

# BACK TO THE FUTURE—QUESTIONS FOR THE NEWS MEDIA FROM THE PAST

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## I

The alleged rape by three members of the Duke University lacrosse team led to extensive coverage by media voices as different as CNN Headline News's Nancy Grace (billed as "the feisty former prosecutor") and the more sedate "Gray Lady," *The New York Times*. Critics of the coverage often charge that most of the media, however different, fell victim to similar journalistic sins.

First, the media ignored the basic principles of Journalism 101: Report accurately and fairly; admit what you do not know; never assume; treat sources, however official, with skepticism; and verify, verify, verify.

Second, the media abandoned prudence for a presumption of guilt. At best, it feigned neutrality and skepticism. Reporters regurgitated the rush-to-judgment rants by the office of District Attorney Michael Nifong and the Durham Police Department. So early press accounts incorrectly reported from official sources: (a) "really, really strong evidence"<sup>1</sup> of rape when no evidence existed; (b) the refusal of all forty-six white lacrosse players to cooperate with police (no player refused); and (c) the players' denial of "participation or knowing anything"<sup>2</sup> (the players interviewed had described in detail what had taken place).

Third, the media exhibited stereotypes about lacrosse players. In *Until Proven Innocent: Political Correctness and the Shameful Injustices of the Duke Lacrosse Rape Case*, Stuart Taylor Jr. and KC Johnson wrote that even journalists who usually shunned gender and racial stereotypes portrayed lacrosse players as almost exclusively white, rich, conceited, and thuggish—"a bad bunch, and probably racists to boot."<sup>3</sup>

Fourth, the media fit the "Duke lacrosse rape" storyline into a centuries-old narrative pattern of innocent, African American, female victims—Sally Hem-

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This Article is also available at <http://law.duke.edu/journals/lcp>.

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1. STUART TAYLOR, JR. & KC JOHNSON, *UNTIL PROVEN INNOCENT: POLITICAL CORRECTNESS AND THE SHAMEFUL INJUSTICES OF THE DUKE LACROSSE CASE* 63 (2007).

2. *Id.* at 64.

3. *Id.* at 8.

mings-era slaves and the antebellum South's black women.<sup>4</sup> Early accounts of the case portrayed the accuser as "a poor African-American mother struggling to work her way through college."<sup>5</sup> The *Raleigh News & Observer* never once used the word "alleged" in describing the "sexual violence" against the virtuous victim, the exotic dancer with two children and a "full class load at N.C. Central University."<sup>6</sup>

Fifth, the media presumed a related storyline about the predominantly white, criminal-justice system—that, especially in the South, the system stood for racial injustice and comforted the already comfortable, ruling whites—here, the Duke lacrosse players. Memories persisted of the trials of the Scottsboro Boys—black teens accused of raping two Alabama white women in 1931—and the 1955 murder of Emmett Till, a fourteen-year-old black, for whistling at a Mississippi white woman.

The false prosecution of the three lacrosse players for rape reminded blogger William L. Anderson and others of the two-decade-old case of African American Tawana Brawley. (Anderson called the Duke case Tawana Brawley II.<sup>7</sup>) Brawley, then fifteen, had accused three white men—including a police officer—of repeatedly raping her. Brawley had been missing from her home in Wappingers Falls, New York, for four days. She was found lying in a garbage bag, her clothing ripped and burned, her body covered with feces and racial epithets written on her in a black, charcoal-like substance.<sup>8</sup> The story, it was later revealed, was a hoax.

Brawley's team of lawyers and advisers starred the Reverend Al Sharpton and the attorney Alton Maddox. In reviewing media coverage of the team's statements, a book by *The New York Times* reporters assigned to the case faulted the media for building into a national story the baseless charges from a Maddox-Sharpton press conference.<sup>9</sup> Maddox said Brawley had been "lured into an automobile" and sexually assaulted.<sup>10</sup> Sharpton called the attack "the most shameful act of racism of our times."<sup>11</sup> The *Times* reporters criticized both the "skillful exploitation of television and the press" and the news media's failure to challenge the inflammatory Sharpton and Maddox.<sup>12</sup>

The failures and follies of the news media in the Brawley and Duke cases have led some critics to focus on political correctness as a key villain. In his

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4. See Carrie Simmons, *Creating Sexual Ethics in Slavery's Shadow*, <http://www.brandeis.edu/projects/fse/news/slavery2.pdf> (last visited Apr. 15, 2008).

5. TAYLOR & JOHNSON, *supra* note 1, at 65.

6. *Id.*

7. William L. Anderson, *Tawana Brawley II*, <http://www.lewrockwell.com/anderson/anderson134.html> (last visited Apr. 15, 2008).

8. *Id.*

9. ROBERT D. MCFADDEN ET AL., *OUTRAGE: THE STORY BEHIND THE TAWANA BRAWLEY HOAX* 114–16 (1990).

10. *Id.* at 115.

