

The Victorian Bushfires and Other Extreme Weather Events:

**Case Studies in Crisis,
Culture and Communications**

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ETHICAL FREE-FOR-ALL OVER MEDIA ACCESS TO THE FIRE ZONE

Abstract

A major issue to arise in the aftermath of the Black Saturday bushfires in Victoria in February 2009 concerned access by the media to the places destroyed. This issue arose in five main forms: media efforts to circumvent roadblocks; use of deception by media to get into areas that were open only to residents; use of private property by media, with and without the connivance of the authorities, as venues for gathering material; balancing residents' rights of access and property protection against the media's need to discharge their legitimate function of informing the community; and managing crime scenes and protecting survivors from the media. This article explores these issues from the perspective of 28 media professionals who covered the fires. It identifies and discusses the ethical dilemmas raised, and describes how the journalists concerned resolved them. It contains many lessons for the media, the authorities and the public. It lays bare the lack of an ethical consensus among media people. In doing so, it points up some exemplary decision-making by individual journalists and the weaknesses of their profession's institutional framework. It is argued that these matter because ethical lapses at disaster scenes can cause harm to victims and survivors, as well as placing the safety of media personnel at risk. Parallel ethical issues confronted the authorities too. These are canvassed as well, and the implications for public policy discussed – particularly in relation to the justification for controlling media access, and balancing justifiable restrictions against competing interests such as the public right to information and the autonomy of survivors in being able to make their own decisions about whether to speak to the media.

Introduction

The objective of this research was to identify and examine the ethical issues that confronted media practitioners who covered the bushfires in Victoria, Australia that occurred on what became known as Black Saturday, 7 February 2009. The purpose was to discover how the precepts contained in the various media codes of ethics were operationalised in the circumstances of a major natural disaster, discover the bases on which media practitioners resolved ethical dilemmas as they arose, and learn how ethical challenges might be met better in the future.

The rationale for the research was grounded in theories of the press and of moral philosophy, for it is these that provide the basis for the professional codes of ethics that are meant to guide media practitioners. The codes do not, of course, draw on the full range of philosophical theories, but on those that have been agreed for more than half

a century to be fit for purpose – principally social contract theory in the tradition of Hobbes and Rousseau, utilitarian theory in the tradition of Bentham and Mill, and the minimum conception of morality. This much may be deduced from the foreword to the code of the Media, Entertainment and Arts Alliance (MEAA) Code of Ethics, which is the longest-standing code in Australian journalism:

This code focuses on individual responsibility, building on the basic values of honesty, fairness, independence and respect for the rights of others. Good journalists will not do harm to people or the public interest ...

These values are also reflected in journalism codes of ethics internationally.

The relevant theory of the press is social responsibility theory, formulated in the 1940s by the US Commission on the Freedom of the Press and articulated by William Ernest Hocking (Hocking, 1947). It remains the dominant paradigm for thinking about the functions and duties of media professionals, even though it is based on a now outdated concept of mass media as 'a single private voice carried to a nation'. The new concept of 'the many speaking to the many' has certainly brought with it a new form of media accountability and a new contestability, but the present study is based on the performance of professionals – not citizen bloggers – largely using their mass media platforms in the 'one-to-many' mode. The foundations of social responsibility theory – named by Siebert and colleagues (Siebert et al., 1956) – were laid with these words by Hocking:

The functions of the press, typified by the news function, are 'clothed with a public interest'. Whenever an institutional activity affects a general need, there is a public concern that the effect be favourable rather than detrimental. One begins to speak of the 'right' of the public to have its news; this language has no necessary legal implications – a moral right lifts its head to announce an answering responsibility on the part of the institution. The support of the alleged right will depend on the depth of public concern. In the case of the press, the concern goes deep.

This responsibility is not just to provide information, raise awareness, bear witness, hold power to account and provide a forum for debate – the core functions of the media under this theory – but to do so in a manner that does not violate the values of honesty, fairness, independence and respect for the rights of others to which the professional codes address themselves. For the purposes of this article, it was clauses 8 and 11 of the MEAA Code that were most pertinent:

Clause 8: Use fair, responsible and honest means to obtain material. Identify yourself and your employer before obtaining any interview for publication or broadcast. Never exploit a person's vulnerability or ignorance of media practice.

