

COM 303 | Editing Across Platforms

Doing justice: Ethical and legal issues

Editors can address most ethical issues in a systematic way. Here are ten questions many editors consider when faced with a potential ethical problem:

- **What bothers me about this story or picture?** If you get a queasy feeling, define it. Tone? Lack of balance? Missing facts? Invasion of privacy? Slippery reporting? You may find that the problem is your own bias rather than a problem in the material itself. On the other hand, you may uncover a real shortcoming, and putting it into words will enable you to do something concrete about it.
- **What do my colleagues think?** Newsrooms are full of smart people with diverse points of view. Use them. A book this size could be filled with variations on a single lament from editors who have made a poor ethical decision: “I should have talked it through.”
- **Is the story complete?** Are all sides fairly represented? Is there enough background and context that the audience can evaluate the news intelligently? Remember that if crucial information is left out, a story can be factually accurate without serving the truth.
- **What’s the good? What’s the harm?** Ask what purpose a sensitive story or picture will serve, and measure that against the damage it might do. Consider who is involved, and ask whether they have placed themselves in a position of public trust or responsibility. By entering the public arena, such people must accept a greater degree of scrutiny.
- **Is there a conflict of interest?** Who stands to gain from this information, and why? Challenge stories that serve or promote the news organization itself, advertisers, pet projects, employees and relatives. At the very least, such stories should stand on their own merits and all connections that could pose a conflict of interest should be made clear.
- **Does the story rely on unnamed sources or deception?** These reporting methods are occasionally legitimate, but the importance of the story must clearly justify the means by which the facts were gathered. Be especially wary of unnamed sources who use their anonymity to grind axes or speculate. And *never* run a story that uses deception, surveillance or secrecy in reporting until it has been fully discussed and approved by senior editors.
- **How will my audience react?** You should never kill a story simply because it might make people angry or offend their tastes. On the other hand, your audience should always be *one* consideration among many. Readers’ and viewers’ standards and opinions matter because they are part of the news community to which you belong. If you run the story in question, how will you defend your decision when the critics call tomorrow?
- **Does timing matter?** Not every story has to run right now. Many vexing ethical problems are solved simply by holding a story for a few minutes or hours and making one more phone call. On breaking stories that must run immediately, questionable sections of the story can sometimes be held until your concerns are addressed.
- **Is there any middle ground?** We often think of ethics and compromise as opposites — firm, lofty principles versus weak-kneed appeasement. That’s true on occasion, but more often, ethical standards help editors reach an *intelligent* compromise. It may not be necessary to choose between extremes or kill a news item outright; often a story can be modified or a similar picture substituted for a questionable one.
- **Should we explain our decision?** Many newsrooms have begun to show readers and viewers how and why they make tough calls on major stories. That may be done in an

editorial column, a box accompanying a print story, or a link on a web story or tweet. Such explanations demystify the process for the audience and show the logic behind difficult decisions.

From conscience to the courts

Media **ethics** are standards of conduct that determine how news should be gathered, reported and edited. **Libel** is a false statement that damages someone's reputation. **Invasion of privacy** is the illegal or inappropriate use of personal information about someone in a publication or broadcast.

Common sense suggests that legal and ethical issues are closely related, and often they are. However, some perfectly legal journalistic practices — the use of unnamed or promotional sources, for instance — raise troubling ethical questions. And some illegal practices may, in extreme circumstances, be ethical. Evaluating and distinguishing legal and ethical issues may be the most important task editors perform, and failure to do it well can have dire consequences.

When to call the lawyer

There are five occasions when an editor should turn to a lawyer for advice:

- When a story or picture may invite charges of libel or invasion of privacy;
- When the news organization must publish or air a major correction or retraction;
- When anyone in the newsroom is served with a subpoena, summons or search warrant;
- When a lawyer contacts or visits the news organization on behalf of someone intending to sue;
- When anyone in the newsroom uses newsgathering methods that may be considered illegal, such as recording conversations or other electronic eavesdropping.

The concept of libel

Libel is a broad term used to describe damage to reputation — legally known as defamation — that is caused by publishing or airing false information. “Reputation” in this legal sense does not only mean what others say about you; damage to reputation could mean a lost job or earning power, a damaged business, a personal sense of humiliation, reduced social standing or estrangement from friends and family. People who believe they have been libeled can sue a news organization, and often individuals within the organization, and ask the court for a monetary award to compensate for the damage.

Try your eye for trouble. Which of the following passages is more likely to land a news organization in court?

After being named No.6 in a magazine's recent worst-dressed column, Britney Spears struck back: She appeared on a talk show draped head-to-toe in sheer fabric. She may as well have been naked.

Neighbors were relieved at the arrest of Robert L. Copeland, 32, of 114 Sagamore St. "That man's a menace to society," one said. Another said she had heard that Copeland "has a long criminal record."

