

PART III: ISSUES AND APPLICATIONS

CHAPTER 9

Ethical Issues Across the Media

When in doubt, tell the truth. — Mark Twain

We have seen in preceding chapters how the various media professions differ in such areas as loyalty and goals. These differences set them apart from each other ethically as well. That doesn't mean that lying in a news story isn't the same as lying in public relations or advertising. What it does mean is that there are issues unique to each medium that require different ethical approaches. That is what we'll be discussing in this section of the book. In this chapter, we will be exploring the broader issues of truth telling and harm and how those larger issues play out within the three mass media professions—public relations, advertising, and news journalism.

To Tell the Truth

Of all the possible virtues a media practitioner would like to be known for, truth stands out as preeminent. Hardly anyone doubts that the media go to great lengths to tell the truth. With the exception of the tabloid press, who sometimes run stories on alien births and Elvis sightings, most media base their reputations on their veracity. In fact, the few laws that limit freedom of speech have mostly to do with protection from harm caused by some form of lying. Laws against libel, slander, defamation, and so on, all deal with false or misleading speech. These laws apply equally to both public relations and advertising. In addition, both public relations and advertising are subject to very strict Federal Trade Commission guidelines governing deception. In short, truth is the default position for all serious media, both legally and ethically. However, as we will see, truth is defined somewhat differently for journalism than it is for public relations and advertising, and on that definitional difference turns a great deal of controversy.

Can the media's allegiance to the truth be bent or even broken in the name of public interest? Do public relations and advertising have to adhere to the same strict standard of truth telling that the news media do? These questions, and others, are probably the most important ones facing the media today. And these are the questions we will take up here.

Truth as a Legal Concept

Remember that the law is the ultimate formalization of societal and cultural values and ideals. The fact that we have enacted laws that deal with truth shows that, as a society, we value communication that is truthful and tend to restrict communication that potentially harms others. Although the law doesn't pretend, nor does it need, to cover every potential communication-caused harm, it does deal with the most egregious. It is also worth mentioning that most of these laws apply equally to individuals and to the media. For example, slander is generally applied to the communication of individuals whereas libel is reserved for published communication. As an individual, I may slander someone else if I harm them in some way because of something I've said to a third party. Libel would occur if the harm were caused by my publishing the same communication.

The First Amendment is not inviolable. Laws exist that clearly disallow certain types of speech, and all those who deal in public communication are bound by these laws. For the most part, these laws protect others. We are all familiar with the First Amendment rights allowed the press in this country. But, as with most rights, there are concomitant obligations—chief among them is the obligation not to harm others through communication. The most important “don'ts” in the media concern slander or libel (defamation), and invasion of privacy. Keep in mind, as you read through these legal prohibitions, the possible *moral* rights involved that may be violated.

Defamation

Although it is variously defined (each case seems to bring a new definition), *defamation* can be said to be any communication that holds a person up to contempt, hatred, ridicule, or scorn. One problem in defending against accusations of defamation is that there are different rules for different people. It is generally easier for private individuals to prove defamation than it is for those in the public eye. Celebrities and politicians, for example, open themselves to a certain amount of publicity, and, therefore, criticism. Whereas a private individual suing for libel need only prove negligence, a public figure must prove malice. In order for defamation to be actionable, five elements must be present.

- There must be communication of a statement that harms a person's reputation in some way—even if it only lowers that person's esteem in another's eyes.
- The communication must have been published or communicated to a third party. The difference here is that between slander and libel. Slander is oral defamation, and might arise, for example, in a public speech. Libel is written defamation, though it also includes broadcast communication.
- The person defamed must have been identified in the communication, either by name or by direct inference. This is the toughest to prove if the person's name hasn't been used directly.
- The person defamed must be able to prove that the communication

caused damage to his or her reputation.

- Negligence must also be shown. In other words, the source of the communication must be proved to have been negligent during research or writing. Negligence can be the fault of poor information gathering. Public figures must prove malice—that is, the communication was made with knowing falsehood or reckless disregard for the truth.

There are defenses against defamation. The most obvious is that the communication is the *truth*, regardless of whether the information harmed someone's reputation or not.

The second defense is *privilege*. Privilege applies to statements made during public, official, or judicial proceedings. For example, if something normally libelous is reported accurately on the basis of a public meeting, the reporter cannot be held responsible. Privilege is a tricky concept, however, and care must be taken that privileged information be released only to those who have right to it. Public meetings are public information. Only concerned individuals have a right to privileged information released at private meetings.

The third most common defense is *fair comment*. This concept applies primarily to the right to criticize, as in theater or book critiques, and must be restricted to the public interest aspects of that which is under discussion. However, it also can be construed to apply to such communications as comparative advertising.

We should remember that laws are extensions of our moral beliefs, codified so that we, as a society, must follow them. In this way, laws are similar to what Kant would call perfect duties. We must refrain from such acts as murder, stealing, and—most importantly for our purposes here—lying. It is often pointed out that being legal doesn't necessarily mean being ethical; however, if we understand that many of our common laws were designed to help us live together successfully as a society, we should also see that those laws reflect the commonalities in our moral standards. All that is legal may not be ethical, but legality is a good starting point for many ethical situations.

Defamation and privacy issues (covered in Chapter 13) are at the heart of legal protection from untruthful and harmful speech, and these types of speech are certainly morally troublesome as well. What follows, then, is a discussion of the additional ethical considerations necessary for all media in order that they fulfill both their professional and their social obligations.

Truth and the Act of Communication

Comedian Stephen Colbert once famously noted, "It used to be, everyone was entitled to their own opinion, but not their own facts. But that's not the case anymore. Facts matter not at all. Perception is everything." This is an excellent piece of satire, which, by definition, contains a grain of truth. Facts are supposed to be provable, of course, and not made up to suit the situation; however, many today don't trust the various media to present them with "real" facts.

You would think that in any act of communication, truth would need to be an essential ingredient. After all, what kind of society would we have if

lying rather than telling the truth were the default position? For example, when you ask a stranger on the street if he has the time, you don't expect him to lie to you. This is because lying constitutes a breach of trust. People expect the truth, especially in response to a direct inquiry in which they don't see any reason to be lied to. In fact, Kant would say that truth is fundamental to the functioning of society. Without it, individual autonomy would be undermined, because we depend on truthful information in order to make informed decisions. In addition, telling the truth demonstrates a respect for persons as ends rather than tools to be manipulated.