Clause 11: Respect private grief and personal privacy. Journalists have the right to resist compulsion to intrude. (MEAA, 2010)

The good and the harm that can be done by media coverage of disasters have been identified in literature concerning media performance on these occasions. Beverley Raphael has written of the actions that survivors take in the aftermath of a disaster to gain mastery of their experience. One of these actions is to 'give testimony', sometimes through the media. Another is to seek acknowledgement, achieved through communal rituals, ceremonies and celebrations, and reaction from national and international communities, for which communication by the media is indispensable. Media presentations might also symbolise public acknowledgement of what survivors have gone through, and provide recognition in their own right of what has happened, what people have suffered and what they need, indicating to survivors that their plight is taken seriously (Raphael, 1986). The presence of the media may provide a vehicle of communication in circumstances where the usual

channels are destroyed or inoperable, thus mitigating isolation and a sense of loneliness that occurs when survivors are cut off from the rest of the world (Scanlon, 1978).

Media portrayal of a disaster might also affect the ways in which the wider community and the authorities respond, and the subsequent portrayal of the response might influence public perceptions of it for good or ill (Raphael, 1986). In the aftermath of disaster, the media also play a role in developing and promoting themes around which recovery begins to be built (Kitch and Hume, 2008) – themes such as ‘pulling together’ or ‘healing’ or ‘rebuilding’.

These, then, may be thought of as the potential benefits of media coverage of a disaster. They are gained, however, at the risk of harm. Whether harm occurs depends on the behaviour of media practitioners, both in gathering material and in publishing it. Harm will not always be avoidable if the gains are to be made. The balance between the two can be delicate and difficult to strike. Yet the potential harms are numerous and serious. Deppa and colleagues (1994) catalogued many of them in an analysis of media coverage of the Lockerbie bombing, in which a Pan Am Boeing 747 was blown up by a terrorist bomb over the Scottish village of Lockerbie on 21 December 1988. All 259 people on the aircraft and 11 more on the ground were killed.

The ethical breaches committed in the coverage of the Lockerbie bombing, as reported by Deppa and her colleagues, included gross intrusion on extreme private grief, albeit in a public place; harassment of a couple who had just lost their daughter; attempts to gain access to an airport lounge where relatives of the dead were taken for help; offensively aggressive behaviour towards officials; the taking and publishing of distressingly grisly footage and photographs; and deception to obtain access to a list of passengers before next of kin had been informed (Deppa et al., 1994).

The breaches referred to here represent bad decisions in relation to many different categories of ethical dilemmas. The same range – and more – confronted media practitioners who covered the Black Saturday bushfires. This article examines dilemmas arising from just one aspect of their work: access to the scene. It sets out – mostly in their own words – what media practitioners said they did and why. Many of the decisions and actions described here are controversial. Media people responded in a variety of ways to the operational and ethical challenges that arose, and these different approaches show how under-developed are the ethical rules that are meant to guide media practitioners. To a large extent, individuals were left to rely on their own ethical compasses, and these differed wildly in the directions they gave.

It was not just journalists who had to make ethical decisions. The authorities faced them too. While the authorities had the force of law behind them, how they enforced the law was often a matter of discretion, and how that discretion was exercised was largely an ethical question. Not infrequently, the ethical decisions made by the authorities collided head on with those of the journalists.

These collisions affected the relationship between the media and the authorities, as well as the way the media responded, and so had consequences for the way the disaster scene was managed.

Access by the media to the places destroyed in the Black Saturday bushfires is a complex issue, with five main elements:

- general day-to-day management of access
- deception by media
- balancing the media’s and survivors’ interests
- management of a crime scene
- protection of survivors from media.

Each of these involves interactions between the media and the authorities, illustrating the need for clear operating principles, articulated and accepted by both parties. In formal settings such as parliament and the courts, there are rules governing media access and behaviour. However, no such rules have evolved for disaster situations which, by their nature, are more dynamic than the relatively static circumstances of the courtroom or parliamentary chamber. As a result, in the aftermath of the bushfires an ethical free-for-all developed. The evidence is that some media personnel made exemplary ethical decisions, while others made poor ones. Emergency services personnel did the same.

