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Fake Journalists and Real Journalists

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Are David Daleiden and Sandra Merritt journalists?

They and their supporters say they are, and that they were practicing "standard undercover journalism techniques," as one of Daleiden's lawyers put it, when they covertly videotaped Planned Parenthood officials in an attempt to expose illegal trafficking in fetal tissue.

Both of those claims are questionable, to say the least. Yes, the line between journalists and non-journalists is less distinct now than it was when I became a reporter more than 50 years ago. But Daleiden and Merritt, who are currently facing criminal charges in California for recording conversations without their subjects' consent, are not journalists by any definition of that word that I find plausible, even in this era. Nor were their actions normal reporting practice. They were far outside the boundaries of journalists' accepted conduct,



whether they are reporting under cover or doing their jobs as usual.

Undercover reporting is, in fact, quite unusual in the news business.

But even in those rare cases, the differences between what real journalists do and what Daleiden and Merritt did are obvious.

For an instructive comparison, consider what may still be the most famous journalistic sting of modern times, though it happened nearly 40 years ago. That's when the Chicago Sun-Times, in collaboration with the Better Government Association, opened a tavern (sardonically named the Mirage), ran it for several months and then reported on a long list of payoffs its staffers had handed over to corrupt liquor, health and fire inspectors and various other city officials.

The Mirage caper superficially resembles the Planned Parenthood sting. Both were acts of deception, intended to fool unwary subjects into admissions they would not have made if they knew who the investigators really were. But the deceivers' methods -- and the stories they produced -- were very different. Here are some (not all) of the differences:

-- In both Illinois and California, state laws in effect when these investigations took place made it illegal to tape a conversation unless both parties agree. By their own acknowledgement, Daleiden and Merritt ignored the law and surreptitiously recorded conversations with numerous subjects -- in some cases, after signing binding nondisclosure agreements that included a specific promise not to make videotapes. The Sun-Times team used hidden cameras to photograph their targets, which was and is legal in public places, but did not violate the law by making sound recordings.

-- Daleiden and Merritt created false identities, including obtaining California driver's licenses under fake names. The Sun-Times staffers used their real names -- although Zay Smith and Pam Zekman, two of the principal reporters on the Mirage story, both said in recent conversations that they do not remember any of the corrupt inspectors ever asking for anyone's last name when they reached out to collect their bribes.



(A more current example is Mother Jones's Shane Bauer, who used his real name and personal information to get hired as a guard in a private for-profit prison -- an experience he described [in a memorable June 2016 article for the magazine](#). In another much-discussed undercover journalism case -- one that skirted ethical and legal lines somewhat more precariously than Bauer or the Sun-Times reporters -- two producers for ABC-TV's 'PrimeTime Live' show used falsified employment histories and references to get jobs in late 1992 at Food Lion supermarkets, where they used concealed cameras to film questionable food safety practices. They did not go nearly as far as falsifying driver's license applications or other official documents, however.)

-- As well as not making illegal sound recordings, the Sun-Times team went to great lengths not to break any other laws. For example, in Illinois, witnessing a criminal act and not reporting it was itself a crime. To observe that law without blowing their cover, the journalists immediately reported every illegal act to a sympathetic official at the Illinois Department of Law Enforcement, a state agency, who filled out an offense report and then filed it.

Smith and Zekman and their colleagues also took exceptional care to avoid entrapment -- to the point, Smith told me with a laugh, that inspectors waiting for a bribe offer probably thought they were too dumb to understand what was expected.

In comparison, Daleiden and Merritt unquestionably did everything they could to draw Planned Parenthood officials into illegal acts. Whether they were guilty of entrapment has not been decided because none of the multiple investigations sparked by their tapes led to any charge against the organization, so to date there has been no need for an entrapment defense.

That speaks to one final and fundamental comparison, having to do with substance, not method.

