

TUNE IN TO THE  
SOUND OF DEMOCRACY

## Justice Talking Radio Transcript

### **The Paparazzi: Public Figures, Private Lives – Air Date: 11/7/2005**

*After the death of Princess Diana in 1997, there were widespread calls for legislation to restrain the so-called "paparazzi." With support from celebrities, including celebrity Governor Arnold Schwarzenegger, California recently enacted the nation's first "anti-paparazzi" law, which creates liability for invasions of privacy by photographers or others making video or audio recordings. Critics of the law believe that the legislation broadly applies to all members of the media and opens a Pandora's Box of issues that may take years to sort out. In this edition of the show, Justice Talking examines the hazy line between public lives and private interests.*

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MARGOT ADLER: From NPR, this is Justice Talking.

UNIDENTIFIED MALE: I know it's like you see celebrities on television all the time and like we don't like the paparazzi. And I don't have a problem with my picture being taken. That's not the problem. The problem is the harassment.

UNIDENTIFIED MALE: Did you mention there's a celebrity living in the complex?

UNIDENTIFIED FEMALE: Yeah. Well, let's keep that quiet. We don't want the paparazzi crawling around here.

UNIDENTIFIED MALE: I hate those bastards. They always follow me around in their helicopters.

UNIDENTIFIED FEMALE: When I'm at home, that's not—I'm off the clock. If I'm going out to dinner with my friends, I'm off the clock. Come on. I mean, what's wrong with people?

UNIDENTIFIED MALE: What did I tell you? I said don't take another picture of my family do you understand that? Not one more.

UNIDENTIFIED FEMALE: I'm okay. I have some—I have a lot of bruises actually. I don't know... They followed me here again.

MARGOT ADLER: I'm Margot Alder. The life of a movie star includes running from or pandering to the ever present paparazzi. But should those megastars get special protection from those overzealous photographers? Stay with us.

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MARGOT ADLER: This is Justice Talking. I'm Margot Adler. We've all been grocery shopping, stuck in line, entertaining ourselves by grabbing a celebrity magazine off the shelf. We may not buy that magazine, but for a few minutes there's a powerful draw to see the latest fashion, the glamour shots of the stars, and the not so glamorous shots that are now commonplace. Many of these photos are taken by a group of celebrity chasing photographers called paparazzi. The paparazzi have come under fire for being stalkers with long lenses and unending amounts of film. Celebrities claim that their privacy is invaded and that the aggressive tactics of the paparazzi cause accidents and personal harm. Recently, there have been several well-publicized incidents involving clashes between photographers and celebrities. California Governor Arnold Schwarzenegger, who has himself been the subject for paparazzi, recently signed a law that allows people who are victims of paparazzi assaults to file lawsuits, seeking up to three times the damages they suffered. The law goes into effect in California on January 1<sup>st</sup>, 2006.

On today's show, we'll take a look at the effect of the paparazzi on our culture. We'll hear from the editor in chief of *Us Weekly*. And we'll bring you a debate on the new law between a Hollywood lawyer, who represents celebrities like Cameron Diaz and Ben Affleck, and a lawyer from the newspaper industry who says the new law violates free speech. But first, I invited Peter Howe into the studio to talk with me about the paparazzi and the ethics of photography. He has worked as a photographer, editor, agent and author. He has been the picture editor of the *New York Times Magazine* and director of photography for *Life Magazine*. His newest book is called *Paparazzi*. Welcome, Peter.

PETER HOWE: It's good to be here.

MARGOT ADLER: First, can you tell us where the term paparazzi comes from?

PETER HOWE: Yes, it came from a movie "La Dolce Vita" which Federico Fellini made in the early '60s. And it was based upon a real life photographer, [Gortezio Sacralilli]. Fellini had this character in his movie and was looking for an appropriate name. And he

was reading a very obscure travel book by a British author in which he quoted an innkeeper called Senor Paparazzo. And Fellini liked the name because it had the same kind of buzzing qualities that his character had. So he called the character Senor Paparazzo. And, of course, the plural of that is paparazzi.

MARGOT ADLER: Now, the issue of paparazzi came to the international spotlight when Princess Diana was killed in a car accident. And at first, it was said that paparazzi were to blame for causing the car crash. Later, the courts found that they were not to blame. How did that singular incident change public opinion?

PETER HOWE: I think it was a terrific point in the way that the public was, first of all, aware of the paparazzi, as well as whether they approved or disapproved of them. Certainly, as you say, the photographers themselves were cleared in both civil and criminal charges that were brought against them. But on the other hand, even though it subsequently turned out after the autopsy that Diana's driver was both drunk and on some quite heavy medication, I think that most people still to this day think that he would not have been driving at speeds in excess of 100 miles an hour in a tunnel in France had it not been for the fact that there were photographers coming up behind him on motor scooters.

