MLRC Media Law Conference
Sept. 29-Oct. 1, 2021
Lansdowne Resort Hotel, Leesburg, VA

PLENARY 1 Sept. 29th 2:45-4:00pm

Why Doesn’t the Public Trust the Media? A new survey suggests it’s because the public does not understand the mission of journalism. A panel of journalists and media lawyers will discuss the survey and its implications for journalism, law and democracy.

With: Sally Buzbee, Washington Post Executive Editor; Tom Rosenstiel, American Press Institute; Bruce Sanford, Baker & Hostetler; Erik Wemple, Washington Post media critic. Moderator: Barbara Wall, former GC Gannett.

A new way of looking at trust in media: Do Americans share journalism’s core values?
The Media Insight Project April 14, 2021
<https://www.americanpressinstitute.org/publications/reports/survey-research/trust-journalism-values/single-page/#the-moral-values-and-journalism-values-of-americans>

The study finds that not all Americans universally embrace many of the core values that guide journalistic inquiry. And uneasiness with these core values of journalism is more connected to people’s underlying moral instincts than to politics.

When journalists say they are just doing their jobs, in other words, the problem is many people harbor doubts about what the job should be.

REPORT HIGHLIGHTS

* Not all Americans universally embrace core journalism values.
* The trust crisis may be better understood through people’s moral values than their politics.
* There is a link between people’s moral values and their support for journalism values.
* There are ways journalists can broaden story choices and framing to reach and be relevant to more of the public, skeptical and trusting alike.

The five core journalism values we identified were:

* Oversight: This value measures how strongly a person feels the need to monitor powerful people and know what public officials are doing. The flip side would be that people need to trust leaders to do their jobs, and that people in positions of authority need the privacy to do some things behind closed doors to fulfill their duties.
* Transparency: This is the idea that society works better when information is out in the open and the public knows what is happening. The other side of this value emphasizes how sometimes all of the information cannot be released specially without the right context. Too much information can hinder progress and leave room for gross misinterpretation.
* Factualism: This is the idea that the more facts people have, the closer they will get to the truth. The inverse is that for a lot of things that matter, more facts will only get you so far in understanding any situation.
* Giving voice to the less powerful: This measures whether people want to amplify the voices of people who aren’t ordinarily heard, or think that is overdone and favoring the least fortunate doesn’t help them.
* Social criticism: This value measures how people feel about the importance of casting a spotlight on a community’s problems to solve them versus celebrating what is right and working well to reinforce the good things.

Only 11% of the public supports all five of the core journalism values unreservedly. Overall, the principle that is most popular is factualism (67%), followed by giving a voice to the less powerful (50%). Fewer endorse the values of oversight, transparency, and social criticism

We gave people some very short samples of stories to read—just the headline and opening paragraph of a possible news story. Some of these, which were drawn from real news articles, tended to reinforce some moral values. They also tended to reflect certain journalism values. Other stories tended to reinforce or touch themes found in other moral values. Each of the stories in one way or another demonstrated a journalism value.

We wanted to test whether what we saw in the first part of the survey—the correlation between moral values and attitudes toward journalism values—would play out when people encountered actual news, or at least the beginning of a news story. We found that they did. People who resonated toward certain moral values in the survey also resonated toward stories that touched on or demonstrated those values in the news. The first part of the study was now complete. We had established a new way of looking at trust in the media. The problem wasn’t strictly a matter of liberal versus conservative or Democrat versus Republican. It may be that some of what journalists value actually only resonates as important to a small percentage of Americans in an unreserved way.

Then we wanted to go further. If journalists wrote the same stories but thought more broadly about their audiences, broadened the frame of the way stories were written, and broadened what they considered news, was there any sign that this might broaden the appeal, and therefore impact, of their work?

