

2001

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Recommended Citation

Randy Awdish *The Following Will Surprise or Even Shock You: A Look into TV Newsmagazines and Their Effect on Consumers*, 13 Loy. Consumer L. Rev. 353 (2001).

Available at: <http://lawcommons.luc.edu/lclr/vol13/iss4/3>

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STUDENT ARTICLES

The Following Will Surprise or Even Shock You: A Look into TV Newsmagazines and Their Effect on Consumers

Randy Awdish

I. Introduction

In the beginning, there was only *60 Minutes*. Television newsmagazines, however, have sprung up like mushrooms in the past decade. Now there are several competing shows such as *Dateline*, *20/20*, *Inside Edition*, *48 Hours* and *Prime Time Live*, along with a host of cable newsmagazines. Many of the segments begin with dramatic voice-overs, informing the consumer that "the following will surprise or even shock you." The frequent targets of these shows range from corporate misdoings to allegedly unsafe products to industry-wide problems. Unfortunately these shows are often one-sided, with perhaps one corporate quote tossed in for "balance." This style of reporting, coupled with often inaccurate information, can leave the viewer with false impressions.

This article will focus on two separate pieces done on the retail gasoline industry. The first piece aired on NBC's *Dateline* entitled "Highway Robbery" and the second on ABC's *20/20* entitled "Cheating at the Gas Pump." Both segments attempted to portray alleged industry-wide problems, such as octane fraud, as prevalent throughout the country. The shows, however, ignored facts relevant to their inquiry and gave little regard to defenders of the

industry, including local law enforcement officials and state governments, who denied the veracity of the various allegations. Both of these segments are examples of the increasing inaccuracy of the information reported on television newsmagazines.

The explosion in the number of television newsmagazines can be attributed to a few factors. The primary catalyst for their growth is that these shows have proven to be highly profitable because they are cheaper to produce than the average sitcom yet often generate the same ratings.¹ Furthermore, because these programs are competing with sitcoms and dramas, many of the stories are produced for impact rather than illumination. This approach frequently leads newsmagazines to either exaggerate problems or misconstrue facts about the story they are covering in order to make it more attractive to viewers.

The descent into the depth of journalistic integrity is facilitated by the Supreme Court's interpretation of press freedom under the First Amendment. Today networks are able to avoid liability from individuals or corporations for portraying them in a false light because of the protective shield given to them by the U.S. Supreme Court decision *New York Times v. Sullivan*. In this landmark decision, the Supreme Court stated that in an action against the media, those in the public arena must prove actual malice, not just negligence, when seeking damages for false statements.²

This Note will explore television newsmagazine shows and their style of reporting. Part II will provide background into the rise of newsmagazines and possible reasons for their style of reporting, which often involves exaggerating problems, selectively using information and misconstruing facts. This section will also discuss how *New York Times v. Sullivan* may have led to the proliferation of tabloid reporting masquerading as serious journalism. Part III will discuss what *Dateline* and *20/20* actually reported on the gasoline industry and relevant

inquiries and facts omitted by both programs. Part IV will analyze the inaccuracy of the reports.

II. Background

Society has long relied on the media to be its watchdog, scrutinize its heroes and villains, and to provide its consumers with fair and accurate information.³ Prior to radio and television, people got their information either through word of mouth or newspapers. Television added pictures to these words in the 1950's which revolutionized the way the public received its information. However, because news programs cannot rely entirely on their hosts, they frequently resort to "an array of visual tricks and lies to get 'gotcha' footage" in order to entice viewers to watch their programs.⁴ This is especially true "of newsmagazines and local news shows."⁵

A. The Rise of Newsmagazines

In 1968, the face of television changed forever with the debut of the first television newsmagazine – CBS's *60 Minutes*.⁶ The great success of *60 Minutes* precipitated an explosion in the number of newsmagazines being aired, such as *Dateline*, *20/20*, *Prime Time Live*, and *48 Hours*. The proliferation of these shows has occurred because they all follow a basic formula that is easy to produce. However, the main catalyst for newsmagazine growth can be attributed to the changes in ownership and control of the media coupled with the high profits associated with newsmagazines.⁷

The majority of the media today is owned by a handful of large corporations, with interests in a variety of industries.⁸ News organizations now exist within a corporate environment that evaluates all divisions in terms of bottom-line performance.⁹ Historically, news divisions of networks were not seen as profit centers.¹⁰ However, newsmagazines such as *60 Minutes* and *20/20* have

proven to be highly profitable.¹¹ The cost to produce a typical one-hour newsmagazine show is about \$600,000, less than half the cost for a drama or comedy.¹² In addition, newsmagazines often receive equal or higher ratings than the shows they compete against in prime time.¹³ Furthermore, because the newsmagazine shows are owned by the network, they keep all the earnings. This combination of high ratings and low cost to produce the shows has inevitably led to an increase in the number of newsmagazines.