As human beings, we naturally seek a state of cooperation (a social contract), and cooperation can be gained in the long run only by telling the truth. However, what constitutes "telling the truth" varies definitionally as well as functionally. Suppose you ask if a particular item is expensive. The store clerk answers that it's not. You ask the price. It's a real killer—at least according to your paycheck. Was the clerk lying? It depends. Maybe the clerk is used to selling high-priced items and this is one of the least expensive of the items she sells. But you're not used to buying high-priced items, so your definition of "expensive" may be different from the store clerk's. Can we say the same thing about the definition of "truth"?

Telling the truth demonstrates a respect for persons as ends rather than tools to be manipulated.

There is certainly no lack of definitions of truth (and lying, for that matter); however, we must always recognize the limits of those definitions and realize our own limitations in pinning them down. One of the most useful definitions of truth comes from the philosopher Sissela Bok, who suggests that lying is a form of coercion. That is, to lie to someone is to lead them to act in a manner in which they would not have acted had you told them the truth. For example, a politician lies to his constituency concerning his stand on a particular issue. His constituency votes for him based, in part, on that stand. They have been encouraged to act in a way they might not have had they known the truth. Recall C. Edwin Baker's description of coercive speech from Chapter 7. He holds that coercive speech is that which undermines another person's autonomy in decision making.

Telling the truth also implies that the teller believes what he is saying as well. This is especially important if the professional communicator is repeating what someone else has said and has no reason to doubt the veracity of that information. In recent years, both public relations and advertising professionals have been called to account for falsehoods they furthered on behalf of their clients. In fact, many agencies now require a contract that includes a "no fault" clause absolving them from blame if they unknowingly pass on false information on behalf of a client. All media professionals, including journalists, must believe in the basic truth of their statements and the accuracy of their information; realizing, at the same time, that there is always the chance they may be proven wrong. The British philosopher Mary Midgley explains how important it is to be committed to what we believe to be true, because commitment doesn't carry any claim of infallibility.

Commitment of this kind is necessary for effective discourse, because if

everybody holds back from endorsing everything they say, no speech is reliable and we lose the advantage of speaking at all. (Someone who kept adding, “Of course this may not be true”, to every sentence would simply be a public nuisance.) Words like “certain” and “know” and indeed “truth” are part of this language of commitment. Perhaps the strongest form of commitment is to say something like, “I am as sure of this as I am of anything.”¹

In some ways, this is related to what is known as “unasserted lies.” For example, actors don’t assert that they are telling the truth, and we understand that they are not. We are part of the fiction they create, we recognize it as

A lie is the act of asserting something you know to be false with the intention of leading someone into believing you

fiction, so it is not a lie. This, then, leads us to a working definition of a lie: Asserting something you know to be false with the intention of leading someone into believing you. A lie is the act of asserting something you know to be false with the intention of leading someone into believing you.

Without getting into deep philosophical debates over the nature of language, perception versus reality, and truths of reason versus truths of fact, let’s take a look at the possible different ways the media might define truth and put it into practice.

Journalistic Truth

Mark Twain once said that his job as a journalist was to “corral” the truth. When a journalist talks about the truth today, she is generally speaking of the elements that contribute to journalistic truth (ways in which it can be corralled). Among these elements are accuracy, context, and balance.

- *Accuracy* has to do with getting the facts straight. Despite deadline pressures, nearly every journalist will tell you that accuracy is of utmost importance to the “truth” of a story. Although the term “fact” itself may often be disputed (especially by philosophers), a journalist will strive to verify the “facts” of a story through sources, background, records, experts, and other methods before deciding on their veracity. Some will argue, of course, that truth (including facts) is relative. For instance, once people believed that the world was flat. For all intents and purposes, it was a fact for quite a long time. Of course, it was later disproved and now we all accept the “fact” that the earth is round (or nearly round). But a journalist upon learning from the coroner that a victim was killed at approximately 2:00 a.m. will almost certainly take that information as fact and pass it on as such. And although other facts are more difficult to ascertain, part of a journalist’s job is to do just that, using his power of perception and his training to decipher, as much as possible, fact from fiction.

A second factor contributing to accuracy is the care with which direct quotes are treated in journalism. No self-respecting journalist

would alter a quote. In fact, whereas some journalists feel that cleaning up grammar is acceptable, others hold that a quote is accurate only if repeated exactly the way it was uttered. Of course, even an accurate quote can be deceptive if taken out of context.

- *Context* is vital to the understanding of a story. To place any element of a story out of context is to leave out information vital to the understanding of that story—and to do that would be tantamount to lying by omission. Journalists strive, or should strive, for understanding. After all, mere facts alone don't constitute understanding. This sticking point is also central to the debate over the supposed objective nature of journalism—a subject we will deal with more fully later.
- *Balance* is integral to the truth of a story because it bears on the concept of fairness, and fairness is viewed by many as essential to ethical action of all sorts. To a journalist, balance simply means presenting as many sides of a story as it takes to achieve a complete picture. So, in a very real sense, balance is related directly both to accuracy and to context. Part and parcel of being objective is to seem not to take sides. It may be for this reason as much as any sense of fairness that most journalists strive for balance. To present an unbalanced account would be to leave yourself open to accusations of partisanship. Either way, it is certain that balance contributes to the truth of a story by strengthening its context.

Truth in Advertising and Public Relations

Many people would say that the area of truth telling is where journalism and advertising and public relations definitely part company; however, from a professional perspective, truth is just as important to advertising and public relations as it is to journalism. The truth of an advertising claim is quickly verified once the product is tested by the consumer. In the same way, the truth of a public relations claim is likewise verified by proof in the form of action. (For example, a political candidate's claims are quickly confirmed once he takes office.) Both advertising and public relations generally rely on a legal definition of truth to determine whether or not they have erred. But, although a legal definition of truth is useful, it does not begin to cover the gray areas produced by vagueness, ambiguity, and puffery.