MARGOT ADLER: And chasing him essentially.

PETER HOWE: Mm-hmm.

MARGOT ADLER: Now, if you look back over the past years, give us a number of the most recognizable paparazzi photos that we might think about that we might recognize.

PETER HOWE: God, there are so many of them. The ones that come to my mind immediately are the ones of Angelina Jolie and Brad Pitt on the beach in Africa. One of the reasons that those come to mind is that apparently Us Magazine paid \$500,000 for them.

MARGOT ADLER: \$500,000!

PETER HOWE: The one that I remember most in the book is one which again has a very high price tag which actually wasn't taken by a paparazzo at all. It was taken by somebody who was getting married at the same time that Britney Spears got married the first time. That was the marriage that lasted 55 hours. And he was getting married in the same wedding chapel in Las Vegas as she was. And he took some photographs of her, and then had the good sense to sell them for \$300,000. So that was kind of a nice little wedding present for him. But I think my favorite paparazzo photograph of all times is a photograph that Ron Galella took of Jackie O. going up Madison Avenue which is a stunningly beautiful photograph. He calls it his Mona Lisa. And it certainly has an extraordinary quality to it, a quality that you don't see in the more formal pictures that were taken of her when she was Jackie Kennedy.

MARGOT ADLER: Now, if I'm correct, Galella also got into trouble with his photographing of Jackie. And actually, there was some ruling...

PETER HOWE: Yeah.

MARGOT ADLER: ...that he had to stay 25—was it yards or feet or...

PETER HOWE: Originally, it was 100 feet. And then he managed to get it reduced to 50 feet. But no, he was always in trouble as far as Jackie was concerned.

MARGOT ADLER: So there were even problems with paparazzi back then. But what do you think has really changed? For example, how did the American public come to feel that it has the right to know the intimate details of celebrities' private lives. I mean, when I think back to the '30s, the '40s, you know, Greta Garbo or Ginger Rogers, I don't think people felt that.

PETER HOWE: Okay. Well, I've got a theory. And it's just my personal theory. I think that television changed our relationship with celebrities completely. When we went to the movies, we went to their house. We went to the cinema. And a very elaborate house it often was. In fact, many of them were like Egyptian temples or they had—the fantasy actually began when you went into the theater. And when you got in there, you saw these figures huge on the screen in front of you, major, mega figures. Television changed all of that. First of all, it brought the celebrities into our house. Second of all, it reduced them in size. And third of all, it gave us the ability to switch them off and go to another celebrity if we didn't like those celebrities. So it put us much more in the driver's seat in the relationship between us and the celebrities. And I think that was a fundamental change in the way we looked at celebrities. It also I think stopped them from being gods and goddesses. One of the things that's interesting about the photography that you see in all of these magazines—very little of it is scandalous. The scandalous stuff really goes to the hardcore tabs like the National Enquirer. But most of it is celebrities doing exactly the same boring and mundane things that we do.

MARGOT ADLER: Shopping you mean, going to the store...

PETER HOWE: They call them the coffee and doughnuts pictures. And those are really the ones that the public really love, because in a way, it forms a bridge between our mundane lives and their kind of super glamorous lives.

MARGOT ADLER: Later in the show, we're going to talk about a new California law that makes it easier to sue the paparazzi. Do you think that that law will make a difference?

PETER HOWE: I'm not a lawyer, but I'm told that it most certainly will be found unconstitutional because it is inflicting a level of punishment upon one group of the public, which it doesn't inflict on others. I also over the weekend was at a conference and talked to somebody who'd actually spoken to Governor Schwarzenegger about it, who said that Governor Schwarzenegger told him he didn't care whether the law was

used so long as it was on the books. And I think that a lot of the posturing that goes on around the paparazzi, and particularly the paparazzi versus celebrities, and especially in California—I mean, they're one of California's prime industries. So they've got to protect them. It's like, you know, making sure that there's no disease on the grapes in Northern California. You've got to protect these people; they're an asset to you.

There is, however, I think one difference that is happening, actually even since the last time when I was writing the book, that last time that I was really involved in doing the research for *Paparazzi*. And that is that there has been a huge increase in the number of photographers that are doing this. Ten years ago, there were probably well below 50 who were doing this. Now there are well above 200. I'm talking about in Los Angeles.

MARGOT ADLER: And why? Why the increase?

PETER HOWE: Money. It's money.

MARGOT ADLER: And how much...you mentioned two photographs, one cost \$500,000. One was \$300,000. But in general, what do photographers get paid for these photos?

PETER HOWE: What the photographer gets paid is not necessarily reflective of what the value of the photograph is. If the photographer is a staff photographer for one of the agencies, the pay level is probably between \$40,000 and \$80,000 a year. But if you're either a freelancer or if you're an agent handling this, I would say that certainly up until recently, you could pretty much guarantee \$1,000 for a published picture. I think that's gone down recently. Ironically, one of the effects of this influx of photographers into Los Angeles is that it has caused a deflation in the price of the photographs. Each photograph is worth less now.