Let’s get the conversation around trust in media unstuck
Poynter (Tom Rosenstiel)
Not everyone sees their values reflected in the news. Here’s how journalists can change that.
<https://www.poynter.org/ethics-trust/2021/lets-get-the-conversation-around-trust-in-media-unstuck/>

We surveyed 2,124 people and found that there was a good deal of circumspection about the values that guide journalists. About two-thirds of Americans, for instance, unreservedly agree with the idea that the more facts people have, the better. But only roughly half strongly support the notion — so cherished in newsrooms — of the press as a watchdog. People appreciate the watchdog role, but many also worry that it can also get in the way of leaders doing their job. Only about half also unreservedly support the idea that the less powerful in society should be given more voice.

Two other values had even less support. People had substantial reservations about the journalistic passion that things be out in the open — the vaunted value of “transparency.”

And they were even more skeptical that the best way to solve problems in society is to spotlight what’s wrong — with the press acting as a social critic. A lot of people think the best way to improve society is to highlight what’s working and celebrate what’s good.

We also learned that assuming that these different ideas about values were largely driven by political differences — which may be the most common framing of trust — may be a misperception, or at least a gross oversimplification. People’s attitudes towards the press had much more to do with their moral instincts than their politics. There are a lot of people across the political spectrum who could be more sympathetic to the press if they saw the press care more about some of the things they care about.

Some media coverage took the findings as more bad news for the press. Some even wondered if the press needed new values. I think the opposite. The findings offer fresh thinking about trust and point to new approaches journalists can take to win over skeptical audiences.

We did some testing of stories as part of the study to see if tweaking the way they were told made a difference. We changed the leads and headlines and added some framing to touch on more readers’ potential questions. We found that it was possible to tell the same story, with all the same facts, and significantly increase the interest of audiences in that story. For instance, a headline that said “New recreation center for low-income neighborhood a casualty of park scandal” was broadened to “Parks boss deceived mayor, misused taxpayer money.”

All the same information. Different headline, slightly different lead, more context. The changes made all audiences, including ones who liked the original framing, trust the story more.

What are the practical implications of all this for people in newsrooms? What should news consumers expect?

First, journalists should open the lens and become more inclusive when thinking about their audiences. That means writing less for themselves and more for the whole community, which will make their reporting more fulsome and complete.

Stop oversimplifying stories so much that people no longer see themselves and their ideas in them — or worse, feel they’re being unfairly represented.

**Reactions & Analysis**

Suggestions for Combatting the Poor Public Perception of Journalists
By George Freeman, MediaLawLetter April 2021
Now comes a new survey which perhaps explains some of this lack of trust, but which at the same time makes the problem far broader and more intractable. A study released last week by the Media Insight Project, a joint venture of the American Press Institute and the AP-NORC Center for Public Affairs Research, concluded that the public does not support the most basic tenets of journalism. The five core values of journalism measured in this survey were:

• Those in power ought to be subject to oversight • Transparency is the right approach to important information • Facts are required to get to truth • The less powerful deserve a voice • Revealing the flaws in society helps us deal with them Although it seems safe to assume acceptance of these fundamental premises by most of us in the media bar, only one of these five core journalistic values was supported by a majority (67%) of respondents. That one – that facts help us get closer to the truth – was very surprising to me, as it was the tenet most attacked and tested by the Trump Administration on a daily basis. But such basic principles as that highlighting society’s problems is a good way to improve it, was agreed to by only 29%. And only 11% agreed with all five core journalistic values.

 As the authors of the report concluded, “when journalists say they are just doing their jobs, the problem is many people harbor doubts about what the job should be.” And these numbers – unlike the trust figures above – cut across the ideological and political spectrums. The study’s conclusion is that rather than being tied to partisan bias, “the problem at the heart of the media trust crisis may be skepticism about the underlying purpose and mission journalists are trying to fulfill.”….

The API study referred to above found that people who were skeptical about journalists’ mission believe more in the values of authority and loyalty, a respect for leaders and groups. Thus, to them, what journalists do interferes with officials doing their jobs; they would like to see more articles about what works, not just what is wrong. The API authors, therefore, recommend that the press edit its stories to better cater to these readers by emphasizing values of authority or loyalty to the community. A more positive message that stresses an organization’s long-term service to the community might make an article about that entity less off-putting than just negative criticism…..