Method

This research project was independent of employers and professional interest groups, and was carried out by two people with extensive experience at the most senior editorial levels of the Australian newspaper industry.¹

A qualitative method was adopted, since it was considered that the complexity of the matters to be explored required in-depth interactive interviews in which there was scope to explore unpredictable turns in the conversation as well as the nuances that were likely to emerge. Research challenges of this kind are not usually well met by quantitative methods, and in any case it was not intended to make the findings generalisable to the population of media practitioners. Media work is highly contingent, and it was considered sensible to avoid creating false certainties by the use of quantification in circumstances where acceptable degrees of validity and reliability were likely to be elusive, perhaps even unattainable.

The research approach involved semi-structured individual interviews conducted by one or other of the authors at a time and place of the respondent's choosing. All the main media companies serving Victoria agreed to circulate on their intranets an invitation by the researchers to participate. The invitation made it clear that participation was voluntary. The interviews were conducted on the basis that what was said by the respondents might be used in the report, but that it would be de-identified. It was considered that this would be likely to relieve respondents of natural inhibitions they might feel in making negative comments about their own or others' actions.

Every media practitioner who volunteered was interviewed. They came from a broad range of media outlets:

- commercial television
- public-sector television
- metropolitan broadsheet newspapers
- metropolitan tabloid newspapers
- local newspapers
- online platforms
- commercial radio
- public-sector radio
- freelance.

They included reporters, photographers, camera operators, video journalists, producers, presenters, news executives, editors and news directors.

While it cannot be claimed that the respondents are representative of the media professionals who covered the bushfires, they do represent a very wide range and a very considerable proportion of the Victorian-based media professionals who did so. The fieldwork was conducted between May and August 2009.

Evidence

General day-to-day management of access

The main instrument used by the authorities to manage day-to-day access to the scene of the Black Saturday bushfires was the roadblock. Among media practitioners, there was a wide range of responses to roadblocks:

- Directly attempting to run through a roadblock was considered going too far, and was certain to end in arrest. So, on pragmatic if not ethical grounds, running a roadblock was out.
- For many, finding a way in that was not blocked was considered not only ethically justifiable but positively required by the countervailing ethical consideration of doing one's duty to the public.
- Getting past a roadblock fortuitously by being mistaken for someone else – a firefighter, for example – without deliberately attempting to disguise oneself was considered to be ethically justified by those who chanced to have done it.
- Getting past by deliberately disguising oneself – as a resident or volunteer, for example – was ethically justifiable for some; for others, any form of deliberate – as opposed to fortuitous – deception was utterly unjustified, even when friendly residents with right of access were willing to help.

For a few, a roadblock was a lawful sign that the area closed off was not to be entered. As such, it was to be respected and any attempt to circumvent it was unethical.

This wide range of attitudes demonstrates that there was no consensus among media people about the correct ethical response to roadblocks at a disaster scene. In general, though, media people tended to place a higher value on successfully meeting the competitive pressures under which they worked, and on carrying out what they saw as their duty to inform the public, than on the countervailing ethical duty to respect the law.

Some media people, however, accepted that a roadblock was a symbolic as well as a physical expression of closure, applying with equal legitimacy on all routes in, even where there was no physical barrier. Part of their acceptance of the legitimacy of the roadblocks was based on their assessment that no cover-up was being attempted.

Deception by media

The familiar combination of competitive pressures and lack of agreed ethical standards was also illustrated by the fact that, while some media people absolutely refused to indulge in deception in order to obtain access, others actively engaged in it or attempted it.

They drew a clear distinction between deliberate and fortuitous deception. Fortuitous deception – for example, being mistaken for a firefighter – was generally considered to be ethically unexceptionable. In this regard, wearing the CFA turn-out gear, consisting of yellow trousers, yellow jacket with 'media' on the back and a blue helmet, proved an unexpected boon at roadblocks for a few media people, where the overworked police saw the yellow jacket and simply waved them through, sometimes in mildly comical circumstances:

I had my yellow turn-out gear on, including the jacket with 'media' across the back, but you can't see that when you're sitting in a car. I approached the roadblock and they just waved me straight through.

As I drove by, one of the policemen yelled out to me: 'Someone steal your effing fire truck?' because I was in my Land Rover. I just kept going.

Deliberate deception was another matter, however, and here there was no consensus:

- Some took the view that deception was wrong, and refused to attempt it even when they were offered help to do so by survivors.

