

The Internet and Press Freedom

Jonathan Zittrain*

On May 8, 2006, the High Court of England and Wales handed down a decision in the long-running trademark dispute between Apple Computer and Apple Corps,¹ a corporation founded by the Beatles. The BBC raced to cover the story and arranged a live interview with a well-known personal computer expert named Guy Kewney. As Mr. Kewney waited in one reception area, a candidate for a job in the BBC's IT department waited in another. His name was Guy Goma.

You can guess the rest. A harried intern fetched the wrong Guy. A puzzled Mr. Goma was rapidly made up, miked, and seated opposite a BBC anchor. As Wikipedia describes it and first-hand viewing confirms: "Goma's face goes through four distinct expressions in under five seconds: shocked realization; blind terror; philosophical resolve and finally determination to do his best."² He endures the interview, commenting generically on a case he has not heard of and then making some comments about digital file sharing under further questioning.

What is most striking about this incident is not the behavior of Guy Goma, who turned in an extraordinary performance under surreal circumstances. (Sadly, he did not get the IT job.)³ It is the behavior of the anchor. She appears to realize almost immediately that something is awry, and yet, the show must go on. She is trapped in a script.⁴

When we first think of freedom of the press, we quite naturally gravitate toward intrusions by government into reporting and publishing and corporate entanglements that pare back editors' independence from the people they cover. These pressures are real and growing, and a vigilant press has engaged in a decades-long effort to sort out how best to defy them.⁵

* Professor of Law, Harvard Law School; Co-founder, Berkman Center for Internet and Society. This article is drawn from the 2009 Richard S. Salant Lecture on Freedom of the Press, delivered at the John F. Kennedy School of Government. Many thanks to Kate Nielson for excellent research assistance.

¹ Apple Corps, Ltd. v. Apple Computer, Inc., [2006] EWHC 996 (Ch).

² Wikipedia, Guy Goma, http://en.wikipedia.org/wiki/Guy_Goma (last visited Jan. 14, 2010).

³ Hugo Rifkind, *Guy Goma*, THE TIMES (LONDON), May 31, 2006, at 13.

⁴ *Wrong Man on News 24*, BBC NEWS, May 16, 2006, http://news.bbc.co.uk/player/nol/newsid_4770000/newsid_4774100/4774179.stm?bw=bb&mp=wm (last visited Feb. 15, 2010).

⁵ See C. Edwin Baker, *Media Concentration: Giving Up On Democracy*, 54 FLA. L. REV. 839, 843-72 (2002) (describing the legal treatment of media concentration); *id.* at 841 n.9 (giving examples of scholarly reflection on media concentration as a problem for democracy); Yochai Benkler, *Lecture: Freedom in the Commons: Towards a Political Economy of Information*, 52 DUKE L.J. 1245, 1262-66 (2003) (discussing shifts in the historical relationship between democracy and the commercial mass media); James Fallows, *Age of Murdoch*, ATLANTIC MONTHLY, Sept. 2003 (discussing media concentration in the context of a profile of

This essay focuses instead on the scripts in which we are trapped, and then on a very different kind of fear than that of government encroachment. The BBC anchor's handling of the Goma interview is not an anomaly. Many professional journalists of good will and undisputed talent have drifted to a place where they are routinely parties to the absurd and prisoners to threats not as readily grasped as those from official censors.

For example, in November 2006, U.S. White House press secretary Tony Snow and counselor Dan Bartlett hosted a briefing in the midst of President Bush's trip to Latvia. They opened on the record with appropriately anodyne remarks about how well the trip was going.⁶ But the press gaggle was interested in an unrelated memo that had just leaked indicating that the Bush Administration was losing confidence in Iraq's prime minister.⁷ As questions ramped up about that, Mr. Snow answered the first on the record—with appropriately anodyne unqualified support for the prime minister—and then announced that the briefing would continue “on background,” which is sometimes-disputed presspeak indicating that quotes can only be attributed anonymously.⁸

Sure enough, at that point in the official White House transcript, we see the Q-and-A substituting “SENIOR ADMINISTRATION OFFICIAL” for

Rupert Murdoch). The uncertain future of investigative journalism—which, by definition, involves reporting “news that someone with power does not want the public to know”—crystallizes concerns about the media's effectiveness as an independent body. ALEX S. JONES, *LOSING THE NEWS: THE FUTURE OF THE NEWS THAT FEEDS DEMOCRACY* 6 (2009). Prime Minister Berlusconi's influence over the Italian media is a particularly egregious example of government interference. See *Muzzling the Messengers; Italy and the Free Press*, THE ECONOMIST, Oct. 3, 2009 (describing recent protests against Prime Minister Berlusconi's media influence); Anna Momigliano, *Silvio Berlusconi Sues Italy's Press and Protestors Fight Back*, CHRISTIAN SCI. MONITOR, Oct. 7, 2009, at 6.

