the press by any law that is reasonably justifiable in a democratic society as follows:

a. In the interest of defense, public safety, public order, public morality, public health; or
b. For the purpose of protecting the rights and freedoms of other persons.

In addition, Article 19 (3) of the International Covenant on Civil and Political Rights provides for the restriction of the right to freedom of expression as follows: ‘The exercise of the rights provided for in paragraph 2 of this Article carries with it special responsibilities, it may therefore be subject to certain restrictions, but these shall only be such as provided by law and are necessary.

a. For respect of the rights or reputation of others.
b. For the protection of national security or public order or of public health or morals.

It is important to emphasise that one of the recognized restrictions to the right to freedom of expression is the right to the protection of reputation as provided under the law of

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17 Section 39 (3) of the 1999 constitution as amended in 2010, Chapter four (4) of the constitution
defamation.\(^{18}\) Is prevalent to bear in mind that social media users or media personalities while in discharge of their fundamental human rights, ought to work within the ambience of the law to avoid breach of other person’s right. In an attempt to temper with the freedom of the press by the legislators, a frivolous petition bill which passed its second reading in the senate in December 2015 would mandate a two years prison sentence or a two million naira (2,000,000 naira) fine for posting on social media outlets abusive statements against a person, group, or government institution. Many Nigerians and international organization including the Committee to Protect Journalists (CPJ), called on the government to reject the bill because it marked an encroachment on freedom of expression. In addition, the 2011 Freedom of Information Act that came into enforcement on 28\(^{th}\) day of May 2011 guarantees citizens right to public information and has put pressure on government agencies to release records in response to petition by media and active groups.\(^{19}\)

3. Presumption of Innocence of the Accused Person

When a matter is before the competent court of law, the accused person is presumed to be innocent pending the determination of the case by the trial judge.\(^{20}\) It is trite to note that the presumption of innocence would be assumed only when a person has been charged with a crime. In the case of AIG- Imoukhuede v Ubah,\(^{21}\) the court reiterated this position when it held that the condition precedent for the activation of the right to the presumption of innocence is that the person must have been charged with a criminal offence. The word “charged” in the section refers to arraignment of an accused person before a court of law having judicial power to convict and punish the accused, if found guilty. The Universal Declaration of Human Rights reinforces the principle when it provides that:

\[\text{’Every person charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.’}\]

In addition, Evidence Act further buttresses the presumption of the innocence of the accused person, and the burden of proving the guilt of the accused specifically laid on the prosecution who alleges that the accused has committed a crime and the degree of

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\(^{18}\) Defamation is concerned with injury to reputation resulting from words written or spoken by others. The words complained of must tend to injure the plaintiff’s reputation in the minds of right-thinking people generally, not merely in the minds of a particular section of the public. Oluwole Aluko, The Nigeria Law of Tort, Chapter 7, page 136, (Published by Spectrum Ltd., second edition, 1999)


\(^{20}\) Section 36 (5) of the 1999 constitution of Federal Republic of Nigeria as amended in 2010

\(^{21}\) (2015) 11 NWLR (PT. 1462) 339 at 408, the court went further to state that a charge is a process by which all allegation are brought to the notice of the accused. It appears only in criminal trial. See Okafor v. James (2102) 16 NWLR (PT. 1326) 339.

\(^{22}\) Article 11 Universal Declaration of Human Rights
such proof must be beyond reasonable doubt.\textsuperscript{23} Furthermore, in the Supreme Court case of \textit{APC v INEC},\textsuperscript{24} it was held that he who asserts must prove.

In the case of \textit{Ibrahim v State}, the Appeal Court held that the law imposes the responsibility of proving the guilt of an accused person on the prosecution and the proof must be beyond reasonable doubt and that it is not part of the system of our law that an accused person should prove his innocence. In support of this assertion, the Supreme Court further in the case of \textit{Ahmed v State}\textsuperscript{25} held that:

``In a criminal trial, the onus lies throughout on the prosecution to establish the guilt of the accused beyond reasonable doubt. The burden of proving a fact which if proved would lead to the conviction of the accused is on the prosecution who should prove such fact beyond and reasonable doubt. Thereafter, any doubt as to the guilt of the accused arising from the contradictions in the prosecution’s evidence of vital issues must be resolved in favor of the accused.’’

