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To bark or to bite? Journalism and entrapment

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TO BARK OR TO BITE?
JOURNALISM AND ENTRAPMENT

Zohar Kampf

Introduction

Entrapment as a method for bringing a scandal to light represents one of the most controversial practices of newsgathering. Defined as “dark art” (Greenslade, 2013) or “ambush journalism” employed in drawing out the worst in others (Rainey, 2011), entrapment is legally and ethically positioned in the gray area of the journalism profession. It entails various types of deceptive and trust-breaking techniques (Liebes & Blum-Kulka, 2004) applied to trick someone to commit a legal or moral transgression (Hill, McLeod, & Tanyi 2017). As such, it takes journalists away from the safe position of passive and distanced spectators whose aspirations for intervention in social reality are minimal to the more controversial position of active and engaged actors directly responsible for generating a scandal (Moncrieff, 2006; Kampf, 2011). Once a transgression is induced by a reporter, debate over the legitimacy and etiquette behind the entrapment (which could itself develop into a parallel scandal) arises: Was the motive to protect the public from misuse of power or just to increase sales (Campbell, 2001; Wasserman & Rao, 2008)? Was there enough prima facie evidence of wrongdoing by the target, or did the reporter go fishing in the hope of catching someone (Greenslade, 2013)? Were the deceptive techniques applied proportionally or were they too intrusive and forceful (Levy, 2002; Sleight, 2010)?

This chapter discusses the reasons, practices, and ethics of entrapment journalism. I will first clarify what entrapment journalism is and point to its early roots in law-enforcement. After discussing the functions of exposing transgressive actions and worldviews via resorting to borderline, proactive strategies, I will survey the gamut of strategies employed by reporters, ranging from attempts to induce a source to commit a transgression or misrepresentation of their own identity to more mitigated “betrayal” strategies, such as exposing off-record information. I will then present emic and etic perspectives on entrapment journalism, namely, how journalists and scholars respectively perceive the practices of deception and trust violation, discussing scholarly debate on ethical issues surrounding entrapment. To conclude, I will point out several future directions for the practice and study of entrapment journalism.

What is entrapment journalism?

The practice of entrapment is as ancient as human storytelling. Consider the story of Adam and Eve, in which the snake provoked Eve (who then induced Adam) to eat the forbidden fruit.
“The serpent beguiled me” is probably one of the earliest known exonerating excuses (Buttny, 1993), pointing to the deceptive and persuasive means resorted to by the snake-as-entrapper for tempting humans into committing a transgression. Further in documented history, entrapment techniques were (and still are) utilized by intelligence agencies (consider the various practices of spying), law enforcement agencies (in the form of sting operations or making use of an agent provocateur to implicate someone in an illegal act; see Levanon, 2016) and even in academia, in the form of experimental methods in social psychology (recall Ash and Milgram’s studies).

In the field of journalism, entrapment is linked to contemporary trends of active newsgathering and to the emergent genre of “crime-busting journalism” (Campbell, 2001). According to Campbell, the practice flourished in the UK from the 1990s onward, when tabloid newspapers, headed by the News of the World (which closed in 2011 following the phone hacking scandal), executed “a series of undercover operations ostensibly to bring drug dealers, fugitive financiers, and other criminals to justice” (2001, 184). A series of scandals, including the Lawrence Dallaglio drug claims scandal (1999), the Victoria Beckham kidnap plot (2002), the Kieren Fallon race-fixing case (2004), the John Higgins video over thrown frames (2010), and the Pakistan cricket spot-fixing scandal (2010) erupted following the use of entrapment techniques by News of the World reporters. They have led, however, to only a few judicial convictions (Bagchi, 2010; Williams, 2016).

Although various scholars and practitioners may include or exclude specific methods from the practice of entrapment, there is an overarching agreement that all forms of entrapment include some trickery on the side of the entapper. In its broader sense, entrapment entails the use of deceptive and persuasive means that induce or provoke the entrapped to commit a legal or moral transgression (Hill, McLeod, & Tanyi, 2017). Journalistic entrapment also entails some form of violation of trust or betrayal on the journalists’ side. It is defined as a proactive method of newsgathering (Levy, 2002) in which reporters break “a tacit or explicit agreement with a source” (Liebes & Blum-Kulka, 2004) in order to obtain and expose scandalous information they would otherwise not be able to gain access to.

