# MEDIA LAW

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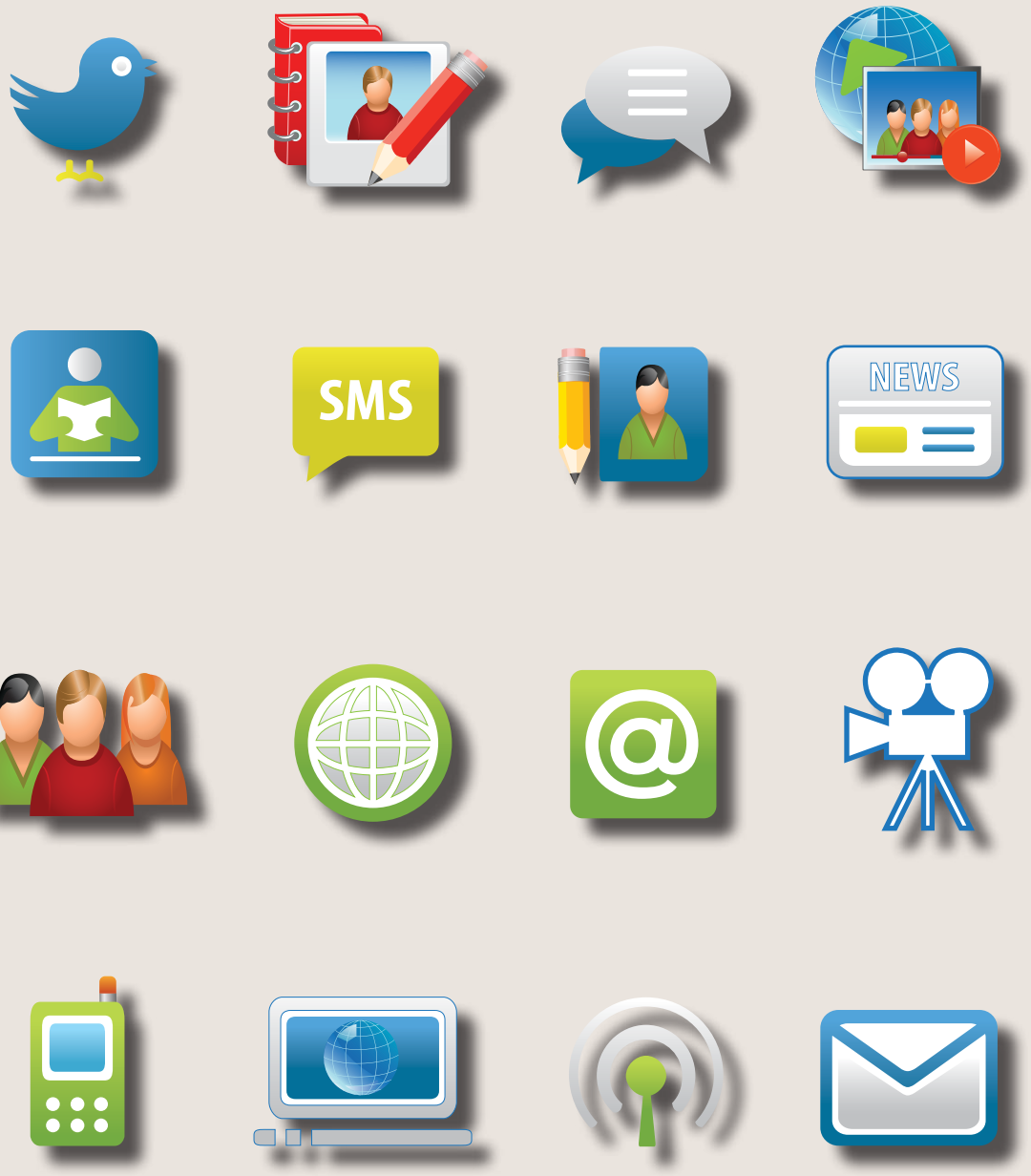


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*But the peculiar evil of silencing the expression of an opinion is that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it.*

John Stuart Mill
*English philosopher and economist*
1806–1873

# Introduction

**Thoughtful people disagree about the proper role of the news media. Some believe that journalists should support government and supply the public only with information the government deems appropriate. Some believe the press instead should be the government's watchdog, searching out and reporting on abuses of power.**

Some want the press to be an advocate, to champion causes, and to take political positions. Others believe the press should be objective and nonpartisan.

Some believe that the press should respect and reflect social institutions and traditions. Others believe that the press should question and challenge them.

This book suggests that despite these disagreements there are standards that describe the privileges and responsibilities of a free press in a free society.

1st **A free and independent press is essential to any free society.** But what do we mean by a free press? In this book, we mean a press that is not subject to undue government control and regulation, one that is free from undue financial influence from the private sector, including advertisers, and economic or business pressures from private sector businesses A free and independent press provides its readers, viewers, and listeners with the information they need to participate fully as citizens in a free society.

2nd **A free press is courageous and will pursue those stories that are important to its readers and viewers, without fear or favor.** It will challenge assumptions, it will question authority, and it will seek truth, no matter where that search may lead—to the highest corridors of power, to the owners of the news organization, or even if it leads to death, as was the case with investigative Russian journalist Anna Politkovskaya, gunned down in a contract killing in Moscow in 2006.

3rd **A free press is responsible.** Perceptions of responsibility vary from country to country, and even from year to year. For many, the standard in times of peace and stability may seem very different than in time of war or national emergency. For example, just a few months after the September 11, 2001, attacks in the United States, a survey conducted by the Freedom Forum's First Amendment Center reported that 46 percent of Americans polled believed that the press had "too much" freedom, a figure that certainly was higher than before the attacks, or the 39 percent reported in the 2009 survey.

Yet some essential principles remain constant. A free press must seek truth and report it. It must be tireless in seeking and achieving accuracy. The press must never knowingly publish a falsehood.

Most societies would agree that even the most free press must exercise its freedom with a clear understanding that actions and editorial decisions have consequences, some of them significant.

The press has great power to affect the lives of millions of people. Like any other powerful institution, it must be prepared to listen to complaints, to explain its decisions to readers and viewers, and to acknowledge and correct mistakes. But it must also be prepared to take unpopular positions and to face critics bravely when important principles are at stake. Some may call this arrogance. I call it courage.

## Freedom of Speech and a Free Press

In the United States, where I live and where I do most of my research and teaching, the press is for the most part free from government controls as a matter of law. The First Amendment to the U.S. Constitution prohibits Congress, or state legislatures, from passing any statute that abridges freedom of speech or freedom of the press.

That absolute language was drafted by revolutionaries shortly after the American War of Independence (1775–1783), during a time of great optimism, but also of great uncertainty. The nation's courts have, over the two hundred-plus years that followed, interpreted the First Amendment as powerful, but perhaps not quite absolute.

The United States Supreme Court has made clear that certain types of speech are not protected by the First Amendment: publishing details about troop movements in wartime, for example. Other exceptions would include restrictions on obscene speech or on so-called fighting words that could predictably incite violence or criminal actions. And the news media are almost always subject to

***Above:*** Andrew Hamilton defended John Peter Zenger, publisher of the *New York Weekly Journal,* who was charged in 1735 with seditious libel for criticizing the Royal Governor. Hamilton argued the truth of Zenger's publication was a defense against seditious libel. The jury acquitted Zenger; an action Hamilton praised: "You have laid a noble foundation for securing to ourselves that to which Nature and the Laws of our country have given us a Right—The Liberty—both of exposing and opposing arbitrary power by speaking and writing Truth."

laws of general applicability—that is, laws that apply to everyone but that do not single out the press for special obligations or punishment. For example, laws that prohibit the interception of telephone conversations without permission apply to journalists as much as they do to corporations.

But even these exceptions are tempered by a strong tradition that there always will be a presumption against any government attempt to stifle the free press. As an American judge once wrote, the default position for the press is to publish. Government should bear the burden of justifying any restraints. This formula preserves the watchdog role of the press and facilitates government accountability.

## Press Accountability

But who watches the watchdog? Who ensures that the press will be accountable? In some countries, the answer is the government. Laws, statutes, and codes spell out in detail the conduct required of news organizations. In these nations, journalists' rights often depend upon fulfillment of responsibilities. The rub is that the government's definition of responsibility may differ greatly from that of the press itself, or even the public.

In other countries, the answer is, the press itself, and its readers and viewers.

In some parts of the world, news organizations or individual journalists subscribe to ethical codes of conduct, like that of the National Union of Journalists in the United Kingdom. Other countries impose ethical standards as a matter of law. In the United States, individual news organizations have adopted their own ethical guidelines. Typically, these codes or guidelines set out the institution's rules governing financial and other conflicts of interest.

For example, an ethical guideline may prohibit a reporter from covering a company for which her spouse works. Or it may forbid a reporter to take part in a protest march, or to display a political sticker on the fender of his car or a placard in his front garden, or to wear a national flag in her lapel as she reports the news. Or it may prohibit a reporter from accepting even a nominal gift from a news source. Guidelines like these are intended to maintain both the reality and the appearance of journalistic independence.

It would seem unnecessary for ethical guidelines to address the necessity for accuracy and truth-telling. But after journalists like Jayson Blair of the *New York Times* either fabricated or plagiarized the news stories they submitted to their editors, many organizations have revised their ethics guidelines to make clear that neither practice can ever be accepted or condoned by a responsible news organization.

Sometimes ethics and the law intersect. In Northern Ireland, for example, Suzanne Breen, the Belfast-based editor for Dublin's *Sunday Tribune,* faced a legal and ethical dilemma. Breen had been telephoned by an individual who claimed responsibility for murdering two soldiers at Massereene Barracks in Antrim. The police demanded that she turn over her cell phone, computer records, and notes about her contacts with the paramilitary Real IRA organization. Breen resisted, arguing that to do so would breach her professional obligation to protect the confidentiality of her sources. She also candidly acknowledged that complying with the law enforcement demands could endanger her life, and the lives of her family members. But if she defied the order, Breen faced the prospect of up to five years in jail for contempt.

In June 2009, a judge in Belfast ruled that compelling Breen to surrender her news-gathering materials would put her life at risk in contravention of the European Convention on Human Rights.

By contrast, in the United States, *New York Times* reporter Judith Miller refused to cooperate in a criminal investigation seeking the identity of a government official who had revealed the identity of a covert intelligence agent. Miller defied orders to testify, even after judicial rulings that journalists possessed no special privilege to decline naming confidential sources. She spent 85 days in jail in 2005. Some judges and members of the public argued that journalists can never hold themselves above the law. But the ethics policies of most news organizations would require a reporter to honor a promise given to a source, even if it means going to jail.

Legal and ethical provisions vary from country to country. Reasonable people—and even journalists themselves—may disagree on how they should apply in a particular situation and whether they strike the proper balance between competing societal interests.

## Privacy and Libel

Is it ever appropriate for a reporter to violate an individual's privacy? In the United States, the Supreme Court has ruled that it is lawful for the press to publish the name of an individual who has been sexually assaulted. But is it the right thing to do?

Is it right for a journalist to make fun of a public official or to lampoon a name or image that is sacred to a particular ethnic or religious group? In the United States, after the pornographic *Hustler* magazine satirized the outspoken clergyman Rev. Jerry Falwell, the Supreme Court ruled that a free society must tolerate even "outrageous" speech in order to guarantee robust public debate and discussion. As one justice once wrote, "There is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries, but on the competition of other ideas."

On the other hand, in March 2008, the United Nations Human Rights Council adopted a resolution condemning "defamation of religions." And many countries retain, and enforce, statutes that make it a crime to insult or "offend the dignity" of any person, even a public official—even if the underlying facts are true.

The Supreme Court of the United States has never upheld a government

***Above:*** *New York Times* reporter Judith Miller was jailed for contempt of court for refusing to reveal a confidential source. Miller, accompanied by her legal team, leave the U.S. District Court in Washington, DC, on June 29, 2005.

attempt to stop the press from publishing classified information. Fierce debates over whether journalists can be criminally prosecuted under espionage laws arise periodically. In China, for example, theft of state secrets is a crime regardless of who does it, and the definition of state secrets is an expansive one. But even assuming that they do not break the law, is it right for journalists to publish classified information, especially when it is claimed that doing so will alert terrorists to surveillance techniques and undermine intelligence efforts to maintain safety and security?

## Transparency

Despite these concerns, the term "transparency" has become a watchword in civil society. Both public and private institutions are exhorted to be more forthcoming about their operations, funding, and governance. The digitization of data and the ubiquity of the Internet can help. But universal access to information raises new issues about security and privacy, and it compounds the difficulties of protecting proprietary or copyrighted information. Ironically, some regard the technology that maximizes access to information as a threat to other fundamental rights, such as the right to a private life or, as an American jurist once wrote, "to be let alone."

Add to this volatile mix the legions of unidentified and seemingly ungovernable bloggers and citizen journalists, operating with gusto but without prior training or certification of any kind. There is no question that they contribute a lively counterpoint to the mainstream media. But will their tendency to challenge conventions and flout the rules lead to greater attempts to regulate the press?

These are not easy questions. Nor are there easy answers.

It is not easy to live with a free press. Doing so means that one is being challenged, dismayed, disrupted, disturbed, and outraged—every single day.

A free press is fallible and at times fails to live up to its potential. But developing democracies around the world demonstrate every day that they have the courage and confidence to choose knowledge over ignorance and truth over propaganda by embracing the ideal of a free press.

It is not easy to live with a free press. But I know I couldn't live without it.

***—Jane Kirtley***

*Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,…*

Universal Declaration of Human Rights
*United Nations*
1948

# A Good Environment for Fostering Journalists

**National legal systems vary. Civil law nations like Germany and France often adopt detailed and precise statutory schemes that govern the rights, duties, and obligations of journalists. In common law nations like the United Kingdom and the United States, a mix of statutes, regulations, and case law establishes broad legal principles that encompass press freedom, even if these laws do not always directly address journalists.**

Regardless of the particular legal approach, good journalism flourishes where society respects and enforces the rule of law. The work of legal, theoretical, and philosophical thinkers, including Confucius, Milton, Rousseau, Meiklejohn, and Mill, among others, supplies the intellectual underpinning for contemporary media law and media ethics.

## International Standards

International standards supply guarantees of free expression. But these standards also typically acknowledge certain legitimate grounds for the state's restriction of free expression. The Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly in 1948, pronounces in Article 19 that:

> Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 29 then qualifies this right as:

> …determined by law solely for the purpose of securing due recognition and respect for the rights and freedom of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Similarly, Article 10 of the European Convention on Human Rights states:

> Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

However, that absolute language is qualified further in this convention:

> The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Many international documents, conventions, and treaties embrace a similar approach, among them the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, and the American Convention on Human Rights, as well as many others. The details differ, but all recognize freedom of expression as a fundamental right, but one that can be limited by duly enacted laws tailored to protect equally compelling societal interests.

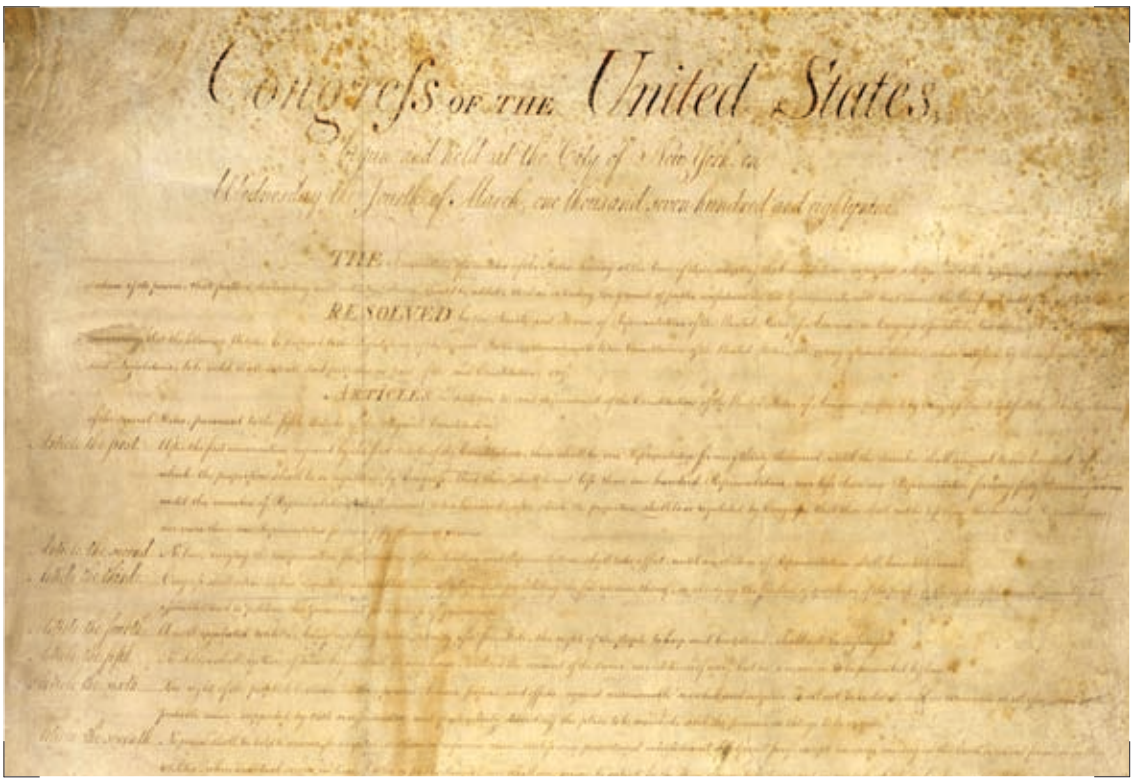
## National Standards

National constitutions also frequently guarantee press freedom. For example, Article 25 of the Belgian Constitution, which dates from 1831, provides that:

> The press is free; censorship can never be established; security from authors, publishers or printers cannot be demanded. When the author is known and resident in Belgium, neither the publisher, nor printer, nor distributor can be prosecuted.

