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Foreword

Tom Goldstein

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SYMPOSIUM

TUNE IN, TURN ON, COP OUT? THE MEDIA AND SOCIAL RESPONSIBILITY

FOREWORD

*Tom Goldstein**

Forty years ago, when television still had the charm of its infancy and public relations had not yet become a potent factor in everyday life, the historian Daniel Boorstin wrote a brilliant book called *The Image*.¹

Boorstin famously defined a “celebrity” as “a person who is known for his well-knownness,”² and he introduced the expression “pseudo-event,” an event arranged for the immediate purpose of being reported on, a type of “synthetic novelty which has flooded our experience”³ As an example of a pseudo-event, Boorstin referred to a public relations manager who is asked to increase a hotel’s prestige. The public relations manager cleverly proposes that the hotel management stage a celebration of the hotel’s thirtieth anniversary. An event is planned to call attention to the distinguished service the hotel has rendered the community. The celebration is held, photographs are taken, and the occasion is widely reported.

This quaint example predates the photo-ops that dominate our political campaigns and prefigures reality television and other modern manifestations of pseudo-events. In the years since Boorstin wrote his

* Dean, Columbia University Graduate School of Journalism; former Dean, Graduate School of Journalism, University of California, Berkeley; B.A., Yale College; M.S. and J.D., Columbia University.

1. DANIEL J. BOORSTIN, *THE IMAGE, OR WHAT HAPPENED TO THE AMERICAN DREAM* (1962).

2. *Id.* at 57.

3. *Id.* at 9, 57.

book, the news—particularly television news—has become trivialized in many ways (with a notable exception being the remarkable coverage following the events of September 11, 2001). The events of the winter of 2002 illustrate the triumph of the pseudo-event. The blitzkrieg of coverage of the World Economic Forum defied any resemblance to dispassionate news coverage. Further, it was difficult to separate the coverage of the exotic competitions of the 2002 Winter Olympics from the event's promotions and commercials.

Similarly, the spectacle of congresspeople in a dozen or so separate committees, closing in on the Enron investigation, demonstrated how little the journalists themselves controlled the flow of information. "In this television age, it's no great mystery why these hearings are proliferating," Adam Cohen insightfully wrote on the editorial page of *The New York Times*.⁴ "There's not an elected official in America who doesn't want to be seen—preferably on television, and ideally during prime time—holding forth on Enron's sins."⁵

In the years since Boorstin wrote his novel, we have seen the maturing of a television culture, where the *ad hoc* television rules differ markedly from the rules of print. For instance, in one critical area—the use of deception—print outlets have by and large abandoned the practice for the last quarter century, while on television the use of hidden cameras and deception remains a staple.

Lately, a third culture—the Internet culture—has emerged, and the rules that govern it are still largely undeveloped. The Internet has brought much good to journalism, but it has also made journalists lazy as they rely too easily on what others have reported without independently vouching for the accuracy of the statements.

For instance, Andrew Sullivan of *The New Republic* made an astonishing defense of Matt Drudge, the *enfant terrible* of the Internet. Yes, Sullivan wrote, Drudge makes mistakes, but his website is "transparent and accountable, and it doesn't pretend to be the finished version of the news."⁶ Sullivan added, "I see no problem with different news sources having different levels of reliability."⁷

In the Internet age, our news should require the following warning label: "Not all of this is true or verified."

4. Adam Cohen, *Making Political Sense of the Committees Making Sense of Enron*, N.Y. TIMES, Feb. 11, 2002, at A28.

5. *Id.*

6. Andrew Sullivan, *Scoop*, NEW REPUBLIC, Oct. 30, 2000, at 10.

7. *Id.*

In a widely-publicized 1998 speech at the National Press Club that was at times provocative, charming, and infuriating, Drudge said:

We have entered an era vibrating with the din of small voices. Every citizen can be a reporter, can take on the powers that be. . . . The Net gives as much voice to a 13-year-old computer geek like me as to a CEO or Speaker of the House. We all become equal. . . . Now, with a modem, anyone can follow the world and report on the world—no middle man, no big brother.⁸

That means the role of gatekeeper, formerly the long-honored function of editors and front-line journalists, now collapses. It is a telling shift in the role of journalists.