MARGOT ADLER: And if you had to name let's say four or five of the top celebrities that people want photographs of, right now, who would they be?

PETER HOWE: Right now? Well, right now, it would be Tom Cruise and the lovely Katie, Brad Pitt and Angelina Jolie. It would be Jennifer Aniston and Vince Vaughn. Probably still Cameron Diaz. Always actually Britney Spears. And always Paris Hilton.

MARGOT ADLER: Why? Why do we care about these particular people?

PETER HOWE: You know, one of the photographers said to me, you know, it's a bit like you hear a song on the radio, and you hear it the first time and you think what an awful song.

MARGOT ADLER: And then you hear it the tenth time...

PETER HOWE: And then you hear it the tenth time and you're singing it.

MARGOT ADLER: Right.

PETER HOWE: And he said that's what it's like with Paris Hilton and people like that. You know, you see them once and you think, oh my god, why would I be interested? After awhile if you're reading these magazines every week and she's in them every week, you do become fascinated by what's happening to Paris Hilton.

MARGOT ADLER: Now, sometimes the celebrities use the paparazzi for their own agendas, correct?

PETER HOWE: Oh, it's definitely not a one way street, absolutely not a one way street. In fact, I'm told, and I've heard it from several sources, that the pictures of Brad and Angelina on the beach in Africa were a result of a tip-off by Angelina Jolie through some agency, that they would then be there at that time. And so there are many occasions when the celebrities or agents for the celebrities are involved with manipulating and guiding the paparazzi.

MARGOT ADLER: Thank you, Peter, so much for talking with us.

PETER HOWE: You're more than welcome. Thank you.

MARGOT ADLER: Peter Howe is a photographer and former picture editor of the New York Times Magazine. His new book is called *Paparazzi* and it's published by Artisan Books. Coming up, the editor in chief of Us Weekly talks about how her magazine uses or won't use pictures taken by the paparazzi. Don't go away.

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MARGOT ADLER: This is Justice Talking. I'm Margot Adler. A new California law aimed at taming the paparazzi is making news. On MSNBC, host Rita Cosby devoted a chunk of one recent show to the topic.

RITA COSBY: The demand for celebrity pictures is definitely on the rise. And that means big business for celebrity photographers. But are the paparazzi really to blame for the recent rash of run-ins with the Hollywood big stars who we have been hearing so much about?

MARGOT ADLER: California celebrity Governor Arnold Schwarzenegger recently signed a bill that takes aim at aggressive paparazzi behavior. It strengthened an existing law passed after the car chase death of Princess Diana in 1997. As of January 1<sup>st</sup>, stars menaced by photographers can sue in civil court for damages. The people who buy the pictures could also be held liable. Independent producer Kathy McAnally prepared this report.

UNIDENTIFIED MALE: That takes us to item number nine, AB381, by Assemblymember Montenez. If she will...

KATHY MCANALLY: Assembly Bill 381 didn't generate all that much controversy in Sacramento as it wended its way through the legislative process. At this hearing, most of

the audience came to speak against a gay marriage bill. Legislation curbing aggressive paparazzi behavior generated just two witnesses, an official from the Screen Actors Guild and a representative from the Los Angeles District Attorney's office.

SCREEN ACTORS GUILD REPRESENTATIVE: Our office has been looking into this type of conduct for several months now and it's only through pure luck that no victim of the paparazzi or innocent third party has been injured or killed yet in Los Angeles. So we strongly urge the committee to support this bill.

L.A. D.A. REPRESENTATIVE: Dan, let me ask you a question as representing the LA DA's office. The one struggle I'm having here with the bill is how in its current now amended form, how it really adds anything to current law.

KATHY MCANALLY: Under the old law, you had to be caught hiding in Brad Pitt's bushes with camera in hand to trigger the criminal trespass penalty, and shove or smack a celebrity to be charged with criminal assault. Under this law, you can sue in civil court for damages if you have reasonable apprehension of offensive or harmful conduct. Chasing after a movie star pulling out of a parking garage, even if no physical harm is done, could hit the paparazzi hard in the pocketbook.

CINDY MONTENEZ: The penalties for any paparazzo that engages in assault or attempts to commit an assault—they will not be able to profit from that assault.

KATHY MCANALLY: California Assemblymember Cindy Montenez sponsored the legislation.

CINDY MONTENEZ: They will be subject to three times the civil damages that they caused. And number two, they will not be able to profit off of that attack. So the bill specifically addresses the motivating factor for the paparazzi and that's the money.

FRANK GRIFFIN: But who does it protect and against what?

