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THE NEW WORLD OF NEWS MEDIA

*David Broder**

Let me begin with a disclaimer that will quickly become a necessity, for it will become very obvious to you. I am not a lawyer. I have never really spent much time studying this interesting subject of journalistic ethics, which some people would describe as a classic oxymoron. I am also not very deep into the new world of the Internet, which is obviously raising many of the most interesting challenges about the relationship of journalism, ethics, and the law. Yet even for an old geezer like myself, business and life are changing, and changing rather dramatically now that we are living in the Internet world.

The *Washington Post* has been putting a great deal of its focus and effort into the development of WashingtonPost.com. We are doing this because we know that there are more people who visit that site every day than read the paper—or at least that buy the paper in its traditional form. Our daily circulation is somewhere in the 800,000s, our Sunday circulation is a bit over a million, but more than a million people regularly visit that web site. It is clearly something that is of importance. The number continues to go up with every new news crisis or sensation, and it never seems to go quite back down to the level that it was before.

So we have begun, just in the last few months, what is in effect a mid-day update of the WashingtonPost.com. And all of the reporters have learned that when we are out on the campaign trail or covering a hearing on the Hill, we try continually to update the stories and give them a fresh look and some fresh substance. I think this change is reflected in a small alteration of the pattern of our daily work at the *Washington Post* and in a much larger way in some of the complicated ethics questions that journalists now face.

I welcome this extraordinary change and development in the news business. Some of you may remember that when A.J. Leibling, a great journalist of the last generation, wrote for the *New Yorker* about the

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subject of the press, his column was appropriately titled *The Wayward Press*. Leibling's remark that became quite famous at the time was, "Freedom of the press is guaranteed only to those who own one." That statement obviously made the point that the cost of everything, to the press as it then existed, was very high. Literally, the cost of a press, a television antenna, or a radio tower was such that very few people could ever aspire to or imagine themselves being, in that sense, an owner of the press. Now, of course, any teenager who has the ability to open up his or her own web site is in effect a publisher and part of the press. Millions of flowers have bloomed in this new media already, and many more will be blooming.

I was on a panel recently at Louisiana State University's journalism school and one of the fellow panelists was Walter Isaacson, the managing editor of *Time*. Walter told a story illustrating how radically this new media has changed society. He said last summer he took an extensive trip through China. At the end of that trip he found himself in the most remote part of that country, literally on the other side of the Gobi Desert—figuratively speaking, at the end of the world. Walter went into a little restaurant in this dusty town and in the back room of the restaurant he noticed a few young people gathered around a computer. He asked his translator what was going on back there and the translator took a quick survey of the young people and then suggested he come back and take a look. They were on the Internet. The first thing he did, of course, was to see what might be available. He punched up *Time*'s web site, and the message came back "access denied." He punched up CNN's web site, and the message came back, "access denied."

Then Walter talked for a few minutes with the Chinese youth. One of the young people said through the translator, "Would you really like to see one of those sites that you were looking for?" The young man sat down at the keyboard for a few moments and—sure enough—there was *Time* and there was CNN. Walter asked, "How did you do that?" He replied, "Well, we know about some links through Hong Kong that they don't know about."

That young Chinese man made the point that once you have this kind of technology, governments that are dependent on controlling the flow of information and ideas as a way of subjugating their people are out of business. There are similar examples—when the Berlin wall came down, and we learned how much people behind that wall had been learning and assimilating through cable television and satellites. But with the Internet, people's access to information is clearly astounding.

At home I think that this development has truly been an enormous blessing and benefit to our country. Part of my job, of course, involves fairly constant travel throughout the country, because my paper happily understands that the only way to cover politics in this country is to be out where politics begins. In some ways Washington is the most parochial city in the world. Major currents of public opinion sometimes wash up on the shores of the Potomac, but they always begin in Little Rock, or Lubbock, or some other place where people are encountering daily the experiences that bring great movements to the fore.

