

ON DECEIVING ONE'S SOURCE¹

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Reporters have relationships with different sorts of sources—some are whistleblowers, working eagerly with the reporter to bring some social ill to the public's attention. Others are reluctant sources, who give their story only when coaxed, tricked or ambushed by the reporter.

The relationships reporters have with sources differ in kind. Sometimes the source is providing background information for the journalist, sometimes she or he is serving as an evidentiary base (journalism has a rather interesting epistemology in that two independent sources saying the same thing provides justification for the reporter saying it is so), and sometimes the source is the focal point of the story.

But, what remains constant in the reporter-source relationship is that it is a relationship based in inequality. No matter how manipulative or malevolent the source, the reporter, literally, has the last word.

The reporter-source relationship seems to have several unique features among professional relationships, but it is as role-driven and convention-bound as the rest. The need to get clear on the nature of the relationship is obvious. The better we understand the duties and conventions of the reporter-source relationship, the better we can detail what kinds of behaviors in that relationship violate those duties and conventions and which do not.

The reporter-source relationship certainly is not like a doctor-patient or lawyer-client relationship in which the professional has a duty to act in

accordance with the patient's or client's best interest. In fact, if a reporter were to say that she pursued a particular line in her reporting or published a particular story to serve the interests of her source, she would be admitting to an egregious professional sin, *i.e.*, being in public relations.

Nor is the reporter-source relationship like the employer-employee relationship in which the employee/source serves the direct interest of her employer/reporter in exchange for secondary gains (such as an income). Sources, particularly if they are the subject of unwanted media attention, don't much care about serving the needs of the reporter. And, more than one source who has thought that she was using the reporter as a channel to get her story and point of view out to the world has been badly burned in the process.

The best professional analogy might be something like judge-defendant in a juryless trial. The source, like the defendant, is trying to cut the best deal that he can. The reporter, like the judge, is serving some perceived duty in an impartial way (applying the law in the case of the judge; gathering and giving accurate, important information in the case of the journalist). The reporter, like the judge, makes decisions that can have enormous impact on the source's life. And, like the judge, the reporter has an obligation to apply her enormous power in a fair and equitable fashion.

But, the analogy fails to capture the full scope of the relationship. Sources aren't always bad guys; a news story isn't always a sentence. And the analogy quickly breaks down when one remembers that the source, unlike the defendant, can discontinue the reporter-source relationship at will, journalistic threats to the contrary.

I will use a well-known current case upon which to apply a systematic analysis of purported deception in the reporter-source relationship.

Readers of *The New Yorker* in March, 1989

were treated, or subjected to, a lengthy two-part series by Janet Malcolm on the reporter-source relationship. Malcolm dissected the relationship of Joe McGinniss, author of *Fatal Vision*, with convicted murderer Jeffrey MacDonald, the subject of his book.

MacDonald invited McGinniss to attend his murder trial and write his story, a story that MacDonald perceived as that of an innocent man hounded by the state. McGinniss accepted, shared a house with MacDonald and his defense team for the length of the trial and became, in all obvious respects, a friend, confidant and supporter of MacDonald.

By way of correspondence, McGinniss continued to express support after MacDonald was convicted for the murder of his wife and two children. Then, to MacDonald's surprise, McGinniss published *Fatal Vision*, a book that portrayed MacDonald as a psychopathic killer, something that McGinniss told readers that he had known all along.

MacDonald sued McGinniss for fraud and breach of contract. The suit was settled out of court with McGinniss agreeing to pay MacDonald a chunk of money but with no admission of wrongdoing.

Some may object that the relationship between the author of a non-fiction book to his subject-source is significantly different from that of news story reporter to his subject or source since MacDonald had agreed to be the subject of the book in exchange for a share of the royalties. While paying a source for information or cooperation with the story is not an acceptable practice in U.S. newsrooms, it will be clear later that payment is not an essential distinction in regards to whether or not the reporter unjustifiably violated a duty in regards to the source, and hence acted immorally.

Malcolm tells readers at the beginning of her description of the MacDonald-McGinniss trial that any reporter-source relationship is "morally indefensible."² She doesn't justify her normative claim; indeed, she insinuates that the relationship couldn't be otherwise.