The First Amendment to the United States Constitution, ratified in 1791, is similarly absolute:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble,


Congress of the United States,
begun and held at the City of New-York, on
Wednesday the fourth of March, one thousand seven hundred and eighty nine.
THE
RESOLVED
ARTICLES

*Above:* Freedom of the press is explicitly protected under the First Amendment of the Bill of Rights in the U.S. Constitution.

> and to petition the Government for a redress of grievances.

Other national constitutions acknowledge the right of free expression but do not regard it as absolute. For example, Article 8 of the Senegal Constitution guarantees freedom of expression and opinion "subject to the limitation imposed by laws and regulations." Similarly, Article 36(1) of the Constitution of the Kyrgyz Republic explicitly declares that the "mass media are free" but then qualifies that statement in Article 17(2):

> Restrictions to the exercise of rights and freedoms is allowed by the Constitution and laws of the Kyrgyz Republic only for the purposes of ensuring the rights and freedoms of other persons, public safety and order, territorial integrity and protection of constitutional order. But in doing so, the essence of constitutional rights and freedoms shall not be affected.

It is probably fair to say that no country in the world regards the cherished universal or fundamental right of free expression as absolute. It is subject to limitation and modification when competing rights are deemed to outweigh it. As a result, some press freedom laws can weaken rather than strengthen the protections afforded a free press.

## Laws That Discourage Journalists

Censorship—government-imposed restraint on freedom of speech and expression—poses the greatest single threat to a free press. Censorship can take many forms:

- compulsory licensing schemes;
- mandatory pre-publication review;
- imposition of gag orders during the pendency of a legal proceeding;
- extraordinary taxes or fees;
- withdrawal of legal protection that would ordinarily be granted to other businesses or citizens.

The threat of post-publication sanctions, such as criminal fines or incarceration, can be as intimidating and crippling to the ability of a news organization to operate as any prior restraint.

More subtle, but equally problematic, are mandates that impose certain duties or responsibilities on the press. Some autocratic countries and democracies require that the press publish "checked facts" or "the truth." For example, Article 20(d) of the Constitution of Spain states, "The rights are recognized and protected…of freely sending or receiving true information by any medium" [emphasis added].

Government desire for accurate reporting is understandable. In former dictatorships, where propaganda and the promulgation of falsehoods were commonplace, the public is eager to learn a variety of facts from many different sources. And it is a basic tenet of ethical journalism that no reporter wants knowingly to disseminate an untruth.

But requiring accuracy only raises more questions: What is truth? Who decides? The government?

Certainly all journalists should aim to be accurate. But often the perception of truth will change over time. As a breaking news story unfolds, what initially appeared to be a fact may turn out to be false.

A spectacular example occurred on September 11, 2009, when the CNN and Fox cable television networks reported that the U.S. Coast Guard had opened fire on a suspicious vessel in the Potomac River in Washington, D.C., not far from the Pentagon, where President Barack Obama was attending commemorative services. Relying on information obtained by listening to police scanners, CNN also used the social-networking application Twitter to

report, "Coast Guard confronts boat as Obama visits Pentagon, police scanner reports say shots fired."

The *Chicago Tribune* reported that it took almost 30 minutes for the networks to determine that they had overheard open radio transmissions—during which personnel made "bang bang" noises and stated, "We have expended ten rounds"—that were part of a routine training exercise, not an attack. White House Press Secretary Robert Gibbs chided the networks for causing panic, observing, "Before we report things like this, checking would be good." CNN claimed that before reporting the incident, it had contacted the Coast Guard's public affairs office and been told that the Coast Guard was unaware of any activity on the river. The Coast Guard did not apologize for its part in the incident, other than to promise that it would review both "our procedures and the timing of this exercise."

Commentators criticized the news media for rushing to disseminate the story, suggesting that the networks should have withheld it until they were able to verify the details. But this example illustrates the difficult tightrope that news organizations walk when reporting breaking news. In an increasingly competitive media marketplace, the pressure to be first with a story is intense. The old Associated Press maxim, "Get it first, but get it right," seems almost quaint in a 24/7 world, where not only mainstream media, but bloggers and other "citizen journalists" can observe and report events instantly.

Should CNN and Fox have been subject to government sanction for having made a good-faith error in their reporting? In the United States, the answer would be "no." But in other countries, such a mistake might lead to a fine or the loss of a license.

As troubling as the Coast Guard incident may be, at least the factual discrepancies were quickly resolved. With issues like global warming or the financial or health crises, the facts emerge more gradually. How can journalists determine the truth at any given point? And what is the responsibility of the government, or of the public, to define and interpret the facts? The reality is that journalism is only one means of ascertaining truth. In a free society, it is up to members of the public, not a governmental entity, to review the facts from a wide variety of sources before deciding what is true.

In one prominent example, the U.N. Security Council in 1996 called on Rwanda to identify and close radio stations it contended had fomented hatred and incited acts of mass violence there. The case raised an important question: Should the media be held responsible for the violent acts of their viewers, listeners, or readers?

Punishment may also await those who challenge the accepted wisdom concerning historical incidents. In Turkey, it is a crime to refer to the mass killings of Armenians during World War I as genocide. In 2007, the neo-Nazi Ernst Zündel was imprisoned in Germany after publishing statements denying that the Holocaust occurred, a violation of the German Criminal Code.

A corollary to the problem is created when the government declares what the

***Above:*** Ernst Zündel, author of *The Hitler We Love and Why* and publisher of *Did Six Million Really Die?*, was handed the maximum allowable sentence under German law in 2007 for inciting hatred and denying the Holocaust. Holocaust denial is a specific criminal offense in several European countries.

truth is in the enactment of insult laws that prohibit criticism of monarchs, politicians, or other public officials, national symbols, or a particular race or religion. Dozens of countries throughout the world, including some in the European Union, former Soviet Union, Asia, Africa, and Latin America, have enacted such statutes. Although the precise language varies, it is invariably both broad and vague, easily manipulated by governments to punish dissent and to silence criticism.

Another dimension arises when the effort to suppress unwelcome publications crosses national boundaries or is initiated by non-state actors. Most notoriously, in February 1989, the Iranian spiritual leader Ayatollah Ruhollah Khomeini issued a *fatwa* offering a bounty for the death of the British author Salman Rushdie, whose novel *The Satanic Verses* Khomeini declared "blasphemous against Islam." In September 2005, the Danish newspaper *Jyllands-Posten* published editorial cartoons depicting the Prophet Mohammad. Again blasphemy was charged. Violent protests and threats on the lives of the cartoonist followed. Blasphemy charges are not leveled only by Muslims. Not until July 2008 did the British House of Lords vote to abolish the common law crimes of blasphemy and blasphemous libel.

## Compulsory Licensing

Another mechanism to discourage journalists is the use of compulsory government licensing. This usually is justified as helping to ensure that only those with appropriate qualifications engage in the profession of journalism. But, as Leonard Sussman of the New York-based

***Above:*** Flemming Rose, center, commissioned the controversial cartoons caricaturing the Prophet Mohammad published by the Danish newspaper *Jyllands-Posten* in 2005. The cartoon sparked heated public debate about the balance between satire and censorship.

Freedom House writes, "Governmental licensing of the press is the old blunderbuss of censoring weapons." Government licensing both determines who may be a journalist and circumscribes the parameters of acceptable reporting and commentary. In short, it encourages self-censorship and stifles dissent and debate.

Even in countries where any *individual* has the right to engage in journalism, those who seek to operate broadcast, cable, Internet, or even print news *organizations* may be subject to compulsory licensing. By their very nature, broadcast and cable franchises are limited in number and scope within a particular geographical area. Most countries have concluded that some governmental authority will be the "traffic cop" that allocates operating frequencies in the broadcast spectrum, or assigns to certain operators the "natural monopoly" of cable or Internet service providers.

Without this type of licensing, anyone might, to use one example, broadcast on the same radio frequency as his neighbor. The result would be complete cacophony and chaos. Even so, when the state chooses who will be allowed to operate the electronic media, there is a real danger of inhibiting the free flow of information. In some countries with a tradition of state-owned *public* broadcasting, it is difficult, if not impossible, for independent media to secure a place in the broadcast spectrum. In nations where privately owned commercial media predominate, questions about how much the state may inquire into programming and editorial decisions when reviewing initial license applications or renewals remains a nagging problem.

On the one hand, some argue, broadcast airwaves are a public resource that should be operated essentially as a public service or, in the words of the Communications Act of 1934 (U.S.), in "the public interest, convenience or necessity." The uniquely pervasive nature of electronic media, it is said, justifies greater government interference in content. On the other hand, broadcasters should enjoy the same editorial autonomy as the print media, subject only to laws of general applicability governing expression, such as libel, invasion of privacy, and obscenity.

## Regulation and the Internet

With each new medium of communication, government efforts to control information appear. Some countries, including China, Iran, Saudi Arabia, and Tunisia, have blocked access to Web sites based on their political or cultural content, monitored individuals' activities on the Internet, and imposed stringent restrictions on Internet service providers. Even mature democracies, including Australia, France, India, and the United States, have blocked access to or punished publication of online material that they deem to be objectionable.

The Internet provides individuals an unprecedented ability to communicate without relying on newspapers, television, or any other traditional media. But many countries retain legislation from the era when, in the words of *New Yorker* magazine contributor A.J. Liebling, "Freedom of the press belongs to the man who owns one." Some countries grant an individual an enforceable right of reply to an article concerning her that she deems false, inaccurate, defamatory, or misleading. The logic of these laws is that because radio and television stations and newspapers are in the hands of a few, the free exchange of ideas requires that they provide those who disagree an opportunity to be heard.

Predicated on the idea that a news organization has an obligation to be *fair,* a statutory right of reply usurps a news organization's editorial authority by requiring an editor to publish material he otherwise would not. When editors tone down their coverage to avoid being compelled to publish replies, the result is more self-censorship and less publication of controversial material. As a U.S. Supreme

Court justice wrote, in a case striking down a Florida state right-of-reply statute, "A newspaper or magazine is not a public utility subject to 'reasonable' governmental regulation in matters affecting the exercise of journalistic judgment as to what should be printed."

Ironically, the Internet, which empowers anyone with access to be a publisher, has nevertheless encouraged right-of-reply measures directed at bloggers and other digital journalists. In 2006, the European Parliament adopted a Council of Europe recommendation that a right of reply be imposed on the online media. The council argued that the physical limitations of space and time that exist in conventional forms of media like newspapers or television do not apply in cyberspace, lowering drastically the cost of affording a reply privilege. In 2009, the Philippine legislature was considering bills requiring anyone who speaks on the Internet, including bloggers and posters on social-networking sites, to grant a right to reply to anyone who considers herself wronged. Compelled publication arguably is another form of censorship.

## Balancing Legitimate Competing Interests

The most insidious aspect of censorship is that at first glance it can seem justifiable, or reasonable.

- Why shouldn't a government authority have the power to stop a news organization from publishing classified material in the name of protecting national security?
- Why shouldn't a court be allowed to prohibit a journalist from reporting the prior criminal history of a defendant facing a murder charge?
- Why shouldn't an individual have the right to demand that a broadcaster refrain from airing footage that would reveal intimate personal information, such as the identity of a child who has been sexually abused?
- Why shouldn't a licensing board have the authority to stop the distribution of a book or film that it deems contrary to public morality?
- Why shouldn't laws proscribing racist or "hate" speech be upheld?

Regardless of how a society resolves these hard questions, the danger is that, all too frequently, these seemingly reasonable restrictions are utilized as a means of restricting press freedoms and ultimately to restrict the dissemination of unpopular opinions and ideas. This is not to suggest that freedom of the press will, or should, inevitably trump other fundamental values. The challenge is to strike a balance between legitimate competing interests. This is not an easy task.

*The liberty of the press is indeed essential to the nature of a free state: but this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published.*

William Blackstone
*English judge, jurist, and professor*
1723–1780

# A Framework for a Free Press

**A useful starting point as we set out to create a framework for a free press is to consider what rights are essential in order for journalists to do their jobs. These might include no prior restraint; protection from compelled disclosure of information; the right of access to government information and court proceedings; the right to criticize government officials and public figures; the right to gather and publish newsworthy information about individuals; limits on government licensing of journalists and news organizations; and only narrow and carefully tailored restrictions on indecent or obscene speech.**

## No prior restraint

The 18th-century English jurist William Blackstone argued, "The liberty of the press is indeed essential to the nature of a free state: but this consists in laying no *previous* restraints upon publications, and not in freedom from censure for criminal matter when published." Blackstone's was an important distinction. The English government's power to license, to control both who could operate a press and what he could publish, was the quintessential abridgement of free expression. By stopping speech even before it is uttered, government stifles discussion and dissent.

But in Blackstone's view, the publisher would properly bear the responsibility for whatever he chose to disseminate. Blackstone would prohibit government from censoring speech, but he would still allow sanctions to be imposed *after* publication.

Only rarely does a country go so far as Blackstone advocated by absolutely outlawing any and all previous restraints on the press. We will examine here a number of types of restraints that are recognized as lawful in many countries. Below are the circumstances under which a prior restraint might be considered proper:

- A compelling interest should be identified.
- The order should be narrowly tailored and no broader in scope than necessary to address the compelling interest adequately.
- The order should be precise in its terms and as limited in duration as possible.
- It should be demonstrated that the order will actually advance the compelling interest asserted or avert the identified harm.

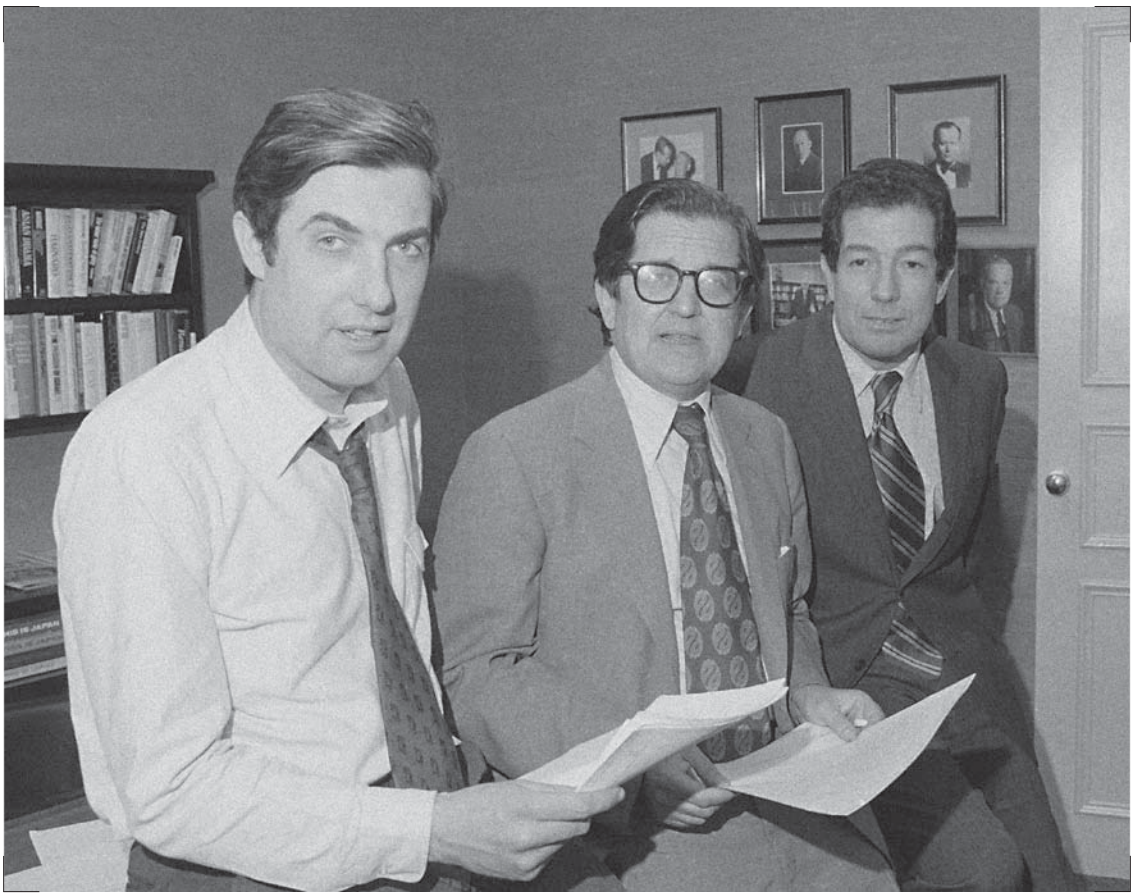
- Notice of the order and an opportunity to be heard to contest it should be provided prior to imposition.