As the number of these shows increased, producers learned that “prying, spying, and lying are highly profitable.”¹⁴ This change in style of reporting occurred for two reasons. First, the several newsmagazines must now compete with each other for the latest story from a limited supply. Second, since newsmagazines are broadcast during prime time, it places them in direct competition for viewers with dramas, comedies, and other traditional forms of entertainment.¹⁵ This explains the trend towards sensationalism of stories.¹⁶ Today the news must compete for ratings against sitcoms that have laugh tracks and dramatic programs that take us into the emergency room and White House.¹⁷ This competition causes the programs to acquire the “aspects of entertainment programs” and producers to do “flashy, ‘promotable’ stories at the expense of nuanced journalism.”¹⁸ This added pressure leads to stories being produced at the “very edge of the truth.”¹⁹ One producer, speaking on the condition of anonymity, states that “there is pressure to leave out information that gets in the way of the ‘good guy/bad guy’ scenario.”²⁰ With all of these factors at work, do newsmagazines regularly blur the line between news and entertainment?²¹ If so, how are these programs getting away with not telling the whole story?

B. *New York Times v. Sullivan*

The *New York Times v. Sullivan* decision has been largely hailed by the press as the landmark case in the fight for freedom of the press.²² The decision in this case, however, may very well be the root cause of the loss of credibility in the media today.²³ As one noted commentator writes, while the *New York Times* decision has given a protective shield to many newsworthy pieces, it is also a "convenient fortress for some of the worst practices that plague the [media] today."²⁴

In *New York Times v. Sullivan*, an official responsible for supervising the Montgomery, Alabama Police Department, brought suit alleging defamation from advertisements printed in the *New York Times* that inaccurately described, *inter alia*, reports of police misconduct toward demonstrators.²⁵ The *New York Times* conceded the inaccuracies of the advertisement.²⁶ Sullivan was awarded \$500,000 at trial and the Alabama Supreme Court affirmed the trial court's finding that defendant, *New York Times*, violated Alabama law by publishing the statements.²⁷ The ruling was based on an Alabama statute stating that it was "libel per se" if the words would in any manner "tend to injure a person...in his reputation, profession, trade or business."²⁸

The U.S. Supreme Court, however, reversed the libel award.²⁹ Justice Brennan, in his opinion for the court, found the rule of law applied by Alabama courts to be "constitutionally deficient for failure to provide the safeguards for freedom of speech and of the press . . . in a libel action."³⁰ The Court held that when seeking damages for false statements in an action against the press, public figures, including corporations, must prove the statement was made with actual malice – that is, "with knowledge that it was false or with reckless disregard of whether it was false or not."³¹ Otherwise, the Court reasoned, there may be a danger that speech, other than false speech, would be deterred.³² Therefore, if those

reporting the news thought that the information was true at the time, they are insulated from redress unless the party seeking damages can prove that the reporter knew the information to be false at the time the story was reported.³³

Following this decision, many journalists now adhere to a legalistic approach in the validation of news stories.³⁴ According to Clark Mollenhoff, an investigative reporter for more than twenty years, this approach has led to an erosion into basic journalistic principles.³⁵ Prior to the *New York Times* decision, news stories were not published unless the evidence behind them was credible and corroborated.³⁶ The basic journalistic principle was “when in doubt, leave it out.”³⁷ However, following the *New York Times* decision, a new journalistic principle is in place – “what you don’t know won’t hurt you.”³⁸ The basic test is whether the reporter *believes*, rather than *knows*, the charges and facts of the story to be true.³⁹ If Mr. Mollenhoff is right, a reporter who makes no effort to determine the truth of a report is now in a better position than one who has made the appropriate inquiries and come up with no evidence.⁴⁰ Therefore, under *New York Times*, in order to certify the claim, the former reporter merely needs to plead ignorance.

III. Television Newsmagazine Shows

With the change in the landscape of the media, due to the competition between newsmagazine shows and the *New York Times* case, there have been many instances of careless reporting. One of the most egregious examples is the segment that NBC’s *Dateline* aired on GM truck gas tanks.⁴¹ *Dateline*’s 14-minute report concluded with 57 seconds of crash footage detailing how gas tanks of certain old GM trucks could catch fire in a sideways collision.⁴²

Following the airing of this segment, GM conducted a thorough investigation of its own.⁴³ Their investigation

revealed that *Dateline* had made two crucial errors: first, X rays revealed that the trucks' gas tanks had not ruptured as NBC claimed, and second, viewers were not informed that NBC consultants set off explosive miniature rockets beneath the truck a split second before the crash.⁴⁴ Subsequent to GM's investigation and revelations, NBC settled a General Motors lawsuit with a retraction and apology for its report.⁴⁵

Unfortunately, inaccurate reporting such as the GM report are not isolated incidents. This section will examine stories about the gas station industry produced by two different newsmagazine shows. The two segments aired nearly seven years apart. However, they both charged the industry with the same accusations – that consumers were being cheated.⁴⁶

A. *Dateline* and 20/20's Report on the Gasoline Industry

Both *Dateline* and *20/20* revealed to their viewers that every time they pull up at a gas station to refuel, they may not be getting what they pay for at the gas pump.⁴⁷ The theory each segment advanced was the same; that fraud at the gas station was prevalent throughout the country.⁴⁸ Furthermore, both programs implied that there were little if any regulations in place by state and federal regulators to battle the alleged fraud.⁴⁹

