THE JOHN PETER ZENGER AWARD FOR FREEDOM OF THE PRESS AND THE PEOPLE’S RIGHT TO KNOW

1984

THE RIGHT TO KNOW:
AN UNENDING BATTLE

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by Tom Wicker
Associate Editor
The New York Times

Carefree, Arizona
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The University of Arizona
Tucson, Arizona
THE ZENGER AWARD WINNERS

1984  Tom Wicker, Associate Editor, *The New York Times*
1982  Fred W. Friendly, Edward R. Murrow Professor Emeritus, Columbia Graduate School of Journalism
1981  Paul S. Cousley, *Publisher, Alton (Ill.) Telegraph*
1980  Walter Cronkite, CBS
1979  Jack C. Landau, Executive Director, *Reporters Committee for Freedom of the Press*
1977  Robert W. Greene, *Newsday*
1976  Donald F. Bolles, *Arizona Republic*
1975  Seymour M. Hersh, *The New York Times*
1974  Thomas E. Gish, Editor and Publisher, *The Mountain Eagle*
1973  Katharine Graham, Publisher, *The Washington Post*
1972  Dan Hicks Jr., Editor, *Monroe County Democrat*
1971  *The New York Times*
1970  Erwin D. Canham, Editor in Chief, *The Christian Science Monitor*
1969  J. Edward Murray, Managing Editor, *The Arizona Republic*
1968  Wes Gallagher, General Manager, The Associated Press
1967  John S. Knight, Knight Newspapers, Inc.
1965  Eugene C. Pulliam, Publisher, *Arizona Republic and Phoenix Gazette*
1964  John Netherland Heiskell, Publisher, *Arkansas Gazette*
1962  John H. Colburn, Managing Editor, Richmond (Va.) Times-Dispatch
1960  Virgil M. Newton Jr., Managing Editor, Tampa (Fla.) *Tribune*
1959  Herbert Brucker, Editor, *Hartford Courant*
1958  John E. Moss, Chairman of House Government Information subcommittee
1957  James R. Wiggins, Vice President, Executive Editor of the Washington (D.C.) *Post* and *Times Herald*
1956  James S. Pope, Executive Editor, *Louisville Courier-Journal*
1955  Basil L. Walters, Executive Editor, *Chicago Daily News* and Knight Newspapers
1954  E. Palmer Hoyt, Editor and Publisher, *Denver Post*
FOREWORD

Each year the University of Arizona and its Department of Journalism honor an individual or an organization for distinguished service in support of freedom of the press and the people's right to know.

This year's winner was chosen by a vote of 400 publishers and editors from Arizona and across the nation. This group of influential men and women selected a journalist who, in the words of the person who nominated him for this award, "has exemplified the highest level of accurate, complete reporting and analytical thinking."

To continue with the words in the nomination: "He has challenged the traditional approach to newsgathering, and in the process has helped revise reportorial perspectives and enhanced freedom of the press."

The man for whom this award is named did not shy away from challenging the traditional approach to newsgathering, 50 years before the United States Constitution was written.

John Peter Zenger was not a powerful and influential publisher. Zenger was a printer, and the New York Weekly Journal was published in his shop. Without hesitation, he accepted responsibility for what he printed in his newspaper. And for this he went to prison for eight months.

Certainly he could have avoided imprisonment by refusing to print a newspaper containing criticism of the New York colonial governor. Probably he could have gotten out of prison by agreeing to go along with the authorities.

But John Peter Zenger made his sacrifice in the cause of the people's right to know. That a jury of his peers acquitted him of the charge of seditious libel—repudiating the law of the time—emphasized the rising tide in the American colonies of a longing for the right of free expression.

John Peter Zenger helped establish that right. He displayed the courage that has been echoed by all 29 Zenger winners, and particularly Tom Wicker, the winner of the 1984 John Peter Zenger Award.

Mr. Wicker was born in Hamlet, North Carolina, and graduated from the University of North Carolina in 1948.

He worked for three North Carolina newspapers, the Sandhill Citizen of Aberdeen; The Daily Robesontan in Lumberton, and The Winston-Salem Journal before serving for two years as an officer in the Navy.

He returned to The Winston-Salem Journal in 1954 as sports editor, then editor of the Sunday feature section, and in 1957 as the Journal's Washington correspondent.

