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The Chiquita Case: A Lot of Banana Oil?

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Abstract. This article focuses on an aspect of substantive law that may unnecessarily impede the social benefits derived from investigative reporting and protect transgressors of the social contract. The article stems from a legal case that originated from allegations by an investigative reporter about misbehavior on the part of Chiquita Brands International Inc. However, the article does not describe the allegations nor take a position on their validity.

The Cincinnati Enquirer published a special section in May 1998 that contained allegations against Chiquita Brands International, Inc. According to The New York Times (see below), the primary investigative reporter for the section significantly based the allegations on voice mail messages internal to Chiquita between its lawyers and its executives.

The Enquirer has since published a front-page apology to Chiquita, promised to pay it over \$10 million, and fired the primary investigative reporter. Moreover, the reporter found himself in legal jeopardy and facing charges that were lessened after he divulged a crucial source: a former Chiquita lawyer--and means of obtaining information--access codes to the voice mail of two Chiquita lawyers.

The most significant substantive law issue in this case concerns both possible means of obtaining information--e.g., word-of-mouth accounts by "insiders"; access to original papers, email reports, or voice mail; or copies of the originals or forwarded email and voice mail--and possible sources of information--e.g., people differing in degree of (1) involvement with alleged transgressions and (2) anonymity or no people at all save for the investigative reporter and related support personnel. The issue is whether specific means and sources should be necessarily illegal regardless of the nature of the allegations.

Substantive law--esp., proscriptions linked with sanctions--in representative democracies is most often conceived to effect some variant of the greater good for the greatest number of people or for the greatest number of people who are ascribed the greatest amount of rights and privileges, even if not responsibilities. In other words, substantive law in representative democracies is most often consequential in its seeking of the good. And consequential, substantive law must ineluctably attend to the fallout from different combinations of means and sources. Consequentialism's usual converse--the deontological approach to good--explicitly denotes that some activities should just not be done regardless of consequences, while others should be, again regardless of consequences.

It is the deontological approach that engenders gradations of legal difficulty for the investigative reporter. For example, receiving forwarded email messages or paper copies of them about an organization from an individual within that organization always has a sanction that is qualitatively different from that linked with directly accessing email messages with a code provided by that same individual. To mandate through substantive law that a specific activity is always subject to sanction (and a specific sanction or range of sanctions) regardless of consequence--or intent as a prefigured consequence--invites miscarriages of justice in the generic sense. Such substantive law can even lead to a weakening of the rule of law in situations where a specific mandate otherwise would contribute to

International Bulletin of Political Psychology

justice in the generic sense. (The same analysis can be made to address contentions that direct access to email is a necessary violation of journalistic ethics.)

Thus, irrespective of the veracity of allegations about Chiquita and of the accounts concerning sources and means to arrive at these allegations, and irrespective of the appropriateness of Chiquita's reaction to the allegations, a vital tool to discover wrong and attempt to right it has been seriously injured. And that is a lot of banana oil. (See Frantz, D. (April 6, 1999). Reporter in Chiquita case reveals a source in court. *The New York Times*, p. A14; Montada, L. (1998). Justice: Just a rational choice? *Social Justice Research*, 11, 81-101; Schminke, M., Ambrose, M.L., & Noel, T.W. (1997). The effect of ethical frameworks on perceptions of organizational justice. *Academy of Management Journal*, 40, 1190-1207; Series of articles in *The Cincinnati Enquirer* about the Chiquita case at <http://cincinnati.com>; Wagstaff, G.F. (1998). Equity, justice, and altruism. *Current Psychology: Developmental, Learning, Personality, Social*, 17, 111-134.) (Keywords: Chiquita, Consequentialism, Deontology, Investigative Reporting, Justice.)