MARGOT ADLER: That's Frank Griffin who's spent more than thirty years taking pictures of celebrities. His Hollywood agency keeps a stable of photographers busy responding to tips from limo drivers and valet parking attendants on the whereabouts of famous prey. He points around his office to stacks upon stacks of magazines filled with photos of the rich and famous.

FRANK GRIFFIN: I'll give you \$1,000 for every picture you can show me that was taken where that celebrity has been hemmed in, attacked, threatened and retaliated as a result of it. There are sufficient laws in place to protect not only celebrities, but members of the public from reckless driving, assault or any other acts that could be carried out, that could be construed as aggressive or overenthusiastic.

KATHY MCANALLY: Griffin says he's seen much worse behavior on the part of news photographers. Hordes of them trampling all over the lawn at Monica Lewinsky's family

home, for example. And California's new law to restrain the paparazzi does concern the California Newspaper Publisher's Association which opposed it. General Counsel Tom Newton says it has a number of problems.

TOM NEWTON: The first one is that from our perspective, it holds out those engaged in First Amendment activities to penalties to which the rest of society is exempt.

KATHY MCANALLY: Secondly, he says it expands the concept of trespassing to public areas, places like sidewalks and parking lots.

TOM NEWTON: In essence, it is creating for celebrities a new right to privacy that most other people won't be able to take advantage of. Finally, we think that reluctantly newsworthy people may misuse the law in an attempt to chill the right to gather and publish news about them. People who are being accused of crime or corporate misdeeds or whatever, may use this new law in ways that harm our ability to tell people the story.

KATHY MCANALLY: Assemblymember Cindy Montenez says the law as written won't endanger legitimate news and celebrity photographers.

CINDY MONTENEZ: From the very beginning, it was a bill that was intended to protect the public safety, which is why we had the district attorney supporting our bill. And at the center of this, of course, are the celebrities. And so I do believe that regardless of profession somebody may have—everybody's entitled to be respected.

KATHY MCANALLY: Will Hollywood's big stars be any safer with the new law in place? Its supporters say sure they will. But others say so long as there are big bucks to be made selling images that celebrities would rather have the public not see, the chase will go on. For Justice Talking, I'm Kathy McAnally.

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MARGOT ADLER: There's a dilemma between giving readers the juiciest photographs possible and maintaining journalistic ethics. Janice Min knows this well. She is editor in chief of Us Weekly. Her magazine is responsible for breaking some of the biggest celebrity stories, including Britney Spear's Las Vegas wedding, Mary Kate's anorexia, and the birth of Britney's baby. Janice also oversaw the highest selling issue in Us Weekly's history in June 2004 by scooping the story of Jennifer Lopez's secret wedding to singer Marc Anthony. That issue sold more than one million copies. Welcome, Janice.

JANICE MIN: Thank you for having me.

MARGOT ADLER: Janice, tell us who is reading your magazine. US is America's third fastest growing publication behind House Beautiful and Real Simple. What's responsible for that growth?

JANICE MIN: Well, when I started working at the magazine I felt that there was this big void in the marketplace, that basically you had all these young women who grew up obsessed with celebrities. They felt like they knew them on a first name basis. These were women who watched MTV, watched “Entertainment Tonight.” You know, they saw the explosion in cable television. They were obsessed. And they were also consumers of the magazines in the ‘90s that began putting celebrities more and more on their covers. But there was no magazine out there that really spoke to these young women that really covered them as news, that really concentrated on the younger people in Hollywood. And that’s what Us does. It covers the fashion. It covers their love lives. It covers their weddings. It’s sort of this everything-you-need-to-know-in-the-world-of-celebrity once a week.

MARGOT ADLER: So I have to ask you, you’re talking about this generation obsessed with celebrities. But why do Americans care? Why does this young generation care about Britney Spears or Paris Hilton and Jennifer Anniston? Why do they care?

JANICE MIN: You know, I think that entertainment has become this large presence in our lives. And obviously a lot of it is because the entertainment industry is so powerful and so pervasive in our lives. I mean, you know, when I was a child—I’m 36 years old—I had three networks to choose from. And, you know, I would watch “Happy Days” and “Laverne and Shirley.” For people who are even a little bit younger than I am, they grew up on MTV, on VH1, on cable. You know, internet stars appeared. Reality stars appeared. I think the whole business of entertainment became a much bigger industry. And I think it’s no coincidence then that the cultivation of stars became the cultivation of personality.

MARGOT ADLER: Okay. So you have all these stars. You have these celebrities. Who’s your competition? How do you try to beat them with the photos you print?

JANICE MIN: I guess I’m always looking for a few things. You’re looking for photos that are either beautiful or newsworthy. And sometimes you get both. From earlier this year, one of the prime examples of the biggest celebrity photos to get were the first photos of Brad Pitt and Angelina Jolie together in Kenya after they had been denying for months that they were dating.

