



HEADLINES

Candid Cameras

How far should reporters go to get the story?

When North Carolina-based Food Lion Inc. won a landmark \$5.5 million decision against Capital Cities/ABC earlier this year, the case sparked debate over just how far a journalist should go to get information. A North Carolina jury found that two producers from ABC's *PrimeTime Live* committed fraud, trespass, and breach of loyalty by lying on their resumes to get jobs at a Food Lion and surreptitiously shooting

more than 40 hours of videotape. The footage was used in a November 1992 report that alleged unsanitary and deceptive food-handling practices. In court and on *PrimeTime Live*, ABC argued that its deception was necessary to bring an important story to the public.

"I don't think journalists should go to the point of breaking the law or lying to tell a story," says Judy Popky '92, who handles the Food Lion account from the Atlanta offices of Ogilvy & Mather, a worldwide advertising agency. "You're only telling one side of the story with a hidden camera or investigative research. With the Food Lion case, they had 45 hours of tape. Somebody had to decide what was newsworthy in those 45 hours, and that tends to be at the expense of one party or the other. Journalists need to be fair in their representation of both sides because, for many people, that's their only source of information."

Popky, a graduate of the S.I. Newhouse School of Public Communications, says Food Lion hired her firm in 1993 to help deal with repercussions from the *PrimeTime Live* broadcast, which reported such practices as repackaging out-of-date meat and treating rotten fish with bleach to remove its foul smell. Food Lion's earnings fell from 37 cents a share in 1992 to 1 cent a share in 1993. "The company was aggressively expanding into new territories, and some of that expansion was devastated by the story," Popky says. "In core territories where Food Lion grew up, so to speak, loyal customers did not believe *PrimeTime Live*. In new markets where people were just learning about Food Lion, the company didn't get a chance. It took Food Lion about three-and-a-half years to rebound."

Food Lion attorneys contacted E. Robert Lissit, professor of broadcast journalism at the Newhouse School, after reading his article on hidden cameras in *American Journalism Review*. Lissit testified at the trial as a paid consultant for Food Lion.

After demonstrating that *PrimeTime Live* aired 80 reports using hidden cameras from August 1989 to September 1996, Lissit said he believed the technique was used to attract viewers. Attorneys for Food Lion argued that ABC used hidden camera stories to boost ratings, raise advertising revenues, and increase profits.





H E A D L I N E S

"If hidden cameras are used in an ethical fashion, I think they're a very important investigative tool," Lissit says. "But in putting your story together, you have to be even more careful than you would be on a story that doesn't use a hidden camera."

A normal videotaped interview may last about 45 minutes, Lissit says, and all parties involved have a clear understanding of the discussion's context. A major investigative piece such as the Food Lion story may include more than 40 hours of videotape, only portions of which will be broadcast. The high volume of material and sometimes-indistinct audio of hidden camera tapes may lead to editing mistakes that are difficult to detect. "That is not an issue of hidden cameras; it's a basic journalism issue. But it has happened frequently enough to suggest to me that there are very difficult and real limitations put on a reporter or producer in using hidden camera material. I think it's remarkable that so many hidden camera stories are done without any problems—and the bulk of them are."

ABC News senior producer Edward Hersh '75 was not involved in the Food Lion reporting or subsequent court case, but nonetheless feels hidden camera journalism has exposed instances of waste, fraud, and abuse, from lax security at airports to neglect and abuse in hospitals and day care centers. "Hidden cameras have proven to be an extremely powerful and useful tool in telling stories that are important and might not otherwise get told," says Hersh, a 15-year veteran of ABC News with degrees from The College of Arts and Sciences and Newhouse. "With the power of that tool comes enormous responsibility on broadcast journalists to use it wisely and judiciously."

At ABC, Hersh says, longstanding guidelines call for hidden cameras to be used only after all other means of getting a story are exhausted. "An investigation undergoes a lengthy review process involving senior management and attorneys," he says. "That's very important for the credibility of the organization and in terms of fairness."

