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False Light, Camera, Action

The story Joe Eszterhas forgot to share.

BY MICHAEL DOYLE

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Joe Eszterhas tells all. All, that is, save the one story he wrote that helped shape the law of the land.

In his new 763-page memoir *Hollywood Animal*, Eszterhas certainly dishes out the goods. Drugs galore, celebrities acting badly, and all things Sharon Stone enliven his recounting of the journey from Hungarian poor boy to the Hollywood jungle. The screenwriter who brought us *Jade*, *Basic Instinct*, and *Showgirls* leaves hardly a stone unturned or a rival unmarked. For good measure, he self-flagellates.

“I was insufferable,” Eszterhas assures us.

Which makes it all the stranger that he ignores Margaret Mae Cantrell.

Because what pre-Hollywood Joe Eszterhas wrote about Cantrell incited an invasion of privacy lawsuit whose ultimate resolution by the Supreme Court still affects journalists today. The court’s ruling in the 1974 case known as *Cantrell v. Forest City Publishing Co.* means publishers can be held responsible when their freelance writers go astray. For more than one periodical, that’s proved troublesome. And though in some ways the *Cantrell* ruling has a narrow reach, it’s still one of only two Supreme Court cases to consider a controversial concept known as a “false-light” invasion of privacy. Meaning judges have looked to it for guidance, as they did when *Battlestar Galactica* actress Robyn Douglass sued *Hustler* magazine for its use of nude photographs she had made. The possible consequences of the journalism make-believe of Jayson Blair and Stephen Glass.

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That's the legal and historical legacy. And then there's the human part: what Joe Eszterhas' story did to the Cantrell family of Gallipolis Ferry, W.Va.

"It was all untruths," Cantrell told a jury three decades ago. "There had been neighbors and friends that had read it, and the children come home from school, come home crying because they had been making fun of them in school because of the article."

In December 1967, Eszterhas was working as a reporter for the *Cleveland Plain Dealer*. The 23-year-old Hungarian emigrant had energy to burn and an eye for a killer story. He landed a big one after the Silver Bridge collapsed across the Ohio River, killing 44 people. One of the dead was named Melvin Cantrell, a 40-year-old coal miner, and Eszterhas movingly wrote of Cantrell's funeral. His good work earned him a \$50 in-house award from the *Plain Dealer*.

"He was known to me as the leading feature writer on the *Plain Dealer* at the time, and you can't be a leading feature writer without having a reputation for being accurate," Allan A. Arthur, the paper's former *Sunday Magazine* editor, later told a jury. Arthur's testimony is now stored, with the rest of the Cantrell trial transcript, at the Library of Congress.

Several months after Melvin Cantrell's funeral, Eszterhas followed up with a follow-up freelance magazine story. So on a cold May day, Eszterhas and freelance photographer Richard Conway set off for Gallipolis Ferry and found the Cantrell's 74-acre property. The reporters had to wait until Margaret Mae Cantrell wasn't home. Eszterhas interviewed her while Conway took some pictures.



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“I photographed what I saw,” Conway later testified, in intriguing counterpoint to Eszterhas’ own narrative approach. “It wouldn’t give a true representation of the time that I was there if I changed anything at that time.”

After about an hour, the two newspapermen left. Eszterhas left his card with the Cantrell children but never did talk with the mother. His subsequent story in the Aug. 4, 1968, issue *Cleveland Plain Dealer Sunday Magazine* showcased the talents that would later seduce Hollywood.

“Statistically,” the story began, “Mel Cantrell was just one of 44 bodies. Like all the others, he was crushed beneath the tons of concrete and steel shoved deep into the silt at the bottom of the Ohio River.”

But Mel Cantrell was no mere statistic. “In terms of Appalachia,” Eszterhas wrote, “he is Everyman,” and his death “is a microcosm of the scar which will remain permanent and stark upon the spirit of the people here.” Cantrell’s wife, Eszterhas wrote, “remembers him singing along with a Flatt and Scruggs song.” Eszterhas described how Cantrell was pushed beneath the Ohio River water when the bridge collapsed. The family was “hill folk” with “little to live for.”