What I found in my travels, particularly in this last decade, is that with the change in the media mix, there has really been a change in the political culture of this country. What I mean by that is that even before the Internet came along we had developed three national newspapers in this country, which we did not have, for all practical purposes, when I started covering this beat forty years ago. Two of them, *The Wall Street Journal* and the *New York Times*, are among the very best newspapers in this country. The third, *USA Today*, is a newspaper that began by thinking that there was some way to imitate television news in print and after discovering that model was not workable, is now making very large and rapid strides toward becoming a serious, quality newspaper.

In addition to those three national newspapers, we have the whole world of cable television now. C-SPAN brings us public affairs events as they happen, sometimes embarrassingly as I have learned. C-SPAN covers not only the actual event, but the chatter that is going on in the room before and after the event—you have to mind your manners when the C-SPAN cameras are around. CNN and MSNBC and all of the others that you are familiar with also cover events as they happen. We now have the resource of National Public Radio, which I personally find one of the greatest blessings in life. With NPR's network of local stations, that organization is as attuned to what is happening in this country as any medium of information that I know. National Public Radio is an incredible service. We have a huge array of magazines. Walter Isaacson's *Time* and other general purpose magazines provide overall news and information, and specialized journals help people satisfy their curiosity about any area of policy or life in which they have a specific interest.

And now, of course, we have web sites and all of the other blessings of the Internet, which means that people can go to a site or search a subject and continue to explore that subject in whatever depth they wish. This is customer controlled news media, not simply a customer responding to the diet that an editor or a journalist has set out.

The result of all of this change is that you can go to a community of any size, anywhere in this country, and discover that there is a self-selected group of people in that community every bit as informed about, and every bit as engaged in, public policy as the people that I would meet if I went around the corner to the offices of American Enterprise or up the street to the Brookings Institution. They know what is going on and they feel and deserve to feel that they are part of that policy debate.

Having said all of that, I have to concede that there are some significant down sides to the changing media world. These problems affect the reputation of the press itself and also bear on the role of lawyers and courts in our country. The most significant of those problems, at least as I have experienced it, is the relative absence of the editing function in these high-speed 24-hour news operations, be they cable or web based. I can see the difference between writing for the old medium, the *Washington Post* that lands on people's doorstep, and writing for the new medium WashingtonPost.com. In the paper *Post* we have wonderful editors who subject the copy that we give to them to pretty searching scrutiny. If you have written a lead that seems a little bit melodramatic to them, they will ask: "Where is the evidence that supports the kind of sweeping language that you put in there?" Or they will look at your draft version and say, "well, now, I read the Associated Press wire," or "I read the *Los Angeles Times* story about this, and they seem to have included some significant things that you have left out." On almost every major story, we engage in a dialogue with our paper's editors who are professionally trained to look for glitches, sloppy reporting, bias, or any other of the many journalistic sins and shortcomings. By contrast, when I bang out six or eight paragraphs on my laptop, and send it over to WashingtonPost.com., they do not have much time to do anything except process it and put it up on the web site.

The 24-hour news operations are similar. I sometimes go over to CNN for *Inside Politics* in the late afternoon. The CNN operation is awesome to me, because of the speed and the flexibility that it requires of the journalists who are part of that operation. Very often, just before the camera light goes on, some eleven or twelve year old will rush in with a new sheet of copy and will put it into wherever it is supposed to be and the anchors will read off whatever has happened. On occasion, because these two people, Bernard Shaw and Judy Woodruff, are really good, serious, professional journalists, after they finish and go to the next commercial break, one of them will say, "Where the hell did that come from?" But by that time, of course, it is out in the ether and has

become, in effect, part of the grist of public information and public opinion.

I do not think, given the reality of this kind of news operation, it is a surprise that during the whole Monica episode many major news organizations—but, thank God, not the *Washington Post*—had to retract stories they had put out on their web sites. When they had a chance to catch their breath and do some checking, they found that the story was perhaps *too* interesting and did not have quite the backup and the veracity that it should have had. One extreme example: Matt Drudge, who became an instant national celebrity during that whole affair, is now engaged in a lawsuit brought by Sidney Blumenthal, a White House aide, who has sued him for libel for saying things about Sidney Blumenthal's personal history that Blumenthal insists are absolutely without foundation.