He was a Nieman Fellow at Harvard in 1957–58.

After returning to the Journal for a year, he joined the Tennessean in Nashville as associate editor.


He became bureau chief in 1964 and two years later began to write The Times's editorial page column "In The Nation." He moved to the New York offices of The Times in 1972 as columnist and associate editor.
Mr. Wicker holds honorary degrees of Columbia College, Dickinson College, Duke University, Emerson College, Franklin & Marshall College, Jersey City State College, Michigan State University, Middlebury College, Notre Dame University, Rutgers University, Wake Forest University, New York Law School and the University of North Carolina.

In 1979 he was given the William O. Douglas Award for defense of civil liberties by Public Counsel, a division of the Los Angeles County Bar Association.

In 1981 he received from his home state the North Carolina Award in Literature.

Mr. Wicker is the author of eight novels. His articles have appeared in many national magazines.

Mr. Wicker, it is my pleasure to present to you tonight the University of Arizona's 1984 John Peter Zenger Award. This silver and turquoise plaque is a symbol of your distinguished service in support of the freedom of the press and the people's right to know.

Henry Koffler
President
University of Arizona
October 18, 1984
The Zenger case is rightly celebrated as a foundation stone of the right of free men and a free press to criticize their government and its officials. But the case was not so much a precedent as a symbol, and in law it only furthered the right of juries, rather than judges, to determine what's libelous and defamatory.

It's ironic, therefore, that more than two centuries after John Peter Zenger was found innocent of seditious libel, there may be a new threat to press freedom in the fact that more and more libel cases are being decided by juries and fewer by judges.

When Zenger, a New York printer, came to trial in 1735, the law was generally understood in the American colonies to give judges the power to decide whether spoken or printed words were defamatory. Juries could only decide whether the words in question had, in fact, been "communicated abroad" and actually referred to the persons or agencies who considered themselves aggrieved by them.

This understanding derived from the laws of England, where royally appointed judges could and did rule that almost any criticism of government, or its laws and officials, was defamatory and seditious—tending to stir up dissent and rebellion. The English state and its servants, in effect, were held to be sovereign and immune to criticism.

The judges in Zenger's trial, appointed by a royal governor who had been criticized in Zenger's New York Weekly Journal, also interpreted the law that way; and the offending articles were declared at the outset of the trial to be defamatory and seditious. Ordinarily, that would have settled Zenger's guilt, since his attorney conceded he had published the attacks on the governor.

But a single day's inspired defense by the colonial attorney, Andrew Hamilton—who may have been the original "Philadelphia lawyer"—not only won Zenger's acquittal from a sympathetic jury; the verdict also gave birth to the later principle of American law that in libel prosecutions a jury can decide for itself whether or not statements are defamatory, even when the statements are criticisms of government officials.

Even so, as this audience knows, modern-day judges tended until recently to dismiss libel suits they considered ill-founded without a jury verdict. In practice, that tended to discourage supposedly offended parties from going to court with dubious or frivolous cases, and to free publications and broadcasters from the fear of being harassed by such suits. Under direction from the Supreme Court under Chief Justice Burger, however, judges now are more frequently allowing libel suits to go to a jury trial, or are being reversed by appeals courts when they dismiss them without jury trial.
But—again ironically—as one consequence of that very freedom to publish that the Zenger case foretold, the American press today is highly unpopular with the public from which jury panels are drawn; many polls and most reporters’ mail demonstrate the public’s animus toward a press widely considered arrogant, irresponsible, and too powerful, among other alleged sins. The predictable consequence, reversing Zenger’s long-ago experience, is more libel awards from juries sympathetic to persons claiming to have been damaged by publications or broadcasters.

These jury decisions can be and often are reversed by appeals courts, if the verdict is insupportable or merely vindictive; but the possibility of winning at least an initial jury verdict encourages angry parties and their lawyers to file libel suits they might once have considered hopeless. And the cost and complication of defending against these suits, perhaps all the way to the Supreme Court, is bound to have made some organs of the press—particularly those less affluent and independent—reluctant to investigate or to circulate stories that might lead to a libel action.