Puffery is advertising that praises the item to be sold with subjective opinions, superlatives, or exaggerations—vaguely and generally, stating no specific facts

Puffery is defined by Ivan Preston as “advertising or other sales representations which praise the item to be sold with subjective opinions, superlatives, or exaggerations, vaguely and generally, stating no specific facts.”² Puffery is advertising that praises the item to be sold with subjective opinions, superlatives, or exaggerations—vaguely and generally, stating no specific facts. A soft drink commercial showing young people frolicking on the beach doesn't really tell us anything about the soft drink itself. It merely creates an ambience in which the soft drink plays an apparently critical role. Some, including Preston, consider

puffery to be unethical by nature; however, anyone who has ever had to come up with an idea for a product that is exactly like every other product of its kind knows that image can be everything.

Carl P. Wrighter in his book *I Can Sell You Anything* defines words that have a vague meaning and seem to say something other than what they really mean as *weasel words*. Such advertising claims as “part of a balanced breakfast,” “helps prevent gum disease,” and “leaves your dishes virtually spotless,” have little meaning when weasel words such as *part of*, *helps*, and *virtually* are fully defined. Both *part of* and *helps* actually indicate that something else plays a part in the success of the product, and *virtually* literally means almost.³ Although use of these words is not, on the face of it, unethical, we should be aware that there is a certain equivocation involved in using them at all, and that ambiguity in both advertising and public relations is usually intentional. Is that tantamount to lying? Possibly not. Unless the claim is absolutely false or the information inaccurate, the truth is not being altered—the message is merely being selectively presented. Selectivity of information and the way in which it is presented is what sets advertising and public relations the farthest apart from journalism. One of the ways to discover the basic differences among the various media is to compare the criteria for truthful communication used in journalism with those in advertising and public relations.

Applying the Accuracy Criterion in Public Relations and Advertising

If we were to compare the journalistic definition of truth with that of advertising and public relations we would discover that on the criterion of accuracy they would approximately match. *Accuracy* is just as important to advertising and public relations as it is to journalism. The accuracy of information disseminated by advertising is central to the success of its endeavor. Inaccurate information could be considered a false product claim, which is illegal. At the very least, it could lead to consumer dissatisfaction. For public relations, inaccurate information could result in, for instance, lack of credibility—and credibility is extremely important to public relations. For both advertising and public relations, intentional inaccuracy would be considered unethical (and possibly illegal), just as it would in journalism. When it comes to quotes, however, there is a major difference.

Whereas quotes used in journalism must be absolutely accurate, quotes in public relations can be, and often are, literally made up. What does a speechwriter do? She makes up quotes. How, then, do those quotes become an accurate reflection of the person for whom the speech is written? That person gives the speech. At that point, the quotes become his, not his speechwriter's. What about the corporate or political speech that is handed out prior to the actual speech being given, as with the State of the Union address given by the President each year? The same thing applies. The quotes, once passed on to the intended audience, are then validated as having been spoken by the person for whom they were written. The same thing applies to quotes appearing in press releases. These are often made up in order to enhance the credibility of the release or simply to get the name of some executive into the release. Once the person to whom the quote is attributed approves the quote, it is legitimate.

The key in both instances is the approval of the quoted person. This form of writing, often referred to as ghostwriting, presents a number of ethical pitfalls. Richard Johannesen proposes a series of guidelines that would remove some of the potential for ethical error from this process.⁴

- What is the communicator's intent and what is the audience's degree of awareness?
- In other words, does the communicator pretend to be the author of the words he speaks or over which his signature appears? And how aware is the audience that ghostwriting is commonplace under certain circumstances? If we assume, as most do, that presidential speeches are ghostwritten, then the only unethical act would be for the President to claim to author his own speeches.
- Does the communicator use ghostwriters to make himself or herself appear to possess personal qualities that he or she really does not have? In other words, does the writer impart such qualities as eloquence, wit, coherence, and incisive ideas to a communicator who might not possess these qualities otherwise? The degree to which the writing distorts a communicator's character has a great deal to do with ethicality.
- What are the surrounding circumstances of the communicator's job that make ghostwriting a necessity? The pressures of a job often dictate that a ghostwriter be used. Busy executives, like busy politicians, may not have the time to write all the messages they must deliver on a daily basis. However, we don't expect the average office manager or university professor to hire a ghostwriter. Part of the answer to this question lies in the pressures of the job itself, and the other part has to do with the need and frequency of communication.
- To what extent do the communicators actively participate in the writing of their own messages? Obviously, the more input a communicator has in his or her own writing, the more ethical will be the resultant image. We really don't expect the President to write his own speeches, but we do expect that the sentiments expressed in them will be his own.
- Does the communicator accept responsibility for the message he or she presents? When former president Ronald Reagan's press secretary, Larry Speakes, disclosed in his book that many of the quotes attributed to the president were, in fact, either made up or "borrowed" from someone else, he caused quite an ethical uproar. Part of the problem with the Larry Speakes revelation was that the President denied the accusations. In other words, he claimed he never approved Speakes' work. Most communicators simply assume that whatever they say or whatever they sign their names to is theirs, whether written by someone else or not. This is obviously the most ethical position to take.

Applying the Context Criterion in Public Relations and Advertising

Context is a more ambiguous concept for advertising and public relations. Whereas a news story needs to appear within the broader context of its setting in order to enhance understanding, the contextual setting of information for both advertising and public relations can be much narrower. For example, a television ad need only be placed within the context of its own reality, and that reality is often created just for that product (in literature, this is called verisimilitude). The make-believe world of the ideal nuclear family is the context from which we are most often sold laundry detergent, bath soap, kid's juice drinks, floor waxes, and dozens of other similar products. Does this created context enhance understanding of the typical uses of the product? Of course it does. Is the context true? Possibly not; however, if it actually shows the most typical use of the product, even in a make-believe setting, it does not alter the veracity of the product claim.

For public relations, context may be even more important. The context within which a claim is made or an argument offered decidedly influences the reactions of the receiving audience. Claims not placed within context generally cry out for support. Intelligent listeners typically reject such vacuous statements. For example, a political candidate claiming that violent crime is a problem so great in scope that only severe measures will work to prevent its uncontrolled spread would do well to place that claim within the context of national crime statistics or risk loss of credibility. By the same token, context is sometimes narrowed in order to give an argument more strength. For instance, an impassioned plea for gun control by a state legislator following a school shooting may be placed within the local context for greater effect. It may even be placed within the larger national context, given the "epidemic" of school shootings in this country, and still succeed. However, if placed within the totality of violent crime, which is on the decrease, or if compared with the relative safety of nearly all of our schools (hundreds of thousands in number), the argument may lose some of its edge. So, selective context for public relations, as for advertising, is purposeful and generally done to enhance the marketability of a product, service, or idea.