I think it is almost inevitable that issues that were once handled between reporters and editors nowadays tend to find themselves being litigated between opposing teams of lawyers, because of the incredible pressure of time and its erosion of that editing function. What can be done about this change? Well, the one thing that cannot be done is to roll back the tide of history. We live in a high-speed age. Instant communication is going to be a fact of life. We cannot, even if we wanted to, go back to the days of the packets, or the Pony Express, or the time when major battles were fought, and then two months later the country would learn about it.

I think this means that if we are going to attempt to adapt our behavior to this new technology, it requires that there be more training of people who call themselves journalists. Remember that the definition of who is a journalist, or who is a publisher, has vastly expanded the number of people in that realm. We need more training—all of us—in that new world.

When I grew up in the Chicago area, the point of entry to daily journalism for most young people who wanted careers in that field was an organization called the City News Bureau, which handled the routine of police blotters and court agendas for all of the papers in Chicago. On the wall of the City News Bureau was a sign that was legendary in the business. It said simply, "If you think your mother loves you, check it." A lot of that caution and skepticism that was ingrained in generations of journalists who were trained that way is, I think, frankly missing today. And among other things, that lack of training shows in the lack of caution about judgments that are being made constantly in the new media.

My own feeling is that, among other things, the required training that we need will increase—not diminish—the role of lawyers in journalism programs, in schools, and in newsrooms. I know that it is fashionable, and today almost required, for a journalist to complain about the lawyering of our stories. The tension between the profession of law and the occupation of journalism is something that is supposed to be built in.

I have to tell you that I am aware of that tension. My experience with the *Post* has been quite different from that of journalists in other newsrooms. It is not that the lawyers do not play a role; they play a very significant role in looking over our stories. This fact has been well documented in many of the accounts about Watergate or the Pentagon papers and other major stories that have been developed in our newsroom; often those lawyers have played a cautionary role, talking to the editor or talking to Katharine Graham about the risks that are involved in publishing.

It is also the case, however, that the lawyers that we deal with in our newsroom understand that their fundamental task is to help us find a way to publish what we think we know, not to prevent us from publishing. Among other things, they have gone to court in many notable cases—including the Pentagon papers case, where they joined a *New York Times* attorney. They also fought our own sort of notable battle with a man about whether we had libeled him in saying that he had set up his son in business, a decision that we lost in the district court and won in the court of appeals. Their skills as lawyers have helped expand, not contract, the area in which we can pursue our journalistic missions.

Now, does that mean that we are always going to be on the same side, lawyers and journalists? Clearly it does not. There have been notable areas of conflict, and I expect with this new medium there will be increasing areas of conflict between the press and the bar. It almost always comes up in terms of the question of the freedom of the press versus the constitutional guarantee of a fair trial.

I do not think these problems are with us as much during the actual course of the trial as they used to be. There are still issues about cameras in the courtroom, but by and large, my impression is that the judiciary and the bar have accepted that the press is going to be a presence during the trial. Judges and lawyers also accept the fact that we write stories about the trial as it progresses—even if those are inherently, in a sense, biased by the timetable and the sequencing of testimony in any case. This bias is a problem, I suppose, but I think it

is perhaps more of a problem for the bar than it is for us in the press. For one thing, I note the increasing pattern, at least I believe it's an increasing pattern, of those same lawyers who are arguing a case in court under strict rules of evidence and with a watchful jurist supervising their activities, going out at the end of the day or at midday breaks to the steps of the courthouse and describing their case to the cameras and to the reporters. These lawyers do this in ways that may or may not reflect the reality of what has taken place in the courtroom. We certainly saw a lot of that during the Microsoft case and many other familiar cases. I think that is an issue for the bar, and I frankly do not have any great helpful suggestions as to how the bar ought to deal with that. But the major battle between the press and the bar, I think, arises in the pre-trial period.

Let me be frank with you about a case in which my newspaper was one of the most active, I suppose, protagonists. The whole battle between President Clinton and independent counsel Kenneth Starr became a battle of leaks between the White House on one side, and the office of independent counsel on the other side. Here you have two parts of the same branch of the same government, both executive branch agencies, who literally went to war with each other. One of the major weapons in that was the systematic leaking of information to the press. I would emphasize that it was on both sides, not just on one side. But it put us in the press in the terrible position of carrying water one day for one side, the other day for the other side. And it clearly had some very damaging consequences, at least for a time, for the individual who was the target of that investigation.