Both reports focused on the problems in the Los Angeles area.⁵⁰ Law enforcement officials, however, believed the problem in Los Angeles originated in the Midwest.⁵¹ Gil Garcetti, the Los Angeles District Attorney, stated that "other states . . . called us with a similar problem, saying we knew something was going on, but we didn't, we couldn't, figure it out."⁵² States that called included Alaska, Michigan, and New York.⁵³

1. Rigging the Gas Pump

According to the programs, there are many ways to cheat consumers so that they end up paying more at the pump.⁵⁴ One way is if the gas pump itself is rigged.⁵⁵ At the time each program aired, the vast majority of gas pumps at stations were electronic, as they are today. Both *Dateline* and *20/20* reported that many gas station owners are taking advantage of these high tech gas pumps.⁵⁶ They both reported that by adding a simple computer chip, costing around \$7,000, the gas pumps could be rigged so as to dispense less gasoline than the customer pays for and estimated that these actions cost consumers possibly millions of dollars every year.⁵⁷ For example, Gil Garcetti said "we're talking about a huge amount of money . . . not . . . about one or two bucks."⁵⁸ The exact figure, however, was unknown, and no reliable study exists.⁵⁹

Furthermore, the computer chip allegedly dispenses purchases of five and ten gallons accurately.⁶⁰ Local and state investigators test the accuracy of gasoline pumps by dispensing gasoline into standard five or ten gallon containers to see if the pump is delivering fuel accurately.⁶¹ Dave Lazier, head of the special gas pump squad in California, stated that the "crooks have designed systems to beat us at our own game so that . . . undercover purchases are the only way of really turning up the fraud."⁶² If the computer chip accurately dispenses five or ten gallons, then the alleged fraud will go undetected.

2. Octane Fraud

20/20 also reported that gas station owners allegedly defraud consumers through what is known as octane fraud.⁶³ This occurs when consumers purchase high-octane, or premium, gasoline at a station, which tends to cost an average of twenty cents per gallon more than

low-octane, or regular, gasoline, but actually receive regular fuel. *20/20* went along with a petroleum quality investigator from the state of Michigan to purchase gasoline to test for octane fraud.⁶⁴ After purchasing high-octane gasoline undercover from a gas station, the product was tested and found to be regular gas.⁶⁵ *20/20* stated that in some states regulation on octane was non-existent.⁶⁶ Furthermore, *20/20* reported that, nationwide, there was "very little activity by state regulators to combat it."⁶⁷

3. Sleight of Hand

Another form of cheating reported by *20/20* was "sleight of hand."⁶⁸ Sleight of hand occurs when gas station attendants push the button for the higher credit price even though the consumer may be paying in cash.⁶⁹ This could result in the consumer paying almost seven cents more per gallon in some cases.⁷⁰

B. What *Dateline* and *20/20* Failed to Include in Their Reports

According to *20/20* and *Dateline*, the above problems are prevalent throughout the country. If true, then we truly owe a service to these newsmagazines. However, service is due only if their reports were fair and accurate. What follows is an in-depth look at *Dateline* and *20/20*'s report on the gasoline industry. Did the programs leave a false impression on viewers by conveniently overlooking or omitting relevant inquiries and facts? Were the problems exaggerated?

1. Accuracy of gasoline pumps

Following the broadcast of the *Dateline* program, the accusations of inaccurate gasoline pumps were met with an immediate response from the Petroleum Marketers

Association of America ("PMAA").⁷¹ PMAA represents 7,850 independent petroleum marketers, or gas stations, nationwide that sell approximately half the gasoline consumed in America annually.⁷² The association's Executive Vice President stated that PMAA was "appalled by the type of behavior highlighted in NBC's 'Dateline' [and that] such behavior is the exception rather than the rule."⁷³ PMAA stopped just short of denying that cheating at the pump is taking place.⁷⁴

Furthermore, the National Petroleum News ("NPN"), a gasoline industry journal, conducted a survey of their own. NPN contacted an official, Tina Butcher, a physical scientist, from the National Institute of Standards and Technology ("NIST"), the federal weights and measures office in Washington, D.C.⁷⁵ The NIST assists federal, state, and local governments to achieve uniformity in weights and measurement standards, laws and practices.⁷⁶ The NIST also publishes the requirements for the National Conference on Weights and Measures and helps to train state employees in the weight and measures offices to inspect gas pumps using standard measures.⁷⁷

Ms. Butcher classified the segment by *Dateline* as poorly done and criticized it for implying that there was little measurement regulation.⁷⁸ She stated that "there are thousands of weights and measures officials that go out every day and check dispensers for accuracy and performance."⁷⁹ Furthermore, she stated that every state had programs in place that inspected on a regular basis the accuracy and performance of measuring devices.⁸⁰ State Weights and Measures offices enforce laws and regulations about the weight or measure of products, including petroleum, and check the accuracy of measuring devices, including gasoline pumps.⁸¹ For example, in Illinois, there is a field staff of more than forty field inspectors from the bureau who perform regular, unannounced inspections of all commercially used weighing and measuring devices within the state.⁸² The basis and statutory authority

for all inspection activities are found in the Illinois Weights and Measures Act.⁸³

