

Court privacy rulings a threat to the media, expert says

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Press freedoms are eroding as courts step in to restore personal privacy battered by an explosion of tabloid reporting on the Internet and 24-hour news outlets hungry for fresh stories, a study by a University of Illinois legal expert warns.

Amy Gajda says long-held boundaries for news coverage have narrowed in a recent spate of [privacy](#) rulings, which could ultimately have a chilling effect on mainstream journalists whose watchdog role helps safeguard against corruption and other misconduct.

"It's easy to condemn journalism as a whole, feeling that something needs to be done about tabloid reporting," she said. "But restricting that sort of reporting can also restrict very legitimate news reporting, creating fear of liability that suppresses disclosures of scandals and corruption. That would ultimately be a very bad thing for society."

For nearly a half-century, courts gave the media broad leeway to delve into personal lives - in deference to First Amendment rights and buoyed by respect for journalism that peaked in the wake of Watergate and other reporting triumphs, according to a research paper published in the *California Law Review*.

Effectively, courts declined to second-guess editorial decisions, said Gajda, a professor of law and of journalism.

The mere fact that stories were published or broadcast would be considered proof of newsworthiness - often making them privileged

under law - so lawsuits seeking damages under privacy torts were routinely tossed out.

But she says courts have begun imposing their own judgments about what qualifies as news over the last decade as a dramatic surge of reality TV, celebrity coverage and tabloid reporting have muddled the line between news and entertainment, tarnishing media esteem and heightening concerns about privacy.

"Courts are putting nearly everyone under this umbrella of journalism, and rightly feel that some Internet blogs and other related media go too far," Gajda said. "As those outlets push the boundaries of what is appropriate, courts are increasingly likely to push back, curbing First Amendment rights and favoring privacy rights."

A 2007 Ohio Supreme Court ruling, for example, expanded grounds for privacy claims against the media and others, suggesting that "as the ability to do harm has grown, so must the law's ability to protect the innocent," the study said.

Gajda says one of the most worrisome cases involves a court's refusal to dismiss an intentional infliction of emotional distress claim filed by the sister of a prosecutor who committed suicide as police were about to arrest him for allegedly soliciting sex with a 13-year-old on NBC's "To Catch a Predator."

"The ruling is dangerous because journalists will be responsive to it," she said. "If it's suddenly not appropriate to report on a prosecutor who is allegedly involved in the kind of crime he's supposed to prosecute and help prevent, it could severely limit what the media covers regarding public officials in general."

In the "To Catch a Predator" case and others, courts have used

journalism's own ethics codes against media defendants, an emerging tool that Gajda says gives the illusion of deference to the profession but instead hands judges an opening to selectively condemn editorial decisions.

She says the "To Catch a Predator" ruling zeroed in on ethics provisions that suggest reporters "show good taste" and intrude into private lives only when there is an "overriding public need," but failed to examine the story and coverage as a whole.

"Reporters and editors are in the best position to sort out of the often-conflicting provisions of an ethics code and come to a reasoned, ethical response to coverage," Gajda said. "Judges have no training in journalism, generally, and may hone in on a provision like 'show good taste' and decide that a reporter has failed. The same with a jury."

But she rejects arguments that journalism should abandon ethics policies to dodge similar rulings.

"That is the wrong response, especially today when some bloggers and others clearly don't understand the need for ethics and could actually learn something from journalism's ethics codes," Gajda said. "The more that news organizations are seen as relying on ethics and self-policing, the more likely it is that courts will stay out of the way."

To halt the judicial turn away from press freedoms, she suggests a standard that would hold journalists liable only when their professional peers widely agree that coverage has crossed the line. Media sued under privacy torts could defend themselves by providing examples of stories on similar events by legitimate news organizations.

"Ethical standards would thus be relevant, but court inquiry would properly be refocused on the professional judgments of journalists rather

than journalistic instincts of judges and jurors," Gajda wrote. "Liability would require a consensus of the defendant's own colleagues that his actions were indefensible."

She says the test would maintain the "breathing room" that the U.S. Supreme Court has said is necessary to ensure robust reporting, while also offering recourse to people who are truly wronged by news coverage.

"I think there is recognition at all levels that there needs to be some way to limit harmful reporting," Gajda said. "My concern is that journalism not be dragged down by those who set out to do harm to others."

Provided by University of Illinois at Urbana-Champaign

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