⁶ Press Secretary Briefing, Office of the Press Secretary, Background Briefing by Senior Administration Officials, Nov. 29, 2006, <http://georgewbush-whitehouse.archives.gov/news/releases/2006/11/20061129-3.html> [hereinafter Background Briefing] (“This has been a very good trip with productive meetings with the leaders of Estonia and Latvia. In addition, the President came back encouraged last night from his working dinner with fellow NATO heads of state. They talked about the normal retinue of issues, most importantly, Afghanistan and on coming up with a coordinated way forward.”).

⁷ *Administration Says Bush Has Confidence in Maliki*, WHITE HOUSE BULL., Nov. 29, 2006 (noting that the Administration was attempting to convey support “despite the leak of a memo from National Security Adviser Stephen Hadley”); Tom Raum, *Iraq Leader Pulls Out of Meeting with Bush*, THE STAR-LEDGER, Nov. 30, 2006, at 1 (discussing the context of the memo and the subsequent press briefing); Tim Grieve, *Trashing Maliki, or When a Leak Becomes a Flood*, SALON.COM, Nov. 29, 2006, http://www.salon.com/politics/war_room/2006/11/29/public/index.html (last visited Jan. 14, 2010).

⁸ M.L. STEIN, SUSAN F. PATERNO, & R. CHRISTOPHER BURNETT, *NEWSWRITER'S HANDBOOK: AN INTRODUCTION TO JOURNALISM* 45 (2006), (explaining that if “[a] source tells [a writer] the information is ‘on background,’ that means [the writer] may publish the comments but must attribute them to an anonymous source.”); ADAM L. PENENBERG, *NYU JOURNALISM HANDBOOK FOR STUDENTS*, <http://journalism.nyu.edu/ethics/handbook/human-sources/> (explaining that the phrase “confers anonymity on [the] source, but allows [the writer] to work with the information the source has provided”); Alicia C. Shepard, *Anonymous Sources*, AM. JOURNALISM REV., Dec. 1994, at 18 (giving examples of various definitions and understandings of the phrase “on background”).

every answer, instead of “MR. SNOW” or “MR. BARTLETT.” And the gaggle rolls with it:

Q Can I get back to something the senior official on the left said?

SENIOR ADMINISTRATION OFFICIAL: Your left, or our left?

Q . . . – my left – . . .

SENIOR ADMINISTRATION OFFICIAL: I’ll help you—even though I’m on your right and our left, I will take on the latter question . . .⁹

The *New York Times* has a tough policy on the use of anonymous sources. It requires that anonymity be “a last resort when the story is of compelling public interest and the information is not available any other way.”¹⁰ When anonymity is granted, the reason should be shared with the reader.¹¹

How did that pan out for the story appearing in the *Times* following the Latvian press conference? The account dutifully kept that solemn confidence between source and reporter, distinguishing the press secretary’s first on-the-record answer from the anonymous ones that had followed:

“The president has confidence in Prime Minister Maliki,” the White House press secretary, Tony Snow, told reporters. . . .

Two senior administration officials, who insisted on anonymity in exchange for talking about a classified memo, . . . suggested its contents would be no surprise to the Iraqi prime minister . . .¹²

The transcript is evocative, making it sound as though reporters had conducted a furtive interview with Deep Throat in a parking garage off the Key Bridge, when in fact they had simply been present at a packed press conference during which Tony Snow had idly waved his hand. *Wonkette* published a droll blog entry the next day that deviated from the otherwise-unremarkable collective media script: “White House Officials Magically Become Anonymous Halfway through Briefing.”¹³

Mr. Snow likely heard about *Wonkette*’s tweak. His next briefing, from Jordan, began as follows:

⁹ Background Briefing, *supra* note 6.