11. *Id.*

12. *Id.* at 116.

book on the Duke case, Don Yaeger begins his chapter on the media by quoting Dan Okrent, *The New York Times*'s public editor until 2005. The Duke lacrosse case, Okrent said, "had everything that would excite the right-thinking New York journalist: It was white over black, it was male over female, it was jocks over a nonstudent, it was rich over poor."<sup>13</sup> Reporters who visited the Duke campus often interviewed bombastic professors who perpetuated the image of the university as an elitist, racist institution.<sup>14</sup> Especially on television, Yaeger argued, calm, intelligent voices were less likely to be heard than hysterical, hyperventilating ideologues.<sup>15</sup> Yaeger quoted Stephen Miller, a columnist on *The Chronicle*, Duke's student newspaper, about the Group of 88 faculty ad titled "We're Listening": "[T]he people turned it from an issue about a specific charge about a specific situation into all-out class and race and gender warfare."<sup>16</sup>

The authors of the other major book on the Duke lacrosse case reached a similar conclusion. In a chapter titled "Politically Correct Sensationalism," Taylor and Johnson said the media, as well as academics, "were not about to let mere evidence get in the way of a delicious 'morality play that simultaneously demonized lacrosse, wealth, the white race, the South, and the male sex,' as Charlotte Allen later wrote in *The Weekly Standard*."<sup>17</sup> Taylor and Johnson asked whether journalists did themselves and the truth a disservice by adopting the slogan, "Afflict the comfortable."<sup>18</sup> Do the "comfortable" deserve to be afflicted? Many journalists, Taylor and Johnson concluded, felt "quite comfortable . . . in their gleeful sneering at the 'privileged' Duke lacrosse players."<sup>19</sup>

## II

A historian might ask whether a review of other cases that have attracted extraordinary media attention would suggest more pervasive press problems than political correctness. I have chosen to focus on one dramatic case—the press's response to Senator Joseph McCarthy. Interestingly, it was a visit to Duke University that helped me understand the relationship between the news media and McCarthy and its significance today as well as almost three generations ago. Mining the J.B. Matthews Papers in Duke's library, I researched CBS correspondent Don Hollenbeck, best known for broadcasting a pioneering radio program, *CBS Views the Press*, from 1947 to 1950 and for casting a skeptical eye on Senator Joseph McCarthy and McCarthyism.

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13. DON YAEGER, *IT'S NOT ABOUT THE TRUTH: THE UNTOLD STORY OF THE DUKE LACROSSE CASE AND THE LIVES IT SHATTERED* 147 (2007).

14. *Id.* at 149.

15. *Id.* at 148–49.

16. *Id.* at 161.

17. TAYLOR & JOHNSON, *supra* note 1, at 122.

18. *Id.* at 125 (quoting Finley Peter Dunne, *Observations of Mr. Dooley* 240 (1902) ("Th' newspaper does ivrything f'r us. It runs th' polis foorce an' th' banks, commands th' milishy, conthrols th' legislachure, baptizes th' young, marries th' foolish, comforts th' afflicted, afflicts th' comfortable . . . .")).

19. *Id.*

The George Clooney movie *Good Night, and Good Luck* tells the story of the televised confrontation in 1954 between McCarthy and CBS's Edward R. Murrow.<sup>20</sup> In a subplot of the movie, Hollenbeck is portrayed as a depressed, despairing victim of McCarthyism, under attack from the conservative press. Hollenbeck's extemporaneous on-air statement in support of Murrow after his famous *See It Now* broadcast—which had editorialized against McCarthy and McCarthyism—leads Jack O'Brian, a radio and TV critic for William Randolph Hearst's flagship *New York Journal-American*, to smear Hollenbeck as a pinko and to lambaste CBS for not firing him. As he did in real life, the despondent, troubled Hollenbeck turns on the jets to his apartment stove and kills himself.

It is hard for me not to remember Hollenbeck, Murrow, and McCarthy as I think about “traditional media” journalists in high-profile cases today. In *The Second Civil War: How Extreme Partisanship Has Paralyzed Washington and Polarized America*, Ronald Brownstein argues that McCarthy's famous 1950 speech, in which the senator said that he held in his hand a list of Communists in the State Department, was a turning point for American politics.<sup>21</sup> Efforts to build consensus gave way to divisiveness and demagoguery. More important for this article, McCarthy's speech and repeated anti-Communist rants were also a turning point for the news media. “The limits of objectivity became more apparent,”<sup>22</sup> write Michael Schudson and Susan Tifft.