"You have to make a distinction be-

tween information that is vital to the public and information that satisfies someone's curiosity," says Newhouse alumnus Steve Geimann '75, president of the Society of Professional Journalists and senior editor of *Communications Daily*, a trade newsletter for the telecommunications industry. "The Food Lion case was one where the public's food supply was in question. I would argue that coverage of how Food Lion prepared and displayed its food was of vital public interest."



Undercover techniques should not be used to entrap a celebrity or public official in a compromising position, Geimann says. "Supermarket tabloids like the *Globe* and *Weekly World News* are fond of using those techniques. In a recent example, with Frank Gifford, there is evidence suggesting the *Globe* helped set up the incident it photographed and then reported on. We ought not to be creating events. If we have cameras and they are hidden, we ought to be recording what we see, and we should be passive about what's going on, not active in helping things along."

Geimann feels a journalist shouldn't resort to illegal means to get a story, but draws a distinction between criminal and civil law. "The issue Food Lion presented was about what the producers put on their resumes and whether their resumes accurately reflected the truth. Food Lion successfully argued that the resumes were not truthful; therefore, a fraud was committed. Was that breaking the law? A jury determined that the producers did something

wrong, but that it wasn't a criminal violation. I would not support, and I don't think any responsible professional journalist would endorse, committing a criminal act to get a story. That includes trespassing on private property or breaking and entering into a house or business. Those examples of lawbreaking are not appropriate for journalists."

"Ethically, I don't think (ABC) did anything wrong," says Joel Thierstein '83, G'84, G'91, G'96, a professor of communications law and media ethics at Purdue University Calumet in Hammond, Indiana. "A journalist's responsibility is to act as a check on government. Journalists really need to go beyond that now because the government seems to be checked quite nicely by big business, so journalists need to act as a check on big business."

Thierstein adds, however, that journalists also have an ethical responsibility to allow people to make such mistakes as putting the wrong prices on items or selling expired merchandise. "When it gets to be a pattern and appears to be deliberate, that's when journalists step in, but they need to make that decision. You have to know where to draw that line legally and ethically, and those are not the same lines."

The Food Lion award, which a U.S. district judge later reduced to \$315,000, may keep networks from being as aggressive as they have been about undercover investigations, Thierstein says. Corporations like General Electric, which owns NBC, and Westinghouse, which owns CBS, aren't media players and are likely to avoid liability at all costs. Lawsuits like the Food Lion case, he says, may give them a stronger argument when they tell their news organizations to back off stories.

Hersh, too, feels that such lawsuits may have a chilling effect on undercover investigations. "If it makes people think twice before they use a hidden camera, I'm not sure that's a terrible thing. If it stops a news organization from bringing stories to the public, then it is not a good thing. Hidden cameras aren't toys or gimmicks, they're reporting tools. The ethical debate needs to go on, and the safeguards have to continue, so that these very powerful tools aren't used frivolously."

—GARY PALLASSINO

SPECIAL REPORT

SU Students File Lawsuit After Denny's Altercation

It's known as "the Denny's incident"—a bewildering saga of alleged discrimination and physical abuse that has put a county district attorney at odds with a national civil rights monitor, spawned a lawsuit, and drawn the attention of the national media—from ABC News and CNN to *The New York Times*. Essentially, it has all the basic ingredients for a good made-for-TV—or at least Court TV—movie.

Here's what's known: Early on the morning of Friday, April 11, 1997, seven college students—six Asian and Asian Americans from Syracuse University and one Caucasian from the SUNY College of Environmental Science and Forestry—were escorted by two security guards from a Denny's restaurant in Syracuse after complaining to the manager that they were made to wait while groups of Caucasian customers were seated ahead of them.

The students were followed outside by several Caucasian patrons, one of whom struck a student, starting an altercation that was eventually broken up by a group of African and African American SU students, including three Orange football players.

What's unclear is just about everything else.