But, to me, it also shows that good journalism is not enough. The press has always been a terrible spokesman for itself. We spend thousands of dollars litigating FOIA cases in small communities, when one article in the local paper embarrassing the governmental entity who is stonewalling us might well pry the documents loose. Yet, we always are so worried about being objective, we never speak up for ourselves. I believe the last four years has shown the weakness in this approach. While I am not advocating answering each tweet and absurd charge by the former president, I don’t think a strategy of ignoring all his blasts really worked. A stronger public relations strategy was and is needed. ….

Education. Without knowledge of the First Amendment, the public unsurprisingly doesn’t understand – or approve – of what journalists do. A recent Freedom Forum Institute survey found that 64% of respondents knew that freedom of speech was protected by the First Amendment, the only interest recognized by more than half those surveyed. Only 22% listed freedom of the press as guaranteed by it. And 29% found that the rights protected by the First Amendment go too far. If the public doesn’t know what’s included in the Constitution, what the values protected in the First Amendment are, what its history, goals and principles consist of, it’s no wonder that they don’t understand the mission of journalists. As the Freedom Forum concluded, “continued efforts to educate the public about its First Amendment freedoms are critical, and that increased awareness can result in increased public support.”

Bad news for journalists: The public doesn’t share our values. But there’s hope.
Washington Post (Margaret Sullivan)
I must confess that my first impulse was to resist these findings. After all, I’ve spent decades with the ideas described above as my lodestar, convinced that journalism serves the public good. And after all, investigative journalism is built on the idea of being society’s watchdog. However, given that trust in the news media has fallen from about 70 percent in the early 1970s to about 40 percent now, according to Gallup — it seems worth viewing this report with an open mind.
<https://www.washingtonpost.com/lifestyle/media/media-values-trust-study-api/2021/04/13/caa25edc-9bab-11eb-8005-bffc3a39f6d3_story.html>

No, Americans haven’t abandoned journalism values like transparency and oversight
Nieman Lab (Joshua Benton)
A study that seemed to claim they had was treated as “bad news for journalists: the public doesn’t share our values.” The reality is a few arbitrary research design decisions put a thumb on the scale.
<https://www.niemanlab.org/2021/04/no-americans-havent-abandoned-journalism-values-like-transparency-and-oversight/>

What in the world is going on here? Why is a study consistently seeming to reduce the number of Americans who support the values of journalism?

The study in question — which was done by the Media Insight Project, a joint effort of the American Press Institute and the Associated Press-NORC Center for Public Affairs Research — contains a lot of interesting data and analysis, some of which I’ll get to later.

But its top-line finding — summarized by a Post headline writer as “Bad news for journalists: The public doesn’t share our values” — is bogus. Or, at a minimum, unsupported by the methodology in use here. There is no reason to believe, based on this data, that Americans have somehow abandoned the basic values of democratic governance, or that we noble journalists are left to fight the lonely fight for accountability.

And whenever we exaggerate the distance between journalists and their readers — a genre of media reporting I call “mistrust porn” — we both exacerbate the problems that do exist and hand a weapon to people who want to attack mainstream journalism.…

There are two main problems with the claims being made off of this API/AP-NORC study. The first is that the study invents an artificially stringent standard for what it means to “support” a journalism value.

The second is that, while it surveys thousands of civilians to discover their thoughts on various values, it never actually surveys journalists to see how they feel about them. And given the weird standard they’re using, I can assure you lots of journalists would be closer to the general public than whatever platonic form of news righteousness the researchers have in mind.

Do Americans really not support “core journalism values”? It all depends on your definitions (and the questions you ask)
Nieman Lab
<https://www.niemanlab.org/2021/04/do-americans-really-not-support-core-journalism-values-it-all-depends-on-your-definitions-and-the-questions-you-ask/>

In all, the report said, only 11% of Americans support all five of what it considers the core values of journalism. “Bad news for journalists: The public doesn’t share our values,” the headlines said.

I argued that that conclusion was false and that some bad and arbitrary methodology by the researchers had artificially lowered the support levels for journalistic values.