As that suggests, the freedom of the press that the Zenger case helped to establish is seldom without challenge, from courts, legislatures, government officials, private citizens. Today, for example, First Amendment scholars and lawyers—not to mention publishers, editors and reporters—are rightly concerned about the unintended consequences of another landmark libel case, *New York Times Co. v. Sullivan.*

As you know, the Supreme Court’s ruling in that case, in 1964, also was intended to protect, even to further, criticism of government officials. The court held that a public official, as distinguished from a private citizen, could recover damages for libel only if he or she could prove that a remark at issue had been published with “actual malice”—that is “with knowledge that it was false or with reckless disregard of whether it was false or not.”

In *Curtis Publishing Co. v. Butts* in 1967, the court also held that “public figures” (well-known persons such as entertainers) could not win a libel judgment unless they could prove “actual malice.” Since it was assumed that such malice could scarcely ever be proved, the *New York Times* and Butts cases appeared to establish virtually the final protection for the press’s right to criticize government officials and public personalities.

That’s now in doubt. Precisely because it’s so difficult to prove “actual malice” as defined by the Supreme Court, and because the burden of proof is on the plaintiff, the courts are now granting lawyers for public officials and public figures wide latitude to question the thoughts and actions of all the editors, reporters, producers or others who may have been involved in the publication or broadcasting of disputed statements. Whatever its substantive rights and wrongs, the Westmoreland-CBS case is a grim example.

This kind of inquiry may be a worthy effort to protect the rights of individuals who happen to be public officials or personalities; but such interrogations can come close to being an inquiry into the beliefs and opinions of reporters and editors, and they are unquestionably inquiries into the editorial process itself.
One result, I fear, is that fewer stories are investigated, published or broadcast that might raise even the remote possibility of a libel suit and the consequent inquiry into editorial processes and newsmen's state of mind. Another result actually may be to encourage libel suits, in the hope that malice can be proven even when the supposed libelous charges are substantially true.

Either consequence tends to confound what the Supreme Court intended its *New York Times* doctrine to produce "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open." On October 1, 1974, the *Washington Post* even commented editorially that "in retrospect, it is evident that the Supreme Court set the law moving on the wrong course" in *New York Times*.

That judgment seems to me too sweeping and premature; but clearly the right to "circulate abroad" a robust criticism of public officials and public figures—while far more strongly protected than in Zenger's day—is under challenge once again, and from a new direction.

But in my view, painfully arrived at after 35 years of often frustrating experience in the press, from the weekly *Sandhill Citizen* of Aberdeen, N.C., to *The New York Times*, the most serious problems for press freedom in America are not new, nor have they usually been, external. I believe the press is too often its own worst enemy; I say that reluctantly, of course, without meaning to dismiss or downgrade some recent external developments no lover of liberty or of the public's right to know could approve.

Secrecy in government, for example, is a hardy perennial that has received special nurturing in the Reagan Administration—although I've known no Administration that treated secrecy for what it is—a noxious weed. The current temporary wielders of power, for example, have sought and probably will seek again to impose pre-publication review (a euphemism for censorship) of virtually all government officials—not just those possessed of the deepest security secrets.

They've tried, too, to limit the Freedom of Information Act, one of the most beneficial products of government in my lifetime; and the Supreme Court, if not Congress, has suggested in some decisions that it's willing to go along. The Administration has pursued "leakers" through the Pentagon with zeal and lie detectors, and visited the usual vengeance on whistle-blowers. It has slowed the declassification of historical documents, and in the year 1982 alone 145 of its employees reviewed 7,805 articles, 2,887 speeches and 68 books before letting them go to the public.

The national security mania, which we had a right to think had been partially tamed in the Seventies, also is flowering again, with the Supreme Court in the Burger era providing some approving decisions. It's "national security," of course, that's always invoked to justify secrecy—as well as gigantic arms expenditures, overt and covert wars against small neighbor countries, and the exclusion of foreign intellectuals like Gabriel Garcia Marquez from these threatened shores.

Most notably in the Reagan Administration, as this audience will certainly remember, the security zealots managed to exclude the press from the
glorious American triumph over 700 Cubans in Grenada; so that "news" film
the nation saw on television was government film and it didn't include any
dead American bodies—although there were some dead Americans to mar
Mr. Reagan's great victory.

And the secret government weapon of "national security" was aimed
squarely at the press, in a manner rarely seen since the Vietnam war, when
Secretary of State Shultz remarked after Grenada that American reporters are
"not on our side" but seem "always against us." Asked at one of his rare news
conferences who was the "us" that Mr. Shultz had said reporters were always
against, President Reagan replied: "Our side, militarily—in other words, all
of America."