What types of interests might be sufficiently compelling to justify a prior restraint? Such interests could include, among others:

- confidential or proprietary business information;
- highly intimate personal information;
- copyrighted material;
- information pertaining to an on-going criminal investigation or prosecution;
- obscene or immoral material.

But probably the most frequently invoked justification is national security. This poses a genuine dilemma for journalists. On the one hand, no journalist wants to undermine national security by disseminating information that poses a genuine threat. On the other hand, government officials can be tempted to invoke national security to justify expansive censorship.

The Supreme Court of the United States considered this issue in *New York Times Co. v. United States* (1971), often referred to as the Pentagon Papers case. After the *New York Times* began publishing excerpts of classified documents about the American involvement in Vietnam, the administration of President Richard M. Nixon sought a judicial restraining order to stop further publication. The Supreme Court ruled against the government. "Any system of prior restraints comes to this Court bearing a heavy presumption against its constitu-



***Above:*** (from the right)Reporter Neil Sheehan, Managing Editor A. M. Rosenthal, and Foreign News Editor James L. Greenfield formed part of the *New York Times* team responsible for publishing the *Pentagon Papers*, excerpts of classified U.S. government documents about American involvement in the Vietnam War.

tional validity," the Court noted and concluded that in this case the government had failed to meet the "heavy burden of showing justification for the imposition of such a restraint."

The brief opinion provided little insight into the Court's reasoning. It is difficult to discern what conditions, if any, might in a future case justify a prior restraint. We only know that the government did not meet its burden in this case. The Court did not say that it never could.

Practically speaking, the case of the *Pentagon Papers* has created a virtually insurmountable barrier to government-imposed censorship on national security grounds in the United States. Never since has the Supreme Court upheld a prior restraint on the media's ability to publish national security information, not even in the post-9/11 environment.

Given the limits of territorial jurisdiction, it has always been challenging for the government of a particular country to impose a restraint that will be truly effective worldwide. In the late 1980s, the British government's attempts to restrict the publication of *Spycatcher,* a former MI5 agent's memoirs, were ultimately futile. While an English court did ban publication, the book circulated widely in Australia, and even in Scotland, a part of Great Britain not covered by the writ of the English court. Copies poured into England from these and other jurisdictions. Eventually the English courts were forced to lift their ban on the grounds that publication elsewhere meant there no longer were any secrets left to preserve. At the height of the controversy, British editions of *The Economist* magazine ran a blank page with this notation: "In all but one country, our readers have on this page a review of 'Spycatcher,' a book by an ex-M.I.5 man, Peter Wright. The exception is Britain, where the book, and comment on it, have been banned. For our 420,000 readers there, this page is blank—and the law is an ass."

The *Spycatcher* case predated the growth of the Internet. Today, the burgeoning new media pose a significant obstacle to the effective imposition of a prior restraint. An example is the Wikileaks case. In February 2008, a federal judge in California issued a permanent injunction on Wikileaks, a Web site that claims to have been founded by "Chinese dissidents, journalists, mathematicians and…technologists, from the U.S., Taiwan, Europe, Australia and South Africa," whose self-proclaimed mission was to "reveal unethical behavior in…governments and corporations." Wikileaks allowed users to publish anonymously a wide variety of documents, such as rules of engagement for American troops, operating manuals for Guantanamo Bay prison, and confidential Swiss bank account information. The site claimed it was not responsible for the content of materials that users posted on its site.

The injunction ordered Dynadot, the California company that had registered Wikileaks's domain name, immediately to lock and disable the domain name and to block access to the documents. But the *New York Times* reported that even after Dynadot placed restrictions on the site, users worldwide could still reach it and read the documents by accessing mirror sites registered in Belgium, Germany, and the Christmas Islands. Two weeks after the initial injunction had been issued, the same federal judge lifted it. "It is clear that in all but the most exceptional circumstances, an injunction restricting speech is impermissible," Judge Jeffrey White wrote. He also observed that his initial order had not only been ineffective but "had exactly the opposite effect as was intended" because the press coverage of the injunction had only increased public attention to the Wikileaks materials.

Other types of gag orders, injunctions, and restraining orders will be discussed

in more detail in the appropriate sections below.

## Protection from Compelled Disclosure of Information

The right of a journalist to protect confidential sources and unpublished information from disclosure is essential to promoting both the free flow of information and the public's right to know. Reporters must be able to assure their sources that their identities will remain secret in order to encourage them to speak freely. They must also be able to protect the fruits of their news gathering from scrutiny by government or private entities in order to maintain their editorial independence. Without these privileges, the ability of the press to scrutinize government and to uncover corruption would be severely compromised.

Most media codes of ethics require that journalists protect the confidentiality of their sources. For a reporter, this is both a matter of honor and a pragmatic necessity. A journalist who violates a promise of confidentiality will not be trusted by other sources in the future. For this reason, journalists will protect their sources, even if it means facing contempt of court.

The rationale for recognizing a reporter's privilege was persuasively set forth by the European Court of Human Rights (ECtHR) in *Goodwin v. United Kingdom* (1996). The case involved reporter William Goodwin, who had received a company's confidential financial information from a source whose identity he had agreed to keep secret. The company claimed that the material had been stolen and obtained an injunction restraining publication of the information, as well as an order under the Contempt of Court Act to compel Goodwin to reveal his source's identity "in the interests of justice" so that it could take legal action against the source.

After the Court of Appeal and the House of Lords upheld the order, Goodwin appealed to the ECtHR, where he argued that under Article 10 of the European Convention on Human Rights (ECHR), only exceptional circumstances could justify compelling him to testify. For its part, the British government contended that no compelling public interest justified recognizing the privilege in this situation, especially given that the source had, at worst, acted irresponsibly in providing the proprietary business information to Goodwin.

The court ruled in favor of Goodwin, finding that the company's interest in pursuing the source was not sufficient to outweigh the public's interest in protecting the right of journalists to keep sources confidential:

> Protection of journalistic sources is one of the basic conditions for press freedom. …Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result, the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected. Having regard to the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom, such a measure cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest.

All countries that are parties to ECHR are bound by the *Goodwin* decision, but the decision has been influential even outside the European Union. Other international and regional bodies,

including the Inter-American Commission on Human Rights and the African Commission on Human and People's Rights, have issued declarations recognizing the right of journalists to maintain the confidentiality of their sources and unpublished information.

In some countries, the journalist's privilege is included in the constitution. For example, the Constitution of Palau says, "No bona fide reporter may be required by the government to divulge or be jailed for refusal to divulge information obtained in the course of a professional investigation." Sweden's Freedom of the Press Act, which is part of the national constitution, provides an expansive privilege for journalists, subject only to a limited number of exceptions, such as if the source is suspected of espionage or treason, or if an accused person demonstrates that the information sought is essential for her defense in a criminal case. The law also provides that a journalist who reveals a source without consent may be prosecuted.

In other countries, courts have ruled that the journalist's privilege may be derived from constitutional provisions. In 2006 in Japan, for example, the Supreme Court found that Article 21 of the constitution, which guarantees freedom of expression, also protects "the freedom of gathering news," as well as the reporting of news. In Canada in 2008, the Ontario Court of Appeal struck down a finding of contempt against a reporter who refused to disclose the source of leaked confidential municipal investigative reports concerning a nonprofit nursing home. It ruled that the right to protect confidential sources is an essential part of freedom of expression as recognized under the Canadian Charter of Rights and Freedoms. "The likely effect of revealing a journalist's confidential source," the court said, "would be to discourage from coming forward other potential sources who, for whatever reason, need to conceal their identity." Although it declined to find an absolute privilege governing all confidential communications obtained in the course of reporting, the court nevertheless recognized that the contempt power should be used only as a last resort, mindful of the competing rights at stake.

Some other nations have by statute granted journalists a privilege to avoid testifying under specified circumstances. About 20 countries have adopted legislation giving journalists absolute rights to protect their sources, among them Mexico, Indonesia, Mozambique, and Turkey. More common are national laws that recognize a qualified privilege, which may be overcome under certain situations. Armenia, for example, grants the privilege but withdraws it in cases where the information sought is directly related to a heinous criminal case when the public interest in disclosure is strong. In some countries, including Germany and the United States, statutory protection has been left to the individual states. Like the national laws, these statutes can be either absolute or qualified in scope.

In the United States, although 39 states, plus the District of Columbia, have enacted journalists' shield laws, Congress has considered, but has failed to pass (as of summer 2010), federal legislation recognizing a reporter's privilege. This means that state shield laws apply in some state court proceedings but not in the federal court system. (For further information on the roles of federal and state laws and court systems, see *Outline of the U.S. Legal System,* http://www.america.gov/publications/books/outline-of-u.s.-legal-system.)

Although each society will work out the precise contours of a journalistic privilege against compelled disclosure of information, an effective privilege would supply broad answers to the following questions:

- To whom does it apply? A broad privilege would apply to anyone who is practicing journalism—meaning anyone involved in the process of gathering, writing, editing, or publishing news or information for dissemination to the public, whether for compensation or not.
- Is it limited by media platform? The most effective privilege would not be limited to those in the print and broadcast mainstream media. It would include book authors, as well as bloggers and others who disseminate their work on the Internet.
- Which sources does it protect? A comprehensive privilege would cover not only the identity of sources but also unpublished information and documentary materials, such as photographs, notes, tapes, drafts, and other unpublished journalistic work product.

In the absence of an absolute privilege, one who seeks to compel a journalist to reveal confidential sources and information should be required to show good cause. Nations have devised different standards, but the more common factors include:

- The information is unobtainable from any other nonjournalistic source after all reasonable alternatives have been exhausted.
- The information sought is material, or absolutely essential, to the disposition of the underlying case (such as exonerating evidence for an accused criminal).
- A judge must find that the public interest in disclosure outweighs the public interest in the free flow of information.

The final element is the most problematic. When does another interest outweigh the fundamental right to press freedom? In cases involving national security, for example, government authorities often argue that preserving public safety outweighs protecting editorial independence. In the United States, federal efforts to enact a journalists' shield law have been stymied for years, in part, because of fears that terrorists might use it to protect their communications from law enforcement scrutiny.

War correspondents face many special challenges. Maintaining source confidentiality can be essential to protecting these journalists' safety. But what happens when the journalist is an eyewitness to atrocities and is summoned before a war crimes tribunal to give evidence?

In 1993, *Washington Post* reporter Jonathan C. Randal interviewed Radoslav Brdjanin, a Serbian nationalist, whom he quoted in an article on ethnic cleansing. Years later, after Randal had retired from journalism, Brdjanin was charged with genocide. Prosecutors wanted to introduce Randal's article as evidence in the trial before the U.N. International Criminal Tribunal for Yugoslavia (ICTY). When the defense insisted on the right to cross-examine Randal, the former reporter was subpoenaed to appear before the court. Randal resisted, arguing that being compelled to testify would compromise his ability to gather news in war zones and could endanger his personal safety were sources to perceive him as a potential witness.

In December 2002, the Appeals Chamber recognized a qualified testimonial privilege for war correspondents, even where their sources are not confidential and their information has already been published. It defined war correspondents as "individuals, who for any period of time, report (or investigate for the purposes of reporting) from a conflict zone on issues relating to the conflict." The court acknowledged that to do their jobs, "War correspondents

must be perceived as independent observers rather than as potential witnesses for the Prosecution. Otherwise, they may face more frequent and grievous threats to their safety and the safety of their sources." The tribunal ruled, "The amount of protection [recognized] is directly proportional to the harm that it may cause to the newsgathering function." To compel testimony, it held, the subpoenaing party must show that the evidence is of "direct and important value in determining a core issue in the case" and that the evidence cannot reasonably be obtained elsewhere.

Randal's case was a controversial one. Although more than 30 international news organizations supported his appeal, Ed Vulliamy, a British journalist who also covered the war in Bosnia and voluntarily testified at the trial of Milan Kovacevic, argued that Randal's position was wrong. "At the root of the *Washington Post's* objection is the supposed bedrock of the journalists' profession: neutrality," he wrote. "I believe that there are times in history…that neutrality is not neutral but complicit in the crime. … The court needs reporters to stand by their stories on oath."

A related issue involves the power of governmental authorities to search media offices. *Zurcher v. Stanford Daily* (1978) was a U.S. Supreme Court case challenging the power of police officers to enter the office of a university student newspaper and to seize unpublished photographs of a violent confrontation between police officers and demonstrators who had seized and occupied the Stanford University hospital. Although the student newspaper argued that the First Amendment protected it from law enforcement searches of its premises, the majority opinion by Justice Byron White ruled that news organizations enjoy no special status under the First Amendment, although they would be protected by the Fourth Amendment, as any other entity would be, from "unreasonable searches and seizures."

In dissent, Justice Potter Stewart wrote:

> It seems to me self-evident that police searches of newspaper offices burden the freedom of the press. The most immediate and obvious… injury…is physical disruption of the newspaper. …But there is another and more serious burden…imposed by an unannounced police search of a newspaper office: the possibility of disclosure of information received from confidential sources, or of the identity of the sources themselves.

In response to the majority ruling, the U.S. Congress enacted the Privacy Protection Act of 1980. This statute forbids both federal and local law enforcement authorities from seizing documentary, or work product, materials in the possession of persons intending to disseminate them to the public (i.e., journalists). Exceptions include materials necessary to prevent death or serious injury, or child pornography. Similarly, in 1995, the New Zealand Court of Appeals ruled searches of journalists' workplaces appropriate only in exceptional cases when essential to promoting the interests of justice and, even then, not to be executed in a way that would impair the dissemination of news.

But in other parts of the world, newsroom searches occur frequently. For example, in 2004, the Independent Commission Against Corruption in Hong Kong obtained 14 warrants to search newspaper offices and journalists' homes. The commission sought the identity of an individual who had provided a witness's name to the news organization. The Court of Appeal ruled these searches justified.

Although the European Court of Human Rights holds that newsroom searches violate Article 10 of the European

Convention on Human Rights, many European countries still permit them. Austria and Germany are two exceptions, with the German Constitutional Court ruling in February 2007 that these searches violate constitutional freedom of speech protections.

Antiterrorism laws adopted in much of the world since 2001 have expanded law enforcement and intelligence authority to intercept communications through wiretapping and similar means. These laws typically afford journalists no less, but also no more, protection than other citizens. However, a few countries do grant the news media special protection. In Georgia, intercepting journalists' communications for the purpose of uncovering professional secrets is a crime. And in Belgium, the Law on Protection of Journalists' Sources imposes the same restrictions on surveillance as on an attempt to compel disclosure of a confidential source.

In short, there is broad recognition that protecting journalists' confidentiality is essential to maintaining their independence.

## The Right of Access to Government Information and Proceedings

Why is the right of access to government proceedings and information important?

- Access helps keep government accountable to its citizens. As a U.S. Supreme Court justice once wrote, freedom of information laws allow citizens to find out "what the government is up to" in the present, and also what it did in the past. By helping to check improper conduct, access serves as a valuable anticorruption tool and helps build public trust.
- Access allows the public to tap into the vast quantities of government-collected and -maintained information, information paid for by the public's tax dollars.
- When journalists can obtain public records, they need not rely on the whims of a government source to report on government actions and activities, and they can better disclose how tax dollars are spent and how policies are made and implemented.

In short, journalists' access to government information is an essential tool for building and maintaining democracy.

Many international agreements embrace and promote transparency:

- Article 19 of both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights guarantees the right to seek, receive, and impart information. This phrase has been construed to include a right of freedom of information.
- Article 9 of the African Union (AU) Convention on Preventing and Combating Corruption, a treaty signed by 40 of the 53 members of the AU, says, "Each State Party shall adopt such legislation and other measures to give effect to the right of access to any information that is required to assist in the fight against corruption and related offenses."
- The Organization of American States, the Arab Charter on Human Rights, and many other treaties, conventions, agreements, and declarations recognize freedom of information as a fundamental human right.

But the reality often falls short of the rhetoric. Individual nations decide whether and how they will implement these lofty principles. The journalist who sets out to exercise her right to know may find the experience a challenging one.

Freedom of information is a constitutional right in about 80 countries. Sweden's 1766 press law, often considered the first freedom of information act, is part of its constitution, and some older constitutions have been amended to include a right to know. Many developing democracies in Central and Eastern Europe and Latin America include access provisions in their new constitutions. Even when the constitution contains no explicit language, the highest courts in some countries, including Korea, Japan, and Israel, have found a right of access to information implicit in the right of freedom of the press or expression.

More than 70 additional countries have enacted freedom of information statutes. These are well established in Europe and the Americas, less so in Asia, the Middle East, and Africa. But the trend is definitely toward greater transparency in government around the world.

## Freedom of Information Laws

Most freedom of information laws share common principles and characteristics. Many recent examples were influenced by the U.S. federal Freedom of Information Act (FOIA), so we will use that statute as an example.

President Lyndon B. Johnson signed FOIA into law on July 4, 1966. Despite its name, the statute does not actually create a right of access to *information*. Rather, it establishes a presumptive right of access to existing records, in paper or digital form, held by executive branch agencies, departments, regulatory commissions, and government-controlled corporations. These include, for example, the Departments of State, Defense, and Justice, as well as the Federal Bureau of Investigation and the Central Intelligence Agency, among many others. Unlike laws in countries like Ireland, FOIA does not list covered agencies by name, nor does it categorically exclude bodies that handle intelligence and security, as in the United Kingdom. But the U.S. FOIA covers neither the legislative nor judicial branches of government. Access to state and local executive branch agency records are covered by state open-government laws.