McCarthy was a master at manipulating the press. For too long, the press never seemed to catch up with McCarthy's accusations, including his charges about card-carrying Communists in the State Department. Was it 205 Commies, or 57, or 81? Who were the sources of McCarthy's accusations? How credible were those sources? Did McCarthy rush to judgment about those he accused? Did he presume their guilt? To learn the answers to those questions—to dig deeper—“took more time and effort than most reporters could spare,” Schudson and Tifft concluded.<sup>23</sup>

In words that could apply to coverage of the alleged rape by members of the Duke lacrosse team and other high-profile cases, Edwin Bayley critiqued the press's handling of McCarthy. Bayley wrote that reporters covered politics “as if it were a stage play; only what happened in public counted.”<sup>24</sup> Too many reporters acted as stenographers, just recording McCarthy's accusations, the more sensational, the better.

Yet respected journalists defended the need to report the accusations. “McCarthy's charges of treason, espionage, corruption, perversion are news

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20. *GOOD NIGHT, AND GOOD LUCK* (Warner Indep. Pictures 2005).

21. *See, e.g.*, RONALD BROWNSTEIN, *THE SECOND CIVIL WAR: HOW EXTREME PARTISANSHIP HAS PARALYZED WASHINGTON AND POLARIZED AMERICA* 88 (2007) (discussing how the speech split an otherwise unified Republican party, with vocal anti-Communist members berating other Republicans for not being sufficiently anti-Communist).

22. Michael Schudson & Susan E. Tifft, *American Journalism in Historical Perspective*, in *THE PRESS* 17, 28 (Geneva Overholser & Kathleen Hall Jamieson eds., 2005).

23. *Id.*

24. EDWIN R. BAYLEY, *JOE MCCARTHY AND THE PRESS* 30 (1981).

which cannot be suppressed or ignored,” wrote Pulitzer Prize-winning columnist Walter Lippmann. “They come from a United States senator . . . in good standing at the headquarters of the Republican party.”<sup>25</sup>

Ten questions about journalists and journalism during McCarthy’s time might help us think about the journalists and journalism of today and tomorrow:

*1. Who is a journalist, and what does it mean to be a journalist?*

In McCarthy’s era, William Randolph Hearst’s *New York Journal-American* paid Harvey Matusow, a Communist turned FBI informer, to co-write (along with Howard Rushmore, a Communist-turned-anti-Communist *Journal-American* columnist) a front-page story that proclaimed in a banner headline, “3,500 Students Recruited Here for Red Fifth-Column.”<sup>26</sup> The number 3,500, intended to grab readers, was a fabrication. Matusow told a Senate Internal Security Subcommittee that *The New York Times* employed “well over 100 dues-paying [Communist Party] members” and *Time* magazine employed seventy-six.<sup>27</sup> Later, he disavowed those allegations: “I had lied.”<sup>28</sup>

Rushmore’s career was filled with conflicts of interest and appearances of conflict of interest. While writing his *Subversive Front* column for the *Journal-American*, Rushmore also testified before congressional investigative committees and joined McCarthy’s Permanent Subcommittee on Investigations as its research director. When a New York school teacher he testified against was fired and killed herself, “Rushmore [was said to have] announced happily, ‘I was responsible for that. That’s the second one I testified against that committed suicide.’”<sup>29</sup>

Of course, the question of who is a journalist today appears even more difficult to answer, given the role of amateur “citizen journalists,” bloggers, humorists like Jon Stewart, and bumptious, shout-fest hosts like Nancy Grace. Jim Squires, the former editor of the *Chicago Tribune*, observes that “[a]ctors, comedians, politicians, lawyers, infamous criminals—and some who fit all five categories—now regularly masquerade as reporters on newscasts and talk shows.”<sup>30</sup> The discombobulating digital revolution may blur the boundaries between journalists and nonjournalists or make clear that no boundaries exist.

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25. RICHARD H. ROVERE, SENATOR JOE MC CARTHY 166 (1959) (quoting Walter Lippmann).

26. HARVEY MATUSOW, FALSE WITNESS 71 (1955).

27. *Id.* at 155.

28. *Id.* at 222.

29. Theo Wilson, *Confidentially Rushmore: Jobless, He Wouldn’t Borrow; On Top, He Was Cold & Cruel*, N.Y. DAILY NEWS, Jan. 6, 1958, at 2.

30. Jim Lehrer, *Blurring the Lines Hurts Journalism*, 53 NIEMAN REP., Summer 1999, at 65 (quoting Jim Squires), available at <http://www.nieman.harvard.edu/reports/99-2NRsummer99/Lehrer.html>.