Think of that. A free press operating in a free society under a Constitu-
tion Presidents are sworn to uphold actually was described by one of those
Presidents as against "all of America."

I don't discount that kind of animosity or misunderstanding, or the
tightening of libel law, or the occasional closing of courtrooms to the press; and
it's true that a depressing number of reporters, these days, are being jailed or
threatened with jail for refusing to disclose sources. But I don't believe that, even
in its hostility toward the press, the American public is going to tolerate the
repeal of the First Amendment or court rulings that would effectively silence,
or even seriously restrain, criticism of government. And I fear that the press
itself, in its attitudes, assumptions and limitations, may as seriously as any
outside force limit the public's right to know, and tarnish the ideal of an
informed populace.

That right and that ideal, after all, not the comfort, convenience, or
status of reporters and editors, are the purposes of a free press with Constitu-
tional protection. How well the press serves those purposes is the real test of its
freedom; and that standard requires us to examine our own performance more
candidly than we usually do.

The American press, for example, is tightly geared to covering what's
happening, particularly what's obviously happening; but it's sluggish at covering
what's not happening, or happening invisibly. Newspapers and television exten-
sively covered the well-organized civil rights revolution of the Fifties and Sixties,
with its prominent spokesmen; but they barely noticed the great outmigration of
blacks from the South into the cities of the north and west—not, at least, until
that unorganized movement with no official spokesmen had profoundly
changed national life.

Similarly, our squalid prisons breed more crime and absorb more tax
money without beneficial result than any American institution. Yet, the press
reports on prisons only when there's a riot, a break or some kind of scandal;
nothing else ever happens in these dark holes, if press coverage is the measure.

And the secret decisions of major business organizations, even though
they may affect more lives more seriously than almost any state legislative
action—more even than many Congressional measures—this closed-door
decision-making isn't happening either, to judge by the press. And in many
other areas—health care and education come to mind—the press too often
performs as if nothing's happening.
When it does venture beyond its fixation on events and spokesmen, the press is often itself ill-informed; and what's printed and broadcast as news is frequently confusing and misleading or just plain wrong. One reason is the supposed need to simplify things for a public presumed to be hurried and none too interested. Complex economic matters, say, or arcane questions of nuclear strategy and arms control are difficult enough to understand and harder to explain, particularly under pressures of time and space, without trying to reduce them to the level of a first-grade primer.

All too many reporters, moreover, get their information about these and other matters "on the beat"—from sources, such as the Pentagon, likely to be self-serving. Few reporters, fighting their deadlines, have the time or perhaps the inclination for outside study of more even-handed and sophisticated documentary or academic material, or for pursuing sources with a different point of view and no vested interest.

The exceptions—many, I'm sure, in Arizona—are honorable but too few; and the result is either sketchy and incoherent coverage, or stories that reflect the interests of self-serving sources. In either case, the public is not being well-informed.

In the important area of foreign and national security affairs—contrary to Mr. Reagan and Mr. Shultz—the American press also reflects a distressing nationalism in the assumptions on which reports are based. So far from being against "all of America," coverage persistently reflects a "we vs. they" attitude—a none-too-subtle kind of rooting for the home team.

Thus, U.S. arms control proposals are almost always seen as fair and in the interests of peace, i.e. as correct; but Soviet proposals are pictured as insincere, warlike and propagandistic. This mindset has some justification; but it was the Soviets, for example, who wanted to ban multiple-warhead missiles in the SALT I treaty, and it was the U.S. that insisted on developing them. That was clearly one of the most dangerous miscalculations of the nuclear era—and it was ours, though that's not often reported the American press even a decade later.

A Soviet pledge of no-first-use of nuclear weapons was treated mostly as a trick, and not to be believed; but it is solemnly supposed in American reportage that if the U.S. were to make such a pledge, the nation would of course be bound by it. The assumption that the Soviets often break treaties but the U.S. always honors them is standard in the same reportage; in the real world, by refusing to negotiate for a comprehensive test ban treaty, the U.S. has in fact violated its commitments in both the limited test ban and the nuclear non-proliferation treaties—unknown to most of those who depend on the American press.