¹⁰ Clark Hoyt, *Those Persistent Anonymous Sources*, N.Y. TIMES, Mar. 22, 2009, at 8 (citing the policy and describing numerous seemingly trivial instances in which anonymity had been granted in circumstances that fell far short of this standard).

¹¹ The New York Times Company, Confidential News Sources Policy, http://www.nytc.com/company/business_units/sources.html (last visited Jan. 14, 2010) (“[w]hen possible . . . articles should tersely explain what kind of understanding was actually reached by reporter and source, and should shed light on the reasons and the source’s motives”).

¹² Michael R. Gordon, *Bush Adviser’s Memo Cites Doubts About Iraqi Leader*, N.Y. TIMES, Nov. 29, 2006, at A1.

¹³ *White House Officials Magically Become Anonymous Halfway Through Briefing*, WONKETTE.COM, Nov. 29, 2006, <http://wonkette.com/217932/white-house-officials-magically-become-anonymous-halfway-through-briefing/> (last visited Apr. 5, 2010).

MR. SNOW: Greetings. Welcome to Amman. First, I am joined by my close personal friend, Senior Administration Official, for a background briefing on the President's dinner So let me introduce to one and all, Senior Administration Official, to give you a readout and then answer your questions.¹⁴

No one came to or left the podium as the rest of Mr. Snow's briefing was officially and unofficially conducted by SENIOR ADMINISTRATION OFFICIAL.

Professor Charles Nesson emphasizes that nearly everything can be viewed through at least two lenses.¹⁵ That is true here. One view lets us get a kick out of the episode. It is refreshing to see public officials display a sense of humor, and what is the harm? It does not take Woodward and Bernstein to figure out who is talking after Mr. Snow's switchover.

Another view says that it is lucky that we do not need Woodward and Bernstein's help—because they are not on our side. The joke is not for us or even near us: it is *on* us. No matter who is in power, our officials so routinely mask their identities when speaking that it can happen as casually as putting on a pair of sunglasses. But it is not the official who dons them. Rather, he tells every reporter to obscure his or her vision—and they do. As the habit spreads, the public reads accounts with quotations, which it must take on faith are not made up, from government officials who cannot be named and who will remain unknown for posterity.

While this is a story involving government, this failure of press freedom does not result from official bullying. The First Amendment is not implicated. Rather, it is a story of banal but loathsome convention: the press is stuck with its script, and each person in the chain, from reporter to editor to publisher, finds it bizarrely inconceivable to stray from it. The script is the medium in which they swim. The wild card here was *Wonkette*, which had no delegate in Latvia or Jordan, leeches off the reporting from those on-site, and then effortlessly highlighted a truth that others in plain view ignored.

¹⁴ *Background Briefing by a Senior Administration Official on the President's Dinner With His Majesty King Abdullah of Jordan*, WHITE HOUSE DOCUMENTS & PUBLICATIONS, NOV. 29, 2006, available at <http://georgewbush-whitehouse.archives.gov/news/releases/2006/11/20061129-7.html>; Tim Grieve, *Tony Snow, Laugh Riot*, SALON.COM, NOV. 30, 2006, http://sacdc.web01.salon.com/politics/war_room/2006/11/30/snow/index.html.

¹⁵ Charles Nesson, Department of Homeland Security: Data Privacy and Integrity Advisory Committee, Meeting Transcript, June 15, 2005 ("Consider the Necker Cube . . . It's a cube that is an ambiguous object. If you look at it, it appears to change its orientation in space . . . It provides a metaphor for disputes, because it has the quality that you can see it one way, then you can see it another, but you cannot see it both ways at the same time."); Sheri Qualters, *Colorful Opening Statements on Display in Boston Music Downloading Trial*, NAT'L L.J., July 29, 2009, available at <http://www.law.com/jsp/article.jsp?id=1202432615191> (Nesson had used the same idea of the Necker Cube to illustrate for jurors that downloading music files might be seen as either theft or merely harmless sharing).

A mention of *Wonkette* invites discussion of the role of the Internet in press freedom more generally. If the subject of a favorable story in the *New York Times* hypothetically had to decide whether the story would appear only in print or only online, the answer has clearly become: online. And once online is the place to be, competition for the public's attention is fierce.