The Malcolm articles, now with an afterword, a book, *The Journalist and the Murderer*, caused an uproar among journalists. Some other journalists objected to having their work called immoral.

They disagree with Malcolm's description of the journalist as "a confidence man, preying on people's vanity, ignorance, or loneliness, gaining their trust and betraying them without remorse."³

J. Anthony Lukas, who writes non-fiction books as well as periodical pieces, said in reaction, "We are, I think, honest craftsmen by and large, working at an evolving craft, trying to tell our stories, and if we make mistakes it is not moral culpability we are talking about but mistakes—sometimes serious ones—that are the mistakes of craftsmen."⁴

Others saw the situation as more than a semantic difference between what one author called immoral action and the other called a mistake. David Halberstam said, "Malcolm really hit on something germane, but she has gone after it with a sledgehammer. I think 'betrayal' is a very very strong and ugly word. And to say that journalists, as a matter of course, do this is particularly offensive to anybody who was a reporter in the South, where many sources were very vulnerable to the white power structure, and reporters kept their trust . . ."⁵

Another journalist, Barry Michael Cooper, illustrated how far he went to protect sources who may be more vulnerable than they know: "Sometimes, whether with Arsenio Hall or with Latinos who lived near the kids accused of raping the jogger in Central Park, I'll shut off the tape when I think they could be hurting themselves inadvertently. I'll say something like, 'I want you to understand that this tape isn't running. What was recorded is on the record, as we agreed, but are you sure you want to continue with this conversation?'"⁶

Clearly, betrayal of one's source is not a universally accepted convention of the business, but saying that Malcolm is wrong doesn't explain the problem with her view. It is irrational for anyone, journalist, source or reader, to advocate that betrayal be part of the customary role of a reporter. A systematic analysis can show why.

First, let's look at how Malcolm describes the reporter-source relationship:

Malcolm tells us that the source is vulnerable. Even the most sophisticated source approaches the relationship with a childlike trust. "The journalistic encounter," she says, "seems to have the same regressive effect on a subject as the psycho-

analytic encounter.”⁷ The relationship is, she says, “invariably and inescapably lopsided.”⁸ Sources, in the end, are left with nothing but the hope that the reporter will present them as they wish to be seen.

Malcolm suggests while that wish of the source is never fulfilled, the reporter does have duties toward the source. One is the duty to clean up quotes: “When a journalist undertakes to quote a subject he has interviewed on tape, he owes it to the subject, no less than to the reader, to translate his speech into prose. Only the most uncharitable (or inept) journalist will hold a subject to his literal utterances and fail to perform the sort of editing and rewriting that, in life, our ear automatically and instantaneously performs.”⁹

A second duty she eludes to is a duty to truthfully present the source: “Because so much of our knowledge of the world derives from what we read in the press, we naturally become nervous whenever the question of misquotation is raised. *Fidelity to the subject’s thought and to his characteristic way of expressing himself is the sin qua non of journalistic quotation*—one under which all stylistic considerations are subsumed. Fortunately for reader and subject alike, the relatively minor task of translating tape-recorderese into English and the major responsibility of trustworthy quotation are in no way inimical; in fact, as I have proposed—they are fundamentally and decisively complementary.”¹⁰

But, according to Malcolm, journalists do not have a duty to disclose to sources their feelings, beliefs or their intention for the use of the material provided: “[T]he writer-subject relationship seems to depend for its life on a kind of fuzziness and murkiness, if not utter coyness, of purpose. If everybody put his cards on the table, the game would be over.”¹¹

The withholding of information and perhaps outright false presentation by the journalist are offered by Malcolm as common interview tools. The ‘betrayal’ that Malcolm believes that all journalists practice is what happens when the journalist makes it clear, through the resulting story, that he has been thinking, feeling and intending something very different from what his source has been misled to expect.

