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Media Ethics: The Powerful and the Powerless

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Elaine E. Englehardt

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Elaine E. Englehardt has taught ethics, philosophy and communication classes at Utah Valley State College for the past 29 years. As Special Assistant to the President, her administrative assignments include working with the nationally recognized Center for the Study of Ethics. She has worked with several federal grants in the field of ethics. These include four large grants in ethics education from FIPSE, the Fund for the Improvement of Post Secondary Education (Department of Education). Most recently she has directed a FIPSE dissemination grant in "Continuing Ethics Across the Curriculum."

In addition to numerous published articles, Dr. Englehardt has recently completed a three-book series with Harcourt College Publishers in Ethics: *The Organizational Self and Ethical Conduct: Sunlit Virtue and Shadowed Resistance*; *Interpersonal Communication Ethics: Friends, Intimates, Sexuality, Marriage and Family*; and *Principled Media Ethics*. She earlier published *Ethics and Life* with Donald Schmeltokopf through Wm C. Brown Publishers. Dr. Englehardt received her Ph.D. from the University of Utah in Communication and Philosophy.

Media Ethics: The Powerful and the Powerless

Elaine E. Englehardt
Distinguished Professor of Philosophy
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Communication professionals are not merely heirs to but are guardians of an extreme and revolutionary view about freedom in a liberal democracy. Chief among the elements is the doctrine that speech ought be neither regulated nor restrained. The public benefit, of course, is an informed electorate with the tools to make decisions about their society. This is particularly crucial because most other actors on the competitive public stage rightly serve their own interests in the speech process, often ones that involve self-advancing expression coupled with pressures to discourage other views. This often creates mismatches when power concentrations are out of balance.

Journalists and broadcasters are under increasingly strong moral pressure to act well with what power they have to protect basic rights by exercising them to distribute unpopular information and by defending the rights of others to do the same. This is a unique moral role that others do not have. It is unique in that it is an obligation that di-

rectly serves the public, rather than the self-serving obligation to serve the public by doing well in one's own sphere. Coming closest to this direct responsibility are the judiciary who have the responsibility to safeguard the First Amendment, but who do so only on matters brought before them. Journalists see an active obligation to "seek out and distribute information" (SPJ Code as found in Englehardt and Barney, p. 179) to safeguard the free flow.

This article is about the inevitable power struggle that accompanies the media in their coverage of the powerful, or in criticism of the powerful. It also is about the inevitable harms of information distribution, and the question of whether the harms will fall on the powerless or on those with vested interests who have the resources and their own power to attempt to deflect harm from themselves. Thus, distribution of information is inevitably linked to the social power struggles in which the media serve as intermediary. In some way, it is also about the struggle for public opinion as efforts are made to discredit the media in favor of power centers.

The collective press has real power to determine who is to be harmed and who is to be strengthened by the selection and distribu-

tion of the day's information. Beyond the press is the very unequal power distribution favoring the status quo of vested interests while further sinking the powerless. At the same time, the media also have an opportunity—by following through on the promise of that which is made possible by the Bill of Rights—to redistribute power throughout the American community, thereby strengthening it and making a more just and equitable society. Such a society can then thrive on the increased competition created by entry into the creative sphere of the newly empowered. Virtually every day stories appear in the media which emphasize this power struggle, in small ways and in large. They range from apologies for deficient coverage to the growing number of formal efforts to mute the press and reduce its scope.

On the former front, the *New York Times*, May 26, 2004, A 10. apologized to its readers in 2004 for their coverage of the Iraqi war. The 1000 word story was entitled "From the Editors: The Times and Iraq." The *Times* apologized for failing in its duty of reporting with a critical eye as well as in aggressive information gathering in regard to its coverage of the lead up to the Iraq War. In the mea culpa, they

wanted to assure their readers that much of the *Times* reporting was solid, however:

...in a number of instances coverage was not as it should have been. In some cases, information that was controversial then, and seems questionable now, was insufficiently qualified or allowed to stand unchallenged. Looking back, we wish we had been more aggressive in re-examining the claims as new evidence emerged or failed to emerge ("From the Editors: The Times and Iraq." May 20, 2004)

Such regrets were borne in regard to a combination of public attitudes toward the media as well as the related natural reluctance to be aggressive in covering an administration in a time of crisis. At this time the World Trade Center bombing of 9/11 was still fresh and the administration was trumpeting the dangers of Saddam Hussein to world security.