In the United States, as in most countries, anyone can make a FOIA request. Neither U.S. citizenship nor residency is required, and access is open to all, not just journalists. Requesters are encouraged to utilize government reading rooms, either brick-and-mortar or virtual, to gain free access to records already released under so-called E-FOIA initiatives or disclosed in response to an earlier FOIA request. They are also invited to contact the agency FOIA officer to discuss informally what types of records may be available before filing a formal access request. In the United States, no special form is necessary to file a FOIA request—just a simple letter, addressed to the pertinent FOIA officer, reasonably describing the records sought. Most agencies are prepared to accept requests in writing or electronically.

Despite the presumption of openness, however, nearly every freedom of information law includes exemptions—categories of records an agency can withhold. The U.S. FOIA has nine exemptions, which, under the terms of the statute and based on guidance from the Department of Justice, should be narrowly construed:

- national security;
- internal agency rules/practices;
- internal agency memoranda (such as working papers, reports, and studies prepared as part of the agency's decision-making process);
- trade secrets;
- records made secret by another federal statute;
- some law enforcement records;
- bank records;

- oil and gas well data;
- records containing information that, if revealed, would constitute an unwarranted invasion of personal privacy.

Most of these exemptions are not mandatory. Agencies may release records if they conclude that the public interest in disclosure outweighs any harm. They must be prepared to justify any exemption and to withhold only the exempt portion of any record while releasing the balance. The necessity of withholding a particular record may evolve over time. In the case of classified records, requesters have the option to appeal to a special review board that will determine whether a previously classified record can now be made public. In some countries, although not in the United States, access laws include specific prohibitions on withholding certain categories of information.

*Above:* U.S. President Barack Obama signed five executive orders on January 21, 2009, requiring staffers to comply with strict new rules on the Freedom of Information Act. In a memo released that day, President Obama wrote: "The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears."

Although the United States does not have an official secrets act of the type found in many other countries, records properly classified in accordance with a presidential executive order can be withheld. In the post-9/11 environment, the practice of classifying information has increased in much of the world. This imposes new obstacles to citizens seeking both intelligence and law enforcement records. And as governments collect more personally identifiable information, agencies frequently invoke the privacy exemptions as grounds to withhold many government records. These exemptions are sometimes vague and difficult to interpret, and the tendency for most records custodians is to withhold the record if there is any doubt.

A requester denied access to a record has a right to appeal. Under FOIA, and in most countries, she begins by seeking an internal review within the agency. This tactic sometimes, but not always, results in release of the records. The next step is to submit the appeal for external review. In the United States, that means filing a lawsuit in a federal district court, with subsequent appeals as necessary through the federal appellate courts and even to the Supreme Court. In other countries, and in some of the individual states in the United States, the requester may appeal to a freedom of information ombudsman, or to an independent tribunal or information commission. Even in those jurisdictions, a final review can be sought in the national courts.

A successful requester may be able to obtain not only the records but attorney's fees, as well. In some U.S. states, and in many countries, courts can impose sanctions on government agencies and employees who willfully withhold records in violation of the law. These

sanctions can include monetary fines and, in rare cases, even a jail sentence if the violation is particularly egregious.

Even where the law requires disclosure, administrative backlogs, lack of resources, or inefficiency may result in delays. Most freedom of information laws set short deadlines for initial responses but allow additional time to handle complex requests. In the United States, the National Security Archive, a private organization that conducts research on access policy, reported in 2007 that the oldest pending FOIA request was 20 years old, although many others are processed far more quickly. Under certain circumstances, as where a journalist demonstrates compelling public interest in immediate release, a requester may be entitled to expedited processing.

Agencies may be authorized to recoup costs from requesters, even if they do not fulfill the entire request. Some countries (although not the United States) assess a filing fee, regardless of the size or scope of the request. Others demand payment for administrative costs, including search time, redaction of exempt information, and copying. Under the U.S. FOIA, certain categories of requesters, including the general public and the press, are entitled to full or partial fee waivers, but commercial requesters (not including the news media) are required to pay all applicable costs, which are determined by the agency according to a fee schedule.

Freedom of information laws create a presumption of public access. FOIA disclosures have empowered journalists to write thousands of stories, some embarrassing to the U.S. government. These range from the revelation of the 1968 massacre at My Lai in Viet Nam to unsanitary conditions

*Above:* U.S. American soldier Ron Ridenhour was largely responsible for uncovering the massacre at My Lai in 1968 by gathering eyewitness accounts and sending letters to 30 members of Congress and to Pentagon officials. Ridenhour later became an investigative journalist.

in food-processing plants; from cost overruns by defense contractors to the most dangerous places to work in the United States. Even features about unidentified flying objects (UFOs) are based on information obtained under the FOIA. All that is required is the persistence to make use of it.

## Access to Court Proceedings

The official activities of the judiciary have a tremendous impact on and are of great interest to the public. And yet, when journalists set out to report on court cases, it may result in an adversarial relationship. Simply put, journalists frequently want to publicize information attorneys and the judge would prefer to keep secret.

Most countries at least tacitly acknowledge that court proceedings should be presumed open to the press and the public, subject to certain limitations. Article 6 of the European Convention on Human Rights provides, in part:

> In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

In common law countries, the Anglo-Saxon tradition since Magna Carta (1297) has presumed that trials would be open in order to protect the rights of the accused and to ensure accountability. In the United States particularly, a line of Supreme Court cases beginning in 1980 has construed broadly both a criminal defendant's Sixth Amendment right to a fair and public trial and the right of press and public under the First Amendment to attend that trial. Many courts recognize a presumed right of access to court documents, as well.

But the Supreme Court also has ruled that a specifically identified state interest can outweigh the presumption of openness. This could include a substantial threat to the criminal defendant's right to a fair trial or a compelling need to protect the privacy of a particular witness or victim during testimony. However, before closing the courtroom, the presiding judge is required to consider whether any alternative will avert the threat and must also establish that closure will be effective. In addition, any closure must be narrowly tailored—as brief in scope and duration as possible.

Some countries, such as Spain and Sweden, among many others, afford similar constitutional guarantees that the administration of justice is to take place in public. However, a separate issue arises concerning limitations on what journalists may report about a pending or ongoing case.

## Prior Restraints and Gag Orders

In the United States, the strong tradition against prior restraints makes it almost impossible to persuade a court to issue a gag order on the press. For the most part, restraining orders are limited to court officials and trial participants. The courts have ruled almost uniformly that dissemination of information pertaining to a case that has been obtained legally by the press cannot be restricted, whether it originated in or out of the courtroom. The Supreme Court ruled in

1976 that a gag order would be permissible only if publication would pose a "clear and present danger" to the conduct of the trial, if the order actually would be effective to alleviate the harm, and if no less drastic means would address the problem. For this reason, journalists in the United States are almost never subjected to gag orders, and they nearly always succeed in challenging those that are imposed.

A rare exception occurred in 2003. Professional basketball player Kobe Bryant was charged with rape and faced trial in Colorado. A court clerk accidentally e-mailed the transcript of a closed pretrial hearing to seven media organizations. The transcript included the name of the alleged victim, information that was secret under the Colorado rape shield law.

Upon discovering the mistake, the presiding judge ordered news organizations to "delete and destroy any copies and not reveal any contents thereof, or be subject to contempt of Court." Although some U.S. legal authority suggests that journalists may defy transparently unconstitutional gag orders, in this case the news organizations immediately appealed the order to the state's highest court. The Colorado Supreme Court ruled that protecting the accuser's privacy and preserving the ability to prosecute future sexual assault cases constituted significant state interests justifying the order. The dissenting justices, noting that the news organizations had broken no law, observed, "It is the responsibility of the government, not the media, to protect information that lies within its control." Ironically, within a short time, even more information, including the alleged victim's last name, was posted on the Internet. The judge released most of the transcripts, and the media dropped their appeal to the U.S. Supreme Court.

By contrast, judges in the United Kingdom and Canada enjoy broad authority to enjoin publication of material that could create a "substantial risk that the course of justice…will be seriously impeded or prejudiced," and to hold in contempt anyone who engages in conduct that tends to "interfere with the course of justice…regardless of intent to do so." As a consequence, from the time a suspect is arrested or charged until sentencing, journalists in these nations may attend the proceedings but are limited in what they may report. In other countries, provisions in either the civil or criminal code specify what types of information may or may not be reported. Common restrictions include the identity of crime victims, familial details in divorce or child custody proceedings, or details about an accused person's past criminal record. In some nations like Sweden, where the law is silent, the journalists' own code of conduct specifies that defendants should not be identified unless "an obvious public interest requires it."

### Cameras in the Courtroom

Courtroom cameras provide greater public access, but they remain a contentious issue in many nations. Coverage of the notorious O.J. Simpson murder trial in 1995 in California continues to influence judges and policymakers around the world. They cite the perceived excesses of that case as proof that cameras undermine the right to a fair trial—even though Simpson was acquitted. Concerns that cameras will disrupt the proceedings, intimidate witnesses, and encourage lawyers to act inappropriately are just a few of the justifications offered to keep electronic media from covering court cases. Nevertheless, cameras continue to be allowed in many U.S. state trial courts and in the highest appeals courts in a variety of countries—though not, as yet, the Supreme Court of the United States. In 2000, a report commissioned by the Inter-

national Criminal Tribunal for Yugoslavia concluded that cameras in the court did not significantly affect the participants' behavior and helped to provide a full and accurate court record. It noted further that cameras can inform the international community about tribunal workings and encourage a transparent and fair system of justice. It suggested that other international judicial proceedings should follow suit.

## The Right to Criticize Government Officials and Public Figures

Journalists report on the activities of government officials and public figures. But, ironically, the more prominent and powerful the individual, the more she may object to criticism. During the course of their careers, many reporters find themselves facing a lawsuit, accusing them of having falsely defamed an individual.

Libel is broadly defined as a false and defamatory statement made to a third party about another individual, with the potential to harm the subject's reputation. In most jurisdictions, an action for libel is a civil case, brought by the individual as a means of recovering monetary damages.

Because the right to reputation is regarded as an important, though not necessarily fundamental, right, international conventions and treaties generally do not reject libel suits as *necessarily* violating the right of freedom of expression and the public's right to know. Article 19 of the International Covenant on Civil and Political Rights, for example, provides that:

> The exercise of rights...carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary…for respect of the rights or *reputations of others* [emphasis added].

The U.S. Supreme Court first grappled with the question of whether the First Amendment to the Constitution applied in libel cases in *New York Times v. Sullivan* (1964). The case arose after the newspaper published a paid editorial advertisement protesting the treatment of civil rights activists by law enforcement personnel in Montgomery, Alabama. Although he was not named in the advertisement, L.B. Sullivan, a city commissioner who supervised the local police, sued, claiming that the advertisement included erroneous statements and that it had defamed him. He was awarded $500,000 in damages.

The U.S. Supreme Court reversed the decision. In the majority opinion by Justice William Brennan, the Court observed, "Debate on public issues should be uninhibited, robust and wide-open," recognizing for the first time that, paradoxically, the First Amendment must protect some false statements in order to encourage truthful speech about matters of public importance. Henceforth, no public official could prevail in a libel case without proving actual malice—that the statement was published "with knowledge that it was false or with reckless disregard of whether it was false or not." In subsequent cases, the Court extended the actual malice test to include libel suits brought by public figures as well.

In cases involving private individuals (not public officials or public figures), the Court permits each state to establish the requisite standard. It acknowledges a legitimate government interest in affording individuals the opportunity to be compensated when published falsehoods harm their reputations. But even then, the Supreme Court requires at a minimum that a plaintiff prove publisher negligence, a standard that affords journalists some leeway for good-faith errors.

Journalists possess a variety of privileges and defenses against libel claims,

even those of non-public figures. Truth, of course, is an absolute defense to libel. The fair report privilege permits reporters to republish without liability government documents, including court filings, that contain libelous allegations, as long as the report of their contents is accurate. Fair comment permits good-faith criticism of individuals involved in matters of public concern, provided it is based on facts that are truthfully stated or otherwise privileged. And, as a matter of First Amendment law, the Court has held that pure opinion—statement that can neither be proven true nor false—is absolutely protected.

The laws of many nations—Canada, Australia, Japan, Thailand, Brazil, and Poland, among them—include variations on these privileges and defenses. Many countries make no distinction between public and private figures, although they may impose stricter standards of proof on plaintiffs who are also government officials. Some countries permit corporations to sue for libel, but many limit those actions to statements damaging to the company's trade or business reputation. Many countries have abolished seditious libel and prohibit government entities from suing for defamatory statements, even though individual officials may be permitted to do so.

Assuming that a plaintiff both pleads and proves the elements of libel, she then typically will seek monetary damages. Although harm to reputation will be presumed in some circumstances, such as when a statement falsely accuses an individual of a crime, in most instances, the plaintiff will be obliged to prove that she actually suffered damage as result of the publication. Many countries allow plaintiffs to recover damages to compensate them for actual out-of-pocket monetary losses, as well as impairment of reputation, loss of standing in the community or profession, or personal humiliation. In addition, where the journalist's conduct is considered outrageous, courts may award punitive damages, designed not to compensate the plaintiff but to punish the media defendant.

In some countries, media defendants may mitigate or reduce their damages by demonstrating that they promptly published a full and fair retraction of the false and defamatory material. In a number of nations, a defendant's offer of amends—a claim that the libel was published innocently—will either nullify the libel action or act as a defense in a subsequent suit.

An alternative to monetary damages is an injunction prohibiting publication of the allegedly libelous material. Courts in the United States and Canada have rejected injunctions as a remedy for libel, finding them to be incompatible with free-expression principles. But many other countries permit them. Courts in India, for example, will sometimes issue pre-publication injunctions, but only if the statement complained of is demonstrably false and only if the plaintiff can demonstrate that immediate injury to person or property is likely to occur. In Italy, not only can prior restraints be obtained, but under Article 321 of the Italian Criminal Code, a court can order the seizure of a defamatory publication.

In many countries, a state prosecutor can bring a criminal libel suit. Many scholars view criminal libel as outdated (its original purpose was to protect the monarchy or aristocracy from criticism or insults). One rationale was to provide a legal alternative for those who might otherwise turn to dueling or vigilantism to seek satisfaction for affronts to their honor or dignity. However unrealistic these threats may be today, even some mature democracies, including the United States, retain criminal libel statutes on their books, although they are rarely used.

In Germany, criminal defamation laws have been defended as necessary to pro-

tect the individual's right to dignity under the Basic Law. Portugal has argued that the state has the duty to protect an individual's reputation. Article 443 of the Belgian Criminal Code permits prosecution for libel, defined as "viciously and publicly attributing to a given person fact, the legal proof of which may not or cannot be established and which is likely to harm that person's honor or to expose that person to public contempt."

However, the European Court of Human Rights has overturned criminal defamation convictions based on Article 10 of the European Convention. In *Lingens v. Austria,* for example, it ruled that a politician who "inevitably and knowingly" opens himself to scrutiny by journalists and the public must be prepared to accept harsh criticism. The court noted that criminal libel convictions have "a chilling effect" on the press and discourage the media from practicing their role as public watchdog. Nevertheless, criminal libel laws have been justified as necessary to protect nascent democracies from damaging criticism. Azerbaijan and the Maldives are just two countries that, in the summer of 2009, prosecuted journalists for defamation.

Some nations apply much looser standards that are less compatible with press freedom. Some jail reporters for erroneously reporting falsehoods about individuals. In many others, *desacato* laws permit criminal prosecution of journalists for insulting or offending the dignity of public officials or institutions. Turkey, for example, has 11 separate insult laws, including one to protect the memory of Mustafa Kemal Ataturk. Expressions of contempt for the president, vice president, or a foreign head of state are punishable by one to five years imprisonment, and/or a fine in Cameroon. A journalist who "dishonors or discredits" another individual can be fined or imprisoned in Argentina. And even France retains the Law of July 29, 1881, on its statute books, permitting the press to be punished for insulting the president, the senate, foreign dignitaries, and the national flag.

By contrast, in the United States, the Supreme Court has said, "There is no such thing as a false idea." In *Gertz v. Robert Welch* (1974), Justice Lewis Powell observed, "However pernicious an opinion may be, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas." In 1988, the Court categorically rejected a cause of action for infliction of emotional distress brought against Larry Flynt's *Hustler* magazine by the Rev. Jerry Falwell. The magazine had published an "advertising parody" depicting the clergyman purportedly describing his first sexual encounter with his mother in an outhouse while both were intoxicated. The publication included a disclaimer that the parody was fiction, "not to be taken seriously."

Falwell sued Flynt for libel, invasion of privacy, and intentional infliction of emotional distress. Although Falwell lost on the first two claims, the jury ruled in his favor on the third. An appellate court upheld this verdict, but a unanimous Supreme Court reversed. Citing the long American tradition of robust and caustic political commentary, Supreme Court Chief Justice William Rehnquist rejected Falwell's attempt to impose an "outrageousness" standard that would permit recovery. He wrote, "'Outrageousness' in the area of political and social discourse has an inherent subjectiveness about it which would allow a jury to impose liability on the basis of the jurors' tastes or views, or…their dislike of a particular expression." Absent a showing that a false statement of fact was made with actual malice, Rehnquist wrote, a public figure must tolerate such attacks, in order to give adequate "breathing space" to the freedoms protected by the First Amendment.