Applying the Balance Criterion in Public Relations and Advertising

On the criterion of *balance*, advertising and public relations diverge widely from journalism. The objective nature of journalism demands balance. The highly subjective nature of advertising and public relations results in no such requirement. In fact, the act of persuasion requires that a side be taken. And although a persuasive claim may very well present both sides of an argument, it will certainly support only one. We must also remember that persuasion is not unethical by nature. As mentioned earlier in this chapter, persuasion within a democratic environment is entirely necessary for that endeavor to succeed. As long as the message isn't intentionally deceptive, important facts are not misrepresented or left out, and blatant lies are not told, advertising and public relations communication can be said to be truthful.

Finally, it should be noted that it would be a mistake for us to hold all media to the same standards as news writing. We must remember that journal-

istic writing, in its present form, is an invention of the past 80 years or so and uses standards of objectivity not suited to persuasive writing. In fact, the ideal of objectivity is being argued by many as an unsatisfactory one even for journalism. Regardless, we must be cautious not to assume unethicity simply because of a difference in style or intent.

Can We Tell Truth From Fiction?

As far as advertising and public relations are concerned, the question of whether we can tell truth from fiction is crucial. We expect journalistic descriptions and reports to be “real”—that is, factual and accurate representations of reality. Thus, we are shocked to learn that a news story has been fabricated, as in the infamous Janet Cooke—*Washington Post* scandal of over 30 years ago. We are outraged when we learn, for instance, that NBC News would rig a truck to blow up to prove a crash-test point. We expect the news to be real. But what about docudramas, “reality” shows, entertainment “news”? These somewhat gray areas, as well as a great deal of advertising and public relations, require a closer inspection of what constitutes truth. Such a discussion also requires that we take sides in the age-old debate over whether people are intelligent enough to make such distinctions or are, as Plato suggested, simply an uneducated mob.

The Qualified Expectation of Reality Test

Ethics scholars Tom Wheeler and Tim Gleason have developed a test for ethicality in photo manipulation that is based on the idea of an audience’s expectation of reality. They claim that one way to test this ethicality is to ask the viewer/reader if the photograph is plausible. “Or, is the fictional content immediately obvious?”⁷⁵ This recognition factor allows for a fairly liberal interpretation of what is misleading. It relies on two tests: (1) whether or not the image is implausible and, thus, readily obvious, and (2) if not, if it is appropriately labeled.

This *qualified expectation of reality* test (QER), then, is the determinant of ethicality—at least for manipulated photographs. Following on this guideline, we might expect that a photo on the cover of *Mad Magazine* would more likely be manipulated than one on the cover of *Time* magazine. That is why, for instance, the now-famous O. J. Simpson photo that appeared greatly altered on the cover of *Time* several years ago drew so much negative attention. The cover was labeled a “photo-illustration” on the masthead and showed a heavily touched-up police mug shot of Simpson with a decidedly darkened countenance. Racial overtones aside, most people felt that the cover of a “news” magazine was not the place to fool around with reality. The determinant is whether an average reader or viewer would expect the image to be real or not. If he does expect reality, then any manipulation must be admitted in order not to, either intentionally or unintentionally, fool him.

The QER test also can be useful for determining the “truth” of advertising and public relations claims—as regards image and context—as well as information programming that blurs the lines between fact and fiction. How plausible

is the image of huge draft horses playing football, or of frogs talking about beer, or lizards talking about car insurance? Do we really believe that the product they are selling is reflected in the image they are using, or are we merely amused? Do we really prefer Pepsi over Coke because of all those clever commercials? Clearly, the examples cited here fall into the implausible category; however, there are many that are not so easily recognized as fiction.

Magazine ads that depict young women as unnaturally tall and thin may appear to be real when, in fact, they are subtly manipulated to enhance already gaunt features. What about the celebrity spokesperson who endorses a product he doesn't use? Do we believe him or not? What about the seemingly real testimonial from a person who turns out to be an actor? Do we believe that "vintage" film footage of Dean Whitter urging his employees to care about their customers is what it purports to be? Or do the advertisers think we'll instantly recognize it as an artistic prop meant simply to catch our attention? Is that Jeep really on top of that mountain peak? Is that hamburger really that big? What are our expectations?

So, although selective presentation, as mentioned earlier, may not be inherently unethical, much depends on the receiver's qualified expectation of reality. The clichéd advertising response of *caveat emptor* (buyer beware) covers only so much transgression. If we follow the model suggested by Wheeler and Gleason, our obligation is to remove all doubt concerning the reality of the context of our message. And although the law has already insisted on some indicators (labeling dramatizations, for instance), our goal should be to eliminate any potential for misunderstanding. If our goal is to intentionally blur the lines between fact and fiction, we are acting unethically.

Consumers: Victims or Informed Choosers?

You'll remember from our earlier discussion of Plato and Walter Lippmann that not everyone has viewed the "people" as intelligent enough to look out for themselves. This is an important point to come to grips with since much of the justification for the type of communication that both advertising and public relations engage in is predicated on the notion that listeners are intelligent enough to discern true from false. According to this concept, the views of the likes of Milton and Locke are correct in that truth will prevail in an open marketplace, in part, because autonomous and rational individuals will be able to discern the difference between truth and falsity. This belief in the rational abilities of the people who receive media messages is directly responsible for such precepts as *caveat emptor*. "Buyer beware" assumes that an intelligent consumer will be able to discern nuances in messages—nuances that the designer of the message may have intentionally obscured. And this turns up the other side of the coin: Why do those advertising and public relations practitioners who say they believe in the intelligence of the average consumer try so hard to cloud their messages? Could it be that,

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like Plato and Lippmann, they really believe that the masses are easily deceived by the “shadows on the cave wall”?