Also of importance is a set of recent cases which ostensibly has a noble public purpose, but which in practical terms reduce the ability of the press to gather information, with the consequence of reduced information circulating for the public to use in making deci-

sions. These cases revolve around an area in which journalists, and the open information system of the Bill of Right, are especially vulnerable—disclosure of confidential sources.

Two cases illustrate the trend. The high profile case of Judith Miller, formerly of the *New York Times*, who was jailed for 63 days for refusing to tell the source of a CIA leak. Miller did not see the story as worthy of publishing but did know the information. She would not disclose the name of the individual supplying the information, thereby receiving the jail sentence. Matthew Cooper from *Time Magazine* also refused to disclose the source of his information in the Valerie Plame story. Carl Rove went on record as the source of Cooper's information, keeping Cooper from the same fate as Miller. In the Miller case, allegedly Scooter Libby had earlier admitted he was the source, yet Miller still accepted the jail sentence. Now reporters worry that 63 days will be the new record for jail time for not releasing information. Everyone wonders what happened with Robert Novak, who released the information but has never been taken to court for not releasing a source.

The Matthew Cooper case was analyzed in a *New York Times* editorial as a problem in the prosecutor's use of power to tame press freedoms:

On a procedural level, the prosecutor's success in the lower court was tainted by egregious unfairness, stemming from the undue secrecy of the prosecutor's filings. The case itself is full of unexplained oddities, starting with the decision to focus on Ms. Miller's contacts, even though she never wrote a single article about the Plame controversy. And then there is the mystery of Mr. Novak who first published Ms. Plame's name, yet seems in no jeopardy even as his colleagues face jail time. "Showdown for Press Freedom, *NY Times* Editorial, p. 12 (Week in Review), Dec. 5, 2004

Can the Powerful stop the Printing of a story?

The printing of a controversial story in a small city or town of a misdeed by a powerful individual can often cause dilemmas for a journalist or editor who may know the accused individual well. Bob Smith was a popular, three-term county commissioner. He was also a

realtor. As a county commissioner, he was directly responsible for the planning and zoning commission. On more than one occasion, when Smith saw land that was being rezoned from farming to commercial or residential, he became financially involved as a silent partner. Marjorie Zimmerman was a long time reporter with the local newspaper covering the county commission. About two months before elections, Zimmerman learned of Smith's financial dealings and wrote articles exposing Smith's conflicts of interest. Zimmerman's editor Ralph Petersen and his wife were neighbors and dear friends of the Smiths. It took a full month before Petersen would allow Zimmerman's stories to be run.

Zimmerman faced numerous threats of a law suit from Smith and his wealthy family. The relationship between the Smiths and the Petersens was dissolved. Friends, neighbors and the Smith's political party were highly critical of the articles written by Zimmerman. The proof was solid that Smith had participated in at least two lucrative land purchases by using information that was not available to the public. However, he was reelected. Zimmerman received threatening phone calls for at least a year after the stories ran.

The Process to Expose the Powerful

Publishing the story was uncomfortable for Petersen and his wife because of their close friendship with Smith. Does this make a difference? First, does the newspaper have a policy of publishing information involving political conflict of interest? If so then from a publishing point of view, it was Petersen's duty to publish the stories. Second, family and neighbors reminded Petersen that he had a duty of loyalty to them, to drop publishing the story. They told him that each story brought more public embarrassment to a good friend. It also created a publicly embarrassing situation for their political party and social group.

Third, and not least, the friends in Petersen's circle argued that friendship and loyalty were created just for the purpose of avoiding the problems Petersen would cause by printing the story, and that if the story were to be published, he would be punished by the group as unworthy to be one of their number.

We have some conflicting virtues. In ethics we often hear the phrase, don't harm anyone. But in media ethics, someone is always

harm. So what are the virtues Petersen must consider? First, should Peterson inform the community that Smith used information that was available only to him and not the public? The readers could then decide if this was a breach of ethics. Second, should Peterson avoid harm through embarrassment to a prominent person? Third, should he demonstrate loyalty and friendship to a group of people he values very much? Zimmerman was not part of this elite social circle and was exerting strong pressure for the publication of the story.