Consequently, until the accused is charged he is presumed innocent and during the trial the prosecution must prove the guilt of the accused to secure a conviction.

In view of the above, the type of media coverage of court cases and tragic events related to crimes, the citizens are bound to ask whether social media handlers and journalists do observe the principle of presumption of innocence of the accused person and how reporters themselves judge their actions in this sensitive area. Where do the limits to parallel trial by media lie and how can amends be made for unnecessary intrusion into the rights of those affected?\textsuperscript{26} Despite the humanitarian impulse of the enlightenment, the presumption of innocence did not in fact appear until the French declaration of the Rights of man and of the citizen of 1789. It was not enshrined in Nigeria until the constitution of first republic,\textsuperscript{27} when the principle became a fundamental constitutional right binding upon all organs of the state and to be applied without delay. To that effect, it is \textit{condicio sine qua non} for every media practitioner while in discharge of their duties and rights as guaranteed under the constitution of the Federal Republic of Nigeria as amended, to work within the ambit of the law and the golden rule is; the media must not make any comment which would tend to prejudice the presumption of the innocence of the accused person.\textsuperscript{28}

\textsuperscript{23} Section 135 Evidence Act
\textsuperscript{24} (2015) 8 NWLR (PT 1462) P 531 at 545, see also NNPC v Lutin Investment Ltd (2006) 2 NWLR (PT. 965), failure to discharge this legal burden alone disentitled the application from the relief if canvasses.
\textsuperscript{25} (1999) NWLR (PT 612) 641
\textsuperscript{26} Carlos Macia Barber, Presumption of Innocence and Journalistic Ethics, the Aitana Case, (Carlos III University of Madrid Press, 2019)
\textsuperscript{27} 1963 Constitution ( First Republic), it came into force on 1\textsuperscript{st} October, 1963 ( Nigeria third anniversary as an independent nation). The 1963 Constitution, which was based on the Westminster system, continued in operation until a military coup in 1966 overthrew Nigeria’s democratic institutions.
A situation where the media converts itself into a “public court” when the accused person is not yet charged to court, or interfering into court proceedings when the accused must have been charged, to the extent of giving its own verdict while the matter is still pending before the court, is nothing but a total affront and disregards to the principle of presumption of innocence of the accused person as enshrined in section 36 (5) of 1999 constitution of Federal Republic of Nigeria.

4. Right to a Fair Trial
In strict legal sense in accordance with the provision of the constitution, when any person is charged with a criminal offence, he shall unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal.29 Provided that:
A court or such a tribunal may exclude from its proceedings person other than the parties thereto or their legal practitioners in the interests of defense, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interest of justice.30

The rampant media trial in Nigeria is something of great concern and any possible measure to ameliorate the situation will be a welcome development. A trial by media where the media itself conducts a separate investigation, builds a public opinion against the accused even before the court take cognizance of the case. The public has already been prejudiced and the accused person whom the law presumed to be innocent until contrary is proved has already been found guilty before the public through the media trial, as a result presumed to be criminal leaving all his rights and liberty un-redressed.
When excessive publicity about a case and the suspect involved in the case by the media prejudices a fair trial or results in characterizing the accused as a person who has indeed committed the crime, it amounts to undue interference with the administration of justice, calling for proceedings for contempt of court against the media. The presumption of innocence31 and the right to freedom of expression32 is a fundamental right guaranteed under the constitution of Nigeria respectively, and the court is duty bound to protect both rights. The end of once rights is the beginning of another, that is to say, is of great importance while in the discharge of your duties not to interfere with another’s fundamental human rights as enshrined in the constitution. Lord Alfred Denning, Master of Rolls, further emphasized and counseled as follows:
“When considering the issue, it must always be remembered that besides the interest of the parties in a fair trial, there is another important interest to be considered. It is the