Scholarly debates conducted within the purview of philosophy (Levy, 2002; Harrison & Breit, 2004), law (Smith, 2004; Dyer, 2015; Levanon, 2016; Hill, McLeod, & Tanyi, 2017), and journalism studies (Sanders, 2003; Liebes & Blum-Kulka, 2004; Patching & Hirst, 2013) suggest further distinctions between the various meanings and practices of journalistic entrapment. Hill, McLeod, and Tanyi (2017) distinguish between legal (conducted by law enforcement agents) and civil or private (carried out by non-official agents) entrapment, two practices aimed at exposing either moral or criminal transgressions. Entrapment conducted by journalists is clearly related to the civil category. It may be designed to tempt the target to commit a crime (“civil entrapment to commit a crime”) or “to do something that is immoral, embarrassing, or socially frowned upon” (Hill, McLeod, & Tanyi, 2017, 2). At the normative level, Levy (2002, 122) distinguishes between permissible and “broader” versus illegitimate and “narrower” senses of entrapment. Whereas the broader meaning sees the practice as legitimate for information gathering, the narrower sense refers solely to the illegitimate use of such methods, thus attributing negative load to the practice. The difference between the two is related to the motivation behind the deception (public or commercial interests), an issue I will deal with in the next section.

Reasons for journalistic entrapment

The practice of entrapment generates engaging stories about well-known figures who transgressed morally or judicially. It is therefore only reasonable that critics of entrapment point
to commercial gain as the main reason for the performance and flourishing of the practice (Harrison & Breit, 2004; Dyer, 2015). Nevertheless, the functional justification for acts of entrapment and their subsequent scandals go beyond issues of profit. According to an idealized view of journalism, entrapment can be seen as part of investigative reporting and guided by the logic of activist ethics of problem-solving journalism (Campbell, 2001). Entrapment is probably the most active form of investigative journalism as it aims at alerting the public about the abuse of power while at the same time thwarting the corrupt conduct of the powerful. It expands the role of the watchdog from barking (i.e., providing information about the corrupt obtained from other sources) to attacking and biting (i.e., active policing and personal engagement in sting operations) and is legitimized by the need of the public to be informed of “public actions of the officials who claim to represent them or whose decisions impact significantly on their lives” (Levy, 2002).

The activist’s logic guiding entrapment may also be seen as an expansion of the practice of enforcing norms (Lazarsfeld & Merton, 1948). Accordingly, journalists are responsible not only for exposing deviation from norms but also for solving crimes (Campbell, 2001) by way of implementing policing practices (Harrison & Breit, 2004) and deception (Patching & Hirst, 2013). The active role of the entrapper-as-norm-enforcer is mainly seen in the initial stages of scandals (disclosure of transgression; see Thompson, 2000), where journalists are traditionally dependent on inside sources and whistleblowers (Molotch & Lester, 1974). During this stage, they are responsible for designing the scene that allows them to expose transgressions later; but performing the role of norm enforcer does not stop here. After bringing the deviation to the public’s attention, journalists possess full legitimacy to demand accountability from the entrapped transgressor. Once corrective action is realized (in the form of apology, resignation, police intervention, etc.), journalists may score extra points with the public when seen as responsible for facilitating the reaffirmation of the transgressed norm (Kampf, 2011).

Reasons for entrapment can be found beyond the expansion of journalism ethics. Scholars have identified a growing process of marketization and sophistication of impression management in the political field (Corner & Pels, 2003; Hamo, Kampf, & Shifman, 2010) that requires the use of “extreme,” nonconventional practices for exposing the “truth” (Liebes & Blum-Kulka, 2004; Kampf & Daskal, 2013). Entrapment can be understood as a professional practice for eliciting information from public figures who have learned how to conceal actions and evade responsibility. Accordingly, the only way to get information from experienced political figures and expose their “real” persona, ideas, or beliefs is by way of deception. Breaking an explicit agreement with interviewees who would otherwise not have spoken with reporters (Liebes & Blum-Kulka, 2002) or using other deceptive methods are thus the only options available for journalists to fight back against the growing sophistication of political marketing.