Richard Salant's insight that news should be based on what the public needs to know to participate in a democratic system, not on what they would like to know,¹⁶ is under threat from viral YouTube videos, and the scripts that push the press to directly compete with it.

When a stunning piece of investigative journalism does break through the page or the screen, it often gets lost before it inhabits the public consciousness. Within our ocean of bits there are too many outrages, some real, most fake, to sustain attention to any given one—unless that one is the subject of a concerted and relentless effort to focus public attention upon a crude bumper sticker of an idea, a project more suited to advertising and astroturfing than to journalism.¹⁷ The big scoop can no longer be the act that pays for the day-to-day sweat.

However, the Internet has the potential to improve the quality of journalism. Some of the popular projects most reviled by the press establishment as unreliable and parasitic can actually help save it from its own growing mediocrity.

For example, deadlines are nothing new to journalism, and a time crunch can make it difficult for even a conscientious editor to check facts. Thanks to the eyes of some bloggers, mistakes and deception can be ferreted out. The number of doctored photos that run in the pages of our most reputable newspapers is astonishing. Reuters published a photo showing “thick

¹⁶ RICHARD S. SALANT, SALANT, CBS, AND THE BATTLE FOR THE SOUL OF BROADCAST JOURNALISM: THE MEMOIRS OF RICHARD S. SALANT 248-49 (1999) (discussing the “fundamental and underlying” issue of what types of information should have priority in a democracy); Robert Butche, *The Case for Richard Salant*, NEWSROOM MAG., Aug. 9, 2007, available at <http://newsroom-magazine.com/2007/newsroom-magazine/honors/the-case-for-richard-salant/>.

¹⁷ See Michael Hill, *Media Circus*, BALTIMORE SUN, Oct. 3, 2004, at 1F (describing how the twenty-four-hour news cycle undermines the credibility of the media). See also Karen A. Popp, *The Impeachment of President Clinton: An Ugly Mix of Three Powerful Forces*, 63 L. & CONTEMP. PROBS. 223, 242 (2000) (arguing the media's relentless coverage sensationalized the incident and “crowded out serious news about public policy matters”).

Scholars have begun to identify the implications of astroturfing—manufacturing the perception of grassroots support—for everything from campaigns to nonprofits. See, e.g., John McNutt & Katherine Boland, *Astroturf, Technology and the Future of Community Mobilization: Implications for Nonprofit Theory*, 34 J. SOC. & SOC. WELFARE 165 (2007); Robert Klotz, *Internet Campaigning for Grassroots and Astroturf Support*, 25 SOC. SCI. COMPUTER REV. 3, 3 (2007) (analyzing the phenomenon of “plagiarized participation”—e.g., over 100 newspapers published one letter that the Republican National Committee had distributed—within the context of politicians' uses of the Internet in campaigns). For more mundane examples, see David M. Shribman, *Pirates' Treasure*, N.Y. SUN, July 10, 2006, at 9 (describing “artificial and manufactured” movements that influenced who was chosen for baseball's All-Star game and Time magazine's poll to determine the most influential person of the 20th century (Ataturk, if you believe 33.19% of voters)).

black smoke rising above buildings in the Lebanese capital after an Israeli air raid”¹⁸ Within hours, bloggers had discovered the manipulations.¹⁹ One produced compelling evidence intrinsic to the photo that the spirals of smoke had been darkened and buildings surrounded by smoke copied with the Photoshop “clone” tool.²⁰ In another photograph from the same photographer, “missiles” fired from an Israeli F-16 were only one flare, crudely copied and pasted in Photoshop.²¹

Reuters stuck to the script. It briefly stonewalled, then withdrew the photo without comment. As pressure grew and more patently doctored photos were found, Reuters editor Paul Holmes clarified: “We’ve since made our guidelines on Photoshop use much more explicit. Photoshop is a standard tool for photographers but it is how you use the software that counts. The rule of thumb in the news business is that you must not do more with Photoshop than you used to do in a darkroom in the days of 35mm film.”²²

No structural changes were made, no apparent self-examination was undertaken. Reuters just circled the wagons: “All the photos that leave Iraq are edited by a highly experienced Chief Photographer who works seven days a week during his rotation. That position is now held by a foreign photographer with 27 years experience.”²³ (The freelancer responsible for the manipulated photos had ten years’ experience with Reuters; over 900 of his photos were ultimately withdrawn.)²⁴

The skeptics within the blogosphere offer a gift to journalism. Rather than seeing them as fraying public confidence in the fourth estate, or unfairly

¹⁸ Julia Day, *Reuters Purges Photo Database*, GUARDIAN UNLIMITED, Aug. 7, 2006, <http://www.guardian.co.uk/media/2006/aug/07/reuters.pressandpublishing1>.