What's your guess? If you suspect that the second passage could bring legal trouble, you're right. The neighbors' opinions are potentially libelous. Even though the opinions are someone else's and the reporter is merely quoting them, the news organization is responsible for the accuracy of those statements and what they imply. Copeland has been arrested, not convicted. Only a summary of Copeland's criminal record, as taken from public court documents, is appropriate here.

What about Britney Spears? She may not care for the comments, but she has no valid legal case. She is known to wear revealing and unconventional fashions, and to say that "she may as well have been naked" has a verifiable basis in her TV appearance. In addition, because she is a well-known public figure, the courts give her somewhat less protection from commentary than they would grant to private citizens.

Five key points of proof in libel suits

Fortunately for the media, it is not easy to win a libel suit. Over time the courts have established a set of points that a person suing for libel must prove in order to win the case. Some experts list additional criteria, but all editors should be aware of these five:

- The information must be false.
- The person libeled must be clearly identified, although not necessarily by name.
- The information must have been published or otherwise viewed by an audience.
- The reputation of the person must have been damaged as a result.
- The news organization must be shown to have been at fault for the libelous

information. This does not necessarily mean showing that reporters and editors were inaccurate themselves, however. Journalists who do not fully check the accuracy of information supplied by outside sources, or who present opinion or speculation as fact, also leave themselves open to libel suits.

Each of these elements of libel law reflects on the basic responsibilities of editors. As the final guardians of truth, they must check all aspects of identification to prevent the possibility that one person might be mistaken for another. They must monitor language to see that damaging information is neither stated nor implied unless it can be proven true. They must confirm the facts of the story so that no untruths appear — and if by chance they do, no fault or carelessness can be attributed to the news organization itself.

Public officials and public figures

Politicians, celebrities and other people in power or the public eye must work harder than private citizens to establish that they have been libeled. In addition to the five elements of libel that ordinary people must prove, people with high public profiles also must show that a news organization demonstrated **actual malice** or reckless disregard for the truth. The news organization is guilty of actual malice if it knew the information was false and published it anyway. It is guilty of reckless disregard if it published the information without caring whether it was true.

This extra burden of proof on well-known figures was established in a landmark 1964 case, *New York Times versus Sullivan*. In that case, an Alabama city official sued

the Times over a fund-raising advertisement for civil-rights causes that was critical of public officials and police. An Alabama court ruled against the Times, but the U.S. Supreme Court reversed the ruling on appeal, saying that uninhibited public discussion of important issues outweighed the risk of damage to the reputations of people in positions of power. By making it easier for the media to act as public watchdogs on government officials and other influential people, the case stands as one of the most important chapters in the history of American journalism.

What does Times versus Sullivan mean for a working editor? If you were to run a story stating as fact that a small-business owner engages in unfair hiring practices simply because he or she has no minority employees, you might be vulnerable to a libel suit. The small-business owner is a private citizen, and needs to prove only that your conclusions are wrong and damaging. If you were to make the same claim in a story about the mayor's office, however, the mayor would have to prove not only that your conclusions were wrong and damaging, but that you *knew* they were wrong, or at least didn't care.

The line between faulty fact-gathering on the one hand and actual malice or reckless disregard on the other is not always clear and absolute, but in practice it allows the media substantial leeway in reporting on people in positions of public trust.

But who are public officials and figures? Mayors are clearly public officials, as are elected officeholders in general. **Public officials** are generally defined as people who serve in positions of substantial authority and are paid with or partially with tax money. Court rulings since Times versus Sullivan have expanded that category to cover **public figures** — people of prominence and wide influence. Celebrities, professional athletes, well-known activists, powerful corporate executives and others who voluntarily enter the public arena are public figures. So, in fact, are nationally known journalists. Public figures who are clearly famous and influential are subject to essentially the same burden of proof in libel suits as public officials are.

However, the concept of the public figure is much less clearly defined than that of the public official. Is the president of a private college or the head of a local civil rights organization a public figure? How about someone who wins a \$50 million lottery?

Many court rulings have tried to clear up such ambiguities by creating a third category, that of the *limited public figure*. Such people may be prominent in one area of their lives but act as private citizens in others, with legal distinctions to match. The head of a union who sues a broadcaster for libel over a story that he misused union funds will probably have to prove actual malice or reckless disregard. If the same union president sues over a false claim that he was arrested for drunken driving, he is more likely to be regarded by the court as a private citizen.

In short, it is sometimes difficult for editors faced with potential libel problems to predict who might be considered a public figure. A fine distinction between public and private life made by the court may mean the difference between a failed libel suit and one that severely punishes a news organization. For that reason, even when people are well known, editors must make sure that all statements about them are accurate and responsible.

Making mistakes

Libel suits seldom arise from controversial, complex “watchdog” stories. The reverse is true. Long investigative stories are almost always written outside the confines of deadline pressure and are built on extensive sourcing and documentation. They are

carefully examined by several editors, and most news organizations also retain lawyers who may be asked to review such stories. As a result, only a tiny fraction of watchdog stories pose serious libel risks.