Methods of entrapment

As noted earlier, regardless of the specific method applied for gaining hidden information or inducing others to commit a criminal or moral transgression, there is an overarching agreement among scholars that all forms of entrapment include some form of deception and betrayal (Levy, 2002; Liebes & Blum-Kulka, 2004; Patching & Hirst, 2013). The narrower, controversial definition of entrapment includes deceptive methods that also consist of some form of active persuasion by the entrapper (Levy, 2002). Consider, for example, the definition suggested by the BBC following a sting operation executed by The Daily Telegraph targeting the coach of the English national soccer team, Sam Allardyce, in 2011.1 Posing as businessmen representing a
Far Eastern firm, undercover reporters filmed Allardyce bargaining for a $500,000 payment for consulting on an illegal deal in the soccer players transfer market (Warren, 2016). Following the public disclosure of the con, the BBC explained to its readers the practice of entrapment, using the following distinction:

To be clear—it’s not just going undercover. So it wouldn’t be entrapment if a police officer or journalist secretly joined a gang to get evidence of someone committing a crime. But if they persuaded or forced someone to do something illegal that they wouldn’t otherwise have done, then it would count as entrapment.

(Rahman-Jones, 2016)

The combination of the two methods—falsifying identity and provoking the entrapped party to commit a crime—seems to be the extreme case of entrapment journalism. Examples are many and include the disclosure of corruption, as in the Sam Allardyce case, or of offensive sexual behavior, as in the case of the Presidents Club scandal in which undercover journalists of the Financial Times reported on the sexual harassment of women hostesses by members of the club during a charity dinner (Marriage, 2018). Entrapment evolved into a television genre in the United States when To Catch a Predator, an NBC investigative/reality television program, was aired between 2004 and 2007. The series was devoted to impersonating adolescents aged 12 to 15 and shaming suspected pedophiles who came to meet their young victims.

The extreme and narrower case of entrapment is often denounced as journalistic “dark art” that resorts to dubious measures for gaining profits (Wasserman & Rao, 2008; Greenslade, 2013). Other less disputable but still controversial methods include a variety of borderline strategies for gaining information. Several of the methods included in the broader definition of entrapment can be found in international comparative studies that survey journalists’ perceptions of “questionable” methods of newsgathering (Weaver & Wu, 1998; Plaisance, Skewes, & Hanitzsch, 2012; Weaver & Willnat, 2012). On occasion, journalists justify the following methods of deception or betrayal: employment in a firm or organization to gain inside information; claiming to be someone else; using hidden microphones or cameras; exerting pressure on unwilling informants to get a story; making use of personal documents, such as letters and pictures, without permission; and revealing confidential sources (among other deceptive methods that do not fit neatly into the definition of entrapment).

A profound lesson from this list of “questionable” methods for newsgathering is that betraying a source’s trust is the most unjustified technique in the eyes of journalists. According to Liebes and Blum-Kulka (2004), betrayal (with some form of subterfuge) stands at the core of entrapment. Pointing to the various options of breaking “a tacit or explicit agreement with a source” (ibid., 1154), the act of betrayal may transform the exposure of scandal from a commendable to a condemnable act. It positions journalists on the “thin line of befriending sources while remaining free enough of personal commitment to do honest reporting” (ibid., 1159). In contrast to other forms of journalistic entrapment, betrayal does not include misrepresentation of identity, at least not in the conventional sense. It does include, however, some form of pretending to be the source’s “best friend.” Trust built in the process of personal interaction between journalist and source is gained, only to be violated.

Liebes and Blum-Kulka provide a variety of examples of trust betrayal, starting with Joe McGinnis’s and Joe Klein’s books (The Selling of the President and Primary Colors), which were a result of the authors gaining the trust (and friendship) of two American presidents, Richard Nixon and Bill Clinton respectively, and violating them by harshly criticizing them. Other methods of entrapment are employed in the process of interviewing sources and include disclosing
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Information that was given off record, breaking an existing agreement not to publish a source’s words, and encouraging unsuspecting sources to dig their own graves. The latter method is considered the most damaging to the source and, in the Israeli context, has ended or severely damaged the careers of several politicians and popular culture figures (Ori Orr, Yaffa Yarkoni, Jacko Eisenberg, to name a few). Entangled in this method, sources are given the impression that their words are communicated off record and some form of intimate relations with the interviewer exists. The latter exploit the trust gained by (naive) interviewees by inducing them to continue to provide information and/or express opinions that will cause damage to their public image.