Drudge's language eerily echoes that of the Supreme Court, which early in the summer of 1997 struck down the "indecent" provisions of the Internet's Communications Decency Act.⁹ In its opinion, the Court found that no particular medium deserves special constitutional protection.¹⁰ On the contrary, the Court's central premise was that in cyberspace "[a]ny person or organization with a computer connected to the Internet can 'publish' information."¹¹

Commenting on the Court's observation, Robert O'Neil, a First Amendment authority who runs the Thomas Jefferson Center for the Protection of Free Expression at the University of Virginia, wrote in 1999, "[T]he line that separates traditional news media from unfamiliar electronic media has become blurred in ways that no previous technological change ever caused. We are still struggling with the resulting conceptual issues—and, quite frankly, not doing too well at that task."¹²

In other ways, we see the diminution of the gatekeeper function of journalists.

For the past several years, courts—not editors, not reporters, and not owners—have played the pivotal role in establishing the professional standards that journalists must meet in doing their jobs.

Nearly a decade ago, before the rise of the Internet and before our current ambivalence to privacy in our daily lives (for instance, people now

8. Matt Drudge, Address Before the National Press Club (June 2, 1998), in *Anyone With A Modem Can Report On The World*, FRONTPAGE MAGAZINE, at <http://www.frontpagemag.com/archives/drudge/drudge.htm>.

9. *Reno v. ACLU*, 521 U.S. 844, 849, 885 (1997).

10. *See id.* at 870 ("[O]ur cases provide no basis for qualifying the level of First Amendment scrutiny that should be applied to [the Internet].")

11. *Id.* at 853.

12. Robert M. O'Neil, A "Public Service" Role for the Press? 52 (1999) (unpublished paper, on file with author).

seem resigned to forfeit a fair share of personal dignity at airports these days), Judge Richard Posner outlined the boundaries of privacy and wrote unflinchingly of the last taboos in a way that no journalist ever had.

The context for the judge's ruminations was the 1993 opinion in *Haynes v. Alfred A. Knopf, Inc.*,¹³ in which the esteemed publisher and Nick Lemann, author of *The Promised Land: The Great Black Migration and How It Changed America*,¹⁴ prevailed on appeal in a libel and invasion of privacy suit. "Even people who have nothing rationally to be ashamed of can be mortified by the publication of intimate details of their life," Posner wrote.¹⁵ He continued:

Most people in no wise deformed or disfigured would nevertheless be deeply upset if nude photographs of themselves were published in a newspaper or a book. They feel the same way about photographs of their sexual activities, however "normal," or about a narrative of those activities, or about having their medical records publicized. Although it is well known that every human being defecates, no adult human being in our society wants a newspaper to show a picture of him defecating. The desire for privacy illustrated by these examples is a mysterious but deep fact about human personality. It deserves and in our society receives legal protection.¹⁶

Another recent instance of a judge becoming the formulator of journalistic norms occurred in a case involving Paladin Press, where the niche publisher was sued for aiding and abetting three murders on the basis of its publication of the book *Hit Man: A Technical Manual for Independent Contractors*.¹⁷ The big media weighed in on the side of the publisher and the First Amendment.¹⁸ And the big media, placed in this awkward legal posture, lost.¹⁹

Judge J. Michael Luttig of the Fourth Circuit Court of Appeals permitted the suit against Paladin to go forward, commenting:

That the national media organizations would feel obliged to vigorously defend Paladin's assertion of a constitutional right to *intentionally and knowingly* assist murderers with technical

13. 8 F.3d 1222 (7th Cir. 1993).

14. NICHOLAS LEMANN, *THE PROMISED LAND: THE GREAT BLACK MIGRATION AND HOW IT CHANGED AMERICA* (1991).

15. *Haynes*, 8 F.3d at 1229.

16. *Id.*

17. *Rice v. Paladin Enters., Inc.*, 128 F.3d 233, 239-41 (4th Cir. 1997).

18. *Id.* at 265.

19. *Id.* at 267.

information which Paladin *admits* it intended and knew would be used immediately in the commission of murder and other crimes against society is, to say the least, breathtaking.²⁰

As *we* go forward in these bewildering times for journalists, we can only hope that journalists and their bosses consume greater doses of common sense. And we can only hope that gatekeepers can perform their traditional task while adjusting to modern circumstances.

20. *Id.* at 265.