¹⁹ Katharine Q. Seelye & Julie Bosman, *Bloggers Drive Inquiry on How Altered Images Saw Print*, N.Y. TIMES, Aug. 9, 2006, at C2 (within the first two days after the bloggers’ initial discovery, the publicity had forced Reuters to remove the photo and fire the photographer).

²⁰ *Reuters Doctoring Photos from Beirut?*, LITTLE GREEN FOOTBALLS, Aug. 5, 2006, <http://littlegreenfootballs.com/weblog/?entry=21956> (last visited Feb. 24, 2010) (analyzing the changes made to the photo of damaged, smoking buildings).

²¹ Rusty Shackelford, *Another Fake Reuters Photo from Lebanon*, THE JAWA REPORT, <http://mynetjawa.mu.nu/archives/184206.php> (Aug. 6, 2006) (analyzing the similarities among the different flares); Antonia Zerbisias, *And Now It’s ‘Reutersgate’*, TORONTO STAR, Aug. 9, 2006, at A07 (describing a second photo of Israeli F-16 firing “missiles during an air strike on Nabatiyeh in southern Lebanon”).

²² Paul Homes, *Working for Reuters as an Iraqi in Baghdad—The Editor Responds*, BLOGS NAVIGATION, Nov. 2, 2006, http://blogs.reuters.com/blog/2006/11/02/working-for-reuters-as-an-iraqi-in-baghdad-the-editor-responds/?src=110206_1538_FEATURES_iraq_n_media.

²³ *Id.*

²⁴ Associated Press, *Photographer Altered Shots of Conflict in Lebanon*, WASH. POST, Aug. 8, 2006, at A06. For more discussion and reactions, see Paul Farhi, *Blogger Takes Aim at News Media and Makes a Direct Hit*, WASH. POST, Aug. 9, 2006, at C01 (discussing the Little Green Footballs blog cited *supra* note 20); Randy Doting, *A Blogger Shines When News Media Get It Wrong*, CHRISTIAN SCI. MONITOR, Aug. 9, 2006, at 1 (discussing the role of bloggers and the creation of blogs that watch the blogs that are watching the media); Deborah Howell, *A War of Images and Perceptions*, WASH. POST, Aug. 13, 2006, at B06 (discussing the role of media in creating perceptions of war).

consuming editors' time revisiting last week's news when this week's is already pressing, editors ought to welcome a public eager to engage with the profession. It is a jury empowered to ask questions. Surely not all of these questions are asked in good faith, but those that are should be treasured. The mirror they offer is far more powerful than internal peer review.

And the fact that the questions comprise an unruly, often anonymous, distributed pack? This can be an important tonic for another new but fundamental problem facing the press, rather than fearing censorship and intimidation from those few in power, the press now fears the masses who are *not* in power.

Consider what happened after the Danish newspaper *Jyllands-Posten* engaged in what many saw to be an unnecessary and puerile stunt, intended to underscore what it saw as undue sensitivity to the emerging desire within some denominations of Islam to eschew any physical portrayal of its founding prophet. Describing it as a protest against perceived collective self-censorship, the paper invited the approximately forty members of the Danish editorial cartoonists' union to "draw Mohammed as you see him."²⁵ Twelve responded, and the resulting collage gave rise to what Prime Minister Anders Fogh Rasmussen called Denmark's "worst international crisis since World War II."²⁶ The images (along with several especially incendiary others that had never been published) were circulated by outraged imams. Riots broke out in multiple countries, boycotts of Danish products were organized, and death threats were made.²⁷

