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The Earnhardt Sensationalism

Almost anywhere you look, a newspaper or some kind of media is going to court to get access to legal documents. If you are a NASCAR fan, then you most likely have heard something about the controversy raised over Dale Earnhardt's autopsy photos. In 2001 during the Daytona 500 Dale Earnhardt was killed in the last turn of the last lap. Dale Earnhardt was a seven time NASCAR champion. This achievement has only been accomplished by one other driver, Richard Petty. NASCAR has become a huge sport over the last decade. Dale Earnhardt made a huge impact on NASCAR during his career. An article by Phil Sheridan explains that after his death the Orlando Sentinel wanted access to the autopsy photo to examine the safety of NASCAR, because of the fact that there have been four deaths in a year, and they would not publish or copy the photos. It was then that Teresa Earnhardt protested to having the photos released. In a statement she said, "Releasing the pictures will serve only to violate the privacy of our family and the integrity of Dale's legacy" (qtd. in Sheridan). Even though the Sentinel may have had good intentions, the problem is that if the photos were made available to the paper then they would be available to everyone, including getting put on the internet (Sheridan). This is exactly what so many people don't want and why they try so hard to keep certain information from the media.

The title of Sheridan's article defines the situation: "Earnhardt Controversy is About Good Journalism, Not Sensationalism." This is a big question in many people's mind, except to the journalist who writes the stories that deal with "sensationalism" everyday. When is it perfectly O.K. to have the media get access to private information that would be used to inform the public or when does it turn into sensationalism? This is something that almost needs to be determined on a case by case basis. In this case the media has turned the controversy of the autopsy photos into sensationalism, not good journalism. In this case I can not see where the journalists seem to think that the autopsy photos could tell them something different, than some investigating of the whole situation from the seat belt to what the medical examiner said. It is not that the Earnhardt family had any doubts as to how or why Dale had died. Maybe if they would have, then there would have been more of a reason for the media wanting the autopsy photos. In many ways this controversy is about sensationalism and invading the privacy of families. Another example of the media using information for sensationalism is the article by Jim Heid, "My Sister's Dead Body is No Longer News". In this situation the event of his sister's death was reported, but then a local news station seemed to think it was appropriate to show the same visual images five months later. Heid believes that the media puts its priorities on making money, not to inform the public. "[I]f it bleeds, it leads" (Heid 12). From the beginning Teresa Earnhardt just wanted to keep her family's privacy and to keep this from happening to other families placed in the same situation.

The coroner who examined Earnhardt said he had died from a basal skull fracture. This is why the Sentinel wanted to review the autopsy photos. It was just a short time before his death when NASCAR had introduced the use of the HANS device, which is a

head and neck support. NASCAR did not have a rule to use the device, but did suggest that the driver try using it. Earnhardt chose not to use the device (Sheridan). This could lead one into thinking that maybe NASCAR did risk the safety of the driver by not mandating the use of the HANS. It wasn't until a week later when NASCAR held a press conference and stated that his seat belt had broken. In this case the HANS device wouldn't have worked (Sheridan). An article by Skip Wood tells us that Bill Simpson, the owner of the company that manufactured the seat belt, "insisted the belt was mounted incorrectly and would not have broken had it been installed in adherence to specifications." By the mounts not being installed correctly they went from supporting 5,800 pounds of safety to 1,900. Simpson also says that he knew Earnhardt had the mounts installed incorrectly, and repeatedly tried to get him to change them (C02). This information was available to the media and did not depend on viewing the autopsy photos.

There are many cases across the country where a person's privacy is invaded by the media. In Teresa Earnhardt's fight to keep her family's privacy, she spent a lot of time in court because the autopsy photos were considered public record at the time of Earnhardt's death. The judge presiding over the case ordered the lawyers for the Earnhardt family, the Sentinel, and a web site owner, Michael Uribe, into court ordered mediation. This court appointed mediator was John Upchurch, who is a former circuit judge. An agreement was reached after 20 hours. The web site owner Uribe failed to show up for the second day of mediation and is not a part of the agreement. The judge stated that it appeared that the web site owner only wanted to post the pictures on the internet. The agreement would allow the former circuit judge, John Upchurch to choose a medical examiner to view the photos and a video tape of the proceeding for no longer than

30 minutes and he also would supervise the viewing (Wickman and Rippel). The Sentinel would also be allowed to ask three specific questions on the head injuries of Earnhardt then the photos would be temporally sealed (“Independent” 16). Both sides felt this was a good agreement, but neither side gave any details on the give and take from either side that resulted in the agreement. This is a good turn of events because the Sentinel can still use the information obtain from the photos, while the Earnhardt family doesn’t have to worry about who’s hands the photos will end up in. While the agreement insured good journalism, the fact that mediation was necessary, show that journalist can’t always be trusted to avoid sensationalism.