2. *What ethical code, if any, does the journalist feel obligated to honor?*

In McCarthy's era, the official code of journalists—espoused in ethics canons of journalism associations and journalism textbooks—had objectivity as its backbone (even when journalists acknowledged that true objectivity was impossible). The “Canons of Journalism” of the American Society of Newspaper Editors called for old-fashioned impartiality: “News reports should be free from opinion or bias of any kind.”<sup>31</sup> But one-sidedness seemed to be the principle in play at numerous news organizations. On the left, Ralph Ingersoll's *PM* newspaper in New York City told its journalists to seek the truth, not objectivity, which in effect meant pro-labor, anti-isolationist reporting and editorializing.<sup>32</sup> On the right, Hearst's newspapers lived by the anti-labor family bible—Hearst's thick, self-published book, *Selections from the Writings and Speeches of William Randolph Hearst*.<sup>33</sup>

Today, some news organizations, out of laziness or lack of concern or on the advice of legal counsel, do not ask their journalists to abide by a company code of ethics. Other news organizations require journalists—if not employees in all departments—to sign company codes of ethics as a condition of employment. More-general news-industry codes and statements of principles—those of the Society of Professional Journalists,<sup>34</sup> the Online News Association,<sup>35</sup> and *The Elements of Journalism* by Bill Kovach and Tom Rosenstiel<sup>36</sup>—clearly articulate standards of fairness, integrity, independence, and accuracy.

Of course, the existence of codes of ethics does not guarantee that they will be honored. Journalists are not subjected to licensing, disciplinary panels, or disbarment. And 24/7 deadlines, increased competition from a variety of new media, reduced newsroom staffing, less space for news, pressure to report stories concisely and quickly across all media platforms, the search for the next big blockbuster story, and numerous other pressures work against the incisive, in-depth coverage in which reporters play by traditional journalism's rules of ethics.

31. American Society of Newspaper Editors, *Problems of Journalism: Proceedings of the 1952 Convention*.

32. PAUL MILKMAN, *PM: A NEW DEAL IN JOURNALISM 1940–1948* (1997) 22–23 (quoting Ralph Ingersoll, “[T]he public was entitled to the truth on all subjects and . . . the paper had an obligation to get the truth and tell it. [E]ditorially, the paper should stand for the publisher's conception of a better world. Newspapers emphatically believed in the existence of Right and Wrong and campaigned for their principles—largely against political corruption, since political corruption was the issue of the day.”); *see also id.* at 39 (quoting Ingersoll, “Newspapers . . . handicapped writers by forcing them . . . to write from a fraudulently ‘objective’ point of view . . .”).

33. WILLIAM RANDOLPH HEARST, *SELECTIONS FROM THE WRITINGS AND SPEECHES OF WILLIAM RANDOLPH HEARST* (1948).

34. *See* Society of Professional Journalists, *Code of Ethics* (Sept. 1996), available at <http://www.spj.org/pdf/ethicscode.pdf>.

35. *See* CECILIA FRIEND & JANE B. SINGER, *ONLINE JOURNALISM ETHICS: TRADITIONS AND TRANSITIONS* 227–28 (2007).

36. *See* BILL KOVACH & TOM ROSENSTIEL, *THE ELEMENTS OF JOURNALISM passim* (2001).

### 3. *What is the role of the journalist?*

In McCarthy's era, many journalists did not rush to judgment; they rushed to silent sycophancy. Eliot Fremont-Smith said that in the early McCarthy years the supine news media "suffered a prolonged attack of *laryngitis intimidatus*."<sup>37</sup> Today's journalists like to believe they are more often skeptical watchdogs than silent, stenographic lapdogs. Journalism students are instructed, if your mother says she loves you, check it out. Introductory reporting textbooks quote Ernest Hemingway: "The most essential gift for a good writer is a built-in, shockproof shit detector."<sup>38</sup>

Certainly the reporting by CBS journalist Ed Bradley of *Sixty Minutes* and others treated the initial accusations in the Duke lacrosse case with appropriate skepticism. But for every journalist who carefully studied the documents, checked the facts, and questioned the conventional wisdom, there were many journalists who did not. They did not perform the function of the skeptical journalist espoused in reporting textbooks—that is, to inform the public as honestly, fairly, and accurately as possible about news crucial to a democracy, not merely crime, celebrity gossip, and "infotainment." Increasingly, given falsehoods, public-relations propaganda, and misleading statements, journalists also need to perform the role of alarm system, the canary in the mine alerting the public to where extra caution may be required.

### 4. *Are journalists sufficiently skeptical about what they are told by sources?*

Few reporters were committed to checking the facts behind McCarthy's charges, though they had reason to suspect his ability to distinguish between Communists and non-Communists. George Reedy, at the time a United Press reporter who was later President Lyndon Johnson's press secretary, recalled covering McCarthy: "Joe couldn't find a Communist in Red Square—he didn't know Karl Marx from Groucho—but he was a United States Senator. . . . Covering him was a big factor in my decision to quit newspaper work."<sup>39</sup>

Several years after McCarthy's initial charges about Communists in the State Department, even devout anti-Communist journalists started to question McCarthy in print and on the air. In July 1954, Frederick Woltman of the *New York World-Telegram* began a five-part series, *The McCarthy Balance Sheet*, with a startling about-face: "Sen. Joseph R. McCarthy has become a major liability to the cause of anti-Communism."<sup>40</sup> Even Howard Rushmore, Hearst's anti-Communist columnist, began to express doubts about the staff McCarthy had hired. Rushmore was rewarded for his honesty by being fired. A Hearst in-

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37. BAYLEY, *supra* note 24, at vii.