This was, of course, news. If you were reading any news in 2005, you likely knew about the incident. But consider: did you actually see the cartoons in question, and if so, from what source? To republish them before the controversy arose may well have been an uncalled-for provocation. But once the riots started, they became central to the story. There is simply no way to grasp the phenomenon—to understand it—without actually seeing the cartoons. Anthony Lewis described the moment in 1971 when the *New York Times* began publishing excerpts from the top secret Pentagon Papers, a multi-volume account from the military about how the United States got into the Vietnam War.²⁸ The *Times's* lawyers had advised publisher Punch Sulzberger not to do it. Indeed, "[they] refused even to look at the docu-

²⁵ Charles Ferro, *Igniting More Than Debate*, NEWSWEEK, Feb. 13, 2006, at 0; Flemming Rose, *Why I Published Those Cartoons*, WASH. POST, Feb. 19, 2006, at B01; Marie Louise Sjolie, *I'm Not a Particularly Brave Man*, THE GUARDIAN (LONDON), Jan. 5, 2010, at 12.

²⁶ Andrew Curry, *Danish Library Wants to Preserve Inflammatory Drawings*, SPIEGEL ONLINE, Jan. 30, 2008, <http://www.spiegel.de/international/europe/0,1518,532057,00.html>.

²⁷ Rachel Saloom, *You Dropped a Bomb on Me, Denmark—A Legal Examination of the Cartoon Controversy and Response as it Relates to the Prophet Muhammad and Islamic Law*, 8 RUTGERS J.L. & RELIG. 1, 3, 6-12 (2006); Carlotta Gall, *Protests Over Cartoons of Muhammad Turn Deadly*, N.Y. TIMES, Feb. 6, 2006, available at <http://www.nytimes.com/2006/02/06/international/middleeast/06cnd-cartoon.html?fta=y> (last visited Jan. 19, 2010).

²⁸ Anthony Lewis, 2008 Richard S. Salant Lecture on Freedom of the Press 14 (Oct. 1, 2008) (transcript available at http://www.hks.harvard.edu/presspol/prizes_lectures/salant_lecture/transcripts/salant_lecture_2008_lewis.pdf).

ments themselves, saying that would make them party to the crime.”²⁹ The U.S. government obtained a restraining order against the *Times*.³⁰ So, the *Washington Post* picked up where the *Times* left off, until it too was silenced.³¹ But then the *Boston Globe* and others published too.³² It was an ad-hoc Napster for classified documents. The Supreme Court’s holding³³ in favor of the press a fortnight later was not just a legal victory, Lewis observed. It was a victory for a Madisonian conception of the press as a check on abuse of power, a commitment to truth in the face of intimidation.³⁴

Four decades later, the intimidation comes not just from a government against its own citizens, but from an inchoate mass. None of the papers that took on the White House in 1971 published any of the *Jyllands-Posten* cartoons alongside their stories. Was it because they were not newsworthy? Of course not. If 2009’s brief obsession with Balloon Boy³⁵ belonged on the front page, this did too. The story is a compelling one. So why were the cartoons not published? Was it because they were potentially offensive to large numbers of people? Of course not. We have entire media networks devoted to generating and promoting material precisely because it is offensive to large numbers of people.

It was fear. The publishers of the *New York Press*, which by its own description “covers controversial issues and tackles edgy topics,”³⁶ intervened to prevent its editors from reprinting the cartoons.³⁷ The entire editorial staff then walked out. Only a handful of papers shared the entire collage with readers, including Clemson University’s *Tiger Town Observer*, Fairmont State University’s *The Columns*, DC’s famed right-wing *Human Events*, the

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *New York Times v. United States*, 403 U.S. 713 (1971).

³⁴ Lewis, *supra* note 28, at 19.

³⁵ On October 15, 2009, Richard and Mayumi Heene called the police reporting that they suspected their son may have inadvertently climbed into a home-made helium balloon that had then floated away. The balloon was in flight for several hours, during which the media extensively covered the search for the boy. Shortly after the balloon fell to the ground, the boy emerged from the attic where he had been hiding. It was later determined that the event was a publicity stunt. See *6-year-old Colorado Boy Found Alive in Attic After Balloon Lands*, CNN.COM, Oct. 15, 2009, available at <http://www.cnn.com/2009/US/10/15/colorado.balloon/index.html>; Eugene Robinson, “Reality” Stunts Don’t Fly in the Real World, WASH. POST, Oct. 20, 2009, at A1; Brian Stelter, *Calling Story of Boy and Balloon a Hoax, A Sheriff Seeks Felony Charges*, N.Y. TIMES, Oct. 18, 2009, at A12.