This nationalistic emphasis—the sports press wallowed in it during the 1984 Olympics—ill-informs and in some cases actively misleads the American public on perhaps the most important issues of the time. That's not as visible or dramatic as an adverse court ruling; but it may well be a greater obstacle to the ideal of an informed public.

The Presidential campaign of 1984 suggests other internal problems. Television news broadcasts, by any measure, convey most of what voters know about the campaign. But the Reagan organization and its candidate are highly
skilled at staging the kind of events—patriotic rallies, the President chatting with school children—they want the public to see. And the networks and local broadcasters are sometimes trapped by the ingrained event orientation of the press into putting much of this calculated image-making on the home screen in the guise of news, even when they know better.

In print, too, the presentation of the Reagan campaign bears too little relation to the facts of the Reagan Administration. One example, from The New York Times, followed the President's conciliatory speech at the United Nations in late September. The Times covered the speech extensively and reprinted the text; Mr. Reagan's stated desire for improved Soviet-American relations received major headlines and much space.

But in another story, not so prominently displayed, one of The Times's diplomatic correspondents detailed the four-year struggle in the Reagan Administration between a Pentagon faction opposing arms control an a State Department group favoring at least limited steps toward arms control. Mr. Reagan usually had sided with the Pentagon group, and there's no evidence to suggest that that group or his support for it will change in a second term.

But the speech—one of those events to which we devote so much coverage—and thus the image of conciliation got the headlines; the reality, though not exactly buried, was much harder for a reader to find. In such cases, the press's traditional effort to keep the news separate from analysis of the news seems to me not to serve the cause of an informed public so much as it plays into the hands of the news managers.

Too many of our political reporters are showing themselves not well enough versed in substantive issues, such as arms control or the budget deficit; and too many of them focus too much on horse-race coverage—who's ahead in the polls, and what are the latest media techniques being used to keep him there—rather than on the substance of a speech or a campaign. And there is as usual too much pack journalism, the herd instinct that can so quickly and so unanimously assure the public that Ronald Reagan is a sure winner—or that Barry Goldwater or George McGovern is a sure loser—that the danger of self-fulfilling prophecy seems to me quite real.

The less searching and skeptical press coverage of the Reagan Administration, compared to that of its immediate predecessors (imagine how the press would have pilloried Jimmy Carter for something like Mr. Reagan's bombing-Russia "joke"), suggests also that the press has been intimidated—not by Administration threats but by Ronald Reagan's success.

That he might win in 1980 was not expected until late in the campaign by much of a press that considered him "just an actor" and a right-winger with a tendency to make ludicrous statements about trees causing pollution. That he could win an Electoral College landslide, carry in a Republican Senate, and push through a major tax bill in his first year caused a certain consternation. Did Mr. Reagan know something the press didn't? Was the country "going to the right?" What was happening out there beyond the Beltway around Washington?

Whatever it was, it didn't seem to encourage the kind of critical skepticism that dogged Mr. Carter. And when Mr. Reagan's personal popularity stayed
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high through good times and bad, it may well have been part of a circular process—he was popular so the press didn't question him too closely; that helped him stay popular so the press still didn't question him; and so on.

Thus, the 1984 campaign in my judgment exposes many of the internal difficulties even a free press has in striving for the ideal of an informed public. Year in and year out, moreover, though the pattern has changed somewhat for the better in the wake of Vietnam and Watergate, the free American press functions—in my judgment—too cautiously in the cause of "robust, uninhibited and wide open" debate and in its dedication to the goal of an informed public.

So far from being the arrogant tramples of national security and government secrets imagined by Ronald Reagan, and Richard Nixon before him, the press in which I've spent most of my life has usually appeared to me to be hungry for a respectable place in the established political and economic order, and apprehensive about the hostile public and official reaction that boldness and independence often evoke. The dramatic event and the official spokesman are still too nearly the staples of our news columns; and the kind of skeptical and challenging coverage that emerged from Vietnam and Watergate is the exception that makes dramatic movies, rather than the general rule.

So if there's ample cause to be concerned about the First Amendment and the courts and the national security zealots, the press has no reason for complacency about its own performance, in print or with the television camera. The First Amendment is not needed to protect coverage of staged "media events," unquestioning acceptance of official statements, ill-informed reports of complex matters, and evasions of responsibility—any more than it is needed to protect gourmet recipes or happy-talk weather reports. And even the First Amendment can't guarantee thoughtful and informed reporting of the news.
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