Think of the huge numbers of infomercials airing on television these days. A great many of them are “performed” before a live audience as if the “guest” was appearing on a talk show. Does the average consumer know that these audiences are paid to be there? Can viewers tell that the “programs” are really commercials posing as talk shows? Why do you suppose the FCC requires these lengthy commercials to carry the disclaimer that they are paid advertising? Why do phrases such as “dramatization” have to appear on commercials in which actors pose as “real” people? Because some believe that average consumers just might be duped by such tactics as fake talk shows and dramatic recreations. This also accounts for the labeling of news images not actually taken during the unfolding of the story being discussed but at some time earlier as “library footage,” or “file footage.”

As the line between entertainment and information becomes increasingly blurred, catch phrases such as *caveat emptor* may no longer provide sufficient warning. Additionally, such techniques as the QER test have to be based on a pragmatic assessment of the abilities of the consumer to discern what is real from what is not, especially in instances in which they are expecting “reality.” Whether you agree with Plato or with Milton, placing the onus of recognition of reality solely on the receiver of your message is failing to live up to your own moral obligations. Intent is still the ultimate measure of truth telling. If, as a media practitioner, you *intend* to deceive, then you are acting unethically; however, if someone is misled by a message you never expected would be misleading, then your actions may be excused. Likewise, we don’t tend to criticize advertising that is clearly fictional. (We don’t really believe that frogs and lizards talk—do we?) But if we are led to believe that someone stands for something she does not, or that a product performs in a way it ultimately does not, or that something fake is something real, then we have been deceived—and deception is unethical.

The Ultimate Truth

It must be remembered that advertising and public relations are not, by nature, unethical. Neither is the act of persuasion. The ultimate determinant of the ethicality of a persuasive technique is the degree to which the practitioner *intends* to deceive in order to manipulate an audience. Manipulation is the same as coercion—the result of telling an outright lie. In both cases the communicator is intentionally altering reality in order to force another person into believing or acting in a way she would not have but for the deception or the lie.

To fail to respect the autonomy of another person goes against most of the principles on which American democracy is founded. It violates the Kantian imperative to treat all human beings with respect; it ignores Mill’s caution against bullying the minority; it runs counter to the Liberty Theory of free speech; and it violates the natural rights of individuals that Locke was so set on protecting. Even the Greek philosophers, who recognized that rhetoric implied persuasion, held that to lie or to mislead by false logic was inherently wrong.

Both Plato and Aristotle had little use for sophists, the group of professional philosophers who specialized in dialectic, argumentation, and rhetoric and who were often known for their elaborate and specious arguments. In fact, the word sophistry has come to mean “a plausible but misleading or fallacious argument.” In the final analysis, it is best to remember that persuasion is ethical, manipulation is not.

The same is ultimately true for journalism. While journalists continually hold up the truth as an icon, they also stoop to consistently newer lows each time they use deception to gather news without first considering alternative methods. At first blush, it may seem that using deceptive techniques in advertising and public relations is so obviously self-serving as to be undeniably unethical. At the same time, deception used in the name of the public’s “right to know” appears to carry a sense of higher purpose. However, if we realize that the news “business” actually is a business, then it is less clear whether deception is being used on behalf of the public or merely to stimulate consumption of the news product.

The growth spurt in television news magazine shows is proof enough that investigative reporting draws viewership. When all the major networks are competing head-to-head on weeknights with amazingly similar products, the push to go for the spectacular is great indeed. And with this rise in competition comes a parallel rise in the temptation to use deceptive techniques to gather the story. Nothing condemns quite like a hidden camera or an ambush interview. As in any war, in this battle to achieve the highest ratings, truth is usually the first casualty.

We rely on the media for practically everything we know about the world that we haven't experienced first hand. It is vitally important that the truth be the rule and not the exception.

How can we avoid this trap? For all of the media, truth has to become the paramount concern. Deception must not be used in advertising and public relations at all. And in investigative reporting, deceptive news-gathering techniques must be limited to instances in which a vitally important story cannot be gathered in any other way. In the final analysis, the media cannot afford to lie—in any way, for any reason. If we cannot be assured that the default position is always the truth, then the media will continue to slide in esteem, along with their ability to affect lives in positive ways.

We have seen so far in this chapter that the road to truth is filled with obstacles. Most of these can be avoided easily; some take more effort. Ultimately, the result is worth the effort, for the media are known by the truth they tell—whether it is about a product, a political candidate, or a school shooting. We rely on the media for practically everything we know about the world that we haven’t experienced first hand. It is vitally important that the truth be the rule and not the exception.

Avoiding Harm

We have all heard the phrase, “the truth hurts.” This simple adage illuminates one of the most controversial areas of media ethics: the avoidance of harm.

The media, in fulfilling their role as disseminators of information, often face the invariable conflict between providing news or respecting rights. As mentioned in Chapter 1, values and ideals come into conflict all the time. A citizen's right to privacy can be, and often is, ignored by the news media. Every tragedy has its victims, and tragedy is news. Unfortunately, so are the victims. The long trail of school shootings has illustrated the extremes that some reporters will go to get a story. Charles Deitz in his in-depth investigation of the the aftermath of the shootings at Sandy Hook Elementary School in Newtown, Connecticut in 2012, notes:

The news coverage of the ... shooting brought to the fore some of the profession's most glaring deficits. On one hand, many of the published reports in the first days were full of speculation and, in some cases, falsities. On the other hand, the grieving community was invaded by a horde of reporters looking for exclusive content.⁶

And, in one of the most famous journalistic invasions of privacy in the past 50 years, *USA Today* ran a story making public the fact that the tennis great Arthur Ashe had AIDS, inflicting a great deal of harm on both Ashe and his family, who wanted the information kept private. *USA Today*, and a number of journalistic defenders, pointed out that Ashe was a public figure and a role model for a great many people, and that this was, thus, a newsworthy story. Others, journalists and non-journalists alike, countered that the story was merely voyeurism, and that there are times when respect for others should outweigh public curiosity.

To what extent does the obligation of the news media to gather and disseminate the news outweigh their personal obligation to respect the rights of others? Can personal standards override professional standards?

As far back as Hippocrates we have been advised to avoid harming other human beings. However, to what extent, if any, is harm an allowable by-product of communication? As individuals, we probably consider harm to others high on our list of proscriptions; however, a great deal hangs on our definition of harm. Do we harm a friend by not telling her the truth about her partner's infidelity? Do we harm ourselves by overeating or drinking too much? Do we harm our children by allowing them to play violent video games? Do we harm our employers by taking sick leave when we're not really sick? These, and a thousand other questions concerning potential harms, are not as easily answered as we might suppose. And when the harm is potentially great or affects the lives or attitudes of large numbers of people, the answers are even more difficult to obtain.

