
THE McGILL LECTURE

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I'm enormously honored to have been invited to give the sixth Ralph McGill Lecture. It's a humbling assignment. Ralph McGill was, and is, a beacon to men and women striving to embody the highest values of journalism. He was one of a handful of people who possessed a special kind of moral clarity. He understood the great issues of his time and place, wrote about them with feeling and insight and helped to compel society to acknowledge its practices and ultimately change its ways.

He never became an ideologue. He performed as a journalist, as one who looked and saw and reported the news. He withstood enormous social and intellectual pressures—and a lot of personal heat. He was a brave and good man, and his legacy lives on today wherever journalists seek to follow his standard.

Much has changed since the time of Ralph McGill, and today we in the press must be wary of very different kinds of pressures from those he endured.

We do not see them in the possibility of physical violence, as was always present in Ralph McGill's days, or even in overt attacks on the press by government officials, as in the days of Nixon and Agnew. Instead, we see these pressures in statistics that show the public's growing distrust and dislike of the press. We measure them in an alarming rise of libel suits and onerous sums awarded to plaintiffs by trial juries. We feel them in recent attempts to curb the Freedom of Information Act, classify more government documents and censor the publications of government officials—all of which undermine our ability to do our job.

The time has come to ask why there is growing disenchantment with the press, what it means and what, if anything, should be done about it.

Everyone would agree we live in an era in which all the institutions of society find themselves more unpopular and more frequently under attack. Why? I think there are several reasons as far as the press is concerned.

The first is what many see as our personality defect—a certain moral and intellectual smugness that creeps into some of what we write or report.

This negative impression is reinforced by a kind of cult of personality that exists here and there, particularly in television news. Anchor people and others have become celebrities in their own right, and the public sometimes resents the status, not to mention the incomes, of these people. It also resents what it takes to be—and sometimes is—their lack of respect and feeling for others.

The public also is occasionally alienated by the sheer size and financial success of the communications media today. To many, we appear to be a rather rich, monolithic, forbidding institution. Our motives become suspect. Are we in business to serve the public or increase our profits? Or both? Are they, in fact, contradictory?

Then there is the question of our so-called “bad news” fixation.

We hear a routine drum beat of complaints that we are too negative. Many people want the press to be head cheerleader or booster for the community, for the country, for the home team. We should print more good news, they say. The negative world view newspapers seem to portray is depressing, and it is all too easy to blame the media as the messenger.

We also are thought to be unfair to many individuals and groups. People are rarely satisfied with what we choose to report about them—what we find relevant, important or justified comment. I concede fairness is difficult to achieve and difficult, too, to judge. We are not always fair, although we try to be. Unfairness can be in the eye of the reader, though, as well as in the story itself.

What concerns me more are the real and legitimate and

perhaps irreducible differences of opinion about where First Amendment rights end and other rights and considerations begin. The right of the press to report the news versus the right of the defendant to have a fair trial is an example.

I, for one, am a hardliner on the basic questions of our First Amendment duties and rights. Concerning the fair-trial question, for example, I agree that gag orders preventing publication of information about trials are unconstitutional, as the courts have held. It is essential that access to the courtroom be preserved, not just access to trials themselves, but access to all of the pre-trial proceedings that have traditionally been open to the public.

Our open system of justice has worked well for over two hundred years because the rights of defendants are protected in other, sufficient ways: through the questioning of jurors before trials and instructions to juries at their conclusion, through continuance and change of venue.

Now, however, as we all know, reporters with increasing frequency are being subpoenaed to testify or produce notes in legal proceedings that result from their news gathering. It seems that the better we do our job, the more aggressive we are in seeking news and exposing wrongdoing, the more likely we are to face subpoenas to testify about what we have uncovered. This can only threaten our independence and hamper our ability to gather news in the future. Reporters have a special role to perform for the public. That role is compromised if reporters become an investigative arm of the state or the ally of any litigant.

Another conflict represents what is perhaps the most fundamental area of disagreement. It is the conflict between the right to confidentiality of information and the press's right to publish so that the public can know that information.

Basically, it comes down to this. It is the press's right and responsibility to discover and report the news. It is the right and responsibility of the government, business and other institutions to try to protect the confidentiality of their affairs.

The late Alexander Bickel, the distinguished Yale Law School professor who represented the *New York Times* in the Pentagon Papers case, wrote perceptively about this dilemma.

“It is a disorderly situation surely,” Bickel said. “But if we order it we would have to sacrifice one of two contending

values—privacy or public discourse—which are ultimately irreconcilable.”