The computer systems used by gas stations today are difficult to tamper with and every state's Weights and Measures Department continually checks pumps to ensure accuracy.⁸⁴ Commenting on *20/20*'s piece, a spokesman for Dresser-Wayne, one of the largest equipment providers for the gas station industry, admitted that it is impossible to make equipment that is tamper proof.⁸⁵ However, when an official from a state's Weight and Measures Department performs an inspection, pumps that are found to be in compliance are affixed with a tamper proof seal. If a device is then tampered with, it becomes an enforcement issue.⁸⁶

A subsequent gas pump survey performed by the Los Angeles Times found little evidence of tampering. The L.A. Times used a measuring device employed by the county's Department of Weights and Measures and certified by the state.⁸⁷ The results of the survey revealed that half of the stations surveyed matched the exact reading on the pump, one-quarter gave away a little gas and the remainder of the stations surveyed sold a little less than the pumps reading.⁸⁸ The amounts above and below the pump readings were within the state's guidelines, amounting to less than 1/254th of a gallon for each gallon pumped.⁸⁹ The director of Ventura County's Weights and Measures Department, Dan Riley, went on the record stating that "in all my years here we've never found anything out of the ordinary."⁹⁰ Additionally, Mr. Riley stated that "one pump out of maybe 100 is off and that's usually giving away gas."⁹¹ Similarly, in New York, it was found that less than 1% of all quality testing showed a problem, and some of that was due to improper tests.⁹²

In addition to government enforcement, major oil companies closely monitor all their gas station owners.⁹³ The station owners, who represent the majority of retail gas stations, are monitored and audited on a continuous

basis.⁹⁴ They must maintain accurate records of sales for the day and must record daily measurements of the quantity of gasoline remaining in their underground tanks.⁹⁵ These figures are then compared to the delivery records that are maintained by the major oil companies so that any discrepancy would be readily apparent.

2. Octane Fraud

a. Legislation

Federal legislation mandates the labeling of octane at retail gas stations.⁹⁶ The statute is commonly referred to as the "Octane Rule." The rule deals with the certification and posting of automotive fuel ratings and applies to refiners, producers, distributors, and retailers of automotive fuel.⁹⁷ Many states also have their own statutes that regulate the certification and posting of octane.⁹⁸ The Octane Rule preempts any state law that is not the same as an applicable provision of this rule.⁹⁹ States, however, are permitted to provide for any investigative or enforcement action, remedy or penalty for violations of this act.¹⁰⁰

The Octane Rule defines what an octane rating is and how an octane number is calculated.¹⁰¹ The rule requires that refiners, producers and distributors certify the octane rating of gasoline that they distribute in commerce for resale.¹⁰² These records must be kept for one year.¹⁰³ At the retail level, gas stations must post the fuel rating of all automotive fuel that is sold to consumers.¹⁰⁴ Retailers must post at least one label on each face of each gasoline dispenser, and if more than one kind of gasoline is sold from a single dispenser, separate disclosures for each kind of gasoline must be put on each face of the dispenser.¹⁰⁵

The octane label, or labels, must be placed on the face of the dispenser as near as possible to the price per gallon and so that it is in full view of consumers.¹⁰⁶ This statute

also governs the labels themselves.¹⁰⁷ All labels must be printed in black ink on a yellow background and must also conform to certain size, font style and dimensions as specified in the statute.¹⁰⁸ In addition, the label must show the octane rating preceded by the words "MINIMUM OCTANE RATING" and "(R+M)/2 METHOD."¹⁰⁹ Retailers must also keep for one year all records of any delivery tickets, letters of certification or tests upon which they based the octane ratings that they certified or posted.¹¹⁰ Failure to comply with these rules can lead to penalties up to \$10,000 for each violation and the courts can issue an order prohibiting further violations, and other relief, such as redress, if appropriate.¹¹¹

Additionally, any branded dealer who knowingly cheats on octane or fuel quality is subject to tremendous repercussions under Federal law.¹¹² Major oil companies recognize that gasoline cheating hurts them as much as the consumer, as it may tarnish their reputation in the industry.¹¹³ All these companies consider misbranding of motor fuel a violation of the company's contract and would result in immediate termination of the contract with the retailer involved in such activity.¹¹⁴ Many oil companies also conduct random tests of their own to ensure that the consumers are receiving the quality gas they are paying for.¹¹⁵

b. Reactions from State Officials

Major branded gasoline marketers claim that octane cheating charges are significantly exaggerated as to what is really happening in the marketplace.¹¹⁶ According to general counsel for Service Station Dealers of America, "fraud and cheating amounts to less than 1% of all refueling episodes."¹¹⁷ An official from the Illinois Department of Agriculture, Pat Hogan, stated that he is confident that rip-offs are not occurring to a large degree.¹¹⁸ The official firmly believes that if a customer in Illinois is cheated on octane, it is the result of an honest mistake, such as when

a new driver "has misread the color coding and put regular unleaded fuel in for premium."¹¹⁹