MARGOT ADLER: Now, how much did you pay for that photo?

JANICE MIN: Uh, you know, reports in the press...

MARGOT ADLER: I’ve heard that you paid \$500,000 for that photo. Is that true?

JANICE MIN: I won’t deny that. I would say that extraordinary photos do sometimes require extraordinary sums. The amount we paid for those photos were far and above, I mean, that was...

MARGOT ADLER: Was it the most money you’ve ever paid for a photo?

JANICE MIN: Yes. The most we ever paid. Probably the most we ever would.

MARGOT ADLER: This show is about paparazzi. And I'm wondering what your own relationship is, what the magazine's relationship is, with paparazzi, and when you think the paparazzi has crossed the line, and what you do, and how you make those decisions.

JANICE MIN: You know, we're pretty strict on the photographers that we use. We setup a formal policy where we will not use photos that were taken in a reckless manner, where trespass was involved, where somebody was harassed, where a law was broken. We actually asked the photo agency to sign a legal agreement with us saying that the photos they're showing us do not violate any laws or there was no harassment involved. So on any given night, we'll probably end up pulling out of our selection maybe 10 to 20 percent of the photos that are sent to us, because we know they were taken through means we would not endorse.

MARGOT ADLER: And how do you know that?

JANICE MIN: You know that sometimes because reporters just hear it on the street. Sometimes if we have questions about it, we'll actually call the people involved, whether it's the publicist for the celebrity or let's say it was at a restaurant, we might call the restaurant to find out what happened. If we're in doubt, we don't run it. We adhere to the belief that if you're a celebrity and you're out in public, you know, yes, you will have your photo taken. That's part of the nature of being a celebrity today. But obviously, celebrities are entitled to a certain level of privacy and to not having laws broken and to not being harassed.

MARGOT ADLER: What do you think of the California amendment, the new sort of anti-paparazzi law that strengthens that law. Do you think it will impact the kinds of photos you will get out of Hollywood?

JANICE MIN: I think it may impact the kinds of photos we get out of Hollywood. For the most part, those types of photos that were taken in an aggressive way do not ever appear in Us Magazine because of the legal agreements we ask the agencies to sign. A small portion of the photographers have this renegade mentality where they'll do almost anything, the heat of the moment takes them over, and they will go to extreme measures. So I think that you'll see some diminishment, but not eradication.

MARGOT ADLER: Janice min is the editor in chief of Us Weekly. Janice, thanks for talking with me.

JANICE MIN: Thank you.

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MARGOT ADLER: As long as there have been celebrities, there have been paparazzi. Our desire to peek into the lives of superstars has resulted in big payments to photographers, which has also meant a big increase in the number of paparazzi. Over the last five years, their numbers have risen from about 50 to 200 in Los Angeles alone. They are all vying for the next lucrative six-figure photo of Angelina Jolie and Brad Pitt or Tom Cruise and Katie Holmes. A number of accidents allegedly involving paparazzi and stars like Reese Witherspoon, Scarlet Johansson and Lindsay Lohan got the attention of the California Legislature. The state amended its anti-paparazzi law to curb the aggressive tactics of some photographers. Here to talk about this new law and the love/hate relationship between celebrities and the paparazzi are Blair Berk and Tom Newton. Tom Newton is general counsel of the California Newspaper Publishers Association. Welcome, Tom.

TOM NEWTON: Margot, thanks for having me.

MARGOT ADLER: And Blair Berk is a trial lawyer who represents many celebrities, including Lindsay Lohan, Reese Witherspoon and Mel Gibson. She's with the firm Tarlow and Berk. Thanks for coming on, Blair.

BLAIR BERK: Thank you, Margot. I'm pleased to be here.

MARGOT ADLER: Tom, can you begin by explaining how this new California legislation builds upon or changes prior laws that protect its celebrities?

TOM NEWTON: Sure. First, I'd like to say that I represent mainstream newspapers that go from the Los Angeles Times to the Gulf Herald and everything in between. And I'm not here to represent the paparazzi nor their bad behavior. And we're not going to apologize for it; we don't represent those folks. Having said that, we have been involved in California legislation that initially created the anti-paparazzi law back in the late '90s and we opposed the legislation that was just approved by the legislature in the final days of their session this year and signed by Governor Schwarzenegger. The initial law that was enacted in the '90s created a new tort that can best be explained as invasion of someone's personal space by trespassing or constructively trespassing on private property. When I say constructive, I mean by use of a long lens or a boom mike in order to capture an image or a sound recording of a person engaged in a personal or familial activity. Now, all of those words are really important because they narrow this tort in an effort to make it constitutional. Although, we're not sure it has done that. What this new law essentially does is add to that a new subdivision that says if you assault someone in an attempt to capture an image or sound recording, then you're subject to all these extreme penalties which mean discouragement of profits from the tort as well as punitive damages.