As is most often the case with communication ethics decisions, we cannot give all three virtues equal status. First, Petersen truly believes that information is critical to the community. Next, he believes his job is in providing that information. Finally, he understands that the community has a right to know most of what Petersen and Zimmerman know as journalists. He would then determine that publication of the story would produce beneficial informational consequences and publishing would be a key responsibility. Professionally, Petersen will have done his job, with the damage done by the story to the Smiths being more than offset by the advantages of a well-informed community.

Would Petersen publish this story if it were someone less powerful, let's say a clerk in the recorder's office? Would he publish the story if he, his family and social group didn't know the individual and didn't apply pressure on him? If Petersen's job as a journalist is secondary, and his family and social group take priority, the virtue of protecting them could subsume his professional obligations. The consequences will be a less informed community, but an unbroken relationship. Consequences will flow from whatever Petersen does. If he publishes the story, his community will be better informed, though much of the community may be critical of the newspaper for publishing the story during a time of elections. However, the community will have a more realistic image of one of its prominent members. However, Petersen is likely to be in deep trouble with his family and social associates for drawing a dark cloud over their association.

Thus, a journalist who leaves stories out for personal reasons tends to do a double harm: the story is left out and the community is less well informed, and the journalist occupies the professional space of someone who would keep the community informed in this and other

matters. If one will do harm, as well as good, as is the case with professional communicators, one must be prepared to understand areas of harm that may be desirable or acceptable and areas that should be avoided. The thoughtless communicator may not distinguish between the two, often harming the powerless in the social structure and strengthening the position of the powerful, or of doing harm for no good purpose. This is the most likely thoughtless scenario, since social institutions tend to condition people to help the powerful maintain position.

Bill O'Reiley

In October of 2004 Bill O'Reiley of Fox News was focus of a sexual harassment case that became a national news story. In an early analysis of the case, Fox Network appeared to be using its resources to demonstrate that the alleged victim of the harassment was at fault rather than O'Reiley. In an offensive strategy, they alleged that she intended to write a book about O'Reiley before the events took place. Because of the strategies used against the alleged victim before the case was filed, Fox was criticized by several major media outlets of

ethical and judicial breaches in suppressing details about the case. As we now know, the case was settled discretely between Fox and the victim, and none of us will know the true outcome of the case.

In most professions when one acts ethically, one refrains from victimizing others. Yet, a democratic society seems to require that someone be inconvenienced or harmed if a misdeed is published in the mass media. The communication industry has a special stake in ethics because of the American business system, a system that generally removes legal pressures from the practice of communication, leaving professionals to largely determine their own ethic and often their own profits. Absence of legal restraint similarly removes protection from audiences, allowing for victimization and manipulation, making it very important that communication professionals “act well.”

Acting well recognizes that virtually all information pumped into the system causes harm because it empowers the receiver at the expense of the subject. In the face of unavoidable harm, the professional communicator must utilize principle and reason to find that

fine line between doing good and doing unjustifiable injury for selfish reasons and/or too little beneficial effect.

Let's look at the expression 'considerate use of power'. That's what ethics is in an individualistic society—the wise, considerate use of power and a measured distribution of power to those who would accumulate it. Power is an important element in a participatory society. Power distribution in authoritarian societies is very one-sided; in a democratic society it should be much more equitable. This is certainly not to suggest that power should not be accumulated, but it does argue that power, no matter where it accumulates, should be challenged by constant public scrutiny and discussion of the holder, whether it is the president of the United States, a corporate chief executive officer, or a physically abusive spouse.

In order to understand the role one may play in society as a media professional, one must understand some of the subtleties in the system in which one works. First, a democratic business system is not meant to be a comfortable system for its members, though all of us strive for comfortable lives. If the system is to function, there is a constant turmoil that is unsettling to many. We understand this better through

the cases presented thus far. Power is the valuable currency in a democratic society. It is power that makes media businesses critically important, and power is dependent on information. In a culture in which public opinion is stronger than the law, it is information from the media that drives the acquisition and use of power.

The power may merely be the ability of the individual to determine her own destiny to a large degree, or it may be the accumulation of political power with life and death influence on millions of people. Picture an individual like Smith from our first case, who has advance information on the location of a new highway that is to be built through an undeveloped section of the community. With that information land can be optioned for a relatively low price and later sold at a substantial profit for the highway right of way, or a business property along the highway for construction of gas stations, motels, restaurants and conveniences necessary for highway travel. The individual who regularly receives such advance information has the power to amass a huge fortune by acting before anyone else knows action is necessary.