An article by Sean Mussenden tells us the web site owner who did not show up for the second day of negotiations has filed an appeal to the 5th District Court. Shortly after Earnhardt’s death he posted 86 autopsy photos of two other NASCAR drivers Neil Bonnett and Rodney Orr who were killed in 1994 after crashing at Daytona International Speedway. He then faxed a press release to The Associated Press and other media outlets. Teresa accused the web sit of “indecency” and the President of NASCAR said that it’s “a perfect example of an opportunist with no morals” (qtd. in Mussenden). When Uribe was asked what he had planned to do with the photos if he was permitted to have access to them he said, “It’s what I’m already doing with the other photographs” (qtd. in Mussenden). It is people like this man that make someone unfortunate events in life, their way to make money. This is pure sensationalism and in no way is to inform the public.

On March 29, 2001 the new law regarding autopsy photos was signed by Governor Jeb Bush (Rippel, “Judge”). The article written by Sheridan explains that Teresa Earnhardt and NASCAR had the support of Jim King, Jeb Bush, and the legislature, which

would help her win the fight on getting this new passed. Sheridan sees this as just an attempt to make a politician look good, “seen protecting a grieving widow from those awful, nasty media people. In reality... [politicians] are helping NASCAR close the file on Earnhardt’s death and getting back to business as usual.” Jim King, the Florida Senate majority leader has even said, “The possibility of graphic and sensitive photos being leaked and exploited is a major public concern” (qtd. in Sheridan) Sheridan brings up a good point here when he says “So major that it never occurred to anyone to address it before now?” I do believe that if it wasn’t for something so unfortunate happening to the Earnhardt family, a family with a lot of support from the fans and others, that the possibility exploitation of private information just gets overlooked. For just a person like Jim Heid, who had lost his sister, could never have gotten all the publicity that this has. Money works for both sides of this, the media and the Earnhardt family. It is pretty clear if Dale Earnhardt had not been so well known at the time of his death, there would not have been such a media event placed on the autopsy photos. If the Sentinel wanted to investigate the safety of NASCAR, since there had been four deaths in a year, why did they not start looking before Earnhardt was killed? Now under this new law, it is now a third-degree felony for a medical examiner to make autopsy photos public. In this situation the views of many important people have accomplished something that will help many families in the future.

After the new law had passed, a student run newspaper at the University of Florida had petitioned the courts stating that the law was unconstitutional and to fight the sealing of the autopsy photos. A judge gave the newspaper the “go-ahead” since they had requested the photos before the new law was signed. Judge Will, who presided in the

Sentinel case, also said that the agreement between the Earnhardt family and the Sentinel did not bind anyone else (Rippel, “Judge”). Three months later the decision was upheld, barring the student run newspaper and Michael Uribe from examining or copying the autopsy photos. In the order he writes:

Modern times have witnessed an erosion of the individual expectation of privacy to a pathetic point. We live in a world in which the individual can anticipate that everything from one’s market habits to one’s personal health (and everything in between) are now to anyone with the electronic capacity to eavesdrop. Nosiness [sic] has become the order of the day—so long as it is amusing or entertaining. While some may say the legislature did not do a perfect job in adopting this statute, this court is convinced it performed within this constitutional directives and is to be complimented for recognizing the privacy needs of its citizens. (qtd in Rippel, “Court”)

The attorney for the student newspaper then said he would file for a new trial. There has also been another lawsuit filed, by the Tribune Co., against the medical examiner for refusing access to autopsy photos. The attorney for Tribune believes the law has “unintended consequences” which would make it hard for medical school to show autopsy photos to students and “it also targets a problem that doesn’t exist” (“Newspaper” D12). If the law would cause problem for medical schools, then there should be something added, with permission from the family. I do not believe that is the purpose of the law. The purpose was to protect families from the pain of sensationalism. But to say it “targets a problem that doesn’t exist” is something that only the media would believe. Finally in December 2003 after the appeals from the student run newspaper, the Supreme Court

rejected their appeal. This appeal was based on the constitutionality of the law, which barred public access to autopsy photos. This accessibility was used to uncover medical examiner's negligence or criminal activities ("Earnhardt Autopsy" D02). This is something that one would have to consider, but in this case, there was no evidence of the medical examiner's negligence or criminal activity. The only one who may have had negligence was Earnhardt himself. The family in no way believed that there was wrongdoing on anyone's part. If they had, then they could have brought this to the media's attention, and then have gotten further experts to review the photos themselves. In an article by the Quill it tells us that the Tribune Publishing Co. who owns the Sentinel has given up on their lawsuit against Broward County, after the medical examiner would not release the photos to them. This came after the ruling by the U.S. Supreme Court ruled on the releasing of the autopsy photos of Vince Foster, a Bill Clinton aide ("Earnhardt Suit Dropped" 61). The fact that is case also went all the way to the Supreme Court, just shows how far the media is willing to go, especially if it has anything to do with someone well known.