- Others tried to get the help of survivors by asking to ride into the scene in the back of their cars. Some succeeded in this; others failed.
- Some journalists attempted to obtain access by pretending to be volunteers.
- Once inside, some concealed from the authorities the fact that they were journalists.

Part of the justification given for this behaviour was that the bolder elements of the media, notably television crews in helicopters, seemed to be getting away with fly-in, fly-out incursions, placing other journalists at a competitive disadvantage.

Another rationalisation was based on the view that the duty to get information overrode all other considerations. Quite where this 'duty' shaded into the competitive ethos was not easy to discern.

Balancing the media's and survivors' interests

One issue to arise during the aftermath of the fires was the priority accorded to the media and to survivors in obtaining access to the places that had been damaged or destroyed.

Faced with this question, some media people stated that the survivors had a prior right because it was, after all, their property and their community. Others asserted that the media were serving a wider public interest by telling the story to the world, and that they were therefore justified in getting in first.

Some discerned a difference, from the authorities' point of view, between managing media access and survivor access. These people said that the media could be escorted in, given a relatively short period to get their material, and then be escorted out, whereas it would be difficult to do this with survivors, who might want to spend quite a long time grieving and trying to retrieve mementoes. On this basis, these people said it was justifiable to take the media in first.

Media people who got into the scene had to make their own decisions about whether to step on to private property in the absence of the owners. Again, there was no consensus:

- Some stayed out of private property altogether. They confined themselves to the streets or to the ruins of public buildings such as schools.
- Some went inside the boundaries of private property but not near the ruins of houses.
- Some went up to the ruins but did not go into them or touch them or look closely into them.
- Some went into the front yard but not around the back.
- There was one view that in a practical sense private property had temporarily ceased to exist because there was no way of distinguishing one thing from another, and nothing of substance remained.
- Others applied the standard rule of trespass: you go on to private property until asked by the occupant to leave. The fact that there was no occupant was not perceived to render this rule irrelevant.
- Some respondents solved this by applying a test: could they tell the story without going on to private property? If so, they would not go on the property.
- Some who were taken into the scene by a resident regarded it as proxy permission, as it were, when the resident took them up someone else's driveway, on the basis that the resident knew the occupant.
- Another respondent applied a simple rule: 'I didn't go onto anybody's property without asking them.'

A further aspect of this issue of access to private property concerned the use by the police of a destroyed home site as the venue for demonstrating to the media the work of the Disaster Victim Identification Unit. This was done without the knowledge or consent of the surviving owners, and clearly was a major ethical lapse by the police, for which they subsequently apologised. The family found out when they saw the images on the

internet, including pictures of blue-suited forensic scientists crouched down in the ruins of the home where they believed their parents had perished.

Management of a crime scene

This issue of arranged access by the media to the property without the owners' consent was only one of a number of ethical issues confronting the authorities. Another major one was whether it was reasonable to declare whole fire-affected areas as crime scenes. Not all the fires were suspected of having been lit deliberately. Yet large areas affected by the fires were declared to be crime scenes.

Allowing for the initial uncertainty, and accepting that the Coroner was justified in taking a conservative approach by declaring large areas of the fire ground a crime scene, questions remain about the justification for maintaining the crime-scene status once causation was reasonably clear, and then about the inconsistent way the exclusion was policed.

More or less all media people expressed respect in principle for the notion of protecting a crime scene. This respect was undermined, however, when they saw celebrities, politicians and residents being admitted to the so-called crime scene, and when the media themselves were allowed in to cover the celebrities and the politicians. It was also undermined by the presence in the crime scenes of residents who seemed to have returned more or less permanently and who were receiving supplies across police roadblocks.

While no media person interviewed suspected that the authorities were attempting to cover up anything, what they did suspect was that the authorities were using the 'crime scene' line to control the flow of information and access to people. This created an acute ethical dilemma for the media. Should they continue to respect the integrity of a crime scene, or should they make their own assessment of its genuineness and then act on that assessment? The dilemma was acute because many media people fundamentally did not want to disturb a genuine crime scene, and they had insufficient knowledge to make an informed assessment. On the other hand, people were coming and going, handing over boxes of provisions at the roadblock to people encamped in the crime scene. Why should they not go in and report what was happening?