Following the *Dateline* broadcast, the executive director of New Jersey's Retail Gasoline Association took an even more militant tone.¹²⁰ He called the *Dateline* piece so "one-sided and selective that it should not have been aired."¹²¹ The program stated that New Jersey did not have a formal quality testing program, failing to mention that testing of fuel quality is being done in the state and that there was a formal octane testing program.¹²²

In New England, the executive director of the New England Service Station and Auto Repair Association called the *Dateline* show "a hatchet job."¹²³ He admitted that fraud and cheating does take place in the gasoline industry, but that it is rare and to the extreme, and to suggest otherwise is "absolutely outrageous."¹²⁴ "The Massachusetts Division of Standards, which is part of the Department of Consumer Affairs, does test gasoline quality, which *Dateline* NBC said isn't done anywhere in New England except in Connecticut."¹²⁵

3. Sleight of Hand

As noted earlier, sleight of hand occurs when a gas station attendant pushes the button for the higher credit card price even though the consumer may be paying in cash, resulting in the consumer paying as much as seven cents more per gallon.¹²⁶ The majority of gasoline stations today do not offer discounts for cash purchases. The reasons for this are numerous, but the primary factor is that roughly 50% of all gasoline is purchased using a credit card. Hence, gas station owners do not want to deter credit card purchasers from their station with higher prices. Of the 50% of gasoline purchased by credit card, about 25% of these purchases are made with branded cards (Shell, Mobil, Amoco, etc.). As a result, sleight of hand cannot be the problem as suggested by 20/20.¹²⁷

IV. Analysis

While the *New York Times* decision gives a protective shield for newsworthy pieces, it has also led to sloppy and inaccurate reporting. As stated earlier, the majority of newsmagazines are broadcast during primetime, where they compete for ratings with sitcoms and dramas, causing producers of newsmagazines to air flashy and promotable stories. This pressure to produce sensational stories causes them to be pushed to the very edge of truth and blurs the line between news and entertainment. However, so long as those reporting the news believed the information to be true at the time, they are insulated from redress unless the party seeking damages can prove that the reporter knew the information to be false at the time the story was reported. This requirement of actual malice has had a definite effect on how stories are portrayed in the media today, especially on television newsmagazines.

Furthermore, television is extremely valuable because it is the single source of news for 69% of Americans.¹²⁸ Therefore, we should expect only the best from TV journalists.¹²⁹ A study done in 1997, however, revealed that only 37% of Americans trusted news organizations to "get the facts straight," down 18% from a study done 12 years prior.¹³⁰ This may stem from what the public increasingly views as "unfair, inaccurate and sensational journalism."¹³¹ Additionally, Americans see mass media as becoming "intrusive, sensational, uncaring, and flawed by bias and inaccuracy."¹³² While only 37% of Americans actually trust news organizations to get the facts straight, it cannot be denied, however, that Americans do watch these shows and are affected on some level. The effects could range from trivial to profound.¹³³ The following is an analysis of what *Dateline* and *20/20* actually reported and relevant inquiries and facts omitted by both programs.

A. Pump Rigging

Both *Dateline* and *20/20* gave the impression that use of a computer chip that rigs gas pumps so as to dispense less gasoline than the customer pays for is prevalent throughout the country. They both stated that there was little regulation and enforcement in this area to curtail the problem. However the problem is not as extensive as portrayed by the programs. Neither *Dateline* nor *20/20* contacted officials from Dresser-Wayne, one of the largest equipment providers for the gas station industry. Following the broadcast of *20/20*'s piece, a spokesman from Dresser-Wayne admitted that it was impossible to make the equipment tamper proof.¹³⁴ However, tampering is rare because of enforcement by the oil industry and the government. According to the Executive Vice President of PMAA, the behavior portrayed by *Dateline* is the "exception rather than the rule."¹³⁵ Additionally, an official from the NIST also criticized the allegations for implying that there was little regulation in the area.¹³⁶

Furthermore, had *Dateline* or *20/20* conducted a gas pump survey of their own, they may have come to a different conclusion. As noted earlier, a gas pump survey by the Los Angeles Times found no evidence of tampering. Also, the newspaper contacted the director of Ventura County's Weights and Measures Department who stated that he had never seen anything out of the ordinary.

Finally, the segments would have been less one-sided if both programs would have reported that all major oil companies (franchisors) closely monitor their gas station owners (franchisees). Since gas station owners must maintain detailed records of all sales and deliveries, which are closely scrutinized by their franchisors, any discrepancy would readily be apparent. As with all franchisor/franchisee relationships, the corporate brand is what draws customers. If a franchisee cheats their customers, it would affect the franchisor's image as well.

Therefore, franchisors closely monitor their franchisees to ensure that the corporate image is not tarnished in any way.

B. Octane Fraud

20/20 reported that nationwide there was very little regulation to combat octane fraud. Once again, however, they failed to mention that there is federal legislation in this area, commonly referred to as the "Octane Rule." This rule deals with the certification and posting of automotive fuel ratings and preempts any state law that is not the same as the applicable provisions of this rule. The Octane Rule requires gas station owners to post the octane rating of all gasoline on the face of each gas pump and further requires the owners to maintain all records, for which they based the octane ratings that they posted, for one year. Failure to comply with the Octane Rule results in tremendous repercussions under Federal law, with penalties up to \$10,000 for each violation. The risk of high penalties outweighs the rewards a gas station owner may receive if engaged in octane fraud, where they would make pennies on each sale.