Communication-caused harm has the potential to affect both individuals and multitudes. The harm caused by the publication of Arthur Ashe's condition was restricted to Ashe, his family, and his friends. Yet all of us are harmed, in a way, when a single person's privacy is violated on our behalf. Remember: The rationale for the news media exposing another's private life is generally the "public's right to know." When Princess Diana died in an automobile accident in France in 1997, the blame quickly fell on the media "vultures" who were constantly following her around. However, little was said about her courtship of that same media when she sought the spotlight for her own personal

messages. And little was mentioned about the seemingly voracious appetite of a celebrity-hungry public that keeps both the tabloids and the “legitimate” media in business.

Can the media operate under a proscription of “do no harm”? Probably not. Stephen Carter points out that Milton “argued that truth would win out, he did not contend that nobody would get hurt in the process.”⁷ Advertisers regularly harm their competition every time a successful ad results in increased sales for the product being advertised. Public relations practitioners certainly harm competing political candidates’ chances each time their own candidate moves higher in the polls because of their aggressive campaigning. It may very well be that, as some scholars propose, the persuasive act naturally causes harm to someone every time it is practiced.

“Harm involves thwarting, defeating or setting back an interest including: property, privacy, confidentiality, friendship, reputation, health and career.”

And yet we accept these “harms” as a necessary by-product of a democratically sanctioned competition. The nature of both democracy and capitalism is competitive, and competition almost always implies a winner and a loser—with some degree of harm visited on the loser. The question then becomes: How much of that harm is avoidable rather than necessary? “If . . . harm is done in the service of a greater good, . . . then it is an acceptable side effect.” Thus say the ethicists Stephen Klaidman and Tom Beauchamp in their book *The Virtuous Journalist*.⁸ However, they warn that, unlike medicine, in which the patient is consulted before any harm is committed (such as a leg amputation to save a life), in journalism the subject of a story is rarely, if ever, consulted. In addition, “the risk of harm to a person or institution being reported on is rarely disclosed, not always evident, and virtually never refusable.” And the potential beneficiary is not the subject of the story who will suffer the harm; it is generally the public.⁹

Klaidman and Beauchamp rely on a definition of harm borrowed from the ethicist Joel Feinberg. “Harm involves thwarting, defeating or setting back an interest including: property, privacy, confidentiality, friendship, reputation, health and career.”¹⁰ The strength of this definition lies in its breadth. According to this approach, a person may be harmed in a number of ways, not just physically or psychologically—the most commonly assumed types of harm. Under this construction, *USA Today* could be held accountable for its unwarranted disclosure in the Arthur Ashe case because it did not honor his privacy. However, if journalists were to avoid any story in which some form of harm might be visited on the subject, very little news would be forthcoming to the public whom they serve. It is very clear that some type of harm follows from much of what journalists produce as news, and that, in many cases, that harm is either a necessary by-product or literally unavoidable.

Causal Harm

For the journalist, then, harm may very well be a necessary concomitant of gathering and disseminating the news. However, are journalists absolved of any

blame for causing harm? Before answering that question, we need to differentiate between causal and moral responsibility. In Chapter 1, we discussed the difference between responsibility and accountability. Recall that not every act can be blamed on the person directly responsible for the act. A bank teller robbed at gunpoint is not accountable for the money he hands over. In the same sense, a manufacturer of toasters is not accountable if someone uses the appliance cord to hang himself. In the first case, the teller is being forced to hand over the money. In the second, the manufacturer could not have reasonably anticipated the misuse of that particular product. In the same way, journalists, and advertising and public relations practitioners cannot be held accountable for every potential harm they may cause through their communications.

Part of the reason for this is the difference between causal and moral responsibility. Moral responsibility refers to being held accountable for an action. So, if an advertiser develops an ad campaign for a liquor manufacturer that deliberately targets a minority population known for its misuse of alcohol, she is complicit in any harm that might be caused by that campaign. She cannot simply declare buyer beware. Conversely, if a journalist reports on a story about a public official arrested for drunken driving, he is not causing the harm—the official brought it on herself. This is called causal harm. All media practitioners must ask themselves this vital question: Does the action being taken actually cause the harm or does it merely augment an already present harm?

That question was probably asked over and over again during the year-long media frenzy over the Clinton–Lewinsky affair in 1998–1999. Did the President of the United States deserve to have his private life dragged before the public, over and over again? Part of the answer to that question can be answered by asking another: Did he in any way bring this upon himself? The answer to that question is decidedly, yes. The harm had already been done. The president had violated a private and public trust by abusing his position, and the story was already known in some circles. Did that give the press free rein to report anything they wanted? Possibly not.

The usual test in cases such as this is whether the private information being reported affects the public figure's public performance. Every journalist has to ask this simplest of questions in advance of releasing any privately held information. However, if the answer is no, does that automatically mean that the information will remain private? It probably should, but it often does not. And when the media decided to go against this most basic of guidelines, did they end up contributing to the very problem they were reporting on? Yes, especially because the release of that information, in and of itself, probably affected the President's public performance—in this case especially (at least according to opinion polls taken at the time). So, in some cases, such as this one, the harm that results from covering a story can both add to existing harm (causally related to the subject's actions) and create additional harm due to, among other things, extended coverage. In the latter instance, some blame must fall on the press.

On the other hand, the concept of causal harm coincides nicely with that of distributive justice. You'll recall that distributive justice rests on giving to those who deserve and withholding from those who do not. In this light, ex-

posing the ineptitude or moral failings of public officials could be seen as a form of justice. Despite the fact that most media practitioners don't see themselves as judges, the result of exposing corruption through media coverage can be ethically justified through both causal harm and distributive justice concepts.