Malcolm uses the McGinniss-MacDonald relationship to illustrate the forms the deception

takes. “Until close to the publication of *Fatal Vision*, when McGinniss apparently felt he could afford to be a bit cold and careless with MacDonald, he wrote letters assuring MacDonald of his friendship, commiserating with him about his situation, offering him advice about his appeal, requesting information for the book, and fretting about competing writers.”¹²

McGinniss’s belief that it is o.k. to withhold his true feelings and intentions was evident in source relationships long before he met Jeffrey MacDonald. His first book, *The Selling of the President 1968*, was a careful analytic look at the marketing of Richard Nixon. McGinniss told Janet Malcolm in the one interview he granted her that, during the research for that book, he didn’t feel an obligation “to say when I arrived at their offices every morning, ‘Gentlemen, I must again remind you that I’m a registered Democrat who plans to vote against Mr. Nixon, and that I think what you’re doing—which is trying to fool the American people—is sinister and malevolent, and that I intend to portray you in terms that you are not going to find flattering.’”¹³

But, MacDonald’s sense of betrayal is based on more than McGinniss’s failure to issue this journalistic equivalent of a Miranda warning.

Michael Malley, a lawyer for MacDonald, explains:

Jeff really liked Joe (McGinniss) and he really trusted Joe. And that’s why it was such an incredible betrayal. If the book had said, “I reluctantly came to the conclusion that this nice guy, whom I really liked, had killed his wife and children,” and that would have been one thing. But the book says, “This guy is a cold-blooded killer, a cold-blooded manipulator, a cold-blooded liar, and only I, Joe McGinniss, saw through it from the very beginning, but I had to be sure.” I always knew that Joe had the option of not believing Jeff, and Jeff knew that, too, but what I didn’t know was that Joe had the option of disliking Jeff. And Joe not only never gave a hint that this was the way he felt but did just the opposite: he gave every indication that he like Jeff. He was this little macho buddy of Jeff’s. They ran together, they swapped girl stories together, they did all this macho stuff together.¹⁴

There’s no denying that, at some point, McGinniss decided that the end (writing the book) justified the means (his artificial relationship to MacDonald). During cross-examination at the abbreviated trial, McGinniss said, “There certainly

came a time when I was willing to let him continue to believe whatever he wanted to believe, so he wouldn't try to prevent me from finishing the book."¹⁵ Malcolm says "what McGinniss did egregiously, most journalists do more subtly and quietly."¹⁶

I reject the notion that the subtlety that Malcolm notes provides an adequate distinction between moral and immoral behavior.

The first morally relevant question, seems to me to be, "Did McGinniss deceive MacDonald either by lying or by failing to disclose information that he had a duty to tell his source?" The second morally relevant question is, "If McGinniss did, in fact, deceive MacDonald was this a justified violation of the general expectation that we do not deceive one another?" The answers to these questions depend on an adequate description of deception.

I begin with the conventional assumption that to deceive is to do something wrong. When I say that a person deceived me, there is an implication that that person is blameworthy, unless her deception is justified.¹⁷

Intentionality is a sufficient condition for deception, but success is neither necessary nor sufficient. If I dress up like a doctor and am caught when I try to sneak past a hospital guard to get an exclusive interview with an ailing public official, I have still acted deceptively. If, on the other hand, I am wearing white slacks and sweater with no intention of passing myself off as something I am not and a person says, "Oh, I thought you were a doctor," I have not acted deceptively.

Some philosophers make a moral distinction between lying and less verbal or more passive forms of deception. I do not. Taking as the basis for morality what it would be irrational for any person to want for herself or people for whom she cares, it is clear that the harm people wish to avoid is being led to have a false belief, however they happen to be led to have it.

Two types of action are deceptive: deception by lying that is always immoral and lacking justification, and deception by the withholding of information that is only sometimes immoral if not justified.

Deception by lying:

A lies when A asserts a proposition, p, that A be-

lieves to be false with the intention of having B believe it is true. If I tell you I am wealthy when I know that I am not, then I have lied to you.

There is also a non-verbal equivalent of lying:

A acts deceptively through a non-verbal equivalent to lying when—presents herself in a way intended to lead B to a false belief. Non-verbal equivalents to lying include gestures, physical appearance, even truthful statements said in such a way as to mislead. If I am not a police officer, but dress up like a police officer in order to initiate a belief in others that I am a police officer, I have deceived in a way that is morally equivalent to a straightforward false utterance.