The Sun-Times team gathered irrefutable evidence of illegal activity and reported it accurately. Daleiden and Merritt did neither. [As numerous fact-checkers have established](#), they doctored their videotapes and selectively edited recorded conversations to give a misleading impression, while consistently failing to



substantiate their allegations against Planned Parenthood -- a failure convincingly shown by the fact that intensive congressional probes did not verify their charges and official investigations in at least 13 states found no cause for any criminal proceeding against the organization.

Draw Your Own Conclusion

Readers can draw their own conclusions on the conduct and contrasting ethical and professional standards displayed in these two investigations.

More broadly, it is hard to prove a negative, so it's impossible to say with certainty that no reporters going under cover for news organizations have been as casual about ethics or the law as Daleiden and Merritt were. (After ABC's Food Lion caper, a federal appeals court -- in a civil lawsuit, not a criminal case -- ruled that the two producers had not committed fraud but did violate trespass laws, for which the court awarded Food Lion a token \$2 in damages.)

Still, the record is indisputably clear that in the great majority of cases, undercover journalists have *not* used comparable tactics.

Those who claim otherwise notably fail to cite any actual instances of such conduct, or so a sampling of their statements suggests. A typical example is an article posted by the antiabortion organization Live Action declaring that Daleiden had done "just the sort of thing that whistle blowers and investigators do all the time" and that "literally hundreds of examples" are available online. But the only link in that paragraph is to a TV news report by journalists who did not go under cover or practice any deception at all. The rest of the article does not provide any evidence for its claim either.

The Professional Journalists' Views



Many journalists and news organizations defend some limited measure of deception when a legitimately newsworthy story cannot be gotten any other way. But contrary to Daleiden's and Merritt's supporters' claims, very few if any journalists would consider the techniques used in the Planned Parenthood sting to be acceptable professional practice. (Prior to this year's criminal proceeding in California, the two were indicted in Texas in 2016, not for illegal recording but for falsifying official identity documents and offering to buy human organs. Both charges were later dismissed on technical grounds.)

Of course, as in any collection of human beings, journalists do not always follow their own code. So... can Daleiden and Merritt still call themselves journalists, even if they broke the customary rules?

My answer is an unequivocal No.

In my judgment, they are more accurately described as ideological warriors seeking to promote their cause. For those who share their pro-life beliefs they may be noble crusaders for the rights of the unborn. For those on the pro-choice side, they are a hit team, out to do a hatchet job on their opponents. Whichever of those descriptions you choose, neither defines them as journalists. Nor does anything else we know about them and their work -- which is another difference between them and the Sun-Times crew at the Mirage.

How "Real" Journalists Have Gotten the Story

Zay Smith spent a few months pretending to be a bartender, but he also spent many years covering thousands of stories where his first words to everyone he reported on would have been, "Hi, I'm Smith of the *Sun-Times*." The same is true of his colleagues on the Mirage series, and all the rest of us who made our living as real journalists. If Daleiden or Merritt ever did any reporting of that kind, I have found no evidence of it.

That's one good reason not to call them journalists, but it's not the principal one. Far more important is that from everything we know, their goal was not to find out facts and report them truthfully, but to do as much damage to Planned Parenthood as they could, and if the facts weren't damaging enough, to manipulate and distort them to carry the message they set out to send.



That is not journalism, but its opposite. Calling them journalists makes a mockery of the word. It tarnishes all of us who have tried to practice the profession as it is supposed to be practiced. It dishonors Zay Smith and Pam Zekman and their Sun-Times colleagues, who obeyed the law while exposing official lawbreaking. It dishonors me, and the many hundreds of reporters I have known and worked with over the years, sometimes in dangerous places. It dishonors the three journalists whom I knew personally who were killed while doing their jobs. And it dishonors the concept of truth, and the value of telling it.

A court will eventually decide if "criminal" is the right label for these two characters. I will not pick one to use in the meantime, but they are not journalists, and no one who knows what journalism is should let them expropriate that name, now or ever.

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