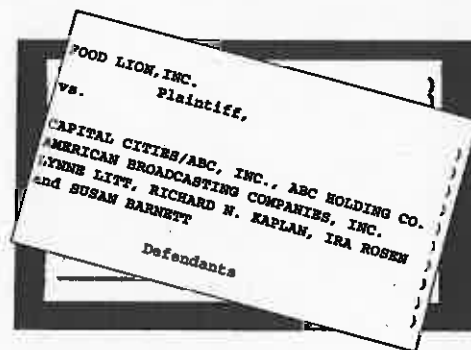


Journalists' con games can backfire

Deceptive newsgathering techniques cause more harm than good to society

By DENI ELLIOTT



A TRUCKING FIRM IN MAINE SEEKS DAMAGES AGAINST the NBC news magazine, Dateline, for misrepresentation. The firm claims that the Dateline producers gained access and cooperation by telling the firm that this was to be a positive segment on the life of long-

erroneously believe that the intended story will be a flattering one to the elaborate illusion of the journalistic mole in corporations and convalescent homes, deceptive gathering techniques

distance truckers. The firm was horrified to find itself the subject of a story on the dangers truckers pose by using drugs and driving when tired.

A North Carolina jury awarded Food Lion \$5.5 million in punitive damages for the ABC Prime Time Live story that had reporters going undercover with faked resumes and hidden cameras to illustrate how store employees doctored outdated, spoiled food and placed it back out on the shelves to sell.

Two celebrated 1991 U.S. Supreme Court cases, *Cohen vs. Cowles Media* and *Masson vs. New Yorker* raised claims of misrepresentation. In *Cohen*, the Court ruled that reporter's promises made to a source might constitute a legal contract; in *Masson*, the Court ruled that altered quotes can constitute libel.

The journalistic practice of producing a story through sorcery is under new scrutiny. While journalists are expressing concern that legal limitations will chill newsgathering practices, it is important to consider the ethical implications of deceptive newsgathering techniques. Here I argue that trickery, slight of hand, and misrepresentation are tools for the magician, not for the journalist. From the passive practice of a journalist allowing a source to

cause more harm than good to the profession of journalism and to society as a whole.

Consumer Gut Not a Good Measure

First, it is important to note that the fact that citizens are uncomfortable with deceptive practices is irrelevant to determining the ethics of this or any other journalistic practice. What makes deceptive newsgathering wrong is not that it is a public relations problem.

Audiences get queasy about a variety of journalistic practices. Some of those practices, such as displaying the shock and grief of a mother informed in public of her daughter's death, are wrong as well as gut-wrenching. Other practices, such as displaying the body of an American soldier dragged through streets of a foreign city, are equally gut-wrenching, but justifiable because they are depictions that American citizens need to see and understand. This is a result of the U.S. government doing its people's business and it is the responsibility of citizens to know what their government is doing.

The special role of the news media is to fill in the information gap between the people and their government. Telling citi-



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zens the kind of information that they need to have to govern themselves is the social function of journalism. When journalists are fulfilling their social function, they have a powerful tool for justifying actions that we might otherwise call unethical.

It is not true that any means justifies that important ends, but the more closely a store conforms to telling citizens what they need to know for self-governance, the more easily unusual action can be justified.

Deception is a Prima Facie Wrong

Deception is an action intended to lead an individual to a false conclusion.

Deception can be a stated or physically demonstrated falsehood, as when journalists dress up as store employees or nursing home attendants while still working as journalists. They are lying in these cases, with their dress and actions saying that they are fulfilling one role when they are fulfilling quite a different one.

Deception can also occur by withholding information that it is reasonable for an individual to expect to be told. If journalists fail to tell sources the true nature of their reporting or fail to tell them that they are journalists working on a story, the sources are being deceived. They are being deceived because the journalists have withheld information that the sources have a reasonable expectation to know.

Deception is a prima facie wrong because it is parasitic on our usual belief that people are who they present themselves to be and that they will tell us all relevant information concerning their relationships with us. Life is too full to question or investigate the truth of each of our interpersonal encounters. No matter how cynical we believe ourselves to be, our social interactions revolve around trust.