Additionally, the program failed to state that many oil companies conduct random tests of their own to ensure that customers are receiving the gasoline they are paying for. All oil companies consider misbranding of motor fuel a violation of the company's contract that would result in the immediate termination of the franchise agreement with any retailer involved in such conduct.

The repercussions that result if a gas station owner commits octane fraud are great, as evidenced by the penalties under Federal law and immediate contract termination by oil companies. *20/20*, however, did not reveal to its viewers the penalties gas station owners are subject to if found to participate in octane fraud. Rather, they informed viewers that there was little regulation in this area. Had viewers of the program been accurately

informed, they would not have been left with the impression that octane fraud is rampant, with no legislation in place to curtail the problem.

C. Sleight of Hand

In order for sleight of hand to be a problem, gasoline stations must offer cash-discounts on gasoline purchases. As stated earlier, however, a vast majority of gasoline stations do not offer cash-discounts. This fact was not reported by *20/20*. Assuming that a gasoline station does participate in offering cash-discounts, the problem exists only if the attendant sets the pump at cash or credit.

An attendant sets the pump price for credit or cash in one of two scenarios. The first scenario is if the consumer purchases gasoline at a full-service island. *20/20* failed to mention that (1) the majority of gasoline stations today do not offer full-service and (2) most consumers who purchase gasoline today opt for the self-service method, since it is often ten to twenty-five cents cheaper a gallon.¹³⁷ Since the majority of gasoline users pump their own gas, it is the consumer who has the option of choosing cash or credit at the pump dispenser. The second scenario involves the consumer prepaying the attendant to purchase gasoline at a certain pump.

In both scenarios, it is difficult for investigators to ensure that consumers are protected and to determine if this is really a problem. Rather, it is up to the consumer to be aware of the price they are being charged. The Illinois Department of Agriculture suggests a consumer take the following precautions: 1) be sure that the correct pump is used and that the price per gallon is clearly marked on each pump, 2) that the pump is set to zero before any gasoline is pumped, 3) to check the price by multiplying the number of gallons by the unit price to calculate the amount due, 4) to figure out the cash discount, if any and 5) if using a credit card, to check your receipt to be sure the amount billed is the amount on the pump.¹³⁸

V. Conclusion

A press that is distrusted by the public is an ineffective press. Prior to the phenomenon of television newsmagazines, the media fulfilled its public-interest obligation of informing the public. Television newsmagazines, however, produce stories for impact rather than illumination because they often air during prime time and are big money makers. These forces lead newsmagazines to either exaggerate problems or misconstrue facts that often leave false impressions on their viewers. While the stories may be true to a certain extent, they often leave out important facts or exaggerate the problem in order to increase ratings. Newsmagazines are able to do this because *New York Times* provides insulation from lawsuits so long as the newsmagazine did not report the false information with actual malice.

The First Amendment should protect the media from lawsuits if they have taken the necessary steps to authenticate stories and to report truthful and accurate information. However, as evidenced by pieces aired by newsmagazines, the media often engages in inaccurate reporting, leaving false impressions on their viewers for the sake of high ratings. When newsmagazines report stories merely for the ratings they will receive, they should be held liable if the allegations are unfounded or portrayed in a false light. The requirement of actual malice by *New York Times*, however, insulates reporters from inaccurate reporting causing a disservice to viewers.

The *New York Times* standard should be relaxed. Without the requirement of actual malice, the media would be required to monitor themselves closely to make sure that what they are reporting is accurate – no longer would they be able to prevail in lawsuits because of their ignorance. However, relaxing the *New York Times* standard will have First Amendment ramifications. The freedom of press is fundamental to our society, and serves its function so long as the media engages in truth-

ful reporting. The freedom of speech and press granted by the First Amendment is not absolute, however, and certain boundaries must be drawn. This is clearly one of those areas the freedom of press should be limited to fair and accurate reporting. Until such time, viewers beware, what you are watching may not be the whole truth – take what you see with a grain of salt.

Endnotes

1. Dirk Smillie, *Newsmagazines Woo Viewers as Must-See TV Drama*, CHRISTIAN SCI. MONITOR, Feb. 20, 1998, at B1.
2. *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964).
3. Lyrissa Barnett Lidsky, *Prying, Spying and Lying: Intrusive Newsgathering and What the Law Should Do About It*, 93 TUL. L. REV. 173, 176 (1998).
4. David A. Logan, “Stunt Journalism,” *Professional Norms, and Public Mistrust of the Media*, 9 U. FLA. J.L. & PUB. POLY 151, 168 (1998).
5. *Id.*
6. Russ W. Baker, *Truth, Lies, and Videotape, PrimeTime Live and the Hidden Camera*, COLUM. JOURNALISM REV., July 1, 1993, at 25.
7. Logan, *supra* note 4, at 167.
8. *Id.*
9. *Id.* at 167-68.
10. *Id.* at 167.
11. *Id.*
12. Smillie, *supra* note 1, at B1.
13. *Id.*
14. Lidsky, *supra* note 3, at 180.