Professional Responsibility

According to Klaidman and Beauchamp, "To be morally blameworthy, . . . a harm must be caused by carelessness resulting from failure to discharge a socially, legally, or morally imposed duty to take care or to behave reasonably toward others."¹¹ As noted earlier, professionals incur a number of obligations by virtue of having taken on professional roles. As professionals, media practitioners must conform to the minimal expectations of the profession of which they are a part. Failure to do so could result in accusations of professional negligence, or malpractice. Malpractice is most often associated with the legal and medical professions; however, every professional is expected to operate within certain ethical parameters. For journalists as well as advertising and public relations practitioners, these parameters should include avoiding unnecessary harm.

Professional negligence can be charged in instances in which the professional has not exercised "due care" in carrying out her responsibilities. Negligence or "careless" action can be analyzed in terms of the following essential elements:

1. an established duty to the affected party must exist;
2. someone must breach that duty;
3. the affected party must experience a harm; and
4. this harm must be caused by the breach of duty.¹²

As we have seen, duty (or obligation) is a natural consequent of social relationships. And, as Kant stated, discharge of duty is of paramount importance if we are to maintain moral standing. Breach of duty almost always indicates a lack of integrity, and results, at the very least, in lack of trust between the harmed party and the instigator of the harm. When this occurs in a professional–client relationship, the client is far less likely to respect the professional's autonomy and more likely to question his motives. And, if the professional continues to violate this trust, the client is very likely to call for restrictions on professional autonomy. Censorship is one such threat that is nearly always the result of perceived over-zealousness on the part of the media.

Mitigating Harm in Journalism

"Act so that you treat humanity, whether in your own person or in the person of any other, always as an end and never as a means only." With this prescription, Immanuel Kant set the stage for the championing of individual autonomy and integrity. He specifically meant that we should avoid, as much as possible, harming other human beings. However, even Kant realized that total avoid-

ance of harm is probably impossible. The question then becomes: If we cannot avoid harm altogether, can we at least mitigate its effects?

Writing in the now defunct media criticism magazine *Brill's Content*, newspaper editor Mike Pride of the *Concord Monitor* in Concord, New Hampshire, cited an instance in which he was getting ready to publish a story concerning the suicide of a local teenager. The victim's family appealed to him personally not to publish the story because of the emotional harm and public embarrassment it would cause them. At their request, and completely against journalistic character, he let them read the story prior to publication. They asked for a single change in copy: omitting an opening paragraph detailing the method of death. Pride realized how little the story would be affected by the deletion of this information and how much pain could be avoided by censoring his own story. The story ran, but without the detailed first paragraph.¹³ Was harm avoided altogether? No. Was it mitigated or lessened without a loss of journalistic integrity? Yes.

In the inevitable clash between personal and professional ethics, the weight is usually on the professional side. The reason is that a person takes on the role of a professional willingly, with eyes supposedly open to the potential conflicts inherent in the work itself. For example, a person enlisting in the Army who is not aware that part of the commitment of military service is a possible battlefield assignment is basically self-delusional. By the same token, any journalist who does not acknowledge the likelihood that personal standards concerning privacy, for instance, will come into conflict with the professional obligation of news gathering is likewise fooling herself. It is wise to remember that, for journalists, the duty to serve the public usually overrides any duty to observe the individual rights of the subjects of their stories. This does not mean that all compassion and civility should be thrown out the window, however.

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The editor/publisher and media critic Steven Brill worried that journalists are so insulated from the rest of society that their decisions are made from within a "cocooned" environment resulting in a "warped sense of their own conduct that renders them unaware of the consequences . . . of what they do."¹⁴ In a survey profiled in *Brill's Content*, the Editor, Eric Effron, observed that the media's reluctance even to consider self-regulation in problem areas such as invasion of privacy renders them at great odds with the public they purport to serve—a public that has indicated an "overwhelming support for some simple common courtesies on the part of the media."¹⁵ The power of the press, likewise, results in what Stephen Carter calls "a special First Amendment arrogance."

The First Amendment, in its current guise as an excuse for everything, makes decisions on what to publish or broadcast virtually risk-free, and thus, almost inevitably, corrupting as well.¹⁶

Carter also warns against the kind of "emotional pornography" that many in journalism indulge in every time they conduct an ambush interview or con-

front a grieving family member. He points out that the media understand completely that this is “where the money is,” and calls for “genuine moral reflection before making a difficult decision.”¹⁷

Others believe that the only answer to media abuses is written guidelines. In addressing the privacy debate, Steven Brill strongly suggests such guidelines.

The real point is having *some* guidelines, something that gives the public a benchmark from which to hold media organizations accountable—not legally, but in a way that compels them to put their decisions to the test of explaining them when asked.¹⁸

In fact, guidelines do exist at most news organizations and in several professional codes. As noted earlier, however, codes are often vague when it comes to dealing with day-to-day ethical issues and tend to speak only to the generalities of professional conduct. As Brill suggests, the best use of such policies might be to give the public recourse to an ethical benchmark from which to ask informed questions concerning media activities they consider questionable. As he points out, however, the existence of such guidelines has never prevented the media from violating them.

A central question in any process of decision making about whether to withhold publication will continue to be: How much does the public need the information, and how successfully does that need compete with the principle that we should avoid the harm that would result from its publication?¹⁹ For journalists, this simple test must be performed whenever release of information has the potential to cause someone harm. By the same token, it would be impossible for editors to perform this balancing act for every story being considered. However, it is not too much to expect that the most obvious cases should require such a weighing of interests. Too much is rationalized on the basis of “the public’s right to know.” As we have seen, that rubric, like *caveat emptor*, is a poor excuse at best. Again, Steven Brill writes that the privacy of those who are entitled to it is best protected by editors who understand the fine line between individual rights and the public’s right to know, between fairness and decency on one hand and the commercial impulse on the other.²⁰

Mitigating Harm in Advertising and Public Relations

For those in advertising and public relations, the task of mitigating harm is even more demanding. In Chapter 3, we discussed the concept of public service as it relates to professional obligation. You’ll recall that the fiduciary model best epitomizes the proper balance of client/professional control over decision making. When the professional is allowed to exercise his decision-making authority (based on education, training, and experience) within a framework of professional standards, he cannot easily ignore third-party obligations. However, the fiduciary model assumes a good deal of professional autonomy. By contrast, the advocacy model allows minimal autonomy to the professional who works almost exclusively at the behest of the client. Advocates are at a distinct disadvantage because of the necessary subordination of their standards to their client’s wishes. Given that advertising and public relations, alike, work

from within both fiduciary and advocacy models, how can harm to third parties be avoided or, at least, mitigated?

