

# Newspapermen and Lawyers

By Anthony Lewis

I propose to speak tonight on a moderately pretentious topic, the public responsibilities of newspapermen and lawyers. It may seem surprising that my profession and yours are in any way comparable. It seems to me that the members of the two professions—if profession is not too high-flung a term for my business—share at least the basic attribute of being generalists. One of the great joys of my brief experience at the Harvard Law School was the discovery that teachers were, on the whole, not trying to drill particular facts into reluctant student memories. In the first-year course I took, Procedure, much of the year seemed to be taken up with persuading the class that there were no absolute facts to be learned. Of course the aim of the Law School is to awake a process, a way of thinking that can be applied to any situation in life. Although many lawyers do become specialists, the essential quality of the lawyer to me is that he is a non-expert, a generalist, a *whole man* in a world made up increasingly of half-men or quarter-men—experts on narrow, specialized problems whose immersion in their own field makes it hard for them to see its relation to life outside.

Now something of the same requirements of broadness, of adaptability, exist for newspapermen—or ought ideally to exist, at any rate. The reporter is constantly being thrown into new situations. He is expected to write knowingly one day about interest rates and the next day about the humane slaughter of animals. As life becomes more complicated, there is a tendency on newspapers as in law offices to create more experts—science writers and legal writers and so forth. But at heart the real newspaperman, even while he ponders whether a maritime tort for jurisdictional purposes arises under Federal law, is ready—eager, I should say—to cover the Presidential campaign.

I do not want to leave the impression that I overrate the similarity in approach of lawyers and newspapermen. They may both be generalists, but the lawyer has to dig deeper into any problem he is handling. There will be published next month a book of reminiscences by Justice Frankfurter, and in it he recalls working on a financial manipulation case for months while an Assistant United States Attorney in 1907. He writes: “When I think of what I then knew about brokerage accounts! But I know

nothing now. A lawyer becomes an expert in so many fields for so short a time.”

The newspaper tradition is very much against becoming even a short-term expert on anything. In the past, at least, the reporter was expected to be the jack of all trades and master of none. One reason for this may be the well-founded fear that the more one learns about a subject, the harder it is to write a good simple story about it. Every sentence you put down cries out for qualification—and there is no space for a qualification. I am sure you all know how much easier it is for the visiting correspondent to write the complete story of Soviet Russia today in 1,000 words after he has been there a week than it would be if he stayed a year. In the same way, newspapers tend to present all issues in blacks and whites. A lawyer's training is to see how many sides there really are to a question, but the newspaper may feel it does not want to see all the possibilities because it can't afford to; that might just confuse it and its readers. I think the two qualities of the legal profession which I mention—the drive to master each subject as it comes along, and the ability to see problems in all their complexities, not in black and white—are needed on newspapers, and I think, hopefully, that the trend is in that direction.

As my concern is public responsibility in our professions, I want to focus especially on Washington. In that city, I think, lawyers and newspapermen do share a basic motivation and joy in life. Charles A. Horsky, in his book, *The Washington Lawyer*, called it “an intimate sense of participation in significant affairs.” Douglass Cater, in a book which referred to the press in Washington as “The Fourth Branch of Government,” spoke of correspondents having a “heady sensation of power and participation.”

Turning first to the press, I have no doubt that a feeling of participation in great events is the life force of many Washington correspondents. Perhaps a heady sense of power, Mr. Cater's phrase, is more accurate. I really hate to see the press taking itself so seriously that it begins writing books about itself as a fourth branch of government. But that the press in Washington has an influence on public affairs, that it is to some degree a participant, is surely true.

A former president of the *Harvard Law Review* said to me last night that reporters are different from lawyers because they are not, or need not be, men of judgment. They are accountable to no one, he suggested, and so they are without responsibility. I agree that the reporter ordinarily does not bear the lawyer's responsibility for de-

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cision; he writes for an anonymous and remote audience, while the lawyer determines the course of action to be taken by human beings immediately present. I agree also that I would trust the judgment of the best lawyer over that of the best newspaperman to decide the fate of the nation, or my own fate. But the suggestion last night was that reporters really make no judgments at all, that they just write and the editors make the decisions.