29 Section 36 (4) 1999 as amended
30 Section 36(4) (a) Constitution of Federal Republic of Nigeria as amended
31 Section 36 (5) of the 1999 Constitution as amended
32 Section 39 of the 1999 Constitution as amended
interest of the public in matters of national concern, and the freedom of the press to make fair comment on such matters. The one interest must be balance against the other. There may be cases where the subject matter is such that the public interests counterbalance the private interest of the parties. In such cases, the public interest prevails. Fair comment is to be allowed.”

In addition, the main motive and reason behind the statement of Lord Denning is to balance the rights between the private person (i.e. the accused) and the public when the need arises.

5. Media Trial Before and After Judgment of the Court by Law Enforcement Agencies

It is repugnant to natural justice, equity and good conscience, and unhealthy for any staffs of the law enforcement agency whether working on the instruction of his superior to engage in media trial when judgment of the court seems to be unfavorable to their expectation. There is need for the Federal Government of Nigeria to guide against whipping up public sentiments against judicial officers whenever it found itself on the wrong side of judicial verdicts, as attempts to demonize the judges and intimidate the judiciary bodies’ ill for the administration of justice in the country. The law enforcement agencies in this context are: the Nigeria Police, Economic and Financial Crime Commission (EFCC), State Security Services (SSS), National Drugs Law Enforcement Agency (NDLEA), etc.

It is indeed a matter of regret that many Nigerians now come to the conclusion that the various prosecutors of alleged economic crimes in the country tend to prefer the mob – induced trial through the media space. Where they grandstand and play to the gallery of the courts just to get self- awarded favorable verdicts.

On the other hand, law enforcement agency which seems to be the hope of the common man in the street of Nigeria in any matter regarding enforcement of law and order, protection of life and property has consistently through their conduct seem to have taken over the duties and functions of judicial officers. The unnecessary parade and trial of suspect by the law enforcement agency in the country through media outlets is not only ridiculous and unprofessional, but also contrary to Administration of Criminal Justice Act. It’s the position of the law that in a situation where a person is alleged to have committed a crime, the law enforcement agency are bound to produce the suspect before the court as prescribed by the act or any other written law or otherwise released conditionally or unconditionally. Court has repeatedly cautioned the law enforcement agencies to desist from parading suspects before the media. The then Inspector General

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35 Section 8, sub-section (3) of the Administration of Criminal Justice Act, 2015
of Police, Mr. Ibrahim Idris justified the illegal practice. It was a defense which smacks off official impunity and insensitivity. The parade is quite prejudicial to the inalienable rights of fair hearing fundamental to the suspect, and several decision of the court has repeatedly condemned the illegal practice. In the case of Ndukwen Chiziri Nice v AG Federation and others, it was held by Justice Banjoko that: ‘’the act of parading him (the suspect) before the press as evidenced by the exhibits annexed to the affidavit was uncalled for and a callous disregard for his person. He was shown up to the public the next day of his arrest even without any investigation conducted in the matter. He was already prejudged by the police who are incompetent, so to have such function, it is the duty of the court to pass a verdict of guilt and of this constitution a clear breach of section 36 (4) and (5) of the constitution of the Federal Republic of Nigeria, 1999 on the doctrine of fair hearing.’’

Similarly, in Dyot Bayi & 14 others v Federal Republic of Nigeria, the community court of Justice, the Economic Community of West African State court condemned the media trial of the applicant when it held that: ‘’the court is of the opinion that for the fact that Defendant presented the Applicants before the press when no judge or court has found them guilty, certainly constitute a violation of the principle of presumption of innocence as specifically provided in Article 7 (b) of African Charter of Human and Peoples Rights and not a violation in the sense of Article 5 of the said charter’. The court proceeded to award damages of US $ 42,750.00 to each of the ten (10) applicants and the U.S $ 10,000.00 as costs payable by the Federal Government for the illegal actions of the naval personnel who carried out the illegal parade of the applicants.