Eszterhas put a spotlight on the Cantrell’s hardscrabble house, describing how “the pillows of the couch are missing. You sit on springs.” A useless old furnace dominated the living room, lacking coal. Margaret Cantrell, Eszterhas reported, “will talk neither about what happened nor about how they are doing.” Instead, her two oldest children “do the talking” while Margaret “wears the same mask of non-expression she wore at the funeral. ... She says that after it happened, the people in town offered to help them out with money and they refused to take it.”

The story was quite something, and readers certainly pitied the forlorn hillbilly family. Unfortunately, their pity sprang at least partly from false impressions. Melvin Cantrell was never shoved into the bottom of the Ohio River. When the bridge collapsed, his car fell on dry land. He did not sing along with Flatt and Scruggs or anyone else for that matter. As Margaret testified, “I never heard him sing in my life.”

the room; it was a heating stove. The family was fully

The real problem, though, arose with the depiction of numbed wife who supposedly refused to talk about h

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“I have never,” Cantrell told the jury, “talked to anyone from the *Cleveland Plain Dealer* about anything like that.”

And yet Eszterhas’ phrasings—“she wears the same mask of non-expression” while her children “do the talking”—clearly conveyed there had been face-to-face contact that day. This impression was, the Supreme Court would later note, a “calculated falsehood.” In Hollywood, famously, everyone lies. But for reporters, calculated falsehoods are a bad thing.

The Cantrells sued, claiming both defamation and invasion of privacy. The invasion of privacy claim was of a special sort, called false light. A false-light invasion of privacy results from communicating something that is factually untrue, or something that is true but conveys a false impression. Generally, the untruth must be something that is highly offensive to a reasonable person. This is also a controversial concept. Courts in some states, including Minnesota, Texas, and North Carolina, have declined to recognize false-light claims because they seemingly duplicate the standard rules for defamation and unnecessarily crimp press freedom. But at the time of the Cantrell’s lawsuit, false-light claims were something of a lawyer’s growth industry.

By the time the Cantrell case reached trial in 1972, Eszterhas had departed the *Plain Dealer* for greener pastures. He did not testify. The trial judge gave the *Plain Dealer* a break, ruling out punitive damages on the grounds that Eszterhas and Conway were clearly not motivated by personal ill will toward the Cantrells. The jury, though, concluded the *Plain Dealer* had in fact invaded the family’s privacy by publishing the error-ridden account; Cantrell and her oldest son, William, were to receive a total of \$60,000.

A year later, an appeals court reversed the decision. As the appellate judges noted, there can be “an unavoidable conflict between the desire of most individuals for anonymity and privacy and the right of the people to enjoy a free flow of information.” In the Cantrell case, the judges concluded, the freedom of the press trumped their right to privacy.

But in 1974, the Supreme Court reversed that decision and ruled for the Cantrells. Simply put, the court said the evidence was sufficient to show the paper had acted with actual malice. This is a high standard and a legal term of art, false statement either knowingly or with reckless dis Eszterhas, Associate Justice Potter Stewart wrote for known that a number of the statements in the feature stressed that his story contained “a number of inaccurate” “significant misrepresentations.”



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The Cantrell's Supreme Court victory meant more than money in the bank for a hard-luck West Virginia family. The court also concluded that though Eszterhas was working the story as a freelancer, the *Plain Dealer's* deep pockets could be tapped because Eszterhas had been acting as the paper's agent. That's proved important. Thus, when psychoanalyst and Sanskrit scholar Jeffrey Masson sued *New Yorker* writer Janet Malcolm for defaming him with allegedly concocted quotes, his lawyers cited *Cantrell* to argue that deep-pocketed Conde Nast, owner of *The New Yorker*, should also be held responsible because Malcolm was acting as the magazine's agent at the time. (Masson won the first trial, but the jury deadlocked on damages; he lost the second trial.) More broadly, the *Cantrell* decision gets routinely cited in other false-light cases; it's not the most powerful opinion ever written, but it is still the law of the land.

The false light Eszterhas shed on Margaret Mae Cantrell can seem understandable; driven by a sympathetic desire to fully capture a human story that exceeds the sum of two-dimensional details. As Eszterhas wrote in his account of the Cantrell family's tragedy, "talking about body counts and slipping bolts is tantamount, in terms of the people here, to telling a vicious lie." Fair enough. But the specific and literal truth matters, too, even if it's tempting to forget that sometimes. That's why we have courtrooms and journalism. For the rest, we can turn to the Hollywood animals.

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