

PRIVACY AND THE PRESS

Joshua Rozenberg.
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This book has come out at a timely moment. In early chapters the trial and appeal of the case of the *Daily Mirror* and Naomi Campbell (refreshingly described as a model, rather than the more ubiquitous “supermodel”; I suppose “clothes-hanger” would give rise to yet another trial). The newspaper had published the fact that the model was receiving therapy for drug addiction (which was acceptable as it was in the public interest) as well as details of her therapy (which was unacceptable). Miss Campbell was awarded £3,500 for breach of confidence and a claim under Data Protection. On appeal this was overturned, largely on the grounds that Miss Campbell had lied when she maintained that she had never taken drugs, and that if it was legitimate to publish the fact that Miss Campbell was a drug addict it did not seem particularly significant to add the fact that the treatment consisted of attendance at Narcotics Anonymous. (One might also wonder, *en passant*, why when famous people are found to be taking hard drugs they are not charged whereas the miserable nonentities who troop through the magistrates’ courts are convicted and punished for possessing small quantities of Class B substances.) However, Miss Campbell appealed to the Lords and during the interval before that hearing Mr Rozenberg wrote his book. Coterminous with reading it for review the Lords’ decision was announced: the Appeal Court ruling was overturned and the fine was reinstated (with costs to the *Mirror* approaching £1 million). After reading the rulings of the three majority Judges and those of the two minority Judges, such was the excellent analysis of the facts and law surrounding the case given in this book that I was immediately enabled to see that the Lords’ decision was wrong, a fact that will not cause the three Judges to lose much sleep. In the same week as this decision was announced the same newspaper published pictures of British troops apparently abusing Iraqi prisoners, pictures whose authenticity has been challenged. True or faked, the photos could well become the centre of another challenge to the freedom of the press to publish, on a far more elevated plane than the pharmacological proclivities of a fashion model.

This book consists of walking a careful tightrope between the requirements of art.8(1) (the right to respect for private and family life) of the European Convention on Human Rights and the qualifications of art.8(2), and those of art.10(1) (the right to freedom of expression) and its qualifications in art.10(2). It can be readily seen that these two qualified rights are in conflict. The situation in England and Wales is further complicated by there being no law of breach of privacy although there is a law of breach of confidence, and even *further* complicated by the term “confidence” being now so loose that it may be implied even when no agreement of confidentiality had been entered into.

A privacy law, introduced by Parliament, would greatly reduce the genteel ping pong between the courts, it has been argued (in more elegant terms), but defining the limits of such a law would be no easy matter. It has been argued in response that any cases brought under such a law would

have to be decided by the Judges anyway, so why not leave it all to them; after all, they have the breach of confidence law, the Convention articles and the Human Rights Act 1998 to work with.

There is a considerable consensus that of the two conflicting articles, art.10 concerning freedom of expression must carry the more weight in a democratic society although it should never become a trump card. This view is strongly endorsed by the author. It might be suggested that “he would, wouldn’t he: he’s a journalist” but it should be said that his endorsement is backed by strong argument including the large number of cases that he cites and analyses which largely support this view.

When he was the BBC’s legal correspondent Joshua Rozenberg was admired for the clarity with which he explained complex and occasionally obscure aspects of the law. His facility with words is no less in print. His descriptions of complicated cases and the unravelling of complex (and sometimes barely rational) arguments are presented with a degree of panache. Trials and rulings are presented with a straight bat but his own gloss on events can be quite entertaining. He even occasionally indulges in a little word play, with mixed results; mobile phone users engaging in “textual intercourse”: not at all bad; the breast implant surgeon who “went bust”: groanworthy.

The function of the press is not only to record the news and comment on it. It is, above all, an independent voice that is uncontrolled by the state but occasionally limited by the law. It will sometimes overstep the mark when the damage caused by the invasion of privacy exceeds the value of what is exposed thereby. But this is the price that a free society should be prepared to pay. The press is sometimes a bloodhound and sometimes a watchdog; it must never become a poodle.

Brian P. Block