MARGOT ADLER: Blair, you're in support of the new law. Why is it necessary?

BLAIR BERK: Well, let me first start by saying my clients are largely actors and musicians who have been very successful in their respective fields and have a life in which the public is very interested in their doings. They care quite a lot about the first amendment.

The irony here is my clients to the one are very big protectors of the First Amendment. But they are finding themselves literally assaulted and battered and the victims of other criminal behavior on a daily basis. All that this new legislation does is it literally creates a civil remedy for someone who has—a crime has been committed, a trespass or an assault in the taking of a picture or sound recording. It's not extreme. It's certainly not any more extreme than legislation on the books. And I think it recognizes the enormous profiteering going on by these celebrity magazines and these paparazzi. You know, I want to say first that the so-called First Amendment activity we're talking about is not First Amendment activity. It's the commission of a criminal offense. We're talking about individuals who are—let's take the last instance—an unemployed valet who's handed a \$5,000 camera and a \$50,000 SUV and sent to literally stalk a young mother and her children, busts into a function, batters people at the function, literally pushing and shoving and hitting and spewing epithets.

MARGOT ADLER: Coming up, more of our conversation with Tom Newton and Blair Berk about the pros and cons of using legislation to change the aggressive tactics of paparazzi. Stay with us.

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MARGOT ADLER: This is Justice Talking. I'm Margot Adler. I'm talking with Blair Berk, an attorney who represents celebrities like Lindsay Lohan and Halle Berry. Also with me is Tom Newton, general counsel for the California Newspaper Publishers Association. We're talking about California's anti-paparazzi law which gives celebrities new protections. There are laws about assault; there are laws about trespass; there are laws about invasion of privacy; battered women get restraining orders all the time—why isn't that enough?

BLAIR BERK: Well, traditionally, unfortunately, Margot, those laws weren't enforced as much as they're being enforced today. This is certainly a two pronged effort. I happen to be trained as a criminal lawyer and I think more law enforcement involvement and policing the wrongful conduct of the paparazzi is crucial here. The situation is that these magazines through paparazzi businesses, in order to fill those magazines each week, are hiring people without any training, many times with lengthy criminal records, to go out and get the bounty. They're telling them where to find the persons and how to do it.

MARGOT ADLER: So let me turn to Tom for one second and ask you, Tom, if this is about free speech? Are these people journalists? Or is this something else? Or is Blair right and they're really beyond the pale and something else?

TOM NEWTON: You know, I don't have any reason to believe that Blair's not correct in talking about the background of some of these folks. But here's the problem. This is not a law of general applicability. Assault is anybody who assaults someone else. It's both a crime and a civil action. But assault with a camera really isn't. And that's what we're talking about here. We're talking about a law that targets one segment of society and subjects them to punishment to which the rest of society is exempt. Now, you know, it

doesn't really matter whether you are attempting to gather a picture or assaulting someone with a pick ax. Both are a crime. And what this does is it sets out a particular class of people who are engaged, some of who are engaged in true first amendment activity and subjects them to penalties to which other folks are not subjected.

BLAIR BERK: You know, we're talking about fundamentally an invasion of privacy. And we've reached the point in our society with the celebrity culture we have where are we to the point where we're saying that if you happen to be a celebrity, you forfeit any right to a private life? Can you not take your child to a park? Can you not decide that you don't want chauffeurs to drive your children to school? You want to drive them to school. And when you get to school, should you be free from 10 or 15 invasive paparazzo surrounding your car, yelling epithets, calling you names, calling four-year-olds names, and pushing and shoving other citizens to get to you? This has become a real public safety issue.

MARGOT ADLER: Tom, did you want to get in?

TOM NEWTON: This is a huge expansion of the law of privacy. Up until next January 1, we all thought that an invasion of privacy meant that you invaded into someone's personal space which means the private property. The tort of intrusion...

MARGOT ADLER: In other words, you walked into somebody's house. Or you walked on their lawn, as opposed to...

TOM NEWTON: You walk into some space where they have—and these are the magic words—a reasonable expectation of privacy. What this new privacy law appears to do is give celebrities an expectation of privacy when they're walking around in the sunshine. And that is an expansion of the privacy law someplace where it has never gone before. And I think that will be tested some day by the courts.

MARGOT ADLER: Blair Berk is a criminal lawyer who represents many celebrities, and Tom Newton is general counsel of the California Newspaper Publishers Association.

We interviewed Kevin Mazur, a celebrity photographer, who makes a distinction between the work he does and between those he calls the "stalkarazzi."

KEVIN MAZUR: The difference between me and the paparazzi is I shoot rock and roll and events and do portrait work, more photojournalist work. Where the paparazzi out in LA, they have more guerrilla tactics, going after people and chasing them to try and get different pictures, than what we do. We're invited to the events, whereas these guys are just following people around and chasing them around their homes and shopping and doing ordinary things.