A Suggested Process

What we need is a framework that allows the function of advocacy to remain a professional role obligated to client interests, professional interests, and personal ethics. Although the role of autonomous professional assumes objectivity, the role of advocate assumes a certain amount (if not a great amount) of subjectivity. The terms, although often mutually exclusive, are not necessarily at odds; and the professional advertising or public relations practitioner may, in fact, be both objective and subjective. The key is the order in which objectivity and subjectivity are applied. Certainly, consulting professionals objectively evaluate potential clients before taking them on. This earliest stage of the consulting process is also the first line of defense against possible ethical conflicts. Objectivity should also be brought to bear in the early stages of campaign development—the period in which a thorough understanding of the issue is obtained. It is during this stage that the professional will examine the ramifications of the proposed actions and its effect on all parties, especially the ethical concerns.

During this *objective stage*, the communications professional may apply any of several applicable ethical theories to the proposed act in order to determine if the act itself (means) and the outcome (ends) are morally responsible. Several standards may be applied, including:

- a determination of the legality of the act (whether it violates existing laws or applicable regulations);
- company procedures and policies or organizational codes;
- and any codes or standards existing for the profession (relevant advertising and/or public relations codes).

Although this procedure will merely provide guidelines, assuming that all that is legally or professionally permissible may not be ethically permissible, these will allow the professional to advance to succeeding evaluative stages.

The communications professional may also apply standard cost–benefit analysis to the issue, determining the potential financial consequences of the act to the client and the affected third parties. Beyond these monetary considerations, he may attempt to determine societal effects. If, after such applications, the professional determines that the act itself and the intent of the act are morally acceptable, then he may proceed to the succeeding subjective stages of advocacy.

Even after the professional has decided to move on to the role of advocate, that role does not absolve the advertising or public relations practitioner from moral culpability. As we know, the moral guidelines under which the advocate operates presuppose loyalty to one's client or employer; however, the obligation of non-injury is still in effect based on non-consequential moral duties. The same rules used prior to the decision to become an advocate may be used at this stage to determine individual actions.

According to non-consequential ethical theory, the obligations assumed as part of a role are of prime importance in making moral decisions. If there are

rules governing decision making within an organization, for instance, and those rules say that one should not dispense false information, then an advocate who has been ordered to falsify information can and should refuse to do so based on existing rules. No consideration need be given to the consequences of the act itself. It is sufficient that the rule exists prohibiting it. For the advocate, non-consequential considerations might include whether an act is illegal or not. Certainly, refusing to perform an illegal act is within the moral scope of even the most loyal advocate.

The existence of a set of guidelines in the form of a code of conduct or ethics is imperative at this stage as well. For the practitioner lacking a formal code within the organization for which she works, an outside, professional code might be cited as legitimization for refusal to carry out an immoral act. An advocate lacking recourse to a professional code might appeal to consequential ethical theory. Lacking any clear-cut guidelines in the form of rules, she may precipitate a complex analysis of both short- and long-term consequences.

In summary, the advocate generally assumes a primary responsibility to the client and to the client's purpose because of the nature of the role of advocacy. However, as precursor to that role, the professional retains his objectivity throughout the exploratory stage in which the issue is defined and the claimants are identified. It is in this early stage that communications professionals must become aware of the affects of their potential actions on all third parties. Both at this stage and in the latter stages of advocacy itself, advertising and public relations professionals must continue their vigilance by constant referral to written codes within their own companies and the professions they are a part of. Lacking any clear written guidelines, the advocate may undertake to stand behind the moral shield of protecting the greater good. Ultimately, the major determinant may be the personal morals of the advocate and his willingness to stand up for or forgo them under certain conditions. The approach proposed here suggests that the advocate, like his journalistic counterpart, resort to the traditional use of objectivity in order to determine, without bias, who the moral claimants are in any given situation.

But, whereas objectivity is still very much the legitimate step-child of Enlightenment reason, some have proposed that there might be an alternative view of those affected "others" that rests not on objectivity, but on subjectivity. No matter what function is being highlighted, counselor or advocate, keep in mind the discussion of functional versus moral obligation from Chapter 2. It can be far too easy to ignore moral obligations to affected third parties when so much depends on the functional obligation of pleasing the client.

What Does It All Mean?

No mass medium is free from the obligations of truth telling and non-injury, and no mass medium should be purposely devoid of care and respect for those it affects with its words and pictures. Telling the truth and avoiding harm are often one and the same thing; however, the delicate balance involved in telling the truth while avoiding harm requires, at times, the equilibrium of a high-wire walker.

Can we expect that no one will ever be harmed by a media act? Probably not. But we should expect that the media will do no unnecessary harm and that, as far as possible, they will respect the dignity and integrity of everyone whose lives they touch. It really isn't impossible to believe that those who choose to become media professionals do so because they care. They care about letting us know what is going on in our lives and how to deal with it. They care that we think about and how we understand the world we live in. And they care about whether we're using a bath soap that makes us "feel" clean and fresh (not a bad thing, really).

However, the perceived value of autonomy tends to hobble the media through fear of interference in their discharge of a constitutionally guaranteed right of expression—even if that "interference" is self-imposed. As professionals, media practitioners expect to be free to choose their own ends, without having them dictated or altered by others. As we have seen, however, we are not necessarily locked into a moral system devoid of care for others. As the philosopher Michael Sandel has argued,

By insisting that we are bound only by ends and roles we choose for ourselves, [modern Western liberalism] denies that we can ever be claimed by ends we have not chosen—ends given by nature or God, for example, or by our identities as members of families, peoples, cultures, or traditions.²¹

If we accept, even tacitly, the tenants of communitarianism, we must allow obligation to others a higher priority than either a strict adherence to personal autonomy or blind allegiance to professional duty. Even the consideration of this point of view during the deliberative process is a step in the right direction.

The point is, if the mass media really care about doing their jobs well, shouldn't they automatically worry about telling the truth and avoiding harm? As Supreme Court justice Potter Stewart once said, "Ethics is knowing the difference between what you have a right to do and what is right to do." The two shouldn't be mutually exclusive, and, with some concentrated effort on the part of media practitioners, they won't be.

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