15. Logan, *supra* note 4, at 166.
16. *Id.* at 167.
17. *Id.* at 166.
18. Jane Hall, *Are TV Newsmagazines Scapegoats or Villains?*, THE DETROIT NEWS, July 23, 1998, Accent section.
19. *Id.*
20. *Id.*
21. Logan, *supra* note 4, at 166.
22. Clark F. Mollenhoff, *25 Years of Times v. Sullivan*, THE QUILL, Mar. 1989, at 27.
23. *Id.*
24. *Id.*
25. *New York Times Co. v. Sullivan*, 376 U.S. 254, 256-59 (1964).
26. *Id.*
27. *Id.* at 256, 263.
28. *Id.* at 263.
29. *Id.* at 268.
30. *Id.* at 264.
31. *Id.* at 279-80. The term "public figure" also applies to corporations. Cris Carmody, *Applying a "Persona Test" for Newsgathering Privilege to Food Lion v. Capital Cities/ABC*, 93 NW. U. L. REV. 1287, 1288 (1999).
32. Patricia Nassif Petzer, *The Corporate Defamation Plaintiff as First Amendment "Public Figure": Nailing the Jellyfish*, 68 IOWA L. REV. 35, 40 (1982).
33. *New York Times*, 376 U.S. at 279-80.

34. Mollenhoff, *supra* note 22, at 27.
35. *Id.*
36. *Id.*
37. *Id.*
38. *Id.*
39. *Id.*
40. *Id.*
41. Joseph R. Szczesny, *Where NBC Went Wrong*, TIME, Feb. 22, 1993, at 59.
42. *Id.*
43. *Id.*
44. *Id.*
45. NBC Calls GM Show 'Failure,' ST. LOUIS POST-DISPATCH, March 23, 1993, at 6A.
46. *Dateline: Highway Robbery* (NBC television broadcast, Jan. 20, 1993), available at <http://www.msnbc.com/news/233715.asp?cp1=1> [hereinafter *Dateline*]; *20/20: Cheating at the Gas Pump* (ABC television broadcast, May 10, 2000), available at http://abcnews.go.com/onair/2020/2020_000510_gastest_feature.html [hereinafter *20/20*].
47. *Dateline*, *supra* note 46; *20/20*, *supra* note 46.
48. *Dateline*, *supra* note 46; *20/20*, *supra* note 46.
49. *Dateline*, *supra* note 46; *20/20*, *supra* note 46.
50. *Dateline*, *supra* note 46; *20/20*, *supra* note 46.
51. *20/20*, *supra* note 46.
52. *Dateline*, *supra* note 46.
53. *Id.*

54. *Dateline*, *supra* note 46; 20/20, *supra* note 46.
55. *Dateline*, *supra* note 46; 20/20, *supra* note 46.
56. *Dateline*, *supra* note 46; 20/20, *supra* note 46.
57. *Dateline*, *supra* note 46; 20/20, *supra* note 46.
58. *Dateline*, *supra* note 46.
59. *Dateline*, *supra* note 46; 20/20, *supra* note 46.
60. *Dateline*, *supra* note 46; 20/20, *supra* note 46.
61. *Dateline*, *supra* note 46; 20/20, *supra* note 46.
62. 20/20, *supra* note 46.
63. *Id.*
64. *Id.*
65. *Id.*
66. *Id.*
67. *Id.*
68. *Dateline*, *supra* note 46.
69. 20/20, *supra* note 46.
70. *Id.*
71. Jim West, *Gasoline Marketing under the Spotlight*, OIL & GAS JOURNAL, July 12, 1993, at 19.
72. Petroleum Marketers Association of America, at <http://www.pmaa.org/about/index.html> (last visited Apr. 21, 2001).
73. West, *supra* note 71, at 19.
74. *Id.*
75. Steve Dwyer, *Scam or Sham? NPN Special Report*, NATIONAL PETROLEUM NEWS, Aug. 1993, at 20.

76. Maryland Virtual High School of Science and Mathematics, *Problems at the Pump*, at <http://museum.nist.gov/exhibits/ex1/rm8/rm8-01content.htm> (last visited Apr. 21, 2001).

77. *Id.* Pumps at any gas station are not to be off by more than 6 in³, or 3.3 oz, for every five gallons. If it is found that a pump is off by more than this amount, then the gas station must shut off the pumps immediately and get them fixed. If they are not fixed within a specified amount of time, then the station owners will not be able to turn the pumps back on.

78. *Id.*

79. Dwyer, *supra* note 75, at 20.

80. *Id.* For a list of every state's weight and measures office, see *The Consumer Action Website*, at <http://www.pueblo.gsa.gov/crh/measures.htm> (last visited April 21, 2001); see also *Pacific Scale Co. Weights & Measures Departments*, at <http://www.pacificscale.com/PSCLINKS.html> (last visited Apr. 21, 2001).

