

1-1-1997

Forgive Us Our Press Passes

Daniel Schorr

Follow this and additional works at: https://repository.uchastings.edu/hastings_comm_ent_law_journal

 Part of the [Communications Law Commons](#), [Entertainment, Arts, and Sports Law Commons](#), and the [Intellectual Property Law Commons](#)

Recommended Citation

Daniel Schorr, *Forgive Us Our Press Passes*, 20 HASTINGS COMM. & ENT. L.J. 269 (1997).
Available at: https://repository.uchastings.edu/hastings_comm_ent_law_journal/vol20/iss2/1

This Special Feature is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings Communications and Entertainment Law Journal by an authorized editor of UC Hastings Scholarship Repository. For more information, please contact wangangela@uchastings.edu.

Forgive Us Our Press Passes

by
DANIEL SCHORR*

* Veteran reporter-commentator Daniel Schorr, is the last member of Edward R. Murrow's legendary CBS news team still fully active in journalism. He currently interprets national and international events as a Senior News Analyst for National Public Radio.

Indulge me, at eighty-one, in some curmudgeonly ruminations about the journalistic craft I have loved, not always wisely, but well.

We are in trouble. It is the natural order of things that we be in trouble with the powerful, whom we try to monitor. But today we are in trouble with the powerless, who identify us more with the powerful than with them. And people are no longer willing to forgive us our press passes.

Press-bashing has become a growth industry, joined in by some of our colleagues. James Fallows, editor of *U.S. News and World Report*, has a book accusing us of undermining American democracy for fun and profit.¹ Howard Kurtz of the *Washington Post* says we have become our own worst enemy.² Ellen Hume says that American life is in trouble and journalists who could help are doing more harm than good.³

What is a journalist today anyway? A blow-dried television personality trained to read a teleprompter? A talk show host spreading conspiracy and hate? A George Stephanopoulos, who has gone through the revolving door to be paid by ABC for saying what he used to say on the White House payroll? A Pat Buchanan, who keeps body and hope alive between campaigns for President by selling celebrityhood on CNN?

Oh for the day of Ed Murrow, invited in his declining CBS days to run for Senator in New York and tempted to do so—until he concluded that, if he did, he would confuse his audience, left to wonder whether his past commentaries had been colored by his future political plans. How many television stars today, between entertaining appearances on TV and lucrative lecture dates in person, think of obligation to the people out there, now called the market?

You would surely not expect me to write more than three minutes without mentioning Richard Nixon. On February 23, 1973, speaking to John Dean, his words preserved on tape for posterity, President Nixon said, "Well, one helluva lot of people don't give one damn about the issue of the suppression of the press, etc." (On another segment of that tape, he referred to me as "that son-of-a-bitch," but let me not digress.) Nixon was a good reader of the popular mood. He had sent Vice President Spiro Agnew out to make a speech denouncing the

1. See JAMES FALLOWS, *BREAKING THE NEWS: HOW THE MEDIA UNDERMINE AMERICAN DEMOCRACY FOR FUN AND PROFIT* (1996).

2. See Alexandra Marks, *After Years of Being Bashed, Media Start to Bash Themselves*, CHRISTIAN SCI. MONITOR, Jan. 30, 1996, at 1 (quoting Howard Kurtz).

3. See Ellen Hume, Book Review, COLUM. JOURN. REV., Mar. 13, 1996, at 49.

“nattering nabobs of negativism” in the media, calling down on the networks of thousands of supporting letters and phone calls.

Since then, anti-media sentiment has grown by leaps and bounds. In a recent Roper-Freedom Forum-Parade poll,⁴ fewer than twenty percent rated the ethics of journalists as high.⁵ More alarming, sixty-five percent of respondents said there are times when publication or broadcast should be prevented.⁶ Prevented? That is prior restraint we are talking about, advance censorship, the heart of the First Amendment. Did we win that fight in the Pentagon Papers case in the Supreme Court⁷ only now to lose it in the court of public opinion?

That is a serious matter. The practice of journalism rests on something called “privilege.” Privilege is a special protection that society grants to some group because it serves society’s purpose. We all have privilege against self incrimination. Doctors, lawyers, and the clergy have a special privilege to preserve confidentiality. And the First Amendment press privilege is the only privilege written into our Constitution to protect a single industry.

But the privilege accorded to the press depends on public support and will wither without it. The public today senses an abuse of privilege for profit and self-aggrandizement when Richard Jewell is falsely named as the prime suspect in the Atlanta bombing case.⁸ Or when a Los Angeles television reporter falsely reports DNA findings in the O.J. Simpson case.⁹ Or when a Dallas newspaper reports a purported confession in the Oklahoma City bombing, which turns out to be a hoax.¹⁰

In all these cases the news organizations said they relied on confidential sources—and then invoked First Amendment protection against having to reveal those sources. But when a news organization relies on sources it cannot name, then it makes itself responsible for

4. See ROPER CENTER FOR PUBLIC OPINION RESEARCH, NEWS JUNKIES, NEWS CRITICS, HOW AMERICANS USE THE NEWS AND WHAT THEY THINK ABOUT IT (Feb. 1997) (on file with the *Hastings Communications and Entertainment Law Journal*) [hereinafter ROPER POLL].