In Mr. Abudu v Nigeria Police Force, the applicant, and electrician, alleged that his wife who was a factory worker at Sagamu, Ogun state was shot dead by the police on December 12, 2008. In justifying the killing, police claimed that the deceased was the head of a robbery gang that had robbed the Sagamu Branch of the First Bank Plc. Her corpse which was decked with charms and a pistol by the police was paraded before the media. In rejecting the misleading evidence of the police, the trial judge condemned the iniquitous killing of the deceased and parade of the corpse. The court proceeded to award the sum of 5 million naira as reparation to the Applicant.

The report of the media trial and parade of criminal suspects including the publication of their photographs is absolutely libelous, that is why the publishers and owners of media organizations are often advised to stop colluding with law enforcement personnel in the crude violation of human rights. This is because the media have the ‘’power’’ to control the minds of the masses. Through a strategic means, they can make the innocent guilty and make the guilty innocent. They are the most powerful entity on earth.

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36 (2007) CHR 218 at 232

37 (2004 -2005) CCJLER 245 at 265, the Community Court of Justice, ECOWAS Court

38 (Unreported Suit No. M/13/2011)
Recently, a Nigerian pastor known as Biodun Fatoyinbo of Common Wealth of Zion Assembly (COZA) was accused of rape by one Busola Dakolo, a photographer on the month of June, 2019. The alleged victim through her social media handles made allegation of rape against the said pastor which eventually resulted to media trial before the matter was filed to court by the law enforcement agency. However, the matter was dismissed by Justice Oathman Musa for abuse of judicial process, empty and purely sentimental. In addition, the sum of one million naira was awarded against the applicant to the defendant. The matter is before the Court of Appeal in Abuja. Furthermore, the National Head Quarter of the Nigerian police Abuja recently paraded three (3) suspects before the media in Abuja who they claimed to have attempted to rob an old generation bank in Mpapa area of Abuja, the capital of Nigeria on the 28th day of December 2019. A bank employee, Larry Ehizo, 30, led three other accomplices namely, Timothy Joe, 21, Princewill Obinna, 24 and Elijah David, 19, alleged to have made an attempt to steal a huge sum of money.

As a result of constant abuse of right to dignity of human person which negates the chapter four of the constitution, human right activist, Mr. Femi Falana, SAN, has approached a Federal High Court in Abuja, requesting for declaration of pre-trial media parade of suspected offenders by security and anti-corruption agencies in the country as illegal and unconstitutional. The court is yet to fix a date for the hearing as of time of writing.

The trial parade of suspects by security agencies before the media or before the court of public opinion without adequate and due process stipulated by law, is nothing but a total affront to section 34 and 36 (5) of the constitution, and Article 5 and 7 of the African Charter on Human and Peoples Rights.

6. Conclusion and Recommendation
The constitution prohibits media interference which might impede the proper administration of justice in any given trial. The reason for this is quite explicit. This is because it will help in preventing undue presumption of guilt or innocence of a suspect in a case which is still under trial. Though the media is regarded as the fourth estate of the realm and the judiciary is often expected to grant the media the freedom and right to cover and disseminate news about court proceedings in an open justice system, the media on its part ought to exhibit proper diligence, social responsibility and extreme caution in the process of discharging its duties in order to maintain sanctity of the court as well as ensuring a free and fair trial.

42 Section 34 of the 1999 Constitution as amended in 2010
43 https://allafrica.com/stories/201501140804.html
45 (Ratification and Enforcement) Act, (Cap A9) Law of the Federation of Nigeria, 2004
From the cases cited in this paper, it becomes clear that the media have had a more negative influence rather than a positive effect. Thus, it is imperative that the media and the law enforcement agencies cease from trial of suspects through the media. It is true that the media has the right to comment in judgments, but commenting while trial is ongoing might unnecessarily make the public to prejudge a matter before the verdict is given by the court thereby impairing the very purpose of justice.