When I check my watch by saying to a stranger in a questioning tone, "My watch says 10:30," I assume that she will tell me if there is a large discrepancy with what her watch reads.

When I face a class at the University, I assume that those are students, there to complete course requirements, and not

investigators of the journalistic or governmental type. Deception works because it is in our human nature to trust.

Because it is a prima facie wrong, deception always requires justification. The most common justification for deception is consent. Just as we have a society built on mutual trust and truth-telling, we have cultural conventions of consent to deception. If I go to a magic show, I want to be deceived. If my husband plans a surprise for me, I want him to withhold information that would lessen that surprise. And when I show up at work with a fabulous new haircut, I do want my colleagues to keep their unflattering, unsolicited opinions to themselves.



As a societal group, we consent to more serious kinds of deceptions. We allow unmarked police cars and carefully restrained governmental undercover investigations. In the interest of national security, we allow public officials to withhold some information and, in times of crisis, to provide "misinformation." Consent, in

these cases, are provided through a combination of citizen action and inaction. While we may disagree on whether deception was called for in a particular situation, we allow for a kind of paternalistic deception by our government. The social function of government is to protect its citizens. Citizens have agreed, implicitly or explicitly, that in a narrow and protected range of cases, that it is justified for the government to deceive us when that deception is in the best interest of the country or community.

Journalistic deception is rarely justified. That is best shown through an examination of journalistic justifications offered for deception.

Journalists' Justifications for Deception

The Story Isn't Certain: Reporters who withhold information from sources about the true nature of the story often justify their actions by explaining (to themselves or others) that the reporters themselves aren't sure how the story is going to turn out. "Why tell the source that he is likely to be presented in a negative way," they

reason, "if I don't really know that myself?"

More often, reporters refrain from offering such information because they are concerned that sources will refuse to talk to them if they know the truth. They withhold information from the source, such as, "We're investigating this story because it has been suggested that you've done something wrong." That is information that a source has a reasonable expectation of being told, just as they have a reasonable expectation of being told that they are talking for publication.

It's true that a story will change, grow and develop through good reporting. Reporters need to have an open mind and to be ready to learn that things are not as they suspected when they began researching the story. But, the reporter does start out with an idea. Reporters talk to particular sources because they are looking for information that they believe that only that source can supply. If sources are not told the true nature of the story, even in light of the story changing and developing, they are being made more vulnerable than they know themselves to be. Sourcing is a voluntary activity. Withholding of information interferes with the voluntariness of the source's action; it eliminates the possibility of the source giving informed consent to the interview. This is unjustified deception.

Reporting is a Con Game: New Yorker reporter Janet Malcolm made this justification for deception most articulate in a 1990 publication, "The Journalist and The Murderer." She opens the book this way: "Every journalist who is not too stupid or too full of himself to notice what is going on knows that what he does is morally indefensible. He is a kind of confidence man, preying on people's vanity, ignorance, or loneliness, gaining their trust and betraying them without remorse."

This justification for journalistic misrepresentation implies that the relationship between the journalist and source is something like a poker game. The source ought be wary; the journalist is out to manipu-

late, to bluff, to coerce the source into putting her cards on the table.

That metaphor for reporter-source relationship would not allow for journalists to fulfill their social function of telling citizens information that citizens need to know. A source that is trying to outsmart the reporter is not one that is providing needed information.

The reporter-source relationship is more like a relationship between professionals with a similar goal. The source is not a client; the reporter is not working in the interest of the source, but rather that of the audience. Sources cooperate because they, as well as reporters, believe that it is important for the audience to have certain information. Sources and reporters may disagree as to which information is most important for the audience to have and it should be clear to sources that the news organization always has the last word.

The most efficient way for the audience to get its needs met is for the reporter-source relationship to be one of continuing conversation and negotiation. The reporter wants certain information for a particular reason. The source supplies that with further information or explanation that had not occurred to the reporter.