Michael Wolff blames CNN’s Brian Stelter for why ‘people can’t stand the media’
Washington Post (Erik Wemple)
<https://www.washingtonpost.com/opinions/2021/07/19/michael-wolff-blames-cnns-brian-stelter-why-people-cant-stand-media/>

Below is a mega-paragraph surveying this common form of punditry and highlighting all the reasons why people hate/can’t stand/don’t trust the media. It’s because:

* Headlines have “have almost nothing to do with the actual story.”
* The Post allegedly mocked Sonny Perdue, Trump’s agriculture secretary, for having prayed for rain.
* CNN ran a headline on its website saying, “Biden lays out brighter vision for America.”
* Journalism doesn’t properly reflect popular beliefs and attitudes, such as when staffers at “elite outlets” use the word “Latinx.”
* “60 Minutes” edited out key comments from Florida Gov. Ron DeSantis (R) on covid vaccine distribution.
* Journalists are ethically blinkered, shallow, incurious and pretty bad at their jobs.
* CBS News botched the story about George W. Bush’s service in the National Guard.
* Fox News slammed Major League Baseball for moving the All-Star Game from Atlanta but then quieted down because Fox Sports is carrying the game.
* There are many outlets that don’t have high standards and prestigious histories.
* There’s a lack of local coverage, and people feel that journalists don’t have “skin in the game.”

That’s a sampling, mind you — nothing at all comprehensive

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Inside the Plan to Make Jeff Bezos’s Washington Post the Everything Newspaper
Washingtonian (August 2021)
<https://www.washingtonian.com/2021/08/25/inside-the-plan-to-make-jeff-bezoss-washington-post-the-everything-newspaper/>

The Post has a new executive editor—Sally Buzbee, the first woman to top the masthead—and visions of becoming the world’s go-to news outlet. The story of the search for Buzbee, and the future at the hometown paper that has long stopped thinking of itself as such….

Buzbee inherits a paper with an audience of 80 million to 100 million per month and a newsroom that has mushroomed from fewer than 600 people to roughly 1,000. She has to navigate a charged political environment in which one half of the United States views the Post as a tool of an elite plot to overthrow democracy while the other half views the same people as a vital bulwark against totalitarianism. And she answers to a boss with extremely grand ambitions. The thinking that led to the hiring of Buzbee—leader of an outfit with little of the iconoclasm or romance of the old Post but a global presence that no single newspaper has ever managed—offers a peek at just what those ambitions are.

Yes, Buzbee’s mandate demands more marrying of technology and journalism—the ratio of journalists to engineers at the Post is now 2 to 1. But it also necessitates a new sort of expansion, one that involves not only the budget but the very concept of just what an American newspaper’s audience should be. “We want to grow,” says Ryan. “We want to grow domestically in terms of our readership across the country, and we want to grow globally with international readers. A lot of our strategy revolves around that.” After setting out to build the world’s largest online store, Jeff Bezos now wants to turn the Post into the newspaper for the world….

Publisher Fred Ryan recently announced a task force, called Next Generation, led by an editorial and a business staffer, that will recommend ways for the Post to come for young readers. And in contrast with the Times, it already has a foothold in the folkways of Gen Z: its delightfully surreal TikTok account. A 30-year-old digital native named Dave Jorgenson launched the account for the paper two years ago, to the bemusement of some in the newsroom. Today, it has 1 million followers—less than Gordon Ramsay’s total but some three times what Washington’s NFL team has. (The Times has posted only one TikTok video; the LAT has a more robust account but only around 500 followers.) Post internal research conducted this spring found that about a third of its TikTok audience said they’d never looked at the Post before they encountered Jorgenson’s videos, and about 80 percent said they trusted the Post more than other news sources.