## The Right to Gather and Publish Newsworthy Information About Individuals

In 1890, two Boston lawyers, Louis Brandeis and Samuel Warren, published an article in the *Harvard Law Review* entitled "The Right to Privacy." They observed that:

> The press is overstepping in every direction the obvious bounds of propriety and decency. Gossip is no longer the resource of the idle and vicious, but has become a trade, which is pursued with industry as well as effrontery. To satisfy a prurient taste the details of sexual relations are spread broadcast on the columns of the daily papers. To occupy the indolent, column upon column is filled with idle gossip, which can only be procured by intrusion upon the domestic circle. …When personal gossip attains the dignity of print, and crowds the space available for matters of real interest to the community, what wonder that the ignorant and thoughtless mistake its relative importance.

The lawyers' prescient observations eventually led to the recognition of a common law right to privacy in the United States. Their concerns seem remarkably timely more than 100 years later.

Privacy rights are enshrined in a number of international legal documents. Article 17 of the International Covenant on Civil and Political Rights says, "No one shall be subjected to arbitrary or unlawful interference with privacy, family, home or correspondence," and Article 8(1) of the European Convention similarly guarantees "the right to respect for his private and family life, his home and his correspondence."

***Above:*** After *Hustler* owner Larry Flynt, left, published a lewd parody of Virginia televangelist Rev. Jerry Falwell, right, Falwell sued Flynt for libel. The case reached the U.S. Supreme Court where Chief Justice William Rehnquist wrote that Falwell, as a public figure, must tolerate such attacks in order to give sufficient "breathing space" to the freedoms protected by the First Amendment.

On the national level, privacy rights may be guaranteed by the constitution, by statute, or by common law. Article 5 of the Constitution of Brazil, for example, declares, "The private life of an individual is natural and inviolable." The Danish Criminal Code guarantees the right to privacy by making it an offense to trespass into private homes, to access private papers, to use mechanical devices to eavesdrop, to photograph or spy on individuals when on private property, to communicate someone else's private facts to another person, or to intrude on another's solitude after having been warned to leave him alone. Germany guarantees "the right of personality" in its Basic Law. And the right of privacy is guaranteed in South Africa both in Section 14 of the constitution and by common law.

Courts in the United States, however, were slow to recognize a right to privacy. Although the Supreme Court has interpreted the Fourth Amendment of the U.S. Constitution to protect individuals from unreasonable searches and seizures, as well as other unwarranted intrusions by government agents, the amendment applies to the government and not to actions by other individuals. With the exception of a handful of federal statutes that prohibit certain types of electronic interception of private communications, U.S. privacy law is almost exclusively the province of the 50 states.

By 1960, the American legal scholar William Prosser had identified four distinct privacy torts:

- intrusion on seclusion;
- publication of private facts;
- depiction of another in a false light;
- misappropriation or commercial use of another's name or image.

Some arise from common law. Others are statutory. Not every jurisdiction recognizes all four torts. But each is designed to provide a remedy to an individual based not on his external reputation, as in libel, but on his own sense of violation of self. Many countries recognize some or all of them.

Intrusion on seclusion most commonly arises in the context of news gathering. It includes not only physical trespass into another's private space but also eavesdropping, tape recording, or otherwise intercepting private conversations without permission. Although the Supreme Court once observed, "Without some protection for seeking out the news, freedom of the press would be eviscerated," the high court has never exempted journalists from generally applicable laws that prohibit intrusion. The use of hidden cameras, for example, is unlawful in some states, and the Supreme Court let stand a Florida ruling that statutes prohibiting the use of concealed tape recorders do not violate the First Amendment rights of the press.

In most, but not all, jurisdictions, journalists are free to record or photograph anything they can observe in a public place. However, there are exceptions. Scottish author J. K. Rowling, of Harry Potter fame, successfully sued for invasion of privacy on behalf of her young son after she was photographed on an Edinburgh street while pushing him in a stroller. A young Canadian woman recovered damages from a Montreal magazine that had photographed her sitting on a door stoop after, she claimed, her friends made fun of her. Even though she was in public at the time the picture was taken, the Supreme Court of Canada found that her right to control the use of her image in the media was guaranteed by the privacy clause in the Quebec human rights charter.

The publication of private facts tort presents a free-expression dilemma because it permits legal action to be brought against journalists who have published the truth. Nevertheless, many countries recognize some version of this tort. The

United States construes it narrowly, limiting actions to publication of intimate facts highly offensive to a reasonable person and of no legitimate public concern. A public figure or public official will probably be held to have a diminished expectation of privacy.

The challenge for any journalist is to determine whether a court would deem a particular fact newsworthy. A news organization's decision to publish information does not necessarily mean that it is of public concern. One also must distinguish between issues that are of legitimate public interest and connecting those issues with individuals. For example, when the British tabloid newspaper The *Daily Mirror* published photographs of Naomi Campbell leaving a Narcotics Anonymous meeting, the supermodel was able to recover damages for invasion of privacy. The House of Lords concluded that although the general topic of substance abuse was a matter of public concern, Campbell's addiction and treatment were not.

A more extreme example involved Princess Caroline von Hannover of Monaco, who claimed that publication of photographs depicting her going about ordinary activities, including horseback riding, shopping, and skiing, violated her privacy under German law. The German courts rejected her claims, but in 2004, the European Court of Human Rights upheld them, finding that her rights as guaranteed by Article 8 of the European Convention on Human Rights had been violated. The court acknowledged that Von Hannover is a public figure but ruled the photographs involved no matter of general concern:

> A fundamental distinction must be made between reporting facts—even controversial ones—capable of contributing to a debate in a democratic society relating to politicians in the exercise of their functions, for example, and reporting details of the private life of an individual who, moreover, as in this case, does not exercise official functions. While in the former case the press exercises its vital role of "watchdog" in a democracy by contributing to impart[ing] information and ideas on matters of public interest,…it does not do so in the latter case.

Broadly speaking, however, information that is in the public domain—for example, details that can be obtained from public records or proceedings—cannot be the basis of an invasion of privacy suit for publication of private facts. In 1989, the U.S. Supreme Court ruled that the victim of a sexual assault could not sue a newspaper that included her name as part of a criminal incident roundup. Even though Florida, the state in which she resided, prohibited news organizations from publishing the names of rape victims, the high court found that because the newspaper had obtained the information legally—from a police report form that had been inadvertently made available in the sheriff's department press room—it could not be held liable for accurately reporting the information. Similarly, individuals who consent to the release of information, or who affirmatively disclose it themselves, generally cannot complain if it is published.

The tort of false-light invasion of privacy is something of a legal anomaly and is not universally embraced. A few countries, such as Hungary and South Africa, allow actions for publication of false and misleading information, but only about two-thirds of American states recognize the tort. Similar to libel, false light allows individuals to sue for depictions that imply inaccurate, but not necessarily defamatory, facts. These may arise in the context of embellishment or fictionalization, such as in a docudrama or other

dramatization of a true story. But many false-light cases arise from the publication of photographs or videotape coupled with misleading captions, headlines, or stories. For example, in 2002, an actor whose photograph appeared on the cover of *Playgirl* successfully sued the magazine in federal court in California by arguing that the combination of the picture and the headlines created the false impression that nude photographs of him appeared inside.

Appropriation of an individual's name or image for commercial purposes is regarded in many jurisdictions as essentially a proprietary right, comparable to trademark or copyright. Others consider it an extension of the right of personality. As an Irish Law Reform Commission report put it:

> Where the person does not consent to such use of the photograph, she or he may feel offended and embarrassed simply because they dislike publicity or because they dislike being associated with the product. In such cases, the protected interest is not necessarily proprietary or commercial. It is human dignity.

China, Australia, Austria, Canada, Germany, and France are among the countries recognizing some variation of this tort. In Italy, Article 41(2) of the constitution permits individuals to commercially exploit the image of another person, as long as consent is first obtained. In the United States, the tort is limited to unauthorized uses in advertisements or product endorsement. For example, the Texas appropriation statute, (known as the Buddy Holly Act because it was enacted in response to exploitation of the deceased singer's name and image,) specifically exempts any use in a play, book, film, radio program, magazine or newspaper article, political material, or work of art. Parodies or satirical works are also protected.

## Limits on Government Licensing of Journalists and News Organizations

Mandatory licensing of reporters has been justified as a means of ensuring that only qualified individuals engage in journalism and of keeping professional standards high. Some international organizations have advocated licensing to protect journalists from government harassment or harm. But when a government asserts authority to determine who can and cannot cover the news, it claims, says Leonard Sussman of Freedom House, "a license to censor." The lack of a license can provide the pretext for arresting journalists or expelling them from a country, and regimes can arbitrarily withhold licenses from reporters whose work they wish to suppress. As the 1980 International Commission for the Study of Communication Problems, also known as the MacBride Commission report to UNESCO, concluded, "Licensing schemes might well lead to restrictive regulations governing the conduct of journalists; in effect, protection would be granted only to those journalists who had earned official approval." In 1985, the Inter-American Court of Human Rights ruled a Costa Rican journalist-licensing statute contrary to the American Convention on Human Rights and, by extension, all human rights conventions, "insofar as it denied some persons access to the full use of the news media as a means of expressing themselves or imparting information."

Mandatory membership, certification, or educational requirements can prevent individuals from gathering and disseminating information and deprive others of the opportunity to receive it. Principle 8 of the Declaration of Chapultepec draws the logical conclusion: "The membership of journalists in guilds, their affiliation to professional and trade associations and the affiliation of the media with

business groups must be strictly voluntary." Mandatory licensing or affiliation requirements for journalists remain in place in many countries in Africa, Asia, and the Middle East. Although in June 2009, the Supreme Court in Brazil abolished a legal regulation requiring a university degree and membership in a union, nine Latin American countries continue to impose some requirements. And in Zimbabwe, journalists challenged the establishment of a media accreditation authority empowered to assess licensing fees, which the journalists claimed were grossly unreasonable and restrictive of freedom of expression.

Licensing conditions news organization operations upon government approval. It affords another means of controlling the press and promoting self-censorship. Article 10 of the European Convention on Human Rights guarantees freedom from "interference by public authority" but has never been interpreted to prohibit licensing requirements. Nevertheless, licensing requirements can, under some circumstances, also be viewed as censorship and, accordingly, as incompatible with freedom of expression.

## Additional Government Regulation

In many jurisdictions, the government's power to regulate content differs between print and broadcast media. In the United States, the First Amendment is held to prohibit any government licensing of newspapers and magazines, but the Federal Communications Commission (FCC) has exclusive authority to license use of the electromagnetic spectrum, which is regarded as a scarce public resource. As the Supreme Court observed in 1969:

> Where there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write or publish. …It would be strange if the First Amendment, aimed at protecting and furthering communications, prevented the Government from making radio communication possible by requiring licenses to broadcast and by limiting the number of licenses so as not to overcrowd the spectrum.

U.S. law authorizes FCC control over some aspects of broadcast station ownership. It may prohibit the concentration of many outlets in the hands of a single entity or limit cross-ownership, where one company controls multiple media platforms in a single market. Nevertheless, the FCC's jurisdiction over broadcasters' content decisions is subject to the First Amendment, and in recent years has been limited primarily to regulating indecency and to requiring broadcasters to provide equal opportunities for opposing candidates for public office to appear on the airwaves during the period immediately preceding an election.

The fairness doctrine, which required broadcast licensees to report on controversial issues of public importance in their communities and to provide responsible representatives of opposing views a reasonable opportunity to reply, was repealed by the FCC in 1987. At that time, the commission concluded that because of the explosion of new media outlets, the doctrine was no longer necessary to serve the public interest in receiving "diverse and antagonistic sources of information." The commission added that:

> The intrusion by government into the content of programming occasioned by the enforcement of doctrine unnecessarily restricts the journalistic freedom of broadcasters …and actually inhibits the presen-

> tation of controversial issues of public importance to the detriment of the public and in degradation of the editorial prerogatives of broadcast journalists.

Taxation, too, presents issues. Tax laws that apply to all for-profit corporations are generally acceptable, while those singling out the news media for special obligations often are deemed unconstitutional prior restraints on speech. By the same token, restrictions on the international circulation of news media products violate both Article 10 of the European Convention on Human Rights and Article 19 of the International Covenant on Civil and Political Rights, which guarantee the free flow of information and ideas "regardless of frontiers."

An extensive discussion of licensing and regulatory schemes is beyond the scope of this book. In general, it is legitimate to require news organizations to abide by corporate laws and regulations of general applicability (such as registering the names and addresses of those legally responsible for the organization's operations). Any government regulation of media operations or content decisions should be transparent; subject to public scrutiny, participation, and oversight; and no more extensive than necessary to promote identified public interests.

## Only Narrow and Carefully Tailored Restrictions on Indecent or Obscene Speech

Probably the biggest challenge to evaluating government controls on indecent or obscene speech is defining the terms "indecent" and "obscene." The United Kingdom's Obscene Publications Act of 1959 (as amended), for example, provides that material shall be deemed obscene if "the effect…is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it." The late U.S. Supreme Court Justice Potter Stewart, when asked to define obscenity, famously observed, "I know it when I see it."

In most countries, publishing or distributing obscene materials is a criminal offense. Prior restraints on their distribution are often considered constitutional. Many laws seek to protect children from both exploitation and exposure to pornographic materials. However, national and international freedom of expression guarantees generally protect the access rights of consenting adults, except for certain specific categories. In Germany, the criminal code prohibits distribution of pornography that depicts abuse of children. In Sweden, some images of sexual violence can be banned. Child pornography, whether or not legally obscene, enjoys no constitutional protection in the United States. Many countries forbid the sales of any pornography to those under age 18.

In mature democracies, obscenity laws usually raise no significant concerns for mainstream news organizations. But in some countries, outdated statutes still recognize offenses like "conspiracy to corrupt public morals" or "outraging public decency." Vaguely worded laws may proscribe indecent or obscene material without defining it, or they may lack qualifying language like that adopted by the U.S. Supreme Court in 1973, which limited obscenity to those works that, "taken as a whole, lack serious literary, artistic, political or scientific value." In these situations, journalists may run afoul of the laws if they publish sexually explicit, but newsworthy, material. Or the obscenity laws may be used as a pretext to censor other material. For example, in Vietnam, the government claims that it filters out Internet access only to sexually explicit material. Yet a 2007 report by the Internet watchdog group OpenNet Initiative found instead that pornography remains rela-

tively unfettered, while religious and political sites critical of the government routinely are blocked.

Even in the United States, the Supreme Court has upheld greater restrictions on the broadcast of indecent material that would be constitutionally protected speech in the print media, on the ground that the pervasive nature of the broadcast medium makes its programming uniquely accessible to children.

The best approach to regulating obscenity is a focused one. Laws should define with precision what is being banned. That way, all parties are on notice of what is impermissible. Laws should distinguish materials that are offensive but not demonstrably harmful. Content that has redeeming social, political, scientific, or artistic value should be protected. Any government body authorized to classify or restrict distribution of obscene or indecent material or to impose sanctions on publishers should operate transparently and follow clearly articulated standards.


FRASER

# Self-Regulation In Lieu of Litigation

*No freeman shall be arrested, or detained in prison or deprived of his freehold, or outlawed, or banished, or in any way molested; and we will not set forth against him nor send against him, unless by the lawful judgment of his peers and by the law of the land.*

Magna Carta
Runnymede, England
**June, 1215**

# Self-Regulation In Lieu of Litigation

**Journalists and news organizations make mistakes. Courts offer aggrieved individuals remedies. Lawsuits for libel, invasion of privacy, breach of confidence, copyright violation, and infliction of emotional distress are just a few types of civil action one can bring against the press.**

But lawsuits take time, cost money, and often do not afford a plaintiff satisfactory results. For example, in the United States, constitutional protections in libel cases are so strong that some trials never reach the point of adjudicating the underlying allegation's truth. By contrast, legal standards favoring libel plaintiffs turned the United Kingdom into the "libel capital of the world" in the 1990s and first years of the 21st century, with individuals of many nationalities filing suit in London against foreign publications that they claimed defamed them. But in May 2010, the newly elected coalition government vowed to "review and reform libel laws to protect freedom of speech, reduce costs, and discourage libel tourism."

The right to free expression often collides with other competing interests. Sometimes there is no legal remedy for types of journalistic misconduct that can upset readers and viewers. A courtroom is often not the best place to resolve disputes about balance, fairness, and accuracy. And there is always the risk that harsh judicial remedies, even those imposed when the underlying case involves journalistic misconduct, will inhibit the future free and open publication of controversial views.

Self-regulatory mechanisms offer a valuable alternative.

## Ombudsmen

Also known as "readers' representatives" or "public editors," ombudsmen act as liaisons between a news organization's staff and the public. Typically, they field complaints, investigating alleged ethical breaches. They encourage staff to respond to readers' questions, and they explain how and why news organizations make their decisions. They may write a column, or they may simply handle complaints on an individual basis. Even though ombudsmen are generally paid by the news organization, they should be assured autonomy and independence.