38. TIM HARROWER, *INSIDE REPORTING: A PRACTICAL GUIDE TO THE CRAFT OF JOURNALISM* 81 (2007).

39. BAYLEY, *supra* note 24, at 68.

40. Frederick Woltman, *The McCarthy Balance Sheet*, N.Y. WORLD-TELEGRAM & THE SUN, July 12, 1954, at 6.

sider explained to Rushmore that his indirect criticism of McCarthy “greatly diminished”<sup>41</sup> his effectiveness as an anti-Communist.

*5. What do we know about the power of storylines and stereotypes in journalism?*

Three favorite storylines of the McCarthy era involved: (1) the victim (the death by suicide of someone like Hollenbeck as admirable sacrifice—or as deserved retribution from on high); (2) the scapegoat (the radical, dissident, or liberal as a threat to basic values and principles—or as a defender of basic values and principles); and, (3) the hero (the triumph of McCarthy—or the triumph of Murrow, his critic). The press gravitates toward such news storylines, for they echo eternal stories, argues Jack Lule persuasively: journalists, unconsciously or consciously, “cast modern experience in terms of myth.”<sup>42</sup> So journalists may need to be especially cautious in approaching specific allegations and court cases that may involve race, ethnicity, gender, class, or religion and that may appear at first blush to fit a stereotypical, mythological formula of a story long loved by the public.

The portrayal of Hollenbeck as persecuted victim driven to suicide, for example, is really a more complicated story—of alcoholism, three failed marriages, a hair-trigger impetuosity, clinical depression, and his mother’s own death by suicide. It is not fair to blame Hollenbeck’s suicide on any one person or event, despite the way Hollywood screenwriters, journalists, historians, and others tell his story. Psychologists associate suicide with the convergence of as many as seventy-five behavioral factors—from aggression to impulsivity—as well as genetic factors.<sup>43</sup>

Complexity, not a simple, good-versus-evil storyline, increasingly may be the reality a reporter needs to capture and convey. Looking at the growth of online news and the absence of a clear economic model for funding some kinds of important news coverage, The Project for Excellence in Journalism addressed the future role of journalism in a democracy: “Journalism . . . is not becoming irrelevant,” declared the Project. “It is becoming more complex.”<sup>44</sup>

*6. What institutional and employer support exists for the skeptical watchdog who pursues the truth at a time when other journalists happily remain lapdogs?*

Those journalists who like Hollenbeck questioned the tactics of McCarthy and his press followers were subjected to Red-baiting ridicule and received in-

41. Letter from J.B. Matthews to Howard Rushmore (Dec. 13, 1954) (on file with Special Collections Library, Duke University).

42. JACK LULE, *DAILY NEWS, ETERNAL STORIES: THE MYTHOLOGICAL ROLE OF JOURNALISM* 7 (2001).

43. See THOMAS JOINER, *WHY PEOPLE DIE BY SUICIDE* 202 (2005) (“Genes, neurobiology, impulsivity, childhood adversity, and mental disorders are interconnected strands that converge and can influence whether people acquire the ability for lethal self-injury, feel a burden on others, and fail to feel that they belong.”); J. John Mann, *Neurobiological Aspects of Suicide*, in *APPROACHES AND SPECIAL POPULATIONS* 1–3 (2005).

44. Schudson & Tift, *supra* note 22, at 43.

sufficient support from their employers. In his column, Nick Kenney, radio critic for Hearst's *New York Mirror*, called Hollenbeck "that Stalinbeck lad."<sup>45</sup> O'Brian, a radio and TV critic for Hearst's *New York Journal-American*, attacked Hollenbeck as a soft-on-Communism, hard-on-McCarthy propagandist: "And right after CBS Board Chairman Bill Paley's noble speech about objectivity and balance in the selection of news. All the news that fits Hollenbeck's view. Meaning, all the news that's left."<sup>46</sup>

To assuage advertisers and professional anti-Communists, both CBS and NBC introduced company blacklists that required new employees to sign loyalty oaths. All CBS employees, old and new, had to sign.<sup>47</sup> CBS President Frank Stanton said the network never tried to remove Hollenbeck from *CBS Views the Press*.<sup>48</sup> But CBS news writer Jack Walters was closer to the truth when he said Hollenbeck's removal, as the program's main writer and narrator, was part of "a CBS executive decision to bow to outside pressures."<sup>49</sup> Of the three major networks, only ABC stood up to McCarthyism and the rush to create company blacklists.