Deception by withholding:

Person A acts deceptively by withholding information when the following conditions are met: (i) A intentionally withholds a proposition that she believes to be true and A believes that withholding that proposition will lead B to form or maintain a false belief, and (ii) A's withholding of the proposition increases the probability that B will suffer some evil.¹⁸ In journalistic practice, deception by withholding most commonly occurs when A 1) fails to do her professional duty, 2) cheats, or 3) breaks a promise.

1) Deception by withholding information as a failure to do one's duty

Duties to tell certain kinds of information are often required by professional relationships. For example, if your internist finds, during a routine medical examination, that you have a growth on the back of your hand that needs medical attention, she would be acting deceptively through a failure to do her duty if she withheld this information from you. If, on the other hand, a physician passing you on the street notices the growth, he has no duty to tell you his belief even if he thinks you need medical attention. Another example is that of a doctor who withholds information from a patient about an important side effect of a drug she is prescribing has acted deceptively. This is because physicians have a professional duty to inform their patients of the important side effects of the drugs they prescribe.

Journalists have a duty to tell readers relevant information that will help them reach an understanding that the reporter believes to be accurate

and complete. When journalists withhold information with the knowledge that withholding will lead readers to a false belief, they have acted deceptively.

A common, usually justified, example of this kind of deception occurs when journalists know that the police are closing in on a fugitive, but withhold that information from their readers. If the case has been well publicized, with news organizations providing updated information on the manhunt, readers could be deceived into thinking that nothing new has happened because the journalists have failed to report information.

2) Deception by Withholding Involving Cheating

Someone acts deceptively by cheating when she withholds information if there are conventions of which she is aware that require her to tell.

Suppose A stops to ask directions from a stranger, B. B listens with seeming attention while A says, "I'm trying to get from Hanover, NH to Woodstock, Vt, so I'll just drive north on Route 5." B, by presenting herself as listening to A's planned route voluntarily entered into a social relationship that includes the social rule or custom that one should not intentionally mislead. If B withholds what she knows to be true, namely that Woodstock is nowhere near Route 5, she will have acted deceptively. A would rightly feel deceived when he learned the truth.

Other people on the street who have not entered into this special relationship that B has with A have no similar obligation even though they may have heard the conversation and know that A is mistaken. It would be laudatory for C, standing nearby, to say to A, "Wait a minute, that's not how to get to Woodstock," but there is no special obligation for C to do so.

Let's see how this applies to the reporter-source relationship.

Most people believe that there are professional conventions that govern reporter-source relationships. One convention accepted by the lay audience is that a source can keep information out of print by uttering the performative, "Off the record." Journalists know that there are many nuances to this complex arrangement, but if a reporter were to withhold the fact from the source that he intended to use the information that the source is trustingly providing "off the record," the

journalist is deceiving because he is cheating the source.

3) Deception by Withholding Involving Breaking a Promise

If A promises B that she will never let anyone use their jointly-owned sailboat without getting B's permission and A subsequently loans out the boat without telling B, then A has deceived B. She has acted deceptively by withholding information that she has promised to tell. However, that promise exists only in regard to B. A is not acting deceptively if she fails to tell her next-door neighbor that she has lent the boat to C because there is no promise that she would tell.

If a reporter promises to trade information—to give a source a certain piece of information in exchange for something that he wants to know—and then does not provide that information, he has acted deceptively because he has broken a promise.

These examples of journalistic deception are not necessarily immoral. Sometimes violations of the general rule 'don't deceive' are justified. Let's take a look at what constitutes justification for deception.

Consent is one kind of adequate justification. Sometimes when we know what's going on, we like being tricked. When I go to a magic show, I give implicit consent to limited deception (I haven't given consent to someone lying to me about what time the show starts or how much the ticket costs), and within those limits, it is justified for the magician to act deceptively. This kind of justification, consent, fits under the general pattern that I will be discussing in the context of the reporter-source relationship, *i.e.*, that a 1) rational person not biased in this particular case could 2) advocate that the deception be 3) publicly allowed in 4) those kinds of cases.¹⁹

It's important to note here that this advocacy does not require approval or even consensus from rational persons. All that is required is that impartial, rational persons COULD advocate the exception, that is, that it not be irrational (lead to the unjustified suffering of evils) to advocate the exception. Whether an impartial rational person WOULD advocate a violation being publicly allowed depends on whether they think less evil would be suffered through the violation. In many

instances, rational people can disagree about whether they would ADVOCATE a particular action while they agree that the action could be rationally ALLOWED.