One famous example of tricking a source to dig her own grave was aired in 1995 during CBS’s “Eye to Eye with Connie Chung.” During a live interview with the mother of incoming House speaker, Newt Gingrich, Chung asked Kathleen Gingrich what her son thinks about Hillary Clinton. Holding a burning cigarette in her right hand, the loving mother answered, “Nothing, and I can’t tell you what he said about Hillary.” In the following turns, Chung constructed the broadcasted interaction with the appearance of a personal, intimate chat between friends:

Chung: You can’t?
Gingrich: I can’t.
Chung: (whispering) Why don’t you just whisper it to me, just between you and me?
Gingrich: She’s a bitch.2

A scandal immediately erupted. The pointing fingers, however, were directed at Chung and not at Gingrich. According to Anderson (1999, 599), “Connie Chung was lambasted by the public and professional colleagues alike for compromising journalistic ethics by ‘tricking’ (the naïve and unexperienced) Mrs. Gingrich into an embarrassing disclosure.” The Kathleen Gingrich–Connie Chung scandal, as well as others that erupted as a result of the formulation of misleading questions by interviewers (Ekström & Johansson, 2008), indicates once again that resorting to entrapment methods may boomerang. In the next two sections I will discuss justification and criticism of the practice from both emic (professionals’) and etic (ethics scholars’) perspectives.

Perspectives on entrapment journalism

Emic perspectives on entrapment journalism

How do journalists conceive the practice of deceiving and betraying sources? Surveys point to divided perceptions among journalists from around the world (Weaver & Wu, 1998). According to a Global Journalist study (Weaver & Wu, 1998), being employed by a firm or organization to gain inside information is justified on occasion (79.2%), as is falsifying identity (60%). However, betraying sources by revealing their identity is approved to a far lesser degree (9.7%). From a cross-cultural perspective, studies suggest that the assumption of a universal standard in regard to entrapment practices is at least questionable (Plaisance, Skewes, & Hanitzsch, 2012). Thus, for example, in response to a question about falsifying identity (claiming to be someone else), 88.4% of US journalists perceive the method unjustified under any circumstances, while 46.6% of UK journalists think it may be justified on occasion. The findings of the World of Journalism project also suggest that this method is justified or justified on occasion in different journalistic cultures such as China (86.3%) and Sweden (85.1%).3

Another question in the World of Journalism surveys focuses on the attitude of journalists regarding the use of hidden microphones and cameras. Interestingly, topping the list were Israeli
journalists, of which 56.9% think this practice is always justified. In comparison, only 8.7% of US and 2.7% of UK journalists justified this practice. Journalists from Sweden, Norway, and Denmark (93.6, 92.7, and 92.7% respectively) considered the method justified on occasion, a finding that may point once again to a cross-cultural difference in ethical perceptions. The reason for the ranging levels of ethical flexibility are explained mostly by variances in ideological or state-level factors, rather than differences on the individual level (see Plaisance, Skewes, & Hanitzsch, 2012).

Journalists’ disagreement on methods of entrapment may be understood as a struggle between those who perceive the practice as guided by an “activist ethic” (Campbell, 2001) and those who reject the use of any misleading and deceptive techniques in the process of newsgathering, criticizing the use of deceptive methods based on ethical or practical inappropriateness. This position was expressed, for example, by Ben Bradlee, the former editor of The Washington Post and a member of the Pulitzer Prize Board that did not award the prize to the Chicago Sun-Times in 1977. According to Bradlee, journalists who aim to uncover deception “simply cannot deceive” themselves (see Levy, 2002, 126). Other critics divert from ethical idealism to more practical reasoning. For Wall Street Journal reporter Matthew Rose, undercover methods are dismissed as “a kind of investigative reporting without much investigating” (see Campbell, 2001, 184; for the same argument see Harrison & Breit, 2004).

On the other hand, those who justify the use of entrapment methods perceive the practice as a powerful tool that “should be used sparingly” (Greenslade, 2013). According to former editor of the Daily Mirror, Roy Greenslade, the use of entrapment methods is justified, like any type of investigating reporting, if it adheres to the notion of “public interest.” If so, a series of questions should be asked by the editor before approving the sting operation: Is there enough prima facie evidence of wrongdoing by the targeted person? What is the position of the entrapped party? How much power does he or she have? How strong is the evidence? What is the nature of the offence—criminal or moral? And if morality is at stake, how bad is the transgression (Greenslade, 2013)? For journalists, answering these questions in a way that demonstrates strong evidence and a clear public interest justifies the employment of active measures for cleaning the rot at the top.