Protecting survivors from the media

Some of the media people interviewed stated that the authorities took it on themselves to protect survivors from the media. The general view among these media people was that, in taking on this protective function, the authorities were both wrong and misguided: wrong because it was not their place to make decisions on behalf of survivors regarding whether they should talk to the media; misguided because, the media people asserted, many survivors – especially in the first 48 hours – had wanted to tell their story and appeared to find it cathartic to do so:

I think the truth is, they had decided they would play a role in keeping the media out of areas where they believed there were traumatised people who didn't want to talk to the media. I've heard people within emergency services say this. It was said at a conference I attended. And that's not their decision to make. That's a decision for the people who were impacted on by the fires. Some were saying yes and some were saying no.

Q: So you've spoken your piece at this conference. What was the reaction?

Oh, they don't see it. I think there's still an element of people in the emergency services who feel that part of their role is to protect victims from the media, as well as from whatever happened.

Media people generally stated that, even in the first 48 hours when they were in shock, survivors were able to say yes or no to media approaches. Media people also said that they respected the survivors' wishes and did not press them.

One way in which media people thought it was constructive and legitimate to assist survivors who wanted protection from the media was to set up media-free zones; this was done after a couple of days. Individuals could then make a choice and avail themselves of the media-free zones if they did not wish to be approached. Media people said they respected these zones.

Discussion

Media access to a disaster scene as large as that of Black Saturday is a complex and unsettled matter. It is complex because it has many elements. It is unsettled because there seems to be no agreed basis of principles on which the media and the authorities can proceed. In addition, there are insufficient consensual ethical standards among journalists on which to build a basis of principles.

So, when a disaster comes, people on both sides make up the rules as they go along, guided by their personal compass. The pressures are acute: the media operate under competitive pressures and under pressures induced by the necessity to perform their function of informing the public; the authorities operate under the multifarious pressures of responding to the harm and damage caused by disaster, and of managing the incessant demands of the media. Under such conditions, it is not surprising that compromises and errors of judgement are made. This is unsatisfactory from every point of view: that of the authorities, the media and, most importantly, the affected public – the survivors and their communities. It is also unsatisfactory from the standpoints of public policy and professional ethics. The public interest is ill-served when policy appears to be weak or *jejune*, and when the ethics of a profession as powerful as journalism are left to the unguided judgment of people working under intense pressure. It is not a matter of good or bad intentions. The evidence was that, for the most part, the media and the authorities were acting in good faith. Clearly, however, this was not enough.

Conclusions

Deciding what is ‘the right thing to do’ when media practitioners are covering a disaster can be immensely difficult. At the heart of what we think of as morality lie two arguments: the Benefits Argument, and the Argument that We Should Not Use People as Means (e.g. see Rachels and Rachels, 2010). We have seen the benefits of media coverage enumerated. We have seen that the telling of human stories arising from the disaster is essential if these benefits are to be realised. Inevitably, then, people get used by the media in the course of having these benefits realised. It follows that two fundamental elements of our morality are in conflict here. So how might this be resolved?

The answer lies in the well-considered application of ethical standards relating to consent, invasion of grief, invasion of privacy, truth-telling, fairness, honesty and respect. Where a person is approached in a manner that respects their situation, is honestly informed of the practitioner’s identity and intentions, is given the opportunity to consent or decline, is reported accurately and fairly, and where no apparent invasion of grief or privacy occurs, a media practitioner has made a defensible professional attempt at resolving the ethical conflict.

These are concrete ethical questions to which the media’s codes of ethics give only the most abstract – and sometimes ambiguous – attention. The Victorian Bushfires Royal Commission, in its interim and final reports, did not address issues of media management or behaviour, so it offers no guidance for the future. It is, in any case, the responsibility of the profession to attend to these matters.

The ethical vacuum within which practitioners work is primarily a systemic failure that abandons them to a kind of relativist jungle. It has been said that journalists look on ethics 'as just the individual journalist's way of doing things' (Hulteng, 1985). This relativistic setting does an injustice to those journalists who make principled ethical decisions in good faith, sometimes under severe pressure. Leaving journalists in this relativist jungle without a better professional compass ill-serves them. It makes a tough job harder. It means that good decisions go unrecognised and bad ones are not named for what they are.

Note

¹ Michael Gawenda was Editor and Editor-in-Chief of *The Age* from 1997 to 2004. Denis Muller was Associate Editor of *The Age* from 1986 to 1993.

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