If that is anyone's impression, it is incorrect. I start with the proposition that news stories are much more significant in shaping public opinion than editorials. Even editors will admit this, perhaps because readership surveys show that only a small portion of the subscribers ever reads the editorial page. And in my experience the reporter has very much more to do with the shape of the news story than any editor does. For the Washington correspondent, editors are a group of anonymous people at the other end of a telegraph wire. Of course they retain their power to cut the point out of a story. But usually this is done by inadvertence, because of the demands of space, rather than by design. The real decisions—what facts to report, and in what light to report them—are made by reporters, in my opinion.

As an example consider a recent story. William R. Connole is a member of the Federal Power Commission whose term expires on June 22d. On April 19th Senator Prescott Bush of Connecticut disclosed that the White House had told him Connole would not be reappointed. I wrote a story in which the bare fact of Senator Bush's disclosure was the lead. There followed the statement that Connole has been regarded as the one member of the Power Commission concerned about the consumer and determined to hold down natural gas rates, and that his being dropped therefore was causing a political fuss. Then the story noted that a month ago it had been learned that Mr. Connole and two other Power Commissioners had had private visits from a lawyer in a pending case at the F.P.C. Mr. Connole was to explain this to a Congressional committee on May 2d. But the story concluded that this possible impropriety on Mr. Connole's part had nothing to do with his failure to win reappointment, since Senator Bush had been informed of the White House decision before this question of impropriety had arisen. I am sorry to go on at such length about that story. I do it simply to contrast the version of the same events written by the Associated Press. Its lead went something like this: "William R. Connole, who has admitted to off-the-record contacts in a controversial natural gas case, will not be reappointed to the Federal Power Commission."

I need not belabor the point that the two stories gave a very different impression of the significance of the reported White House decision on Mr. Connole. And it

was the reporter who determined the shape of the story. Many, perhaps most, Washington events are not simple facts about which only one objective account can be written. The facts can be given more than one interpretation, and the "truth" depends on one's point of view. I do not suggest that newspapermen live like characters in a Pirandello play, chasing elusive and changing truths. I say only that judgments are involved in writing even what purport to be straight newspaper stories.

There are many examples that could be given, but the most telling is probably the whole McCarthy situation. During much of Senator McCarthy's career the Associated Press as a matter of high-level policy kept all interpretation out of its stories about the Senator. The stories were supposedly objective, factual, dead-pan presentations of the Senator's activities. But after a while some of the more sophisticated members of the A.P. began realizing that objectivity may be a little more complicated. Was it objective to report a speech by Senator McCarthy without pointing out his own internal contradictions? Was it objective to report his account of the spies uncovered at a closed session of his investigating committee without checking others who had been in the committee hearing and had seen no spies unveiled? The McCarthy issue deeply troubled American newspapers because, I think, it drove home to them the necessity of interpretive reporting. The idea of reporters exercising judgment worries many editors, just as some judges prefer to find absolute commands in the texts of statutes and constitutions because, they say, it is inappropriate for judges to weigh these things in the balance. I am not going to get into the judges' disagreement, but it seems to me that there is no way for newspapermen to escape making judgments.

I have been talking about the process of deciding what goes into a story—setting the facts in the necessary framework of interpretation. There is also the simple question of what is news. It is said, I think correctly, that the most important decision made within the *New York Times* is what to put on page one. Although these are much more editors' decisions, reporters have a hand here, too. When the Supreme Court hands down a half dozen or a dozen decisions on a Monday, our editors rely to some extent on my advice as to which cases are significant. When Lyndon Johnson makes a speech, our political writers are likely to be asked: "Is there anything new in this, or is it more of the same?" To a surprisingly large extent, what the Washington Bureau of the *New York Times* files over the wire to New York each day depends on the judgment of the staff members. Of course certain stories obviously must be covered; we would hardly ignore General DeGaulle's visit. But if you read the *Times* Washington cov-

erage carefully, you will observe that much of it is not so obviously big news. How prominently we play an anti-trust suit, for example, depends in part on the significance seen in it by the man covering the beat. The *Times* may ignore a week of testimony by scientists on nuclear testing, and then carry a prominent story because a member of the Washington Bureau thinks certain threads in the testimony add up to a significant shift in scientific thinking.