Etic perspectives on entrapment journalism

Professional disputes over the practice of entrapment is mirrored in the debates among scholars of applied moral philosophy and journalism ethics (e.g., Levy, 2002; Sanders, 2003; Harrison & Breit, 2004). At the core of the debate stands the distinction between utilitarian interpretation of moral behavior and moral absolutism. According to the utilitarian perspective, the consequences of an action are the key parameter for assessing its moral value. Moral behavior is thus judged by the perceived effect of actions, and if methods of entrapment serve the higher value of public interest (even though compromising other, inferior, values such as individual privacy) they are morally justified (Sanders, 2003). Moral absolutism, on the other hand, delegitimizes the practice of entrapment. It calls for assessing an action on its own moral value, thus omitting its possible (positive) consequences from the question of morality. Accordingly, deception cannot be eradicated by a counter-deception because practices like falsifying identity and lying position professionals on the slippery slope of corruption (Williams, 2012; Sanders, 2003).

Further debates on journalistic entrapment accept the fact that in everyday practice law enforcement agencies and other public institutions already resort to methods of entrapment. Adopting the utilitarian perspective, that is, that “morality is judged by its beneficial effects and that principles should always be weighed against consequences” (Sanders, 2003, 20), the locus
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of the debate is whether journalism as an institution has the right to employ entrapment methods and, if so, under what restricting conditions. The clearest position in favor of entrapment is advocated by Levy (2002). Building on the assumption that the news media is the fourth pillar of democracy, he argues that “journalists can ethically engage in deceptive behavior in the service of the important goal of informing the public of the actions of the officials who claim to represent them, or whose decisions impact significantly upon their lives” (ibid., 128). He adds two further justifications, focusing on the unique privileges of the powerful: (a) compared to ordinary people, public figures have more options for protecting their privacy; (b) their greater impact on society must entail greater scrutiny by law and norm-enforcing institutions.

In response to Levy’s legitimization of journalism as an institution that has the right to exercise deceptive techniques, Harrison and Breit (2004) challenge the definition of journalism as the Fourth Estate. Journalists are guided by the public functions they perform but also, at times even more, by commercial constraints. Entrapment thus may be performed only with an appearance of public interest, whereas de facto it may be aimed at increasing sales. According to Harrison and Breit (2004, 2), operating “under the proprietorship of some of the most powerful media corporations” undermines the basic justification for resorting to deception and betrayal of trust.

Accepting the assumption that journalists have the right to employ entrapment methods opens up a second line of debate, this one over the specific conditions under which deception methods are justified. Conditions (some of which were presented in the last section) that must be met are, for example, “probable cause to suppose that the individuals approached are already engaged in or are intending to engage in activity of a similar nature” (Levy, 2002, 125) and a clear public interest (Harrison & Breit, 2004). Despite disagreements over a specific condition, there is basic agreement among scholars that journalists must use entrapment with caution. For Levy, journalists “must consider the privacy implications of their actions, especially in the absence of probable cause, and the effects of their behavior on third parties” (ibid., 128). A similar stance is also expressed by the Independent Press Standards Organisation, the independent regulator of most of the UK’s newspapers and magazines: “Engaging in misrepresentation or subterfuge, including by agents or intermediaries, can generally be justified only in the public interest and then only when the material cannot be obtained by other means.”

Concluding remarks

Debates over the legitimacy of entrapment methods point to a deeper disagreement over the role of journalists in society: are they neutral and balanced observers of social and political reality? Or, alternately, are they engaged actors guided by activist ethics? Putting it differently, is their role to bark in order to draw our attention to the misuse of power, or rather to bite by inducing powerful actors to disclose their weaknesses? As demonstrated in the last two sections of this chapter, this ongoing controversy among both scholars of media ethics and professionals is to a large extent due to the efficiency of entrapment methods to provide valuable information in an age of public cynicism and political sophistication. It would not be too risky to predict that entrapment methods will be used in the future for constructing political scandals, even after the harsh criticism they received following the News of the World phone hacking scandal and the Leveson report. Even more so, with advanced digital technologies, entrapment methods are here not only to stay, but to improve as well. The questions for future debate are what self-restrictions journalists should adopt and how far they should go in using the various methods of entrapment journalism.
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Notes

1. http://www.bbc.co.uk/newsbeat/article/37505199/entrapment-has-won—but-what-is-it
2. https://www.youtube.com/watch?v=vccw539MjWM
4. For further explanation of Israeli journalists’ justification of deceptive methods, see Tsfati and Meyers (2012).
5. https://www.ipso.co.uk/editors-code-of-practice/

References

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