In a lawsuit filed August 20 with the U.S. District Court for the Northern District of New York, the students in the Asian/Asian American group claim the Caucasian restaurant patrons shouted obscenities and racial slurs, then attacked them in the parking lot while the guards—two uniformed and armed off-duty Onondaga County deputy sheriffs hired by Denny's—stood by. Not only did the guards ignore their pleas, the students claim, but also blocked bystanders' rescue efforts. One guard was also said to have used a chemical spray on the Caucasian ESF student as he tried to rescue a female companion who had been knocked to the ground and kicked in the head.

According to the lawsuit, several of the students were bloodied and two were beaten into unconsciousness before the African/African American group intervened. The plaintiffs are seven members of the Asian/Asian American group, along with three members of the African/African American group who themselves were ejected from the restaurant after the fight—when they complained about their own wait to be seated and about the guards' failure to break up the attack.

Named as defendants are Denny's Inc.; Denny's parent companies—Flagstar Companies Inc., Denny's Holdings Inc., and Flagstar Corp.; NDI Foods Inc., the local Denny's franchisee; Onondaga County; and the two off-duty deputy sheriffs.

The plaintiffs claim their civil rights were violated when they were denied service and evicted from the restaurant, and when the deputy sheriffs took no action to halt the assault in the restaurant parking lot. They are seeking a judgment that includes payment of compensatory and punitive damages, and attorneys' fees. According to the lawsuit, as a result of the incident, the plaintiffs missed classes, were forced to reschedule exams or take incompletes, and "lost their abilities to enjoy life in the manner they were accustomed to."

Three days after the incident, NDI Foods called in the Office of the Civil Rights Monitor—an independent agency established to investigate claims against Denny's as part of a 1994 consent decree settling an earlier discrimination suit. Among the monitor's recommendations, communicated to the students' attorneys August 13: The manager on duty who ordered the students' ejection should be terminated; the two security guards should not be rehired; and the hostess who initially ignored the students should be suspended without pay for two weeks and reprimanded.

Denny's Inc. agreed to follow the recommendations and implement new policies deterring future discrimination. On August 21 a Denny's Inc. spokeswoman said that all employees involved in the April incident had been dismissed.

On September 4, Onondaga County District Attorney William J. Fitzpatrick made public the result of an investigation conducted by his office. According to the DA's report, no evidence was

found that "the students were discriminated against by Denny's, by the deputies, or that they were assaulted as a result of their ethnic origin." Fitzpatrick released the report at a press conference attended by the fired hostess and manager, and their attorney. He called Denny's "a gutless corporation" for dismissing the pair and stated that it was "an absolute disgrace to throw these people as sacrificial lambs to the wolves over an incident that never happened."

According to the report, the students' wait was not based on their ethnicity, and the incident began as a result of one student's abusive conduct in the restaurant. The report also stated that no one used racial epithets prior to the fight, that pepper spray was displayed but not used, and that the students appeared to have been drinking. The guards did not want to "lock up" with any one person since they were armed, and therefore monitored the situation until backup arrived, the report said, and the Caucasian patron who threw the first punch had been identified but would not be charged because of conflicting accounts as to which student he hit.

In total, the DA's report directly contradicts the account of the students in their lawsuit and the findings of the civil rights monitor. "We feel the DA's report is inaccurate and incomplete," says Elizabeth OuYang of the Asian American Legal Defense and Education Fund, attorney for the seven students in the Asian/Asian American group. "We feel it is not objective and that there is a major conflict of interest in the County of Onondaga DA's Office investigating this case when the security guards and the police are implicated here."

Shortly after the incident and twice over the summer, the University issued public statements expressing concern for the students' well-being and calling for a thorough investigation leading to the prosecution of those responsible for their assault.

The next chapter will most likely be written by the U.S. Justice Department. The FBI and the U.S. Attorney's Office are conducting a preliminary investigation, the outcome of which will determine whether a full-scale investigation is warranted by the Justice Department's civil rights division.

—KEVIN MORROW