The challenge facing Sally Buzbee at the Washington Post
Columbia Journalism Review
<https://www.cjr.org/the_media_today/sally_buzbee_washington_post.php>

Buzbee’s past statements about journalism offer cause for optimism—she told CJR in 2017 that some journalists don’t understand what “a dangerous weapon polling is,” and argued ahead of the early stages of the 2020 primary campaign that reporters should ignore horserace polls altogether—as well as reason for skepticism: when CNN’s Brian Stelter asked her last year if the AP wasn’t labeling Trump’s lies as “lies” because doing so might inject “emotion” into its coverage, Buzbee replied that she didn’t “want to put any filter, or any sort of off-putting thing there, that keeps [readers] from going to good, old-fashioned, factual journalism.” (The AP has recently been more blunt in labeling Trump’s election lies, as several media-watchers have noted.) According to Farhi, on a staff call at the Post yesterday, Buzbee avoided speculating on how her leadership might change the paper, though she did emphasize a focus on “deep, factual journalism,” and pledged to run a newsroom where “a wide, very wide diversity of voices are heard and have influence.” After Baron announced his retirement, I wrote that a strong successor would understand that ensuring the latter is integral to the former, and that factual journalism needn’t be old-fashioned. That challenge now falls to Buzbee.

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Don't shoot the messenger: How our growing hatred of the media threatens free speech for all of us
By Bruce W Sanford (Rowman & Littlefield, 2000)

The First Amendment and the American news media are under siege. Loathed and distrusted by the public it hungers to serve, the media faces a backlash of unprecedented proportions. This work is the first to help us understand the dangerous consequences of the disintegration of trust between the public and the news media. In a twenty-year retrospective, Sanford sifts through historical evidence and polls to explore the root causes for the mounting hostility toward the media. Drawing on interviews with more than four hundred people from former Vice President Dan Quayle and scandal-scarred Donna Rice to such respected icons as David Broder and Eugene Roberts-Sanford describes a dangerous dialectic the media falsely stereotypes public figures, while the public encourages the caricatures.

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The U.S. Supreme Court's Characterizations of the Press: An Empirical Study
By RonNell Andersen Jones, University of Utah - S.J. Quinney College of Law & Sonja West, University of Georgia School of Law
February 17, 2021
<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3787709>

Abstract: The erosion of constitutional norms in the United States is at the center of an urgent national debate. Among the most crucial of these issues is the fragile and deteriorating relationship between the press and the government. While scholars have responded with sophisticated examinations of legislators’ and the President’s characterizations of the news media, one branch of government has received little scrutiny—the U.S. Supreme Court. This gap in the scholarship is remarkable in light of the Court’s role as the very institution entrusted with safeguarding the rights of the press. This paper presents the findings of the first comprehensive empirical examination of the Court’s depictions of the press. We tracked every reference to the press by a U.S. Supreme Court Justice in the Court’s opinions since 1784. We coded these references to the press (broadly defined by the Justices themselves) for the presence of common frames and for whether the frame was conveyed with a positive, negative, or neutral tone. The results of our study reveal troubling trends at the Court, with widespread implications for any discussion of contemporary press freedom. We find that there has been a stark deterioration in both the quantity and quality of the Court’s depictions of the press across a variety of measures. Our data show that the Justices are now less likely to talk about the press than they were in the past, and that, when they do, it is more often in a negative light. At this crucial moment, when we have seen the risks of executive and legislative branch attacks on the press, our study finds that the U.S. Supreme Court is not pushing back. The study also reveals a substantial correlation between ideology and the Justices’ attitudes toward the press. It likewise illuminates the press-characterizing behaviors of the most and least press-friendly Justices of all time and of the currently sitting Justices, providing insights into patterns that might be expected in the years to come.

Conclusion: The vilification of the press by the political branches—a focus of significant concern in recent years—is matched by a marked and previously undocumented uptick in negative depictions of the press by the U.S. Supreme Court. Our large-scale empirical study shows an especially stark abandonment of positive judicial depictions of the press in the last 50 years. A generation ago, the Court actively taught the public that the press was a check on government, a trustworthy source of accurate coverage, an entity to be specially protected from regulation, and an institution with specific constitutional freedoms. Today, in contrast, it almost never speaks of the press, press freedom, or press functions, and when it does, it is in an overwhelmingly less positive manner.