The deadly enemy of this powerful person is the mass media system, for it has the power to inform everybody at the same time, thus leveling the playing field so no one gains the advantage bestowed by exclusive information for a very few in a closed information society. This is one of the forms of extreme corruption prevalent in closed cultures in which those in the inner circles with advance information can exploit that information to their own ends. It is one reason why media are rigidly controlled in closed cultures. Those who have power often recognize that media may threaten that power at any time through disclosure, or by turning a public spotlight on the powerful. It is not surprising, then, that those with power, or who hope to accumulate power, have a strong interest in controlling the media. If the media can't be controlled, then discrediting the media is generally the next step. Those without power must trust the media, an uncontrolled and powerful entity in their lives. The media must function within this social system. Often media are pressured from all sides by those with an interest in controlling the media.

In this environment, media workers must keep in mind that information is power, and that open information flow discourages its ac-

cumulation. Media are in the business of redistributing power. Information control should not be accumulated and centralized, thereby creating inequities among people.

Classic Case in Journalism:

Publishing Claims of Sexual Harassment

The *Seattle Times* published the story of eight women who claimed to have been sexually harassed and assaulted by a U.S. Senator from Washington state. The women asked not to be identified, though they agreed to testify in the event of libel action against the *Times*. The Senator, Brock Adams, denied the harassment, but announced he would not seek reelection that year. The story destroyed his political career. Some 200 miles to the south, in Oregon, the *Portland Oregonian* received similar information about one of Oregon's U.S. Senators and chose not to run the story because sexual coercion could not be confirmed from sources other than the women. In the wake of media silence, Sen. Robert Packwood was reelected. The story, however, was published soon after the elections by the *Washington Post*. For nearly two years, the Senator was virtually full time

defending himself, denying Oregon the effective services of its senator. Ultimately Sen. Packwood resigned after the Senate Ethics Committee recommended his expulsion on the basis, not only of the original story, but also additional information which surfaced as a result of the story and subsequent public discussion.

It is important to note in these cases, as in most others, that few still know whether accusations in either case were true. Evidence suggests they might be true, but only the accusers and accused know for certain. The important moral principle is that the *Seattle Times* opted to assist the powerless women who claim to have been victimized by a powerful senator. The story certainly redistributed power by diminishing the Senator's ability to chart the course he laid out for himself. This was done by bringing the accusations into the sunlight of public discussion so all sides could discuss and defend their positions publicly.

Public criticism of the story was immediate and strong, centering on the *Times'* willingness to quote anonymous sources and without corroborating evidence. The Senator named in the story chose not to participate in a public discussion, instead withdrawing from public

life. Such an action indicates neither guilt nor innocence, but it did mean the full story would not be told in public discussion.

The *Oregonian* opted to stop the story, protecting the power of a senator at the expense of the women and leaving power in place until more complete evidence could be presented. That decision allowed power to perpetuate itself through reelection. Had the *Washington Post* not published the story in the nation's capital, the women's case may never have been made public; and additional information about Sen. Packwood and his behavior that led to the ethics committee action may never have been disclosed. Public silence would have continued to protect his power. Some believe strongly that power should be allowed to prevail undisturbed until definitive evidence is found to justify public accusations. Arguably, the Constitution and succeeding legal decisions encourage verbal assault on power, even though the information underlying that assault may not be complete. The basic premise, of course, is that the nation can better afford to lose a few from political positions, even unjustly, because of open discussion than it can to suppress discussion and consolidate power by withholding information editors reasonably believe to be true.

Whether or not to publish a story is the essence of a “free and open marketplace” of discussion in which all ideas are introduced and the operant truth determined by public opinion. The moral obligation still holds on editors to assure as much as humanly possible that the truth is being told, but it encourages informed public opinion rather than maintenance of traditional power. The two harassment cases indicate the pressures on journalists. Whichever route they would have followed in each case, they would have been strongly criticized. Importantly, a conditioned reflex about protecting power placed public opinion initially on the side of the senators. That reflexive response is indicative of public responses professional communicators must consider virtually every day.