The court appointed medical examiner Barry Myers, a Duke University expert in crash injuries concluded in his four page report that the broken seat belt had not contributed to the skull fracture Earnhardt received. But this was in part from the violent whipping motion when his car slammed into the concrete wall at over 160 mph. It also appears that the seat belt held up through most of the crash, but even if it had not failed, his head injuries would have been just as traumatic given the force and the near head-on angle (Clark D01). NASCAR had their own experts' examiner the findings in the car. In this 293 page report of two independent experts concluded that there were several factors

that led to the fatal blow to the skull. One factor is the near head-on angle was found to be the result of the collision with Schrader, which changed the direction of the car just before impact, another being the stubbornness of Earnhardt for the malfunction of the seat belt. The report differs with that of Barry Myers in that if the head whipping alone could not have caused the fracture, otherwise there would have been more evidence of injuries to Earnhardt's torso, caused by the restraint system. All the information from this report was without viewing the autopsy photos. Teresa Earnhardt supported the NASCAR report stating:

My family and I appreciate NASCAR's thorough report into Dale's accident. The findings released today are based on the most comprehensive information available and appear to be consistent with previously released medical reports and our own understanding.
(qtd. in Weir C01)

Both of these reports also do not say that if Earnhardt had used the HANS device, it could not have saved his life, they do agree though it could help in preventing injuries (Weir; Clark). If it is possible for two independent experts to find important information on the cause of death, then the media should be able to do the same.

From Earnhardt's place in stock car racing, track records, seven championships, and 76 victories, to his leadership in the sport, the fans cars that bear a sticker or decal of the No.3, to the black flags waving and banners, we have signs stating that the "The Intimidator's" memory still lives on, and this doesn't even gauge the true Earnhardt legacy (Poole E01). No matter what the media has done or tries to do, this man has made his legacy in the hearts of many people and will not be forgotten.

Works Cited

- Clarke, Liz. "Earnhardt's Seat Belt is Not Blamed." The Washington Post 11 Apr. 2001: D 01. ProQuest. Newspaper Source. 11 Feb. 2005 <<http://proquest.umi.com>>.
- Heid, Jim. "My Sister's Dead body is No Longer News." Newsweek 17 Sept. 2001: 12. EBSCOhost. Academic Search Elite. 21 Jan. 2005 <<http://web36.epnet.com>>.
- "Independent Expert Will Handle Earnhardt's Autopsy Photos" St Louis Post-Dispatch 17 Mar. 2001: 16. ProQuest. Newspaper Source. 11 Feb 2005 <<http://proquest.umi.com>>.
- "Earnhardt Autopsy Photos Are Off Limits." Washington Post. 2 Dec. 2003: D 02 ProQuest. Newspaper Source. 7 Feb. 2005 <<http://proquest.umi.com>>.
- "Earnhardt Suit Dropped After Similar Decision." Quill. 92.5 (2004): 61 <<http://web22.epnet.com>>.
- "Newspapers Want Autopsy Law Declared Unconstitutional." St. Louis Post – Dispatch. 2 Sep. 2001: D 12. Proquest. Newspaper Source. 7 Feb. 2005 <<http://proquest.umi.com>>.
- Mussenden, Sean. "Drivers' Autopsy Photos Posted by Web Site Owner; the Site Displays Autopsy Pictures of 2 Drivers Who Were Killed in 1994 Crashes." Orlando Sentinel. 29 Mar. 2001. EBSCOhost. Newspaper Source. 11 Feb. 2005 <<http://web30.epnet.com>>.
- Poole, David. "The number 3 Car Still No.1 in Hearts; Earnhardt's Legend Resound for Friends, Fans." Washington Post. 25 May 2003: E01. ProQuest. Newspaper Source. 11 Feb. 2005 <<http://proquest.umi.com>>.

Sheridan, Phil. "Earnhardt Controversy is about Good Journalism, Not Sensationalism."

Philadelphia Inquirer 8 Mar. 2001. EBSCOhost. Newspaper Source. 21 Jan. 2005

<<http://web36.epnet.com>>.

Rippel, Amy C. "A Judge's Decision May Put Dale Earnhardt's Widow "Back to Square

One" in Her Fight to Keep the Photos Private." Orlando Sentinel 5 Apr. 2001.

EBSCOhost. Newspaper Source. 7 Feb. 2005 <<http://web30.epnet.com>>.

Rippel, Amy C. "Court formalizes Decision Keeping Autopsy Photos from Web Site,

Student Paper." Orlando Sentinel. 9 Jul 2001. EBSCOhost. Newspaper Source.

11 Feb. 2005 <<http://web23.epnet.com>>.

Weir, Tom. "Seat Belt a Factor in Death NASCAR Report Also Cites Collision, Wall Hit

Angle." USA Today. 22 Aug, 2001: C01. ProQuest. Newspaper Source. 11 Feb.

2005 <<http://proquest.umi.com/pqdweb?>>.

Wood, Skip. "Seat Belt Creator Stands by Product." USA Today. 22 Aug, 2001: C02

ProQuest. Newspaper Source. 11 Feb. 2005 <<http://proquest.umi.com/pqdweb?>>

Wichman, Debbie and Amy Rippel. "Compromise Reached in earnhardt Autopsy Photos

Case." Orlando Sentinel. 17 Mar. 2001. EBSCOhost. Newspaper Source. 7 Feb.

2005 < <http://web36.epnet.com>>.