## Press Councils

Press councils, which typically operate as tribunals that consider and adjudicate complaints about media conduct, can take many forms. Some are legislatively mandated. Many are funded by the news media. Others are underwritten by charitable

foundations or nongovernmental organizations, multilateral organizations such as UNESCO, or even voluntary contributions from the public. Still others are affiliated with universities. A few receive support from governmental entities but operate independently.

Press councils can have national, regional, or local jurisdiction. The members of the tribunal usually include representatives of the press and of the public, including academics, and, sometimes, of the government. Those who choose to submit their complaints to a press council for resolution are usually obliged to waive any right to pursue a law suit. Council staff screens complaints and submits those of potential merit for adjudication under council procedures. A typical model features an open hearing before the tribunal. Both the complainant and the news organization have the right to appear. After the presentations, questions, and deliberations, the tribunal issues a ruling. Some news councils require member news organizations to publish the rulings involving them; for others, publication is voluntary.

## Codes of Ethics

Most associations of journalists, and many individual news organizations, have adopted codes of ethics. Terms vary. Some codes are binding, and violation of a provision can lead to dismissal by an employer or expulsion from a professional journalism society. But most codes of ethics, instead, offer voluntary guidelines to help journalists make morally and professionally sound decisions. Codes thus encourage greater accountability to readers and viewers.

Some codes of ethics are extremely detailed. Others offer more general principles. A good example is the Code of Ethics for the Society of Professional Journalists (SPJ), the largest voluntary association of U.S. news reporters and editors. Its code encourages journalists to abide by four core principles:

- Seek truth and report it: Journalists should be honest, fair and courageous in gathering, reporting and interpreting information.
- Minimize harm: Ethical journalists treat sources, subjects and colleagues as human beings deserving of respect.
- Act independently: Journalists should be free of obligation to any interest other than the public's right to know.
- Be accountable: Journalists are accountable to their readers, listeners, viewers and each other.

By its own terms, the SPJ code is a *voluntary* guide to ethical behavior. It states: "The code is intended not as a set of 'rules' but as a guide for ethical decision-making. It is not—nor can it be under the First Amendment—legally enforceable."

The SPJ has a National Ethics Committee, consisting of members from throughout the United States with a special interest and expertise in ethics. Although the committee does not adjudicate specific complaints, it does provide guidance and opinions to journalists and members of the public.

*A responsible press is an undoubtedly desirable goal, but press responsibility is not mandated by the Constitution and like many other virtues it cannot be legislated.*

Chief Justice Warren Burger
*Supreme Court of the United States*
***Miami Herald Publishing Co. v. Tornillo 418 U.S. 241*** (1974)

# The Responsibilities of Journalists

**In August 2009, a court in Amsterdam ruled that the Associated Press (AP) violated the Dutch royal family's privacy by distributing photographs taken of them on a skiing holiday in Argentina. The presiding judge prohibited further dissemination or sale of four of the photos. She found that the pictures were taken during "a private vacation" and depicted "private activities." "The right to respect the personal sphere weighs more heavily than the right to freedom of expression," the judge wrote.**

Taking the photographs was legal under Argentine law. But the judge cited a 2005 media code drawn up by the Royal House with the assistance of the Netherlands Government Information Service (RVD), requiring the Dutch news media to refrain from photographing them except during official functions or designated "media moments." Although she acknowledged that the code "cannot be regarded as a binding agreement," the judge nevertheless invoked it as the basis to threaten AP with a fine of up to 50,000 euros for any future distribution of the photos.

The AP had argued that royalty's public actions are of public concern. It predicted the ruling "would have the unfortunate effect of unduly restraining the exercise of freedom of information globally." Reporters Sans Frontières (Reporters Without Borders) denounced both the ruling and the media code, contending that the system established by the code "reduces the media to PR agencies." But the judge concluded that publication of the photos served no public interest and that, in this particular case, "The right to respect the personal sphere weighs more heavily than the right to freedom of expression."

This story represents the responsible journalist's worst nightmare. A nonbinding journalistic code of conduct became the basis to stop an international news agency from publishing photographs of public figures that had been taken legally.

It does not always happen that way, of course. Many individual media organizations and journalists' associations voluntarily adopt codes or standards of practice. These serve not as grounds to restrict press freedom but, instead, as guideposts to help journalists determine the best way to do their jobs. As the preamble to the Code of Ethics of the U.S.-based Society of Professional Journalists says, "Professional integrity is the cornerstone of a journalist's credibility.".

## Is Journalism a "Profession"?

The term "code" is usually associated with a profession. But whether jour-

*Above:* Was privacy a more important right than freedom of the press? A court in Amsterdam ruled that the AP photographers violated the Dutch royal family's privacy by distributing photos taken of them during a skiing holiday in Argentina.

nalism is a profession is a hotly contested question. In many countries, the answer is "no." Traditionally, a profession is an occupation with formal qualifications, requiring specialized training and licensing, and subject to a regulatory body with the authority to admit and discipline members. Lawyers, physicians, and members of the clergy are regarded as professionals throughout the world. So are architects, engineers, dentists, pharmacists, and accountants.

Journalists are sometimes subjected to similar requirements. Some countries require reporters to complete a particular training or university program. Others mandate their guild or union membership or compel them to hold a government-issued license.

Most free-expression advocates oppose mandatory credentialing schemes. However well-intentioned, they argue, these impose barriers to participation and can exclude individuals who represent unpopular or minority viewpoints. Licensing circumscribes freedom of expression and undermines the public's right to receive information from diverse sources.

Ideally, then, journalism codes of ethics will be aspirational rather than legally enforceable by the state. The former might allow a member news organization to discharge an individual reporter who violates the code. But even then, nothing would stop that reporter from seeking another job elsewhere or prevent another organization from hiring her. No court or licensing board could rule that reporter ineligible to practice journalism.

## Ethics and Standards: More Questions Than Answers

Ethics codes aim not to impose legally enforceable standards but, instead, to offer journalists a framework to help them decide what to report and how to report it. No code of ethics can answer every question, and good ones probably raise more questions than they answer. Reasonable people, even journalists them-

selves, may disagree about how a specific ethical standard should apply in a particular situation.

- For example, should a journalist lampoon a name or image sacred to a particular ethnic or religious group? This is perfectly legal in many countries. But does it contribute to robust public discussion or, instead, foment hatred and promote conflict?
- Should the press publish classified information, especially where government claims that doing so will damage its efforts to protect the public? Would this be the act of an independent government watchdog or of one needlessly endangering public health and safety?
- Should a television station air graphic footage of military conflict, including scenes of violence and death? Would this convey to the public the reality of war? Or, instead, undermine morale and needlessly distress surviving family members?

Readers and viewers may not agree with every choice a news organization makes. But ethical standards and guidelines can offer guidance toward thoughtful and defensible solutions.

## Seeking Truth: The First Principle

Most journalism codes emphasize that telling the truth—being accurate—is essential. "Seek truth and report it" is the first core principle of the Society of Professional Journalists Code of Ethics. The British Editors' Code of Practice also lists accuracy as its first principle and states, "The press must take care not to publish inaccurate, misleading or distorted information, including pictures." The one universal ethical principle may be simply this: A journalist never knowingly publishes a falsehood.

This is not always an easy standard to uphold. Of course, a journalist should


***Above:*** In 1971, the *New York Times* published the *Pentagon Papers* despite government claims that doing so would endanger national security. The U.S. Supreme Court ruled that constitutional guarantees of a free press overrode other considerations, and allowed further publication.

make every effort to verify a story before reporting it. But facts that alter original perceptions may only be learned over time, after publication. Here, a responsible news organization publishes a correction or clarification as quickly as possible.

News organizations should take great care to assure that headlines, teasers, sound bites, or quotations are not only accurate but do not oversimplify the facts or take them out of context. Photographs, audio, and video may need to be cropped or edited to address considerations of space or time but not in a way that misleads or misrepresents. The staging of photos or reenactments of news events should be avoided or, where absolutely necessary, clearly labeled.

Obviously journalists should not fabricate the news, nor should they plagiarize—that is, copy without attribution—another person's work. They should not make up quotations, nor reprint a news story prepared by someone else without first obtaining permission to do so.

## Sources

A reporter, it is said, is only as good as her sources. Knowledgeable ones enhance a journalist's news-gathering ability and help her publish more information.

But journalists must be cautious and determine that a source is credible. This includes ascertaining a source's point of view or what his "agenda" might be. Ideally, reporters should consult multiple sources to obtain diverse perspectives on a subject. And they should make every effort to verify the accuracy of a source's information whenever possible.

What about anonymous sourcing, the practice of attributing a fact to an unnamed source? It is preferable that all sources be "on the record" and that facts not be linked to "administration sources" or some other imprecise formulation. Sources who stand behind their word are more likely to tell the truth. Attributing information to a named source also helps the reader or viewer evaluate independently the credibility of the source.

But sometimes a source has valid reasons to request, or demand, that his identity be kept secret. When possible, a journalist should resist making this promise. But it won't always be possible. Some news organizations require that an editor approve any promise of confidentiality. Although this can frustrate a reporter, the policy makes sense. When an unattributed piece of information is published, the news organization's reputation is at stake along with that of the individual reporter.

Reporters should be very clear about their promises. Phrases like "off the record" and "on background" mean different things to different people. Journalist and source should agree on the terms governing the news organization's use of information.

Once a promise is made, it must be kept. As the British Code of Practice says, "Journalists have a moral obligation to protect confidential sources of information." Should the journalist be called to testify in court about her information, keeping that promise can put the journalist at risk of being held in contempt in nations that do not recognize a legal privilege for journalists. Any reporter must be clear with the source exactly how far he is prepared to go to keep that promise.

## Surreptitious and Undercover Reporting Techniques

Journalists should avoid deceptive reporting techniques, like using hidden cameras, tape recorders, and microphones, or assuming a false identity. In some jurisdictions, they are illegal. But equally important, they can undermine credibility. Readers and viewers often won't believe that a reporter who essentially lied in order to get a story will tell

the truth when he reports it. Generally speaking, a journalist should identify herself as a member of the news media and make clear that she may use whatever she learns in a story.

Nevertheless, there are times when a story can be obtained only through subterfuge. Journalists and their news organizations should reserve these techniques for the rare occasion when conventional methods will not work and, only then, when a compelling public interest demands it. News media should then explain their methods when the story is published or broadcast.

## Objectivity in the News

Journalists in the United States strive to achieve objectivity. This model has been criticized in recent years. Some question whether objectivity is desirable. They suggest that true objectivity essentially has no moral compass and treats all facts and all viewpoints as equally deserving of respect.

Professor Michael Bugeja, director of the School of Journalism at Iowa State University, disagrees. "Objectivity is not a synonym for truth," he writes, "but the process through which we seek to attain it." No one approaches any story with complete objectivity. As a reporter begins researching, it is likely that she will have a definite bias toward at least some aspects of the story. But the goal is to set aside those presumptions and prejudices and to move forward with a healthy skepticism.

Suppose a suspect has been arrested and charged with a crime. In many countries, an accused person enjoys a presumption of innocence until tried and convicted. Yet law enforcement personnel often want to convince the public that the person in custody really is the perpetrator of a crime and will encourage news media reporting of information that strengthens their case. The objective journalist will, of course, report what the authorities say. But, to the extent the law permits, she also should seek independently to verify the accuracy of the information and to search for credible conflicting information from other reliable sources. She should resist simply parroting the theories of the authorities as if they are proven fact.

## Encouraging Diversity of Views

In many countries, a partisan press is the norm. Readers and viewers in these nations may expect that a news organization will approach topics from its own particular point of view and select the subjects that it covers accordingly. They also know that competing news organizations may advocate different perspectives. This can be consistent with journalism ethics but only if the news organization distinguishes between advocacy and reporting. Opinion columns and editorial commentary should be clearly labeled and should neither distort nor falsify the facts that underlie the opinion.

Journalists should seek out diverse voices and afford competing and, even unpopular, views an opportunity to be heard. They should support freedom of speech for all. News organizations should provide a forum for robust debate on issues vital to their community. Letters to the editor and online readers' comments are two ways to encourage public participation. But news organizations also should make every effort to keep the discussion civil and to discourage the dissemination of falsehoods or pejorative attacks on others.

## Respect for the Individual

The second tenet of the SPJ Code of Ethics is to "Minimize harm…treat sources, subjects and colleagues as human beings deserving of respect." This principle recognizes that a responsible journalist sometimes unavoidably will harm someone but requires her to make every effort to minimize that damage. The SPJ code, like

many similar codes, exhorts the journalist to show compassion for those who will be affected by news coverage, especially when they become the subject of attention through no fault of their own.

Crime victims, the relatives of public figures and celebrities, children, and other vulnerable individuals should be treated with sensitivity. Journalists should consider carefully whether there is a genuinely newsworthy reason to report on them at all.

Intrusive news-gathering techniques can cause harm. Persistence is appropriate, but aggressive tactics will not be justified in every case. Although they may be legal, making repeated telephone calls, following a person on the street, taking multiple photographs, or remaining on private property after having been asked to leave may cause distress. Even the most public person is entitled to some zone of privacy, and only an overriding public interest justifies intrusion into individuals' private lives.

On the other hand, there can be good and valid reasons to report information that a news subject would prefer to keep secret. A public official may wish to keep secret details of an extramarital affair. But if public funds or other resources are used to support the affair, they become a matter of legitimate public interest. Similarly, crime victims often prefer that their identity remain confidential, and a news organization may agree, at least in the case of children or sexual assault victims. But in many countries, a crime victim plays the role of accuser in a criminal prosecution. Although an alleged victim's credibility might be a legitimate issue to explore—and one of some importance to the criminal defendant—journalists should not pander to prurient tastes by publicizing sensational facts that are not a matter of public interest. The news media should balance the rights and interests of both victims and criminal defendants with the right of the public to be informed.

## Cultural Sensitivity

Journalists should not reinforce stereotypes. The practice is intellectually lazy and can lead to misperceptions and inaccuracy. They should consider carefully whether it is necessary to identify an individual by race, religion, sexual orientation, or similar characteristic. Gender-neutral language is often appropriate.

Reporters should remember and be sensitive to different cultural traditions. For example, adherents of some religions forbid or strongly discourage photographing individuals. Journalists should respect their preferences, unless there is a compelling reason to do otherwise.

On the other hand, "cultural values" sometimes is a cloak for censorship. Repressive regimes may cite social values when their real intent is to restrict freedom of expression and to silence dissenting views. The ethical journalist should challenge attempts to suppress the truth, whatever justification is offered.

## The Independent Journalist

The journalist's highest loyalty should be to the public. This means avoiding conflicts of interest that could compromise her ability to act independently and to inform the public free from other influences and considerations.

Journalists should avoid accepting gifts, fees, tickets, travel, or other goods or services from news sources. Review copies of books, music, or movies should be donated to charity unless there is a journalistic reason to retain them as a resource for future reporting. Be wary of travel junkets that are little more than thinly disguised attempts to persuade reporters to write enthusiastically about a particular destination or subject. News organizations should pay their own way when sending staff to cover sporting or cultural events.

If this is not possible, a disclaimer should be included in the story.

Journalists should not endorse products in return for compensation, and they should keep separate the editorial and advertising sides of the news business. Advertisers must not influence favorable coverage or suppress negative reporting. Any advertisement should be clearly labeled so there is no possibility of confusing an ad with news reporting or commentary.

Memberships in clubs, associations, political parties, or religious organizations can create a conflict of interest for a journalist. Some news organizations prohibit certain kinds of political or philanthropic activities, such as running for political office or volunteering with an advocacy group. Most forbid journalists to report on organizations with which they, or close family members, are affiliated. Although an editor at the *Washington Post* even abstained from voting in elections, individuals obviously do not surrender their civil rights when they choose to become journalists. But it is important to remember that affiliations can be interpreted as bias. If a conflict of interest is unavoidable, it should be disclosed.

Many news organizations have special rules for reporters and commentators who cover business and financial topics. Laws forbidding insider trading (buying and selling stocks and other equities when one possesses nonpublic knowledge that may affect the stock price) may apply. Journalists should not write about companies in which they own stock or have some other financial interest, particularly if their reporting might influence the market and benefit them personally. They should disclose to their editors the financial instruments they and their families own and refrain from trading stocks within a short time of writing about them.

Just as journalists should not take payments intended to influence news coverage, they should not offer bribes or payments to news subjects. To the outside observer, news that has been "bought and paid for" is suspect. In certain situations, such as when a source is asked to travel to a particular location to appear on a radio or television program, it may be appropriate to reimburse her reasonable expenses, including meals, travel, and lodging. But "checkbook journalism" and bidding for news should be avoided.

### Ethical Issues When Covering Government

Reporting on government raises particularly difficult challenges. The public generally expects journalists to act as watchdogs, guarding against improper government behavior. But what about when law enforcement officials ask reporters not to report the details of an ongoing hostage situation, for example? Should journalists cooperate? If they do not, lives may be endangered. But if they do, they may compromise their own ability to hold government accountable.

During war, crisis, or emergency, journalists may feel conflicting loyalties. The pressure to be patriotic can be great. Or a newly elected government may claim that it cannot afford a completely free press and will urge journalists to write favorably as a way to help solidify a fragile and emerging democracy. Sometimes journalists are asked to report propaganda as truth in the interest of protecting "national security."