News organizations, however, can also pressure their journalists for a higher standard of reporting. Following the discovery of reporter Jayson Blair's plagiarism and fabrication, *The New York Times* published a long, front-page story about Blair's deception<sup>50</sup> and commissioned a critical study that found management breakdowns and other failings.<sup>51</sup> Two editors resigned. The *Times* appointed a public editor to encourage greater transparency about the paper's news performance and to provide access for readers with a complaint.<sup>52</sup>

7. *What obligation do journalists and news organizations have to be self-critical—to admit mistakes and point out the mistakes of other journalists and news organizations?*

In the time of McCarthy, there was an understanding among many major news media—unstated, for the most part—that they would not criticize one an-

45. Nick Kenny, *Nick Kenny Speaking*, N.Y. MIRROR, Jan. 15, 1949, at 12.

46. Jack O'Brian, *Gonna Wash That Color Right Out of Our Set*, N.Y. J.-AM., May 26, 1954, at 38.

47. DAVID EVERITT, *A SHADOW OF RED: COMMUNISM AND THE BLACKLIST IN RADIO AND TELEVISION* 72 (2007).

48. Interview with Frank Stanton, President Emeritus, CBS, in N.Y. City, N.Y. (Aug. 4, 1975). The author declined to make available notes of interviews with sources conducted years ago for a project other than this article; for this reason, the editors cannot independently verify their content. Fuller use of the interview notes is made in the author's 2008 book, *CBS'S DON HOLLENBECK: AN HONEST REPORTER IN THE AGE OF MCCARTHYISM*.

49. Interview with Jack Walters, former Senior News Writer, CBS, in N.Y. City, N.Y. (Aug. 5, 1975).

50. Dan Barry et al., *Times Reporter Who Resigned Leaves Long Trail of Deception*, N.Y. TIMES, May 11, 2003, at 1.

51. Tina Kelley, *Times Editor Details Steps to Prevent a Recurrence of Fraud*, N.Y. TIMES, May 13, 2003, at B3.

52. See DANIEL OKRENT, *PUBLIC EDITOR #1: THE COLLECTED COLUMNS (WITH REFLECTIONS, RECONSIDERATIONS, AND EVEN A FEW RETRACTIONS) OF THE FIRST OMBUDSMAN OF THE NEW YORK TIMES* 2 (2006).

other. Arthur Hays Sulzberger of *The New York Times* said: “I don’t believe it’s the business of papers to attack each other.”<sup>53</sup> If papers had decided to criticize one another, they would have had much to say about newspapers as organizations with social, economic, and political agendas. It may well have been that McCarthy, during his famous speech in Wheeling, West Virginia, held a list of the names of Communist sympathizers in the State Department. Or, as he told a close friend, he may have held only “an old laundry list.”<sup>54</sup> Regardless, Bill Hearst, son of William Randolph Hearst and a McCarthy loyalist, said,

Joe gave us a call not long after the speech. And you know what—he didn’t have a damned thing on that list. Nothing. He said, “My God, I’m in a jam . . . I shot my mouth off. So what am I gonna do now?” Well I guess we fixed him up with a few good reporters. . . .<sup>55</sup>

Bill Hearst drew upon “that little band of anti[-]red zealots who made their nest at the [*New York*] *Journal-American*,”<sup>56</sup> his biographers said.

#### 8. *How is a primary tool of journalism—language—used by journalists?*

The language used by many McCarthy-era journalists—such labels as “fellow-travelers,” “pinkos,” and “anti-anti-Communists”—reflected the era’s partisanship. Journalists today face similar choices about the use of language, whether the topic is abortion, the Middle East, terrorism, or criminal justice. Few realists would hold journalists to a standard of absolute “objectivity.” But journalists retain a voice in their choices of the stories they write, the questions they ask, the material they include in their articles, and the language they use. Some of America’s most memorable reporting has contained not only a stylistic voice but also an editorial voice—for example, Murrow’s famous *See It Now* broadcast about McCarthy.

For traditional media, however, it still may be crucial to err on the side of initially reporting what officials—truth-tellers and liars alike—say and then letting readers, listeners, and viewers make up their own minds. A democracy needs journalists who try to report dispassionately and impartially. “[W]hen the evidence on a controversial subject is fairly and calmly presented,” Murrow said, “the public recognizes it for what it is—an effort to illuminate rather than to agitate.”<sup>57</sup>

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53. John F. Lewis, *The Press Gets a Policeman*, PM, June 3, 1947, at 25.

54. FRED J. COOK, *THE NIGHTMARE DECADE: THE LIFE AND TIMES OF SENATOR JOE MCCARTHY* 149 (1971).

55. LINDSAY CHANEY & MICHAEL CIEPLY, *THE HEARSTS: FAMILY AND EMPIRE—THE LATER YEARS* 128 (1981).

56. *Id.* at 129.

57. *IN SEARCH OF LIGHT: THE BROADCASTS OF EDWARD R. MURROW, 1938–1961*, at 376 (Edward Bliss, Jr. ed., 1967).