MARGOT ADLER: Now, do you believe the paparazzi are bona fide photographers or not?

KEVIN MAZUR: They're more like stalkers with cameras, and they're hiding behind journalist laws, photojournalist laws, in my eyes. If you took the cameras away from these guys out there, they would probably be considered stalkers. But because they have a camera, these guys are able to get away with what they get away with, with their guerilla tactics, chasing down celebrities, you know, and getting in their face when people are just trying to go about their ordinary day.

TOM NEWTON: Do the paparazzi give sanctioned celebrity photographers a bad name, Tom?

TOM NEWTON: I suspect that there is some confusion that the public has now between entertainment and news generally. And I think that is harming the credibility of my members a little bit. But I think there maybe some bleed-over between the stalkarazzi and legitimate press photographers or celebrity photographers.

MARGOT ADLER: Now, one of the principles of the First Amendment is to protect the media's ability to print the news, even when the newsmaker may not like it. As a general rule, the media's given a lot of leeway to photograph and write about public figures without worrying about being sued. Blair, doesn't this put celebrities in a different category than other public figures?

BLAIR BERK: I don't think it does in anyway. I think all public figures are protected as are regular citizens by this new legislation. I think it's been fashionable to refer to this as somehow an act that particularly protects celebrities. But as you read the language of the law, it clearly makes available to other public figures, and others assaulted or trespassed upon, the right to sue. And I will say this: my clients are the last individuals in the world that look forward to getting into a lawsuit. You know, one of the problems here is many times the paparazzi are trying to invite some kind of relationship with their target. They purposely stage an accident, so the targeted individual has to get out of their car. They would love nothing more than a very flashy lawsuit. In fact, many of these paparazzi organizations pay for the insurance. We just had one, in fact, where they hired the lawyer for the person after he got arrested. They bailed him out of jail. So I think that it does protect other citizens just as much as it protects a so-called celebrity. And I think it serves a real purpose in discouraging the kind of wrongful conduct we're talking about.

MARGOT ADLER: Tom, do you think that this law puts celebrities in a different category than other public figures?

TOM NEWTON: I think that certainly is the intention of the law. If you take a look at the legislative history, both to the initial anti-paparazzi law and to its recent amendment, you'll find that all that was discussed was the idea that something had to be done to stop the illegal acts of paparazzi.

MARGOT ADLER: Do you think the law was just a bone that California Governor Arnold Schwarzenegger threw to celebrities, many of whom are his personal friends and contributors? Who wants to take that one? Tom?

TOM NEWTON: I don't think so, no. I think the bill came to him. And interestingly, as we pointed out in our letter to the governor asking him to veto it, we did acknowledge that he himself was a victim of some very bad behavior by paparazzi, illegal criminal conduct for which the folks involved were convicted and punished.

BLAIR BERK: Let me make clear we're not talking about victims who just don't want to be bothered—they live millionaire's lives and it's just a nuisance, and then they are going to use their power to create legislation. I have one client who happens to be a movie star who literally has had to sell the house of her dreams because she has two young children under five who were being photographed in their bedroom with long lens cameras. She had to remove one of her children from a preschool because ten cars at a time filled with paparazzi were getting out every morning as she dropped her child off and screaming the worst kind of epithets in order to provoke a response. I have another client who was literally trapped in an underground garage for two hours hoping she would be forced out of her car. I also want to say, Margot, there's a sexism involved here. The majority of my clients who are being most violated by the worst of these so-called stalkarazzi are women or young mothers. And I think it comes back to are we at a point in our society where we're just telling someone, hey, if you happen to be famous, if you happen to be a movie star, your social contract is out the window. You have forfeited your right to any private life. And I hope we're not at that point in our society.

MARGOT ADLER: Well, that brings up an interesting thought. Because if these are mostly women and young women and young mothers, it brings back the memory, of course, what happened many, many years ago when Gary Hart was caught on camera on that boat *Monkey Business* with a beautiful woman, not his wife. And I think most people applauded the photographers who brought the transgressions to light. And so I'm wondering if we have some kind of a double standard operating here?

TOM NEWTON: Well, you know, of course, our concern about this is that the reluctantly newsworthy will misuse this law to chill First Amendment activity.

MARGOT ADLER: What do you mean by that? Give an example.

TOM NEWTON: Well, to try to keep their images and their name out of the newspaper. Let's say someone has been accused of corporate misdeeds or child molestation or you name it. And they're in a busy crowded hallway where there's a lot of activity, and they're going to say, well, I've got this law here and that photographer really was very close to me and it really upset me. So I'm going to use this law to attempt to punish the press for their engagement in protected activity.