The reporter takes in that new information, checks with other sources — documents as well as people — and the story expands and changes. Or, it doesn't. The reporter then returns to the source

for further conversation. Within this style of reporter-source relationship, they need not agree or even like one another; they simply must understand and respect one another's agenda. That is, the reporter and source are morally obligated to treat one another in a professional manner.

Let's Catch the Bad Guys: Journalists argue that truly deceptive techniques, such as going undercover or masquerading to get a story, are used to catch people who doing things that endanger individuals or society.

The Food Lion story, for example, showed that Federal regulations for how food should be handled were ignored.

Food Lion sued ABC, claiming the corporation's reporters used deceptive practices to gather the story.



Primetime
LIVE

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Consumers were harmed or in danger of being harmed by being sold tainted food. Thus, in these cases, journalists are doing their job, they are fulfilling their social function by getting information out that citizens need to know for self governance.

This justification has greater plausibility than those that purportedly allow for generalized conning or withholding of sources. But, still it is problematic.

Just who are the bad guys? How does a source know if a reporter, believing the source to be a good guy, is being truthful or if the reporter, believing the source to be a bad guy, is thereby justified in deceiving to get a story?

As these questions are unanswerable in specific reporting situations, this justification, like the others, creates a scenario in which all sources are more vulnerable than they know themselves to be.

In addition, the story here is not just that the store employees have failed to do their jobs. The governmental agencies that we trust to oversee such practices have failed to do their job as well. And this is more systemic problem. What citizens need to know for self-governance is how the government keeps track of how well its regulations are being followed. Do regulatory agencies conduct undercover investigations to ferret out such practices? If not, why not?

As citizens have tacitly given approval for government to carry out restrained and justified undercover investigations, it is more consistent for government, not news organizations, to take on such projects.

Justified Journalistic Deception

With the understanding that almost no journalistic deception is justified, it is important to note that there is one case in one hundred where it is justified. Criteria for how to justify journalistic deception fall out from the analysis of what is wrong with the justifications usually offered. Journalistic deception is justified only if all of the following criteria are met:

- All usual means of gathering have been attempted and exhausted. The need for deception is not justified by a journalist's assumption that it would be easier to get information that way. Deception will have met one criterion if it can be shown that journalists attempted and failed to develop the story differently.

- Regulatory agencies that have the responsibility of overseeing the problem have been approached. The story most often missed in undercover exposes is why the government is failing to do its job. Federal, state and local agencies form a web of oversight for bad truckers and bad meat. It is an important matter for self-governance if that oversight is not happening. Too often journalists skip the step of approaching regulatory agencies because of their fear that the story will "evaporate." Upon learning from journalists that there is a problem, regulatory agencies step in and take care of the problem. The story is gone. But, while that story is gone, another has emerged: a story of government that works. Or, if the matter was cleaned up simply in response to journalistic pressure, the problem will recur and quickly. In that case, the story is delayed, not gone and when journalists begin checking into the matter again, they have the additional information that agency oversight didn't solve the problem.

- No innocent person is deceived. If a story is important enough to warrant journalistic deception, the problem is broad enough that only persons involved in the wrongdoing ought be taken in by the journalistic ruse. The Wilmington, N.C. *Morning Star* provided an example of journalistic deception that met this criterion when, in the mid-1980s, reporters infiltrated a military base in a mock-terrorist raid. All people who work on a military base, including civilians, have a duty to be security-conscious. No "innocent" person was duped by the mock raid because all should have been ready for an infiltration by terrorists, or journalists.

- The news organization must publicly discuss its use of questionable tactics, regardless of the outcome. Citizens have not given consent to be deceived by news organizations. In the highly unusual case in which reporters and news managers determine that journalistic deception is justified, it should be justifiable after the case, in a public sense.

Journalistic deception tears at the fabric of trust that holds society together. News organizations who take it upon themselves to deceive owe the public an explanation of why it was necessary. If the case is strong enough, the explanation ought to make sense regardless of outcome. MJR