A violation is *strongly* justified if all rational persons would estimate that less evil would be suffered if that kind of violation were publicly allowed. A violation is *weakly* justified if impartial rational persons would disagree in their estimate of whether more or less evil will be suffered; it is *not* justified if all rational persons would estimate that more evil would be suffered if the violation were publicly allowed.

An example of strongly justified journalistic deception is the withholding of the fact that a kidnapped child was also raped. All impartial rational people (in this case, encompassing audiences and journalists in virtually all U.S. communities) would agree that less evil would be suffered by the community at large not having that information than the amount of evil suffered by the child if that information were revealed. So, even with a journalistic duty to tell readers any information that, if withheld, would lead readers to a false conclusion (the false conclusion being that the child was harmed in no way aside from being kidnapped) that they would likely not reach if the information were disclosed, this kind of violation is strongly justified.

An example of journalistic deception that is not justified includes situations similar to the following:

A reporter writes a story based on a justice department investigation of possible insider trading. The story contains detailed information that makes a broker look clearly guilty. The reporter in no way reveals to the reader the fact that all of the incriminating material came from a justice department source who 'leaked' the information. The reporter withholds this information, knowing that readers might question the validity of the story if they knew it came from a single, biased source. All rational persons would estimate that more evil would be suffered through the withholding of this information. First, the broker might be unfairly thought to be guilty of insider trading by friends and business associates, even if he is never charged. Next, readers are missing a piece of information that would be vital to their ability to reach an accurate conclusion.

A weakly justified violation of journalistic deception (one about which impartial, rational people might disagree) includes the withholding of information about the government's plans for military intervention. Reasonable editors (and readers) disagree about whether more or less evil is suffered through the withholding of this information.

These examples have all been based on a duty of journalists to give certain information to their public.

Journalists have duties to their sources as well as to their readers. The first is not to cause unjustified evil to them. Let's now return to the questions in the McGinniss-MacDonald dispute. Did McGinniss deceive MacDonald? If so, was he justified in deceiving him?

Let's start with the acknowledgement that McGinniss withheld some information from MacDonald. Both Malcolm and McGinniss advocate the withholding of some information from sources. In fact, in Malcolm's summation that "the writer-subject relationship seems to depend for its life on a kind of fuzziness and murkiness . . ." ²⁰ she implies that withholding some information is necessary. That may be o.k. Withholding of information is a violation of the moral rule against deceiving only when such withholding also includes a violation of duty, cheating or breaking a promise.

Let's start with duties. The duties Malcolm identifies that the reporter has toward the source are:

- 1) to clean up quotes
- 2) to be faithful to the source's thought and characteristic way of expressing himself.

While I identify additional duties to the source elsewhere,²¹ they are not necessary for this argument.

There is no duty for journalists to tell sources what they believe, feel or intend to do with the information that they gather. Withholding that intention is not deceptive.

When a source enters into a relationship with a journalist, even the most unsophisticated source knows that the journalist is participating in the relationship to gather information *from* the source rather than for the purposes of transmitting information *to* the source. Neither McGinniss, nor any other journalist, would be "cheating"—violating

some understood rule of the game—by withholding from his source his intention of how the information will be used. And, unless McGinniss promised to tell MacDonald if he thought that MacDonald was guilty or promised to write a positive book, McGinniss broke no promise by withholding his intentions from his sources.

Nor is there a duty for journalists to tell sources their true feelings. Reporters should “act professionally” toward sources, just as we would expect all other professionals to act toward the lay population. If the reporter feels hostility toward a source (or even warmth or sexual attraction), that emotion is presumably something that the reporter can set aside in the interests of doing her job—getting as truthful an understanding of the source’s perspective as possible. As with doctors or teachers, it is not deceptive for journalists to withhold the truth of their feelings from those who encounter them professionally. Nor was it deceptive for McGinniss to withhold the negative feelings he had toward him from MacDonald.