But a democracy also needs those journalists to exercise extraordinary skepticism in their reporting, without the delays so evident in journalists' coverage of McCarthy. If a source is suspected of lying, the public needs to know the possibility that person is lying, even if the word "liar" is not used in describing the person.

9. *What is the state of mind of journalists as they practice their craft?*

The textbook model of the nonpartisan reporter competes with other models, including advocates for a certain version of the truth. *Village Voice* writer Nat Hentoff recalled the partisan state of mind of Jack O'Brian, who wrote for Hearst's *New York Journal-American* during the McCarthy era: "He wanted the First Amendment for himself."<sup>58</sup> O'Brian saw *Journal-American* columnist George E. Sokolsky and himself as holy warriors, defending the flag, patriotism, and congressional investigators like McCarthy, who were being questioned by Murrow and Hollenbeck. "I don't know whether [O'Brian] thinks Edward R. Murrow is a paid agent of the Kremlin or is only doing it for kicks," Hentoff joked.<sup>59</sup> O'Brian "declared war" on Hollenbeck as well as on Murrow, CBS correspondent Bob Schieffer recalled. "The attacks were relentless."<sup>60</sup>

10. *What institutions exist for journalists to practice mutual criticism, institutions that remind news media and the public of what is wrong with coverage yet encourage journalism's improvement?*

In 1947, when Hollenbeck began *CBS Views the Press*, his upstart radio program of media criticism was applauded and damned. Radio, a teenager of a medium, had never before taken on the powerful press, which had been around for hundreds of years. The *Washington Post* editorialized: "Newspapers all over the country need the prodding of this sort of inquiry from the outside, need to be jogged for sins of omission as well as for sins of commission."<sup>61</sup> But Keats Speed, executive editor of the *New York Sun*, saw Hollenbeck's press criticism as little more than anti-conservative, pro-Communist propaganda. Speed said, "Several newspapers follow the Communist line, so why shouldn't a radio station?"<sup>62</sup>

But, whatever one felt about Hollenbeck's radio program of press criticism, it was one of the few places where the public could go during McCarthy's time for an honest assessment of news performance of the press—and then only the press of one city, New York. Today the venues for press criticism are many—press councils, public editors, blogs focused on the media, ombudsmen, online fact checkers, and journalism reviews, to name a few. There are more institu-

58. Interview with Nat Hentoff, Columnist, *The Village Voice*, (July 27, 2005).

59. Nat Hentoff, *N.Y. TV Criticism: The Stumbling Eye*, *THE VILLAGE VOICE*, Mar. 5, 1958, at 5.

60. BOB SCHIEFFER, *FACE THE NATION: MY FAVORITE STORIES FROM THE FIRST 50 YEARS OF THE AWARD-WINNING NEWS BROADCAST* 26 (2004).

61. *Viewing The Press*, *WASH. POST*, May 29, 1947, at 6.

62. *CBS Station in New York Starts Criticism of Press*, *New York Editors' Comment*, 24 *EDITOR & PUBLISHER* 80, June 7, 1947, at 11 (quoting Keats Speed).

tions and individuals dedicated to achieving greater transparency about the work of journalists, which bodes well for the public as well as the press.

### III

I have detoured into a mini-history of McCarthy's misuse of the press for two reasons. First, as Tom Goldstein writes in *Journalism and Truth*, more than other disciplines, history "may have the most lessons to offer journalism."<sup>63</sup> Key elements of the historian's methodology involve interrogating witnesses, testing evidence, and assessing sources' testimony for relevance and reliability, Goldstein writes.<sup>64</sup> In his groundbreaking book *The Idea of History*, Robin G. Collingwood similarly called for serious scrutiny of sources: "The man who makes the statement came henceforth to be regarded not as someone whose words must be taken for the truth of what he says, but as someone who has voluntarily placed himself in the witness-box for cross-examination."<sup>65</sup>

Second, McCarthy's use of the press provides perhaps the most famous example in recent U.S. history of a source who deserved to be placed in the witness-box for cross-examination. McCarthy's specific charges about specific individuals could not always be verified. Translation: He appeared to be lying. He had an agenda—political celebrity, possibly even a shot at the presidency—beyond the specifics of his charges. His investigative efforts had more than the appearance of a conflict of interest: the more sensational his charges, the greater his fame.

Skepticism inevitably requires an extra level of work for the journalist—a willingness to go beyond the words of officials, to challenge first impressions, and to question easy explanations. The Duke lacrosse case reminds us that too many journalists practice their craft without a sufficiently high level of skepticism. But many cases involving prominent public officials—from police officers to even presidents—require extra skepticism. Call it Joe McCarthy skepticism, if you will.