That was not, of course, a unique case. Look at what has been going on with the Jon Benet Ramsey case. This is a case where there has not yet been an indictment. Yet the American people have been told all sorts of things that will lead them to believe that this person or that person has been implicated in this terrible case. For another example, look at what happened with Wen Ho Lee, the physicist at Los Alamos Laboratories, who has not yet been indicted for anything. His name, nevertheless, has been spread on the prints and on television as somebody who allegedly gave away secrets to the Chinese about our vital nuclear weapons program. I think it is clear as anything can be that pre-trial publicity can and often does jeopardize an individual's right to a fair trial. And in my view that right to a fair trial is more vital than the public's right to know about a case before it reaches trial.

Now, how do we deal with that, assuming that people in my business accepted that proposition, which obviously not all of them do.

The only way that I can see dealing with that is to acquire a greater sense of self-discipline in the press. However, we are talking about something that is not very easy. When somebody says to you, "There is some information that I have which you might be interested in about this case," the temptation to say, "Tell me, please tell me," is almost overwhelming. But we have to find a way to discipline that inclination within ourselves.

I think that another area in which the role of the press and the law needs much more careful consideration, certainly by us in the press, is the relationship between reporters and legislators. I have been talking the last few weeks about my book, *Democracy Derailed*, which deals with initiative campaigns and some of the concerns that I have developed over the last couple of years on the way in which those campaigns are conducted in our country.

Initiative campaigns are another example of a wonderfully generous and public-spirited reform which worked as the framers of the reform hoped it would work—for a while. However, the process has been, at least in my view, largely subverted by some of the same groups and individuals that made the ballot initiatives necessary to begin with. Money is driving the initiative process in much the same way that money drove the legislature when the reformers brought the initiative here a hundred years ago. The initiative was seen as a way to break the power of those interest groups that had sought control of the legislatures around the country. The initiative movement was driven by the belief that if the people themselves could just vote for laws, surely they would vote for laws that were in the public interest. Good theory, but it is not working quite as well in practice.

As I have been talking about this subject in states such as Oregon, Washington, California, Arizona, and Colorado, where residents have become very familiar with lots of initiatives in recent years, I raised somewhat academic sounding arguments about whether the checks and balances that are part of our constitutional process are or are not missing from the initiative process. At some point in every one of these forums, someone in the audience or some fellow panelist has said to me, "But you don't know our legislature." An interesting question is, if all of these legislatures are as bad as all of these people say, then how do any legislators ever get re-elected?

The reality is that in many of those states, people do not know their legislature. For example, Sacramento, California, has the fifth or sixth largest government in the world, measured by the size of its budget, staff, employees, and all of the rest. There is not a single television

station in the whole state of California, outside of Sacramento, which keeps a full-time correspondent in the state capital. There is no way that the people of California can know their legislature, because it is simply not being reported to them in what is now the single most important medium of public information.

What is true about Sacramento, sadly, is also true of a good many other states where the state capital, for historical reasons, is located somewhere other than the current center of population, and current center of media attention. In Baton Rouge, people there say that the New Orleans coverage of state government is meager. I have heard the same thing about Jefferson City, Missouri and Springfield, Illinois, Madison and Lansing, all of those places where government is an out-of-town story for the big local media, so they basically do not cover it very carefully at all. But even where the coverage of the legislative body is extensive, as is the case with Congress, the way in which the press covers lawmakers contributes to the low repute of politicians and particularly of legislators.

Two things are almost universal in our business. First, we love colorful characters. And we flock to them and make them even larger figures. For example, probably the best known governor in the United States today is Jesse "The Body" Ventura, although he has been in office less time and accomplished less in his state than probably forty other governors. Virtually no one in this country, outside of the state of Maine, knows that there is a highly successful, very effective independent governor in his second term in the state of Maine named Angus King. But he never wrestled, so we tend to ignore the fact that he is there and may have something to tell us about how an independent governor can function with a legislature that is controlled entirely by Democrats and Republicans.