There is no convention that journalists will only interview sources whom they like or agree with, so McGinniss wasn’t cheating by eliciting cooperation from someone he did not like. And in the absence of any promise to tell MacDonald his real feelings about the case, he did not deceive him by choosing not to share them.

However, feigning emotion and feigning knowledge are morally different from withholding information or the expression of emotion. A reporter who nods her head affirmatively at the source’s statement, “I suppose you know about x” is offering the non-verbal equivalent to saying, “Yes, I know about x,” which would be a lie. The reporter is deceiving.

The reporter who feigns emotion is offering the non-verbal equivalent to saying, “I feel this way about you.” If ‘this way’ is not genuine, then, again, the reporter is lying.

McGinniss reportedly feigned friendship and comradery with MacDonald and admitted a willingness to lie or at least to express what he called “untruths.”²² McGinniss’s withholding of his true feelings and intentions from MacDonald was not deceptive and requires no justification. But, in addition, he said and did things with the intention of leading MacDonald to a false belief. These acts are deceptive. Absent justification, they are im-

moral as well.

Under what conditions could an impartial rational person advocate that this kind of violation be publicly allowed? In the broadest sense, what is being suggested by Malcolm and McGinniss is that it is justified for A to deceive B whenever A feels he needs to do so to meet his ends. It is clear that more evil would be suffered if this kind of violation were publicly allowed than not; no impartial rational person could advocate that wording of the violation.

Even if we give “the kind of violation” the more limited interpretation—that of the reporter-source relationship—it fails to find justification. This limited interpretation of the exception to the rule, “don’t deceive” would be that it is justified for journalist A to deceive source B if the journalist feels that he needs to deceive in order to get his story.

Again, I think it seems clear that more evil would be suffered if this violation were publicly allowed than not, but let’s take a look a why.

First, if everyone knew that journalists were likely to deceive them, people would not be willing to be sources. I would like to think that no journalism would be a greater evil than what exists now.

The second problem with this proposal is that such an exception would make it impossible for journalists to meet even the minimalistic duties that Malcolm lists. A journalist can not honestly portray the sources’ thoughts if sources are afraid to reveal those thoughts to journalists.

No rational person could justify deception of sources by reporters even in the narrow range of sources whom the journalists know to be bad guys. If we allow for reporters to deceive the bad guys, sources would never know if the reporters were being honest with them or not, not knowing, of course, whether the reporters thought they were bad guys or not.

The issue of whether the source got paid (as in the McGinniss-MacDonald arrangement) or not (as in the case in most reporter-source relationships) is thus irrelevant in determining whether or not it is justified to deceive sources to get information for publication. The evils brought about by the deception (sources’ unwillingness to express their true feelings and beliefs) are not changed when the source is paid.

FOOTNOTES

1. The definitional work in this paper is based on an unpublished paper, "An Analysis of Journalistic Deception," written with my colleague, Charles Culver, M.D., Ph.D.
2. Janet Malcolm, *The Journalist and the Murderer* (New York: Knopf, 1989), p. 3.
3. Ibid.
4. Martin Gottleib, "Dangerous Liasons," *Columbia Journalism Review* (March/April, 1989), p. 24.
5. Ibid., p. 31.
6. Ibid.
7. Malcolm, op. cit., p. 32.
8. Ibid., p. 161.
9. Ibid., p. 155.
10. Ibid., p. 57.
11. Ibid., p. 143.
12. Ibid., p. 37.
13. Ibid., pp. 10-11.
14. Ibid., p. 140.
15. Ibid., p. 49.
16. Ibid., p. 161.
17. See B. Gert, *A New Justification for the Moral Rules* (New York: Oxford 1988) for an explanation of theory to which this assumption coheres.
18. These evils include being killed, caused pain or disability, deprived of freedom or pleasure, having a promise broken, being cheated, and having a law or a duty violated in regards to you.
19. The justification for acts of deception and for other moral rules is from Gert.
20. Malcolm, op.cit., p. 143.
21. With Culver, "An Analysis of Journalistic Deception," and "Philosophical Foundations for Press Responsibility," in D. Elliott, *Responsible Journalism* (Beverly Hills: Sage, 1986).
22. Malcolm, op.cit., p. 50.

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