MARGOT ADLER: I want to thank both of you for joining me. Tom Newton is general counsel of the California Newspaper Publishers Association. Thank you very much for joining us, Tom.

TOM NEWTON: Thank you for having me.

MARGOT ADLER: Blair Berk is an entertainment lawyer for many celebrities, including Lindsay Lohan, Reese Witherspoon and Mel Gibson. She's with the firm Tarlow and Berk. Thank you, Blair, so much for coming on.

BLAIR BERK: Thank you, Margot. It was a pleasure.

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MARGOT ADLER: Tom Goldstein is a founding partner of Goldstein & Howe and is an adjunct professor of Supreme Court litigation at Stanford Law School and Harvard Law School. He writes about the Supreme Court at SCOTUSblog.com. Tom, thanks for joining me.

TOM GOLDSTEIN: Oh, it's such a pleasure. And the most important part of my resume is that I'm a two-time NPR intern.

MARGOT ADLER: That's wonderful. Let's talk for a minute about President Bush's newest nominee to the Supreme Court, a judge from the U.S. Third Circuit Court of Appeals, Samuel Alito. First of all, what do we know about Judge Alito?

TOM GOLDSTEIN: Well, you can characterize his jurisprudence and his thinking in a lot of different ways; there's an awful lot of spin. Here are the things that I think we absolutely know. Like John Roberts, everybody agrees he's very smart, and everybody believes and agrees on left and right that he has a lot of integrity. The real fight is over how conservative he is. Is he outside the mainstream is the way that it's often put. And you can read his opinions different ways. Mostly, it's a situation I think where liberals think my goodness, the conservatives really like him, he must be very dangerous to my life.

MARGOT ADLER: And the conservatives?

TOM GOLDSTEIN: The conservatives are ecstatic. Everything changed I think when the Harriet Miers nomination was withdrawn. Sam Alito was always high on the list of conservatives, but they are so pleased to have anyone other than Harriet Miers that it has really been a...

MARGOT ADLER: A love fest?

TOM GOLDSTEIN: It has been a rallying event. They couldn't be happier.

MARGOT ADLER: Now, both sides are beginning to sort of mobilize. Money is being raised. How do you think the fight over Alito is going to shape up?

TOM GOLDSTEIN: I think ultimately there will be a lot of smoke and not so much fire. I think you put your finger on it when you point to what all the groups are doing on the left and the right. It has been a mobilizing event. It has let them reach out and raise money which is a very important thing for these groups. It's really the reason that these groups

were formed. Particularly over the seeds of Sandra Day O'Connor who's the swing vote on the Supreme Court. But ultimately, when we get to the hearings, which I think will be very important, Sam Alito presents very well. In testifying I think he is going to come across probably as a very good witness the way that John Roberts did. And his decisions aren't ultimately going to paint him as an extremist. Democrats, progressives and liberals I think are very worried about what he would do on the Supreme Court. They know he will be perhaps substantially more conservative than Sandra Day O'Connor. But the question is can they muster the votes for a real fight where they have a chance of either filibustering him or beating him. And so far, it certainly doesn't look like it.

MARGOT ADLER: One of the things I've noticed in some of the articles that I've read is that he has ruled fairly often to support the government against individuals when we talk about things like family medical leave or immigrant cases. Corporations get the nod over certain individuals. Am I correct about that?

TOM GOLDSTEIN: It's hard to characterize somebody who's had fifteen years of decisions because both sides can point to cases on either side of the issue. But I think that's probably generally true. Now, do his decisions make you think that he's in the most extreme one, two, three, four, five percent of judges who have a commitment, if you will, an ideology of saying the civil rights statutes have been read too broadly? I don't think so. You really can point to decisions in which he has ruled for individuals against companies, individuals against the government.

MARGOT ADLER: Now, Alito is getting some support from some Democrats as well as Republicans. And though he has the nickname "Scalito," referring to Antonin Scalia, do you think he's going to get bipartisan support from the Senate?

TOM GOLDSTEIN: Yes and no. Mostly no. But probably enough to avoid a filibuster and certainly enough to avoid being voted down. I think that moderate Democrats are likely to end up supporting him. My prediction has been that while John Roberts got roughly half the Democrats, perhaps a little bit less, Sam Alito will get enough votes to get him to around 63, 64. A lot will depend on the hearings and how much he's willing to say.

MARGOT ADLER: Tom Goldstein, thanks for talking with me.

TOM GOLDSTEIN: Oh, it's terrific to have been here.

MARGOT ADLER: Tom Goldstein is a lawyer who writes about the Supreme Court at [SCOTUSblog.com](http://SCOTUSblog.com).

MARGOT ADLER: In the weeks ahead, we'll get analysis on several issues that may come before the Supreme Court and look at Judge Alito's record to see how he might vote as the Supreme Court nomination process continues. I'm Margot Adler.

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