The vast majority of libelous mistakes are made on deadline, in shorter and more routine stories. Such stories are apt to be written in one draft and edited with one eye on the clock. The errors to which such stories are most susceptible are exactly the errors that spawn most libel charges:

- Imprecise or incomplete names and addresses that create false identification;
- Misrepresentation of people's legal status, such as saying or implying that they are guilty of crimes when they have only been arrested or charged;
- Vague language that creates false impressions or suggests guilt by association;
- Shallow sourcing and poor attribution that make it seem as though the reporter has not researched the story carefully;
- Speculations or conclusions based on scanty evidence but presented as fact;
- Headlines that go beyond the facts or strike a demeaning tone.

Most libel cases can be avoided by following fundamental editing guidelines and practices. Information must be accurate; language must be precise; facts must be clearly distinguished from opinion. No news organization is entirely libel-proof, but editors who take care of the basics can tackle libel questions with confidence when they arise.

Ask yourself: A libel checklist for editors

Here are key questions to ask yourself when considering the possibility of libel in a news account:

- Could the information hurt the reputation of an individual, group or business?
- Is the information true, and can it be proven?
- Does the story presume the innocence of those suspected of wrongdoing?
- Is the information privileged because it is a fair and accurate report of an official government proceeding?
- Is the information protected as fair comment or criticism, as in a clearly defined column, review or editorial?

The right to privacy

Although the Constitution does not specifically mention a right to privacy, a legal doctrine of privacy has evolved over time, as media coverage has expanded into more and more areas of daily life. As with libel, most guidelines on privacy are set by case law, making it difficult for journalists to know in advance precisely where the line is drawn. In addition, a few states have their own privacy laws, so it is important that editors know what constitutes invasion of privacy in the states where they publish or broadcast.

Broadly speaking, though, federal court decisions have established that individuals have the right to be left alone, especially from unwanted attention and publicity in places where privacy is expected, such as their own property. When people become involved in news events or matters of public interest, however, the courts have found that they may have to forfeit their privacy.

Privacy cases also resemble libel cases in that no one can prevent publication of a story that invades someone's privacy. It is up to the offended person to bring a civil

lawsuit after publication. As with libel, that person has to have been clearly identified in the story.

However, privacy suits are very different from libel suits in one crucial way. Truth is not always a defense against privacy suits. A story or photo can be accurate but nevertheless can invade someone's expected privacy in a way that is not warranted by the importance of the event.

Key privacy issues

In general, editors should watch for these kinds of problems when balancing the right to privacy with the public's right to know:

- Material that discloses highly personal information about an individual or portrays the individual in intimate terms when there is no legitimate public concern. One privacy lawsuit involved a woman pictured in a newspaper with her skirt blowing over her head as she went into a funhouse at a county fair. She argued that she was identified, even though her skirt covered her face, by the presence of her two children in the photo. The photo intruded upon her personal life and was not particularly newsworthy. Even though she was in a public place, the Supreme Court of Alabama upheld her claim.

- Material that depicts someone in a false light. If a minister is walking on the street and pauses in front of an X-rated movie theater as a photographer for a local television station shoots video footage of the theater, the minister could sue if the footage were aired. Viewers might reasonably infer from the video that the minister was entering or leaving the theater.

- Evidence that a journalist has intruded on someone's privacy inappropriately or secretly. This would include entering private property without permission, eavesdropping, surveillance, using a telephoto lens to take secret photos or video, and harassment.

Ask yourself: A privacy checklist for editors

Here are key questions to ask yourself when considering whether a news account unfairly invades someone's privacy:

- Does the story or picture reveal something personal or private about an individual or his or her activities, home or family?
- If so, to what degree? Is the information intimate or potentially embarrassing in any way?
- Is the intrusion warranted because the person is part of a news event?
- Is the intrusion warranted because it serves a significant social good?
- Is the intrusion warranted because it involves a public official or public figure?
- Can the intrusion be minimized or eliminated without substantially damaging the news?

The ultimate judge: Your audience

Apart from the confusing legal issues raised by online exchanges, editors should keep in mind the needs and perceptions of the public. A great many people are weary of what they see as media intrusion into their lives, and journalists who eavesdrop on online discussions are practicing yet another form of intrusion: surveillance. Even when

reporters have the best intentions, their covert presence in online conversations that are not quite private and not quite public can anger participants and contribute to a general backlash against long-honored media freedoms.

Many matters of privacy, in fact, are ethical issues more than they are legal ones. It may be perfectly legal to shove a microphone into the faces of grieving parents and ask dumb questions because their child was involved in a tragedy. Whether that shows the sensitivity or the civility one expects from holders of a respected public trust is another matter.

Good editors look beyond the law to think about how published stories might affect the people involved, the news audience, and the credibility of the media. Libel and privacy rulings tell journalists what they can and cannot do. Ethical standards remind journalists what they should and should not do. But in both realms, good decisions are neither made on a mountaintop nor conjured out of thin air. They grow out of experience, honest discussion and a willingness to seek out and stand by strong principles.