Skepticism is just one of the factors that should have made reporters wary of Joe McCarthy. But sufficient skepticism can be overwhelmed by the all-too-common practice of beat reporters' accepting at face value the word of officials. In an essay titled, *The Importance of a Second Look*, William F. Woo, the editor of the *St. Louis Post-Dispatch* and later a journalism professor, cited three instances in which newspapers, including his own, were not sufficiently independent of official sources at the outset of their investigation. One case fit "the myth of The Liar or The Pretender."<sup>66</sup> The case involved Richard Jewell, a security guard who spotted the suspicious package that turned out to be a pipe bomb at a party celebrating the 1996 Summer Olympic Games.

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63. TOM GOLDSTEIN, *JOURNALISM AND TRUTH: STRANGE BEDFELLOWS* 40 (2007).

64. *Id.*

65. *Id.* at 42 (quoting ROBIN G. COLLINGWOOD, *THE IDEA OF HISTORY* 259 (1946)).

66. William F. Woo, *The Importance of a Second Look*, in *LETTERS FROM THE EDITOR: LESSONS ON JOURNALISM AND LIFE* 82 (Philip Meyer ed., 2007).

The bomb killed at least one person and injured more than one hundred. At first, news reports portrayed Jewell as a hero. But the president of Piedmont College, where Jewell had once been a security guard, called the FBI and, in the words of an FBI report, “expressed concern that Jewell may have been involved in the bombing.”<sup>67</sup> Reporters recalled the case during the 1984 Olympics of a Los Angeles police officer who became an overnight hero when he claimed to have disarmed a bomb on a bus filled with Turkish athletes; the police officer turned out to have been responsible for putting the bomb, which was a fake, on the bus. Soon the *Atlanta Journal-Constitution* was publishing a special edition that treated Jewell as a prime suspect, and a high-ranking FBI official was telling CNN executive Tom Johnson that Jewell “was our man.”<sup>68</sup> With 15,000 members of the media covering the Olympics, Jewell had gone worldwide, wrote CNN’s Henry Schuster, “from hero to zero—and worse—in a media nanosecond.”<sup>69</sup> Later, Jewell passed a lie-detector test, a U.S. Attorney acknowledged that Jewell was no longer an investigation target, and Jewell obtained settlements from NBC, CNN, and Piedmont College.<sup>70</sup>

#### IV

Joe McCarthy skepticism is required when, as in the cases of McCarthy and Jewell, the storyline has the ring of myth or legend—the myth of the hero, victim, scapegoat, or pretender. Such skepticism is increasingly required because journalism appears to be returning to the more partisan model of earlier eras. Even the casual consumer of today’s news-oriented programming on cable, on the Internet, and on radio may feel that the Hearsts of yesteryear have their match in Matt Drudge, Jon Stewart, Rush Limbaugh, and other contemporary media icons. Such neutral-sounding mottos as Fox’s “Fair and Balanced” may feel more like “Fiery and Biased.” John Carroll, former editor of the *Los Angeles Times*, criticizes the cynicism of what he called “pseudo-journalism”—*The O’Reilly Factor* and similar shows that dress themselves up as news programs but whose primary purpose is to manipulate the public. Carroll said, “We live in changed times. Never has falsehood in America had such a large megaphone.”<sup>71</sup>

Regardless of whether journalists are willing to exercise Joe McCarthy skepticism, they need to be quick to acknowledge their mistakes and apologize for the kinds of major errors represented by the reporting in the cases of McCarthy, Jewell, and the Duke lacrosse players. One redeeming quality of the contemporary media scene is the greater willingness of journalists and news organizations today than in the past to report on themselves. Editors’ columns, public editors, online fact checkers, ombudsmen, radio and television programs of media criticism, accuracy checks, and other mechanisms encourage news-media scrutiny,

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67. HENRY SCHUSTER & CHARLES STONE, HUNTING ERIC RUDOLPH 28 (2005).

68. *Id.* at 30.

69. *Id.* at 31.

70. *Id.* at 34.

71. Schudson & Tift, *supra* note 22, at 41–42.

self-scrutiny, and greater audience access to the news media. But those mechanisms sometimes seem more like public relations devices than real agents of change.

Ultimately, as sacrilegious as it may sound, journalists may need to be more open to the notion that journalism today is a most human of institutions—pushed by 24/7 pressures, expected to cover more events with fewer reporters, asked to file stories in several media formats—and that journalists are bound to make mistakes, large as well as small. If those mistakes are large enough, the public deserves more than publication of a correction. The public deserves a public, prominent apology and, yes, even humility from reporters.

But the victims of the news media's errors may choose words other than humility to capture the mindset of reporters—possibly the words Jeffrey Toobin applied to Supreme Court justices during their performance after the 2000 Presidential election—“vanity, overconfidence, impatience, arrogance and . . . partisanship.”<sup>72</sup> Perhaps it will be no easier to introduce humility to journalism than to the Supreme Court. But certainly journalism as practiced warrants uncommon humility as well as Joe McCarthy skepticism.

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72. Michiko Kakutani, *Power Lineup, Swings From the Right*, N.Y. TIMES, Sept. 21, 2007, at B37 (quoting Jeffrey Toobin).