Second, we love conflict. I have said in a different context that reporters are essentially fight promoters. If there is not a good fight going, we will try to get one started. So conflict is the way in which we define what is interesting about a legislative body. When a legislative body is working at its best, of course, it works by consensus. And consensus, in news terms, tends to be very boring. When something happens by consensus in a legislative body it tends to be ignored or it is a one-day story, and then it disappears from the news. However, contentious issues, whether campaign finance, patients' bills of rights, or other current topics, are in the paper day after day after day convincing people that all they do down there in—fill in the

blank—Washington, Springfield, whatever their state capital may be, is fight, bicker, and argue with each other.

An example of this pattern of coverage occurred about a year ago on an issue which I had been interested in for quite some time, job training programs. Congress had been trying since the beginning of the Clinton administration to reach agreement about how to restructure job training programs. There were literally hundreds of them, on which large amounts of money were being spent and which everyone—no matter what their political ideology—believed were not working. The programs were not getting training to people in a fashion that really helped them find a job or move into a better job.

In 1999, for the first time in six years, Congress passed a serious overhaul of job training programs. Now, admittedly, I do not know how it is going to work in practice, but it cannot be worse than what we had, and it conceivably may be better. My paper did a story about three inches long on the fact that it finally passed—mainly because it had passed the House something like 384 to 10, and passed the Senate unanimously. The *New York Times*, the great *New York Times*, the journal of record, did not report that this bill had become law. I thought this was ridiculous. This measure was something that really has the potential to affect lots of people's lives. It was won by the handiwork of two people who are as anonymous as any two legislators you could find. One of them is a senator from Ohio named Mike DeWine, the other is a congressman from California named Buck McKeon. They got zero play in the national press and zero play on television for what they had done.

What I would suggest to you is that this systematic distortion or underestimation of legislative bodies by people in my business also creates problems for the courts. Because the less the people believe that the legislative process is an effective way to move policy in the direction that they want to move it, the more likely they are to resort to litigation to move policy in that direction. We have seen that now on many health and safety issues, such as the whole tobacco litigation. We have seen it increasingly on budgetary issues, where people go to court to tell the state to finance schools in a way that they think they ought to be financed. This litigation places judges in exactly the position where they do not want to be: in the political crosshairs. As you all know, we have had a number of instances in which judges have wound up literally running school systems and prison systems, because that is the arena in which the decision on public policy has finally been made.

In this initiative area which I have been working on the last couple of years there is an even more insidious trend, because it has become virtually automatic now that when a major initiative passes, the losing side goes to court the next day and seeks an injunction or files a brief challenging it on constitutional grounds, sometimes the state constitution, sometimes the federal constitution. I spoke with a number of the judges who had been assigned these cases. I had to be careful quoting them by name because they felt, and I think correctly, that public debate was not something in which they ought to be engaged. I can tell you that they feel extremely at-risk in being in effect the last opposition to something that has already been approved by the majority of the people of the state in which they are sitting. Clearly there is enormous public frustration when, after a great public campaign, a policy decision has been made through the initiative process and the next day a federal judge or a state judge says, "No, you may not do that."

In the case of California Proposition 187, the initiative that ended or would have ended social services for the children of illegal immigrants, members of the California delegation in Congress were outraged that a judge might block that initiative. They introduced legislation which would have stripped a single federal judge of the authority to invalidate a citizen-passed initiative for any reason and said that kind of action could be taken only by a three judge panel. The judges with whom I spoke feel that what comes from this is a growing threat to the independence of the judiciary, and I think they have reason for that fear.

In conclusion, the manner in which we in the press report or distort legislative actions puts a great political burden on the courts, which some judges feel puts those courts and their independence in jeopardy. This pattern is continuing to seriously de-legitimize some of the basic institutions with which we have long governed ourselves. What I think this means is that all of these parties, legislators, judges—and especially us in the press—have to become much more conscious of the implications of the way in which we are working, for this system of law and justice that we enjoy and which has been such a treasure to us for so long.