Professional communicators recognize that society both must be courted and resisted. All media people and professional communicators face the task of reaching audiences as a matter of survival. So media content must be audience friendly, providing what people want, as well as what they need. However, many outside the media with a vested interest in affecting media content for their own purposes form formidable groups to bring constant and often fierce pres-

sure to deter media from the primary responsibility of serving audiences. These groups even form an interesting interaction that includes the media and the public in which pressure groups often use the media to enlist audiences in pressuring the media, or in discrediting the media with those audiences. Paradoxically, much distrust of the media springs from media stories quoting leaders and surveys that declare the media cannot be trusted. The exclamation that, "the media are attacking me, an innocent person, for their own purposes," is a recruitment call to audiences to side with the accused.

Sen. Adams made the accusation against the *Seattle Times*. The call takes advantage of public anxiety about the power of the media and whether they can be trusted to keep us appropriately informed. Potential rewards of being empowered by media attention are enough to make the media the center of intense, high stakes attention. Many pressures on the media are well founded, of course, but others also have the practical effect of crippling the important information gathering and distribution process, both for individuals and for society. All are society's way of responding to a perception of the power of both media and information.

Many in any community who have activist inclinations, as well as strong feelings about the way their community is functioning, develop a sense of powerlessness and frustration in attempting to have some impact on shaping their environment. This drive toward involvement makes their cause neither good nor faulty, but suggests not only a disposition to take a hand in influencing events, and a sense that some changes are needed. In any event, access to, and attentive treatment by, the mass media are very often critical elements in an activist's successful efforts to influence the course of public events.

An additional problem is that of entrenched power and an accompanying arrogance which concludes that "I know what is best for everyone." Yet a great deal of evidence suggests that power protects power, making it difficult for the powerless to crack the portals and take a place in the discussion. In the Brock Adams/Bob Packwood cases, the effects of power are easily evident. A female staff member in Sen. Adams' Washington office had, several years earlier, complained that Sen. Adams had drugged and raped her in his office. An investigation, predictably, could find no corroborating evidence in the case, so the matter was dropped. Similarly, a number of women had

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complained about unwanted and inappropriate sexual advances by Sen. Packwood. Through the arrogance of a couple of editors, the *Oregonian* chose to leave power in place by not running the story, thereby keeping the matter out of the sunshine of public discussion, further entrenching power and ignoring the women who were powerless before his advances. It took another newspaper and other editors after Sen. Packwood's reelection, to make the public disclosures.

Perhaps it is coincidental, but both instances above were attempts to protect or defend powerful individuals. It required newspapers, doing what their moral obligations demanded, to make the disclosures in the face of very strong and instant public criticism. How do media practitioners, particularly editors shift their paradigms of power? Pluralism is a natural element in the national redistribution of power, the leveler of the playing field of public policies. Sometimes we are so used to those in power having their way that we won't buck the system to challenge those in power. It is a mistake. It would also be morally desirable if equity and justice considerations would lead the media establishment to seek expressive participation by diverse

groups, and also seek staff diversity through recruitment and training of minority members to become effective communicators.

This paper has focused on some important cases and considerations. First considered were the actions of the *New York Times* in its apology for shoddy reporting. Through this lens we discussed the notion of harm that can be caused to a public when sources are unsound and incomplete. We then moved on to look at the prominent politician who was buying real estate based on privileged information. Here the editor had the tough decision of going against family and friends and running the story. Is friendship more important than informing the public? The editor moved aside the powerful friendship and allowed information to be distributed.

Democracy is uncomfortable. Criticism will always accompany the brave publication of controversial material, particularly when power is being diminished. Our last example of the senators once again leaves us uncomfortable. There wasn't legal evidence in Washington to publish a story about the Senator. But the story was published. Many political cronies criticized the *Seattle Times*. Brock Adams brought a lot of money to the University of Washington and

Boeing Air Corporation, just to mention a couple of constituents.

Why does the Senator's sex life need to intrude into his comfortable power relationships? Brock Adams did the smart thing by resigning. He didn't ever admit guilt, and his reputation didn't suffer as Bob Packwood's did. Many individuals remember Bob Packwood with disdain. The *Oregonian* didn't do Packwood any favors by turning the story over to the *Washington Post*. The Post was severely criticized for taking on Packwood's alleged sexual misconduct, yet in the end was proven right. Two years of intense public scrutiny left Packwood a strongly negative page in national history books, not just Oregon history books.

The media and business of media have power. Their power can match the economically powerful in the business community. However, media organizations must increase the voices of the voiceless by hiring more diverse reporters and seeking more diverse sources. They also need to constantly consider shifting the paradigm on a story that is uncomfortable. Who is being protected and who is being harmed when a story is held or run?

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