When editorial decisions conflict with government wishes, news organizations can be criticized for substituting their own judgment for that of elected officials. This can arise when the government claims that there is a compelling need for secrecy about intelligence and law enforcement matters. On the other hand, journalists may also be condemned for withholding information or accused of delaying publication for partisan reasons.

These are difficult calls. The answers are not always easy. One guiding principle is that a journalist's loyalty is to the public,

not to a particular government or regime. No journalist wants to harm his community or country. But governments may be tempted to suppress critical reporting by claiming it could damage public safety or national security. Reporters can respect these claims, but they should also be skeptical. They can give government officials an opportunity to explain why a particular story might endanger lives or a specific national interest. But journalists should scrutinize those in power and hold them to account. Sometimes, the most patriotic thing a journalist can do is question authority.

## Being Accountable to the Public

An important part of a journalist's job is to hold those in positions of authority accountable to the public. News organizations have a similar ethical obligation of accountability.

The news media are more transparent than many businesses because their work product is constantly available for scrutiny. Journalists regularly critique and challenge each other's work. And in most countries, the consumer has many news choices and can reject those whose standards fall short.

That said, most news organizations can do more to be accessible to the public. If business or political affiliations influence their editorial choices, they should be disclosed. Did a merchant who advertises heavily in a newspaper, for instance, request favorable news coverage? Media should explain how they make editorial decisions, especially controversial ones. Deviations from usual ethical standards should be explained. News organizations should invite readers to comment and encourage them to raise concerns and complaints. Ideally, a dedicated, impartial staff member should address these complaints.

All news organizations make mistakes. They should strive to minimize these by establishing fact-checking procedures throughout the editorial process. But when errors do occur, they should be acknowledged promptly and corrected prominently.

## Special Ethics Issues Raised by New Media and Citizen Journalism

Most, if not all, traditional media's ethical guidelines make sense for citizen journalists, bloggers, and other new media practitioners. But those who publish in cyberspace face additional challenges.

Bloggers, unlike mainstream journalists, often publish anonymously or use a pseudonym. In some societies, those holding controversial or dissenting views withhold their identity as a matter of personal safety. But those who speak anonymously still have an ethical obligation to be truthful, accurate, and as transparent as possible about conflicts of interest.

Many bloggers encourage readers to engage in the discussion and to add comments to their sites. They may invite user-generated content and post it on their blogs. They may link to external sites. And they may excerpt others' work for the purpose of commentary and criticism.

All these techniques add vitality to a blog. But bloggers should consider whether they will attempt to verify links and to moderate postings made by others, as well as whether they will establish policies for certain content types, such as sexually explicit video or personal attacks. It is wise to post these policies prominently and to apply them consistently.

### Using Social Media

Many journalists, both traditional and new media practitioners, are turning to social media, such as Facebook, Orkut, and MySpace, or tapping into YouTube or other sites that allow individuals to post content. These media can provide story ideas and useful leads. They can even allow a journalist to interact with a community or to promote a journalism "brand" by encouraging readers to visit a news organization's Web site.


***Above:*** Social media raises new questions for journalists. Facebook CEO Mark Zuckerberg delivered the keynote address at an internet conference in San Francisco on April 21, 2010.

But social media pose new challenges for the ethical journalist. Verifying postings can be difficult. Reporters should make clear when they utilize social media sites as the basis for a story. They should exercise special caution when using information concerning minors, which could damage someone's reputation, or when using information that someone else claims to own—such as a trade secret. The laws of libel, privacy, and copyright still apply in cyberspace.

Some news organizations have adopted ethics policies for their employees' use of social media. Dow Jones, publisher of the *Wall Street Journal,* discourages its reporters from expressing personal or partisan viewpoints on their personal Facebook pages or from discussing developing stories that have not yet appeared in the newspaper. Some organizations recommend that a reporter maintain separate professional and personal Facebook pages. Journalists should remember that friending a confidential source on Facebook may reveal that source's identity to the world. They also should recall that decisions to friend or to join a fan page may be construed as evidence of bias.

Finally, nothing on Facebook or similar sites is really *private.* Once something has been posted to the social media, there is really no way to take it back or to stop others from using it in whatever way they choose.

## Conclusion

Many journalists believe they should not have to justify their role as government watchdogs and as conduits of public information. Surely, they think, modern recognition that freedom of expression is a fundamental right has already settled all that. Therefore, some journalists think that they must have the legal right to be wrong—sometimes.

But journalists' own ethical standards can be more stringent than legal ones. They encourage journalists to examine their motivations, their methods, and their work product. They encourage reporters and editors to ask tough questions about how they make decisions. And these ethical precepts invite journalists both to consider other perspectives and to contemplate how their decisions affect others.

Adopting and applying ethics principles can seem daunting. But they help journalists do the best job possible. They provide a mandate to act independently—even courageously—when seeking and pursuing truth.

*Everyone is in favor of free speech. Hardly a day passes without its being extolled, but some people's idea of it is that they are free to say whatever they like, but if anyone says anything back, that is an outrage.*

Sir Winston Churchill
*British Prime Minister*
**Speech, House of Commons—1943**

# New Media, Citizen Journalists, and Bloggers

**The freewheeling world of the blogosphere seems like the last bastion of truly free speech. One does not need a lot of money, an expensive printing press, or a transmitter tower. Anybody with access to a computer, a modem, and a little software can share his thoughts with the world through a weblog, or blog. And many of the intensely personal and highly opinionated weblogs proliferating on the Internet inhabit a world apart from the sometimes-dreary realm of meticulously sourced and fact-checked traditional journalism. Bloggers are a law unto themselves. Or are they?**

## Balancing Free Speech and Competing Internet Interests

From the early days of popular use of the Internet, the rallying cry was that cyberspace was the new frontier, subject to no law. But governments around the world, shaken by the implications of the new communication technology, have tried to figure out how to harness and control its use.

Gaining access to the Internet can be the first hurdle. A 2007 report by the Internet watchdog group OpenNet Initiative showed that attempts to censor the Web are spreading and growing more sophisticated. Saudi Arabia, to offer one example, uses filtering software to block everything from sites classified as pornography or gambling to religious conversion sites and sites critical of the Saudi monarchy. China has been criticized for a combination of Internet control measures, including filtering software, requiring users and Internet cafes to purchase licenses, and banning Internet cafes.

In the United States, Congress, state legislatures, and the courts have struggled to balance free speech on the Internet against competing interests, like national security, copyright protection, and the right to reputation. In its landmark *Reno v. ACLU* (American Civil Liberties Union) decision (1997), the U.S. Supreme Court extended to communications on the World Wide Web the same First Amendment protections covering newspapers or other print media. Cyberspace, the Court ruled, is neither a "scarce expressive commodity," like the broadcast spectrum used by radio and television broadcasters, nor an invasive one that enters "an individual's home or appears on one's computer screen unbidden." With neither of these historical justifications for government licensing and control applicable, Justice John Paul Stevens wrote for the

majority, "The interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship."

The Reno decision means that Internet-based communication receives the highest level of constitutional protection, including many judicial rulings defining the scope of the First Amendment. Prior restraints are presumed unconstitutional. Successful libel suits require proof of publisher fault, even if a plaintiff proves the challenged statement false. Most invasion of privacy suits will be rejected if the publisher can demonstrate that the subject of its story was newsworthy. Copyright violations may be excused if the publication constitutes fair use.

One need not be a recognized journalist to invoke these protections. As far back as 1972, the U.S. Supreme Court said, "Liberty of the press is the right of the lonely pamphleteer…as much as of the large metropolitan publisher."

So bloggers have First Amendment protections. They may have statutory protection as well. Existing laws protecting reporters' confidential sources might or might not apply to a blogger, depending on the language of the statute or the court addressing the issue. Although some laws limit coverage to full-time employees of for-profit traditional news media, many are expansive, covering anyone who engages in gathering information and disseminating it to a wide audience. A California court ruled that the state shield law protected the identities of bloggers who revealed Apple Computer's trade secrets. Their publications, the court ruled, constituted "news." But shortly thereafter, a federal court in the same state refused to acknowledge that blogger and self-described anarchist Josh Wolf was a journalist because he was not "connected with or employed by" a news organization.

U.S. courts have interpreted broadly Section 230 of the Communications Decency Act, which immunizes providers of "interactive computer services" (ISPs) from defamation claims arising from third-party content. Courts have extended this protection to those who operate Web sites and listservs, even if they exercise some editorial control over that material. The same analysis logically would apply to blogs.

## Holding Bloggers Accountable

So does that mean that bloggers are free to upload whatever they want, with no fear of being sued?

Absolutely not. Whatever immunity may exist for links to third-party sites or to postings submitted by readers, a blog publisher can still be sued for any material he writes himself. During the course of litigation, the blogger could face a protracted examination of his news-gathering techniques. Did he attempt to verify the accuracy of the story, or did he simply repeat an unsubstantiated rumor? Did he rely on anonymous sources? Did he, in other words, act negligently or with reckless disregard for the truth? If a court finds that he did, he may lose the suit.

In most countries, libel suits can be grounded only in false statements of fact. No one can be sued for statements of pure opinion that can be proven neither true nor false. But many blogs are a robust mixture of idiosyncratic opinion and unsupported allegation. It can be hard to distinguish between the two when invoking an opinion privilege, which requires showing that the underlying factual statements on which the opinion is based are true.

U.S. legal protections end at the border but the Internet does not. A blogger in the United States can brandish the First Amendment and Section 230 all she wants, but a foreign court has no obligation to pay any attention. Those courts will, for the most part, apply their own

laws. Although traditional journalists long have faced lawsuits and even criminal prosecutions in other countries where their work product is distributed, it may surprise bloggers to learn they are vulnerable to suit anywhere their words are read.

The Australian High Court so ruled in 2002, when it allowed "Diamond Joe" Gutnick to file a libel suit. An Australian national, Gutnick claimed that an article published online by U.S.-based *Barron's* magazine defamed him. When Gutnick showed that a handful of readers in his hometown of Melbourne downloaded the story, the court allowed him to file a libel suit there. The chief justice wrote, "[T]hose who post information on the World Wide Web do so knowing that [it] is available to all and sundry without any geographic restriction."

Libel lawsuits are not all that bloggers need worry about. Statutes in many countries make it an offense, or even a crime, to "insult" or "offend the dignity" of someone, even if the criticism is absolutely true. For example, in 2008, blogger Raja Petra Kamarudin, editor of the Web site Malaysia Today, was arrested and detained on charges of violating Malaysia's Internal Security Act by criticizing Islam.

Many countries enforce mandatory rights of reply, which compel publication of responses by individuals and corporations who claim they have been the subject of inaccurate reports. In 2006, the European Parliament adopted a Council of Europe recommendation to extend these rights of reply to online media, including any "service available to the public containing frequently updated and edited

***Above:*** Australian philanthropist "Diamond Joe" Gutnick (left) sued U.S.-based *Barron's* magazine in 2002 for defaming him in an article posted online. Even though the alleged defaming article was published in the United States, the Australian High Court decided any article available online can be considered published wherever it is read, thus granting Gutnick the right to sue in Melbourne.

information of public interest." That sounds like a typical weblog.

Many bloggers already take these steps. They update their blogs, often print retractions or modifications to erroneous postings, and freely publish responses from disgruntled readers. They claim that laws are not required to make them act responsibly. But there is a big difference between making an editorial choice because you believe it enhances your credibility and doing so under compulsion of law.

In addition, many bloggers engage anonymously in vituperative online commentary. Under Section 230, an ISP can be compelled to reveal an individual's identity if a judge concludes that a plaintiff has made a valid libel claim. Here, ISP includes newspapers and other media, who could be forced to unmask readers posting anonymous comments on their Web sites, leaving the posters vulnerable to retaliation or retribution.

## Protecting Privacy and Copyright

Invasion of privacy presents special challenges in cyberspace. Digital technology facilitates news gathering. In theory, digitizing government records should create an unprecedented opportunity for citizen access and oversight. But many judges and legislators, driven by fear that access will facilitate identity theft, employment discrimination, or other illegal conduct, instead curtail access to electronic files.

Judges also express discomfort at the prospect of someone from a distant location, with no legitimate interest in the local community, surfing through court or real estate records and publishing them online. They fear that bloggers do little except spread rumors, violate copyright laws, and identify sexual assault victims, all the while hiding behind the anonymity that the Web permits. They worry that citizen journalists with cellphone cameras and recorders will invade courtrooms and post trial footage online, a practice they find both disruptive and undignified. Gatekeepers often support access to government records and proceedings in the abstract; once access becomes cheap and easy, they may question its wisdom. Information, they think, is too valuable, or dangerous, to be online.

For example, in September 2008, a California trial judge forbade the *Orange County Register* to report "by all means and manner of communication, whether in person, electronic, through audio or video recording, or print medium" testimony by any witness appearing in a class action wage-and-hour suit brought by its newspaper carriers. He concluded this injunction was necessary to prevent future witnesses from being influenced by others' testimony.

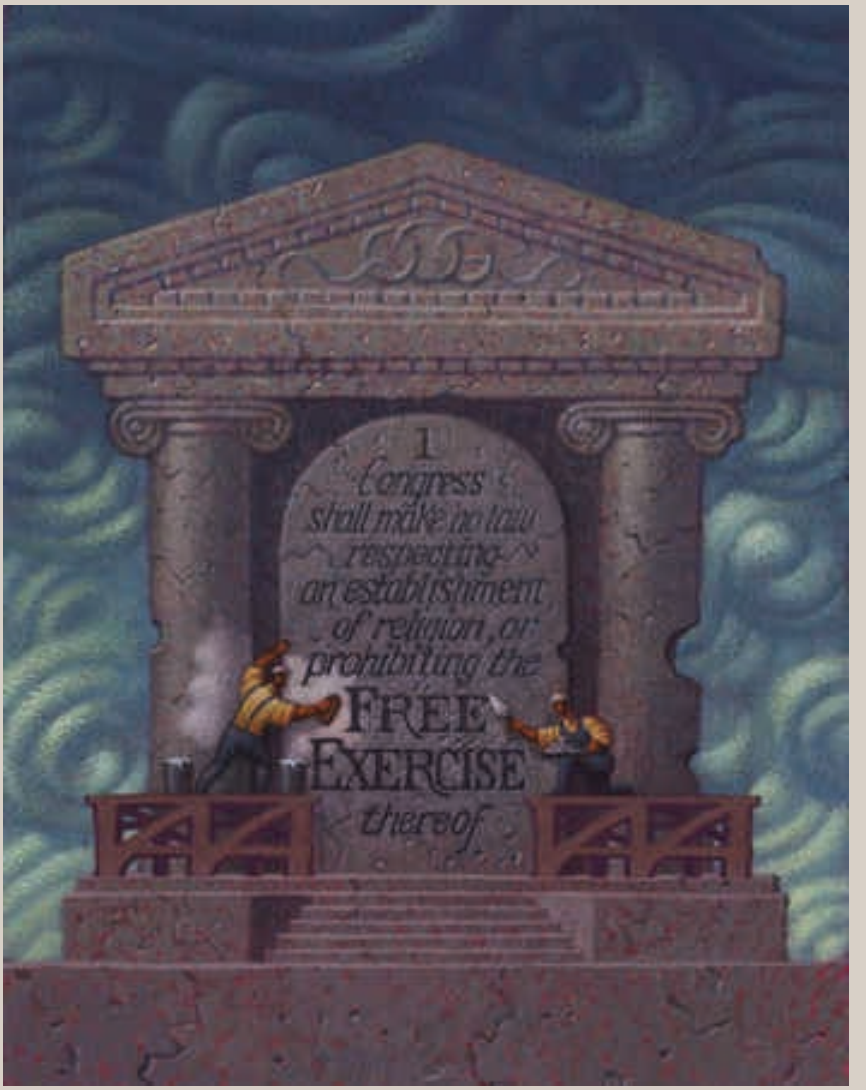
An appellate panel eventually overturned this order. It ruled that the risk that news reports might influence witnesses was insufficient to justify censorship. Other, less intrusive alternatives, such as admonishing witnesses not to read the paper, would accomplish the same goal. But the pervasiveness of the online media had convinced the trial judge to overlook nearly 70 years of precedent outlawing similar prior restraints.

Copyright law presents separate challenges. The owners of intellectual property have always possessed the legal right to demand that violators "cease and desist" publishing and distributing infringing works. But the Internet makes copying others' work without permission easier than ever before. Should the telephone company or other ISP be liable when one of its customers uses their connection illegally to post a copy of an .mp3 file for download? The U.S. Digital Millennium Copyright Act (DMCA), enacted in 1998, was designed to address this situation without also stifling protected speech. The statute's "safe harbor" provision protects ISPs from liability if, upon receiving no-

tice that infringing material has been posted, they "expeditiously" remove it.

The problem is that a prudent ISP will choose to take down the content and leave the subscriber and copyright owner to sort out their respective rights. To facilitate the process, the DMCA permits copyright holders to use "administrative subpoenas" to compel the ISP to disclose the subscriber's identity. Although these are supposed to be issued only to curtail infringing activity, the risk is that subpoenas might improperly be used to circumvent the well-established First Amendment principles protecting the right to engage in anonymous speech.