Even my friend Henry Kissinger has come around to this view. In a recent interview in *American Heritage* magazine, he affirmed that it was up to the government to keep its secrets and up to the press to print what it knows. As a result, he now agrees the press was within its rights to publish the Pentagon Papers. Yes, you heard me right. I might add parenthetically that I only wish he had tried to persuade his colleagues of this at the time. We all could have saved a lot of legal fees.

Freedom of speech versus the right to individual privacy is part of this issue. The opinion polls show people believe the press sometimes invades the privacy of individuals to an unacceptable degree.

I have little sympathy for the complaints of movie stars and other celebrities who want and need and seek publicity but then complain when the reporter's inconvenient or uncomfortable questions invade their privacy. That is not to excuse excessive paparazzi or tabloid sensationalism.

But certainly the microphone shoved in the face of the wife of a man killed moments before in a plane crash offends basic notions of sensitivity and human decency—even though the public has a voracious appetite for watching or reading the results of this kind of reporting.

More perplexing are investigations into the private lives, finances and habits of government officials and other leaders. I believe the public recognizes its need to know—and our responsibility to report—those factors or incidents that might affect performance or that bear on an individual's fitness to hold office. The question is which incidents do and how prominent the office.

Here the rules have changed. No one, for example, reported Franklin Roosevelt's extramarital affairs, or even John Kennedy's. Today no president, living or dead, is immune. I think people feel uncomfortable with this kind of probing, even though they recognize its legitimacy.

I think most people value vigorous and aggressive reporting. They welcome the press as their representative, as watchdog over government, business, labor and other institutions. They

understand that this is one of the cornerstones of our democracy.

On the other hand, the public reacts strongly when the press oversteps some fine line and appears to tear down those institutions or limit the rights of others. People feel safe when the institutions of our society are in conflict and thus keeping each other in check and balance. The public becomes most uncomfortable if any one institution, such as the press, seems to gain an upper hand. And today many people think the press is going too far.

As a result, much of the public now feels, for example, that fairness must be compelled. Polling by the Public Agenda Foundation showed that the public favors, among other things:

- Laws requiring newspapers to give major party candidates equal coverage (by an 82 percent margin).
- Laws requiring newspapers to give opponents of a controversial policy as much coverage as proponents (73 percent).
- Laws requiring newspapers to cover major third parties (63 percent).

In an excellent *New York Times Magazine* story two weeks ago, Floyd Abrams put into alarming perspective Reagan administration efforts to control the flow of, and access to, information.

The administration is seeking to control the scope of the Freedom of Information Act by loosening the guidelines according to which information may be classified and tightening the guidelines according to which information may be released. It is seeking to censor the writings of a broad range of government officials and ex-officials. This would stifle criticism of government activities by the very people who are best positioned to do so.

Libel is another alarming example of the adverse impact the public's negative attitude toward the press can have. Today there are fewer pre-trial summary judgments or dismissals in favor of the press. More libel cases are coming to trial.

The trial results are most disturbing. Fully 89 percent of jury

trials result in verdicts against the press. Multimillion-dollar judgments have become commonplace. On appeal, 75 percent of the cases are either set aside entirely or the financial award is substantially reduced.

The reason appears to be that libel cases have become, in a sense, politicized. In the case of public figures, juries seem unable to understand or unwilling to apply the legal standard for actual malice, which demands knowledge of falsity or reckless disregard for the truth. As a result, once juries conclude that a news report contains errors—or even if an accurate story appears hostilely written—it is an easy step for them to conclude that the media should pay. These sentiments persist regardless of the requirements of the law.

The rise in libel suits is damaging the ability of the press to serve the public's interests. Without question, the threat of libel suits discourages aggressive reporting, particularly at smaller newspapers. The natural impulse is to avoid the cost, the time, the risk of an excessive judgment or, indeed, of an expensive legal defense of a perfectly accurate, hard-hitting story.

A \$9.2 million judgment threatened to put the Alton, Illinois, *Telegraph* out of business for a memo to the Justice Department, not even a written story. The paper survived by settling for \$1.4 million; however, it lost its drive and aggressive stance. At one time the *Telegraph* broke important investigative stories that improved life in its community. Today all that has changed.

"We're like a tight end who hears footsteps every time he runs to catch a pass," the paper's editor said in a *Wall Street Journal* article last week. "Wouldn't you be gun-shy if you nearly lost your livelihood and your home?"

The whole notion of punitive damages in libel cases is one with which I strongly disagree. Compensatory damages should remedy whatever harm has been caused by libel. The press should not be punished for punishment's sake. That is contrary to our whole notion of a free press.

How should we respond to all this?