To some extent the newspapers themselves create news. Let me go back to the story about the Power Commission and Mr. Connole. Mr. Connole's reputation as a protector of the consumer, I said, was causing some political fuss to be raised about his reappointment. But it could fairly be said that the newspapers were at least an instrument in raising that fuss. I had written a story saying that the heads of seven state utility regulating commissions had urged Mr. Connole's reappointment. A columnist had written two pieces purporting to disclose how the "gas lobby" had blocked his nomination. Until these and other stories were written, there may well have been no public issue over the appointment at all. Mr. Connole could have been quietly dropped with almost no one noticing.

The other day Senator Kennedy accused the press of creating the religious issue in the Presidential nominating campaign. He argued that hordes of reporters combing through Wisconsin and West Virginia, asking the citizenry whether it would support a Catholic for President and then reporting the existence of religious bloc-voting, had in effect made the citizens think of religion for the first time as a factor in politics. I believe there is some accuracy in the picture; the press has at least sharpened the religious issue. But given history and the political realities in this country, could the press really have failed to wonder whether primary voters would cast ballots along religious lines? Was it not appropriate to remind the readers of Senator Kennedy's speech, as my bureau chief, James Reston, did, that the Senator had argued to the professionals in 1956 that he should be nominated for Vice President because his religion would win more votes than it would lose?

My examples should suggest that these newspaper judgments may involve moral considerations. Nothing raises more acute problems here than the leak. The leak is the great weapon of the Washington politician. Most of the stories that are called scoops probably result from a calculation by some official that publication of the material at this time will be advantageous to him and the interests he supports. The idea may be, for example, to start building public support for a program which has not yet won approval within the Administration. Or it may be a leak designed to frighten Congress out of heavy spending by, say, painting a horrifying picture of the gold outflow from

this country. Sometimes the reporter's initiative is vital; many good stories are obtained by asking the right question at the right time. But other stories are presented on a silver platter. In both cases there may be ethical concerns. When a law professor frustrated with the limitations on his role as a Congressional committee investigator of the regulatory agencies offers a newspaper his memorandum making sweeping and unconfirmed charges against many persons, should the paper print it? Suppose the Secretary of the Treasury returns from a European trip, calls in a reporter and tells him of deep concern in European financial circles about possible weakening of the dollar as a currency if a Democrat devoted to easy money is elected President. The reporter is not allowed to identify the Secretary by name as the source of the story; he *can* use a disguise such as "high financial circles in the Administration. . ." Should he write the story? Or go back to Mr. Connole and the Power Commission. Would it affect the validity of the story about the seven state utility regulation chairmen supporting his reappointment if the reporter had actually obtained copies of those seven men's letters from Mr. Connole? (I should say, parenthetically, that reporters at the Supreme Court are spared *this* moral issue anyway. There are no leaks at the Supreme Court.)

It is evident that there are dangers in the power of the Washington press to create public images of men and events. There is a strong temptation on some correspondents to play God. After all, it is so much easier to determine foreign policy without going through all the trouble of becoming Secretary of State and without being subject to the limitations that the political system puts on him. Newspapermen are not responsible to a constituency, or even to a client. They are used to haste and superficiality, not to reflection; depth is a quality not normally found among them. For all these reasons irresponsible journalism is a serious concern.

I am as critical of newspapers as anyone, but I do not think the Washington press corps is predominantly irresponsible. Individually, and collectively with his editors, the reporter does tend to impose on himself the restraint, the responsibility of concern for the public interest.

Mr. Cater, in his book, quotes a well-known Washington correspondent on the difference between reporters and officials. The reporter, he says, decides whether to print something he learns on the basis of only two considerations: Is it news? Is it fit to print? The official, weighing disclosure, must also consider the effects of publication on policy—on the interest of the country.

I think that distinction is overdrawn. Certainly officials and newspapermen approach differently the question of whether something should be published. But no

responsible reporter ignores the possible effects of publication. One of my colleagues has said to me that he thinks a newspaperman's ability to achieve rapport with an official depends on the official's confidence that the reporter is interested as he is in the good of the country. The reporter interested only in tomorrow's headline is not likely to keep the respect of those in government—a respect he needs to do his job properly.

