

Intrusion for Journalism's Sake

With the rise of ambush journalism, many journalists seem to believe that they have a special exemption from the privacy laws. That's simply not true. Two cases illustrate the point.

The first case is *Dietmann v. Time*. In the November 1, 1963 issue Time published an article titled "Crackdown on Quackery." To gather information for the article two journalists went undercover to visit Antone Dietmann. Mr. Dietmann had no medical training but purported to heal people with herbs, minerals and clay.

The journalists, a man and woman team, used a hidden camera and microphone. The woman, Jackie Metcalf, told Dietmann that she had a lump in her breast. Dietmann diagnosed the problem as butter poisoning because Metcalf had eaten rancid butter eleven years, nine months and seven days earlier. According to Dietmann, the poison settled in Metcalf's leg causing the lump in her breast. He prescribed clay pills to cure the problem.

As a result of the reporters' story Dietmann was arrested for practicing medicine without a license. Thereafter, he filed a civil suit against Time for invasion of privacy. The trial court awarded Dietmann \$1,000 for injury to his "feelings and peace of mind." The Ninth Circuit Court of Appeals affirmed the award holding that the First Amendment is not a license to trespass, to steal, or to intrude by electronic means into another's home or office. This is true even when the subject of the intrusion is reasonably suspected of committing a crime.

The second case dealing with journalists and the right of privacy is *Sanders v. ABC* decided by the California Supreme Court in 1999. In *Sanders*, Stacy Lescht, an ABC reporter, obtained a job with the Psychic Marketing Group as a telepsychic. The Psychic Marketing Group restricted access to its offices by the general public.

After she was hired, the reporter wore a "hat cam" – a video camera in her hat – to secretly record her co-workers. Mark Sanders was one of the co-workers recorded. He talked about his personal aspirations and beliefs then gave Lescht a psychic reading. ABC included part of the Sanders conversation when it ran the story about the telepsychic industry.

ABC argued that Sanders did not have a reasonable expectation of privacy in an office consisting of rows of over 100 cubicles. The California Supreme Court rejected ABC's argument holding that intrusion is not an all-or-nothing concept. Employees may enjoy a limited, but legitimate expectation that undercover television reporters will not secretly videotape their conversations.