The emergence of the Internet as a significant communications technology and publication platform for journalists creates new legal complications. But the governing principles should remain constant. They should not depend on whether a journalist works for the mainstream media or publishes a blog. Judges and legislators should follow the principles that have long protected the press and the public's right to know, regardless of affiliation or platform.




*Without an unfettered press, without liberty of speech, all the outward forms and structures of free institutions are a sham… if the press is not free, if speech is not independent and untrammeled; if the mind is shackled or made impotent through fear, it makes no difference under what form of government you live, you are a subject and not a citizen.*

William E. Borah
*United States Senator*
**Speech in the Senate—April 19, 1917**

# Free Exchange of Information and Enhancing Civil Society

**Courageous journalists all over the world have risked their livelihood, and even their lives, to report the news and to bring accurate information to the public in the face of repressive governments and other significant obstacles. But journalism thrives best where the rule of law is respected. A free press is best protected through a national constitution or by statutory or common law. However formalized, the law should, at a minimum, protect the news media from censorship and guarantee reporters access to information.**

"Freedom of the press" is not just a slogan. Nor is it only for journalists. The right to receive and impart information is a universal one. But while a system of generally applicable laws benefits everyone, special-interest legislation that singles out the news media for protection or provides the press with special rights is less desirable because it invites *de facto* licensing of the press. It can also create a false sense of confidence. Protection a legislature grants today can be withdrawn tomorrow.

And that's the paradox. The "rule of law," however defined, protects everyone, including the press. But, of course, *bad* laws can also be enacted, and even the best law can be repealed or struck down. That's one of the reasons why some journalists are reluctant to lobby, even for legislation that might benefit them, like shield laws.

Governments change. But public support for a free press should be constant because citizens are the ultimate beneficiary. A free press enhances the public's right to know by encouraging the free exchange of information. Protecting it requires a national commitment, by government and the public alike. The result is a stronger civil society for all.

Once strong legal protections are enacted, an independent judiciary is essential to ensure they are applied and enforced equitably. No matter how clear the text of the law, confusion and conflicts may occur. When they do, the judicial branch's interpretation of the law can be decisive. Judges who appreciate the importance of a free press are the best assurance that it will be protected.

## Advocacy Resources

In this section, we consider some organizations that work to strengthen and enact laws that guarantee and strengthen freedom of the press.

### Article XIX

http://www.article19.org

Established in 1986, this human rights organization is named for the Universal Declaration of Human Rights provision that guarantees the rights of freedom of expression and opinion. Article XIX is based in London, England. It lobbies and litigates internationally to promote these universal rights.

This NGO develops networks to raise awareness about and to improve monitoring of threats to freedom of expression. It provides legal training for other organizations, journalists, and government officials. It drafts model legislation, including freedom of information laws, and provides a searchable database of legal opinions and other resources. Its periodic reports call international attention to laws and actions that restrict freedom of information and expression. It denounces attacks on individual journalists and the institutional press alike. Among its many accomplishments, Article XIX convened the group of international law and human rights experts who adopted the Johannesburg Principles on National Security, Freedom of Expression and Access to Information in 1995.

### Canadian Journalists for Free Expression (CJFE)

http://www.cjfe.org/

Originally established as a project of the Centre for Investigative Journalism in Canada in 1981, CJFE advocates freedom of expression throughout the world. It conducts media training in developing countries, including Indonesia and Thailand, and has worked to rebuild key parts of the media in Sierra Leone after the conclusion of the civil war there.

CJFE manages the International Freedom of Expression eXchange (IFEX) Clearing House, a virtual network of 88 organizations that monitors the state of free expression around the world and transmits that information to more than 120 countries. IFEX provides daily Action Alerts by country and region and a weekly *Communique.*

### Central European and Eurasian Law Initiative (CEELI)

http://abarol.ge/about_ceeli.html

A project of the American Bar Association, CEELI was founded in 1990. Its mission is to provide technical legal assistance to increase professionalism among judges and lawyers in Central and Eastern Europe and the former Soviet Union. The group maintains a training institute in Prague and a number of volunteer legal liaisons.

Among its goals are promoting accountability and increased awareness of international human rights standards, combating corruption, and increasing public transparency and accountability.

### Center for International Media Assistance (CIMA)

http://cima.ned.org/

An initiative of the National Endowment for Democracy, a private nonprofit organization, CIMA supports programs that assist the media throughout the world. It convenes working groups, holds events, maintains a database of media assistance resources, and conducts research. It has established a network of media practitioners and experts through the Global Forum for Media Development. CIMA is funded through a grant from the U.S. Department of State.

### Chapultepec Project

http://www.declaraciondechapulte pec.org/

The Chapultepec Project began in 1994 as a special undertaking of the Inter-American Press Association, a membership organization of more than 1,300 newspapers and magazines located throughout the Americas. Although its original mission was to increase public understand-

ing of the importance of press freedom in civil society, the project has expanded to include sponsoring a series of international conferences with representatives of all three branches of government. These conferences have been instrumental in curtailing insult laws in several countries. The Chapultepec Project has submitted friend-of-the-court briefs before the Inter-American Commission on Human Rights on behalf of journalists in three cases, and it has sent missions and held emergency forums to protest legislation that would curtail press freedom.

It published *Press Freedom and the Law* (1999), the first comparative study of laws related to press freedom in the Americas, and is undertaking a new initiative on the internal issues media organizations face and the values that should guide them.

### Citizen Media Law Project (CMLP)

http://www.citmedialaw.org

Based at the Berkman Center for Internet & Society at Harvard Law School in Cambridge, Massachusetts, CMLP provides legal assistance, education, and resources to individuals involved in online and "citizen" media. It also files friend-of-the-court briefs in appellate cases. CMLP's Web site provides a variety of legal guides, as well as a "threats database" that outlines current and pending legal cases involving online media.

CMLP has organized a network of lawyers and academics interested in representing individuals facing lawsuits arising from online journalism activities. It is affiliated with the Center for Citizen Media at Arizona State University.

### Committee to Protect Journalists (CPJ)

http://www.cpj.org

A group of foreign correspondents from the United States created CPJ in 1981. Based in New York, but with a network of consultants in more than 120 countries, this NGO conducts its own research into press harassment. It publishes articles, news releases, special reports, and *Attacks on the Press,* an annual global survey of press freedom. It intervenes when local or foreign correspondents are threatened, and it provides advice to journalists on dangerous assignments.

CPJ's campaigns have worked successfully to secure the release of journalists imprisoned in Iran, including Maziar Bahari, *Newsweek's* Tehran correspondent, and freelancers Roxana Saberi and Iason Athanasiadis.

### Electronic Frontier Foundation (EFF)

http://www.eff.org

A non-governmental organization, EFF was founded in 1990 with offices in Washington, D.C., and San Francisco. It defends free speech, privacy, innovation, and consumer rights online. It has litigated many cases in U.S. courts and, through its Action Center, educates the public, mobilizes citizen responses to legislation, and provides advice to policymakers. Although much of its work is domestic, EFF also fights for digital rights around the world, and in July 2009, it published *A Practical Guide to Internet Technology for Political Activists in Repressive Regimes.*

### Freedom House

www.freedomhouse.org

Eleanor Roosevelt and Wendell Willkie, the 1940 U.S. presidential candidate, were the first honorary co-chairs of Freedom House, which was founded in 1941 and is headquartered in Washington, D.C. It publishes a wide variety of annual surveys, including *Freedom of the Press* and *Freedom in the World,* an annual report on journalistic independence throughout the world.

Freedom House advocates globally for human rights and democracy. It works directly with democratic reformers in Cen-

tral Asia, Central and Eastern Europe, the Middle East, Africa, Latin America, and the former Soviet Union to provide training, policy briefs, and support.

The World Press Freedom Committee (WPFC) (http://www.wpfc.org), a consortium of 44 press freedom groups from throughout the world based in Northern Virginia, merged with Freedom House in 2009. The WPFC has monitored press freedom developments at international organizations, such as UNESCO, and published authoritative studies, particularly on insult laws, for more than 30 years.

Freedom House Europe serves as Freedom House's primary European office. It is based in Budapest, Hungary (http://www.freedomhouse.hu/).

### Index on Censorship

http://www.indexoncensorship.org

Originally founded as a magazine in 1972 by a group of London-based writers and journalists, Index on Censorship is an NGO that promotes freedom of expression. It works with grassroots organizations to facilitate and promote this goal. In 2009, it launched projects in Tunisia, Afghanistan, Pakistan, Iraq, and Burma. It also supports the creation of new journalistic and artistic works and is undertaking a youth outreach program.

Index on Censorship's Web site is a resource for current worldwide news on freedom of expression.

### International Center for Journalists (ICFJ)

http://icfj.org/

A non-profit organization based in Washington, D.C., ICFJ provides hands-on training to journalists in more than 176 countries through workshops, seminars, fellowships, and international exchanges. It operates the International Journalists' Network, IJNet (http://www.ijnet.org/), which connects journalists with opportunities to obtain media training and other assistance.

### International Media Lawyers Association (IMLA)

http://www.internationalmedialawyers.org

The IMLA is a worldwide network of media lawyers that serves as a clearinghouse for sharing information, strategies, and expertise on media law and press freedom. Based at Oxford University in England, it facilitates communication between public interest lawyers around the world who work to promote freedom of expression. IMLA also conducts training sessions for media lawyers and policymakers.

### International Press Institute (IPI)

www.freemedia.at

This Vienna, Austria-based NGO traces its history to 1950. It works to promote and protect freedom of expression. Its *Death Watch* publication tracks journalists and media staff who have been directly targeted for practicing journalism, and IPI recounts the stories of individual journalists through its *Justice Denied Campaign*. IPI conducts independent research into the state of press freedom around the world, and its Watch List monitors governments whose official actions threaten media independence.

IPI has sent advocacy and fact-finding missions to Bangladesh, Nepal, Sri Lanka, and other countries.

### International Senior Lawyers Project (ISLP)

http://www.islp.org

Launched in June 2001, the organization applies the skills of soon-to-be retired or retired attorneys to the legal and legislative issues in the developing world, press freedom and access to information among them. Based in New York, with offices in Washington, D.C. and Paris, ISLP's volunteers have worked primarily in Eastern Europe, Russia, and India, but the group's mandate is global.

Among many other projects, ISLP's lawyer volunteers have convened a con-

ference that explored China's role in establishing global Internet norms and standards, provided legal briefings arguing that the Sierra Leone criminal libel law violates that country's constitution, and worked with the Center for Journalism in Extreme Situations to help that group improve its advocacy on behalf of journalists facing defamation and related legal charges in the former Soviet Union. In 2008 and 2009, ISLP provided advice on draft freedom of information and press laws in Yemen.

### International Research & Exchanges Board (IREX)

http://www.irex.org/

Founded in 1968, IREX is a Washington, D.C.-based international NGO that works to strengthen independent media and improve the political environment for journalists. Together with its partner, IREX Europe, based in Lyon, France (http://www.europe.irex.org), IREX organizes media training programs and provides expert consultation to local partners that help support and advance civil society development in more than 100 countries. For example, it empowered local groups to lobby for change to the media laws in Slovakia and in Bulgaria. IREX's *Media Sustainability Index* evaluates and quantifies conditions for independent media in 76 countries.

### Open Society Institute and Soros Foundations Network

http://www.soros.org

This New York-based private foundation was established in 1993 by investor and philanthropist George Soros. It provides monetary grants designed to strengthen civil society. Through the Open Society Justice Initiative (OSJI), it promotes legal reform and litigates a range of human rights cases, including freedom of information and expression. It also conducts studies, including a notable 2006 survey of government responses to freedom of information requests. This study concluded that more recently adopted laws actually work better than those in some older democracies. The OSJI cites its role as a "friend of the court" in *Claude v. Chile,* a case argued before the Inter-American Court of Human Rights, as a factor that led to Chile's adoption of a freedom of information act in April 2009 (http://www.soros.org/initiatives/justice/litigation/chile).

### Privacy International (PI)

http://www.privacyinternational.org

Established in 1990 by a coalition of more than 100 privacy experts and human rights organizations from 40 countries, Privacy International conducts research and sponsors programs on threats to personal privacy. Based in London, PI monitors government surveillance activities and studies the implications of cross-border information flows. This NGO publishes a wide variety of books and reports, including an annual international *Freedom of Information Survey.* It reviews proposed legislation, particularly in developing democracies such as Albania, Moldova, and Croatia, and has studied how counterterrorism measures affect freedom of the press and the rights of journalists to protect their sources.

### Radio Television Digital News Association (RTDNA)

http://www.rtnda.org/

RTDNA (formerly the Radio Television News Directors Association) is the world's largest professional association exclusively serving the electronic news profession. Founded in 1946, it promotes ethics in reporting, freedom of information, and press freedom. It advocates, lobbies, and occasionally litigates on issues affecting the electronic journalism industry in the United States and abroad. Through its foundation, RTDNA spon-

sors workshops and training programs, as well as the RIAS Journalist Exchange in Germany.

### Reporters Committee for Freedom of the Press (RCFP)

http://www.rcfp.org

Founded in 1970, RCFP is an NGO located in Arlington, Virginia, that maintains a 24-hour hotline offering free legal and research assistance to any journalist working in the United States. It lobbies and advocates for press freedom and open government, files friend-of-the-court briefs, and initiates litigation. RFCP also publishes a wide variety of legal guidebooks and handbooks on media and freedom of information law.

### Reporters Without Borders (Reporters Sans Frontières [RSF])

http://www.rsf.org/

Founded in 1985, RSF fights censorship laws and works to improve the safety of journalists, particularly in war zones. It undertakes fact-finding missions and defends reporters who have been imprisoned or persecuted.

Among RSF's many publications is an annual January round-up of press freedom, a "predators of press freedom" list released on World Press Freedom Day (May 3), and the *Worldwide Press Freedom Index* each October.

This NGO has branches in nine countries, as well as offices in Paris, New York, Tokyo, and Washington, D.C., and a network of more than 120 correspondents in other countries.

### Society of Professional Journalists (SPJ)

http://www.spj.org

The largest voluntary association of working journalists in the United States, SPJ lobbies and advocates for press freedom. It files friend-of-the-court briefs, initiates litigation, and speaks out on behalf of endangered journalists in the United States and elsewhere. Thousands of journalists voluntarily embrace the SPJ Code of Ethics, which is frequently cited as the most authoritative statement of media ethics in the United States.

### Ujima Project

http://www.ujima-project.org

A collection of databases, documents, and other information launched in September 2009, the Ujima Project attempts to bring greater transparency to the workings of governments in Africa, particularly those that have no freedom of information laws. It is supported by the Great Lakes Media Institute (http://www.greatlakesmedia.org/), an NGO whose mission is to encourage professional and ethical journalism in Sub-Saharan Africa.

## Additional Resources

In addition to the organizations and Web sites listed above, the following resources offer a wide variety of publications and other resources on media law and ethics:

### Online Resources

#### Center for International Media Ethics

http://www.cimethics.org/

A resource page for journalistic ethics. The Center has an annual conference, provides training and presentations, and publishes a monthly newsletter on ethics in journalism.

#### EthicNet

http://ethicnet.uta.fi/codes_by_country

Collection of codes of journalism ethics organized by country.

#### Media Law Resource Center

http://www.medialaw.org

A non-profit information clearinghouse supported by media organizations and law firms to monitor developments and promote First Amendment rights in the libel, privacy, and related legal fields.

**Organization for Security and Co-operation in Europe (OSCE)**
http://www.osce.org/resources/
The OSCE resources web page including links to materials on Freedom of the Media.

**Organization of News Ombudsmen**
http://newsombudsmen.org/
A website devoted to the concept of the independent, resident ombudsman, a simple and yet effective way of self-regulation for journalists.

**Silha Center for the Study of Media Ethics and Law**
http://www.silha.umn.edu
The Center's primary function is to conduct research in areas where legal and ethical issues converge and to monitor changes in law or in journalistic practice that may result.

**UNESCO**
http://unesdoc.unesco.org/ulis/index.shtml
The Documents and Publications web page provides the search capability to access UNESCO publications.

## Selected recent books

Glasser, Charles J. (ed). *International Libel and Privacy Handbook,* 2nd Edition. New York, NY: Bloomberg Press, 2009.

*The First Amendment Handbook*. Arlington, VA: The Reporters Committee for Freedom of the Press, 2003. http://www.rcfp.org/handbook/index.html

Kittross, John Michael. *An Ethics Trajectory: Visions of Media Past, Present and Yet to Come*. Urbana, IL: University of Illinois/Institute of Communications Research, 2008.

Sterling, Christopher H. *Encyclopedia of Journalism*. Thousand Oaks, CA: Sage Publications, Inc., 2009.

Vile, John R., David L. Hudson Jr. and David Schulz (eds). *Encyclopedia of the First Amendment*. Washington, DC: CQ Press, 2009.

Weisenhaus, Doreen. *Hong Kong Media Law: A Guide for Journalists and Media Professionals*. Hong Kong: Hong Kong University Press, 2007.

Wendell, Carolyn R. *The Right to Offend, Shock or Disturb*. Reston, VA: World Press Freedom Committee, 2009.

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http://www.america.gov/publications/books/learner_english.html