Given that much of the press’s foundation for a special or protected societal role has turned on the tenor of the Court’s rhetoric, our findings make clear that any assumption that the Court is poised to be the branch that defends the press against disparagement is misplaced. Instead, these sharply negative tone trends suggest that the judicial road ahead for the American press will be bumpy. This conclusion is reinforced by our data on the impact of judicial ideology on the Justices’ attitudes toward the press, which indicate that conservative Justices are as unlikely as their co- ideologues in the political spheres to view the press positively. Moreover, while liberal Justices of a generation ago were the all-time press friendliest—actively finding opportunities to discuss the press and aggressively preserving a positive characterization when doing so—this generation’s liberal Justices appear significantly less poised to take these opportunities and, instead, are drifting toward more neutral depictions or toward not discussing the press at all.

All told, in a study of eight frames, three tonal variations, 114 Justices, and more than 8,000 characterizations of the press over the course of 235 years, there is not a single indicator that bodes well for the press’s position before the current U.S. Supreme Court.

See also

Tah v. Global Witness Publishing, Inc., 991 F. 3d 231 (D.C. Cir. 2021) (Judge Silberman’s dissent). <https://scholar.google.com/scholar_case?case=12911762782670805994>

Although the bias against the Republican Party—not just controversial individuals —is rather shocking today, this is not new; it is a long-term, secular trend going back at least to the '70s. (I do not mean to defend or criticize the behavior of any particular politician). Two of the three most influential papers (at least historically), The New York Times and The Washington Post, are virtually Democratic Party broadsheets. And the news section of The Wall Street Journal leans in the same direction. The orientation of these three papers is followed by The Associated Press and most large papers across the country (such as the Los Angeles Times, Miami Herald, and Boston Globe). Nearly all television —network and cable—is a Democratic Party trumpet. Even the government-supported 255\*255 National Public Radio follows along.

As has become apparent, Silicon Valley also has an enormous influence over the distribution of news. And it similarly filters news delivery in ways favorable to the Democratic Party. See Kaitlyn Tiffany, Twitter Goofed It, The Atlantic (2020) ("Within a few hours, Facebook announced that it would limit [a New York Post] story's spread on its platform while its third-party fact-checkers somehow investigated the information. Soon after, Twitter took an even more dramatic stance: Without immediate public explanation, it completely banned users from posting the link to the story.").

It is well-accepted that viewpoint discrimination "raises the specter that the Government may effectively drive certain ideas or viewpoints from the marketplace." R.A.V. v. City of St. Paul, Minn., 505 U.S. 377, 387, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992). But ideological homogeneity in the media—or in the channels of information distribution—risks repressing certain ideas from the public consciousness just as surely as if access were restricted by the government.

To be sure, there are a few notable exceptions to Democratic Party ideological control: Fox News, The New York Post, and The Wall Street Journal's editorial page. It should be sobering for those concerned about news bias that these institutions are controlled by a single man and his son. Will a lone holdout remain in what is otherwise a frighteningly orthodox media culture? After all, there are serious efforts to muzzle Fox News. And although upstart (mainly online) conservative networks have emerged in recent years, their visibility has been decidedly curtailed by Social Media, either by direct bans or content-based censorship.

There can be little question that the overwhelming uniformity of news bias in the United States has an enormous political impact. That was empirically and persuasively demonstrated in Tim Groseclose's insightful book, Left Turn: How Liberal Media Bias Distorts the American Mind (2011). Professor Groseclose showed that media bias is significantly to the left. Id. at 192-197; see also id. at 169-77. And this distorted market has the effect, according to Groseclose, of aiding Democratic Party candidates by 8-10% in the typical election. Id. at ix, 201-33. And now, a decade after this book's publication, the press and media do not even pretend to be neutral news services.

It should be borne in mind that the first step taken by any potential authoritarian or dictatorial regime is to gain control of communications, particularly the delivery of news. It is fair to conclude, therefore, that one-party control of the press and 256\*256 media is a threat to a viable democracy. It may even give rise to countervailing extremism. The First Amendment guarantees a free press to foster a vibrant trade in ideas. But a biased press can distort the marketplace. And when the media has proven its willingness—if not eagerness— to so distort, it is a profound mistake to stand by unjustified legal rules that serve only to enhance the press' power.