Finally let me raise the most difficult question of all for Washington newspapermen, the extent to which they can properly become participants in events—doers instead of observers. Reporters, like lawyers, have opinions. They are naturally interested in public affairs. They are not eunuchs. Almost inevitably they find themselves rooting for one side or another. Along with this comes the frustrating feeling that they could do things so much better than those who are the participants. Every reporter who covers Congressional committee hearings finds himself full of questions that the Congressmen don't have the sense to ask.

But there are limitations on newspapermen. I do not know precisely what they are, and so I shall simply raise some questions. One of my newspapers colleagues in Washington, a lady, was much concerned two years ago about the effects of what I can refer to here in shorthand as the McNabb-Mallory doctrine—the Supreme Court's rule that unnecessary delay in arraignment of a Federal prisoner voids any confession made during the delay. This lady thought the doctrine was filling the streets of Washington with criminals, and she wrote a great many tales of horror designed to encourage Congress to overrule the McNabb and Mallory cases. I sat next to her in the Senate the day a bill to accomplish that purpose was defeated by two votes. Her eyes filled with tears, and she rushed downstairs to talk to some Senators and see if she could rally her forces. I have been a little sarcastic in describing the episode, but is that justified? If *she* was wrong, what are the proprieties of a newspaperman calling to the attention of some Senators a little-noticed bill that would have restricted an important area of Federal court jurisdiction?

What about a reporter who was praised by the Senate Rackets Committee for bringing in adverse information on Jimmy Hoffa? How does his position compare with that of the reporters who fed tidbits to Senator McCarthy? If they were wrong, what about the reporters who opposed Senator McCarthy, discussed strategy with his enemies and, I think, had a good deal to do with bringing him down?

There is no sure guide for all situations, but I think it is clear that the reporter must not become entirely committed—an obvious special pleader. His instinct should be all the other way. If he has a concern for the public

good, as I think most Washington reporters do, he must reconcile himself to satisfying that urge by uncommitted reporting. Justice Frankfurter has put it that the reporter is an educator, not a reformer. I accept that definition, with the proviso that the educator be allowed to harbor within him just a little of the spirit of reform.

Which brings me, at long last, to the public responsibility of lawyers. A little over a year ago I heard Judge Wyzanski say in a memorable speech that the bar does not live up to its responsibility for public service. I am afraid I agree.

How many law offices encourage their younger men to devote time to public matters? I fear the number is not large. How much have the practicing lawyers of America done during the last dozen years to bring reason and fairness into loyalty and security proceedings? A few have done a great deal, but the record of the bar as a whole does not seem to me adequate. What has been the reaction of the country's lawyers to the barbarian attacks made on the Supreme Court in recent years? On the whole, I think, silence.

A few years ago Dean Acheson wrote to a friend about the reasons for going into public service. He spoke of the *exhilaration* of public life, of the scope it gives a man that private affairs cannot. A newspaper reporter can sense this exhilaration, but he can never really be a participant. Perhaps the fact that he must remain an outsider makes the newspaperman believe that lawyers should seize the opportunities for public service given them by their training and status. If there is one thing the legal profession might borrow from journalism, it is a touch of the romantic and impetuous. Newspaper reporters are becoming stodgier all the time, but they are not yet as stodgy as lawyers. Perhaps lawyers need a bit more Don Quixote in them to fulfill the public responsibility I think they have. If you would borrow that from us, I hope we might borrow from you the thoughtfulness of lawyers, the concern for longer-range values, the sense of accountability and responsibility.

In his book of reminiscences that I have mentioned, Justice Frankfurter says he has almost a religious feeling about the Harvard Law School. He says it is the most "democratic" institution he knows—meaning by democratic "regard for the intrinsic and nothing else, \* \* \* dedication to the pursuit of truth, \* \* \* complete indifference to all the shoddiness, pettiness and silliness that occupies the concern of most people who are deemed to be important or big." My own respect for the Harvard Law School is no less. If I close with an exhortation, it is only that the graduates of the Harvard Law School translate its great tradition into a greatness and a public responsibility of their own.