81. *The Consumer Action Website*, at <http://www.pueblo.gsa.gov/crh/measures.htm> (last visited April 21, 2001). These offices also enforce regulations concerning the labeling, weight, measure or count of such packaged items such as food and household products. Along with checking the accuracy of gasoline pumps, the offices also check the accuracy of weighing and measuring devices such as supermarket scales, taxicab meters and rental car odometers. As in most states, Illinois adopts the standards used by National Institute of Standards and Technology. 225 ILL. COMP. STAT. 470/30 (1998).

82. 225 ILL. COMP. STAT. 470/1 (1998); see also Illinois Department of Agriculture, at <http://www.agr.state.il.us/w&mprogram.html> (last visited Apr. 21, 2001).

83. 225 ILL. COMP. STAT. 470/1 (1998).

84. Dwyer, *supra* note 75, at 20.

85. Chris Traczek, *Gas-Pump Fraud*, NATIONAL PETROLEUM NEWS, July 1, 2000, at 14.

86. Dwyer, *supra* note 75, at 20.

87. *Id.*

88. Coll Metcalfe, *Area Gas Pump Survey Shows No Tampering*, L.A. TIMES, Oct. 23, 1998, at B1. The *Times* sampled 15 stations. At each station, one gallon of premium-grade gas was tested to see if the pump passed the state standards for accuracy. Eight of the stations sold exactly one gallon of gasoline, matching the reading on the pump. Of the remaining seven, four sold a bit less than a gallon and three sold just a bit more than a gallon.

89. *Id.*

90. *Id.*

91. *Id.*

92. Dwyer, *supra* note 75, at 20.

93. *Id.*

94. *Id.*

95. *Id.*

96. 16 C.F.R. § 306 (2000).

97. 16 C.F.R. § 306.1 (2000); 16 C.F.R. § 306.2 (2000).

98. Some examples include the following: 815 ILL. COMP. STAT. 370/4 (1998); MICH. COMP. LAW ANN. § 290.641 (West Supp. 2000); N.Y. AGRIC. & MKTS. LAW § 192 (McKinney 1991); MINN. STAT. ANN. § 239.751 (West 1992); MISS. CODE ANN. § 75-55-6 (2000); TENN. CODE ANN. § 47-18-1305 (2000); CONN. GEN. STAT. ANN. § 91-322 (West 2000); WIS. STAT. ANN. § 168.05 (West 1997).

99. 16 C.F.R. § 306.4(a) (2000).

100. 16 C.F.R. § 306.4(b) (2000). Prior to this amendment, the Environmental Protection Agency would conduct surveys to ensure octane quality and any violation then found would be enforced by the Federal Trade Commission. 58 Fed. Reg. 16464, 16466 (commenting on how § 1502(a) of the Energy Policy Act of 1993 amending § 204 of the Petroleum Marketing Practices Act).

101. Octane rating is the rating of the anti-knock characteristics of a grade or type of gasoline as determined by dividing by 2 the sum of the research octane number plus the motor octane number. 16 C.F.R.

§ 306.0(a) (2000). Research octane number and motor octane number are also defined. 16 C.F.R. § 306.0(b) (2000).

102. 16 C.F.R. § 306.6 (2000).

103. 16 C.F.R. § 306.7 (2000).

104. 16 C.F.R. § 306.10(a) (2000).

105. *Id.*

106. 16 C.F.R. § 306.10(b)1 (2000).

107. 16 C.F.R. § 306.12 (2000).

108. 16 C.F.R. § 306.12(a)1 (2000); 16 C.F.R. § 306.12(b)1; 16 C.F.R. § 306.12(c)1 (2000).

109. 16 C.F.R. § 306.12(b)1 (2000).

110. 16 C.F.R. § 306.11 (2000).

111. *How to comply with the FTC Fuel Rating Rule*, at <http://www.ftc.gov/bcp/conline/pubs/buspubs/fuelrate/requires.htm> (last visited Apr. 21, 2001).

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. Michael Causey, *Marketers Reject Gasoline Octane Cheating Claims*, THE OIL DAILY, Sept. 2, 1992, at 1.

117. Dwyer, *supra* note 75, at 20.

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*
123. *Id.*
124. *Id.*
125. *Id.*
126. *20/20*, *supra* note 46.
127. *Id.*
128. Federal Communications Commission Chairman Reed E. Hundt, Address at the Museum of Television and Radio (June 3, 1997), *available at* <http://fcc.gov/Speeches/Hundt/spreh729.html>.
129. *Id.*
130. Logan, *supra* note 4, at 168.
131. Jack Nelson, *Public is More Critical of TV Networks and Large National Papers, Study Says*, L.A. TIMES, Mar. 21, 1997, at A21.
132. Logan, *supra* note 4, at 169.
133. Cynthia Crossen, *When Numbers Lie. We Study Them, Quote Them, Live by Them, But Can We Trust Them?*, THE ATLANTA JOURNAL AND CONSTITUTION, Oct. 9, 1994, at R-1.
134. Traczek, *supra* note 85, at 14.
135. West, *supra* note 71, at 19.
136. Dwyer, *supra* note 75, at 20.
137. *20/20*, *supra* note 46.
138. Illinois Department of Agriculture, *Getting a True Measure: Consumer Information Tips*, at <http://www.agr.state.il.us/w&mtips.html> (last visited Apr. 21, 2001).