To begin, I think we must do a better job of explaining the true role of the press. The best way we can serve the community, the country and even the home team is to report on and print the real news about them. Often the news focuses on cor-

ruption, deceit or failure. But unless we can convince the public that we don't favor bad news over good—only news itself—we risk mounting hostility. I don't believe the press can ever be, or need be, popular. I do think we can be better understood.

We also must do a better job of explaining the media as a business operation. What is not clearly perceived by the public—and even, on occasion, by our own people—is this: Financial success is not a luxury in today's world but a necessity. Quality costs money. The cost of maintaining an overseas bureau, for example, has risen from \$60,000 a year when I first joined the business twenty years ago to \$200,000 today.

More important, financial strength is the foundation on which the independence of the press is built. It gives us the ability to pursue the news, no matter now unpopular, costly or even dangerous that might be.

Financial strength enabled the *Washington Post* to pursue the Watergate story despite administration efforts to thwart us. These even included attempts to prevent renewal of our television station licenses, which caused our stock to plummet and cost over a million dollars to defend. Most smaller newspapers with fewer financial resources simply cannot afford to take such risks.

We also must do a better job of explaining some press practices that are not well understood.

Leaks are an example. To hear some government officials talk, you would think that a leak was an exceptional occurrence and that leaks represented a breakdown of the system. I admit I sympathize with their frustration at saying something in a private meeting only to read about it in the paper the next day and maybe even to have it distorted or misrepresented. It has happened to me.

In fact, however, a leak is not a leak until the wrong person gets wet. If a newsman finds out the fact that President Reagan plans to send more than 5,000 troops on manoeuvres to Central America, is that a leak or is it a public service? The person who provides that information believes his act to be in the highest tradition of public service. The Reagan administration believes it is being victimized by leaks. I call it the fruit of good reporting. It depends on where you sit.

Leaks are useful to, and used by, the politicians who complain about them. Selective leaks by the executive branch are a regular means to alert the public to government programs and to conduct foreign relations. Leaks form a fundamental, and I would argue inevitable and even necessary, component of our system of government and its communications with the people.

The unnamed source is the essential ingredient to a leak and is also misunderstood. There have been instances of casual or sloppy use of anonymous sources. However, the press is currently attempting to name and identify sources as much as possible. Sometimes, however, the sensitivity of information or the position of the individual providing it makes using an unnamed source essential. It is the only way to put vital news in the hands of the public and protect the individual from reprisal by an unsympathetic boss or a more ruthless force in our society, such as terrorists or gangsters.

But explaining ourselves is not enough.

We must strive to do our jobs better, be always alert to the requirements of fairness and accuracy and attempt to give the complete story, as free of bias as humanly possible.

We can do more to educate our reporters and editors, to give them the tools, skills and knowledge to report well the complex issues of our day. Knowledge is the best guarantee of accuracy. When charges of unfairness or inaccuracy prove to be substantive, I most often have found carelessness or ignorance, not bias, the cause.

We should admit our mistakes and correct them, and this is happening much more now than before. It is well to remember, too, that our power and position derive from service to the people, not from our individual institutions, personalities or accomplishments. With that in mind, arrogance is less likely to arise.

Finally, we must be ready to support our people and the institution of the free press. We must defend our reporters against unfounded attacks of unfairness or inaccuracy. We must vigorously contest libel suits, no matter how expensive that might be. We must be willing to go to court to preserve the public's right of access and to jail to preserve our confidential sources. And we do.

In short, we must not retreat, neither in the face of hostility nor in the face of suits. We must not be complacent or content with the soft story or the easy way out.

Instead, we must go forward. We must expand our coverage, dig deeper and work harder to make the public aware of the complex, often unsettling, not always exciting issues that affect our lives.

The simple fact is this: "Freedom of the press" is not so much the press's freedom as the citizen's right to be informed. To know what is going on and to be able to act on that knowledge have never been more important, considering the economic, social, diplomatic, nuclear threats we face.

True freedom of the press as we know it in this country exists nowhere else, certainly not in totalitarian states, nor even in most of our sister democracies.

It is essential to our free way of life. Without information of the highest quality and deepest penetration, we lose our ability to govern ourselves in our kind of democracy. We surrender our thoughts to those who would do our thinking for us. If we surrender our critical judgment to dictators of the mind, our liberty will surely follow. If people do not understand what our liberties are and why they are essential, people won't fight to keep them and may sit passively by as liberties erode.

The best way to keep freedom of the press, like freedom itself, is to know what it means and to exercise it wisely and well.

For example and inspiration, we need look no further than the memory and legacy of Ralph McGill.