5. *Id.* at 8.

6. *Id.* at 9.

7. See *New York Times, Co. v. United States*, 403 U.S. 713 (1971) (per curiam).

8. See, e.g., *Jewell Asks for Probe of Treatment by FBI Hearing*, L.A. TIMES, July 31, 1997, at A23.

9. See, e.g., Howard Kurtz, *Bloody Sock Report Said to be “Incorrect,”* WASH. POST, Sept. 27, 1994, at A12.

10. See G. Robert Hillman, *Hews Denies Defense’s Allegation That it Stole McVeigh Documents*, DALLAS MORNING NEWS, Mar. 4, 1997, at 1.

the accuracy of the story. So you had better think twice about how good your sources are. I say this as one who has occasionally been burned myself.

The *Washington Post's* style book says we should always assume that information provided by confidential sources is weaker than information attributable to real people.¹¹ Not necessarily. Real people can lie and dissemble. Some informants, whistle-blowers with important stories to tell, must remain anonymous. Check out the information. But remember that when your confidential source has manipulated you, you do not get to justify yourself by saying you were had by someone you cannot name.

My concern is what we do to ordinary people and to the workings of justice. I am much more worried about the Richard Jewells than about government secrets. When it comes to the government and its millions of pages of mindlessly classified material, I have no doubt that this nation has suffered much more from undue secrecy than from undue disclosure. The government takes good care of itself. But protecting the ordinary citizen from defamation and invasion of privacy becomes our responsibility, and the public will judge us by how we carry out that responsibility.

I join in the general dismay of the journalistic community about the judgment against ABC for the methods used in its investigation of tainted food being sold by a Food Lion store.¹² ABC was using modern video techniques to do what Upton Sinclair was applauded for doing in penetrating a meat-packing plant in Chicago at the turn of the century.¹³ His expose led to the creation of the Food and Drug Administration.

So why was Sinclair applauded while ABC was slapped with a penalty of \$5.5 million, which, perhaps coincidentally, is roughly what anchor Diane Sawyer earns annually?¹⁴ Perhaps coincidentally, I say. But given the presence of a star who was not really a part of the investigation, given the concentration on video techniques and entertainment values in the remorseless quest of ratings, people can

11. See Ben Bradley, *Standards and Ethics*, in WASHINGTON POST DESK BOOK ON STYLE (1984).

12. Food Lion, Inc. v. Capitol Cities/ABC, Inc., 887 F. Supp. 811 (M.D.N.C. 1995).

13. See UPTON SINCLAIR, THE JUNGLE (1906).

14. See Howard Kurtz & Sue Ann Pressley, *Jury Finds Against ABC for \$5.5 Million*, WASH. POST, Jan. 23, 1997, at A1. In August 1997, a federal judge reduced the punitive damages award to \$315,000. See Lawrie Mifflin, *Judge Slashes \$5.5 Million Award to Grocery Chain for ABC Report*, N.Y. TIMES, Aug. 30, 1997, at A1.

be forgiven if they no longer accept us as dedicated solely to the public weal, even when we perform a public service.

So where are we? Let's go back to that Roper poll. Eighty-two percent of respondents think reporters are insensitive to people's pain when covering disasters.¹⁵ Sixty-four percent think the news is too sensationalized.¹⁶ Sixty-three percent think the news is manipulated by special interests.¹⁷ Fifty-eight percent think reporters too often quote confidential sources.¹⁸

I guess we have nowhere to go from here but up. But we have some trail markers for the way up. Young television reporters: Do not poke a microphone in the face of the person on the stretcher and ask, "How did it feel when the plane came down?" Young investigative reporter: Be careful of the friendly but nameless official who has a scoop for you that undermines somebody else's program. Police reporter: Watch out for the law enforcement officer who has a tip on the real guilty person. Producers: Do not regard people as "generic footage."

And to the great media organizations that employ these journalists: You are going to have to convince the public all over again that you are on its side. The *New York Times* and *Washington Post* made a good start on that when, contrary to rules and traditions, they agreed to publish the tract of the Unabomber under threat of further murders.¹⁹ Serendipitously, that publication led to his being identified.

But more and more we will be under challenge to show whether we consider the public merely a market or part of a community in which we are joined. I would like to go back sixty years when I could say to someone who asked me what my profession is that I am a journalist and not be glared at. For even if the "media" of today are not admired as the "press" of yesterday, it is still a great and wonderful thing to work at finding out what the establishment does not want to tell you and to tell people who need to know.

15. ROPER POLL, *supra* note 4, at 6.

16. *Id.* at 7.

17. *Id.*

18. *Id.* at 6.

19. See Howard Kurtz, *Unabomber Manuscript is Published*, WASH. POST, Sept. 19, 1995, at A1.