³⁶ *New York Press*, About Us, <http://www.nypress.com/flex-11-about-us.html> (last visited Apr. 5, 2010).

³⁷ Nat Hentoff, *The Cartoons Conspiracy*, VILLAGE VOICE, Feb. 28, 2006, at 18; Reuters, *Told Not to Publish Muhammad Cartoons, Editors Resign*, N.Y. TIMES, Feb. 9, 2006, available at <http://www.nytimes.com/2006/02/09/international/americas/09observer.ready.html>.

Harvard Salient, and the University of Illinois's *Daily Illini*.³⁸ The editor of the *Daily Illini* was suspended from the paper for printing the cartoons.³⁹

But is it really appropriate to put the *Jyllands-Posten* cartoons in the same sentence, much less league, as the Pentagon Papers? I think so: both are, in their own ways, at the heart of a process over maintaining a liberal society, one where ideas we revile or fear must nonetheless be available, with only the most narrow and carefully constrained exceptions—exceptions having to do with personal privacy, genuine national security, and the protection of children.

In a testament to just how odd our media landscape has become, this point was made most lyrically in a two-part episode of *South Park*. The episode's dramatic tension is grounded in whether a television network within the show's universe will allow a three-second unremarkable depiction of Mohammed. The answer in the storyline is yes, and *South Park* cuts to an image of a cartoon television about to show a cartoon Mohammed—now a full two layers removed from reality. Then our reality intervenes: a slide of text fills the entire frame. It says: "Comedy Central has refused to broadcast an image of Muhammad on their network." It was not a joke. The most offensive show on television—which in the very same episode featured *poop smeared over Jesus*—was not permitted to cross that line.⁴⁰ (*South Park*'s creators have the last word of a sort; it turns out that the opening title sequence of every episode since July of 2001 has included a depiction of Mohammed within a horde of waving townspeople.⁴¹)

Academia, beloved and vital bastion of free thought, is in the same bind as the press. Brandeis professor Jytte Klausen wrote a definitive account of the *Jyllands-Posten* affair, called *The Cartoons that Shook the World*.⁴² Yale

³⁸ Kathleen Burge, *Harvard Students Print Danish Cartoons*, BOSTON GLOBE, Feb. 15, 2006, at B3; Michael Fumento, *Here's to Absolute Free Speech (Within Limits)*, HUMAN EVENTS ONLINE, Mar. 3, 2006, available at <http://www.humanevents.com/article.php?id=12882>; Steve Miller, *MSU Students to Publish Muhammed Cartoons*, LANSING ST. J., Feb. 27, 2006, at 1A; Wikipedia, List of Newspapers that Reprinted Jyllands-Posten's Muhammad Cartoons, http://en.wikipedia.org/wiki/List_of_newspapers_that_reprinted_Jyllands-Posten%27s_Muhammad_cartoons (last visited Apr. 6, 2010).

³⁹ Monica Davey, *Student Paper Prints Muhammad Cartoons, and Reaction is Swift*, N.Y. TIMES, Feb. 17, 2006, at 14; *Illini Editor Fired Over Cartoon*, CHI. TRIB., Mar. 15, 2006, at 8; *Process Behind Decision Making: The Daily Illini Explains Why the Two Editors Were Suspended From the Paper*, DAILY ILLINI, Feb. 16, 2002, available at <http://www.dailyillini.com/opinions/2002/02/16/process-behind-decision-making>.

⁴⁰ Lisa de Moraes, "South Park" Plug Goes a Little Haywire, WASH. POST, July 14, 2006, at C01; David Kronke, *A Decade of "South Park" Controversy*, L.A. DAILY NEWS, July 17, 2006, at U12.

⁴¹ Ryan J. Budke, *South Park's Been Showing Muhammad All Season!*, TVSQAD, Apr. 15, 2006, <http://www.tvsqad.com/2006/04/15/south-parks-been-showing-muhammad-all-season/>; James Joyner, *Comedy Central Censored Mohammed "South Park"*, OUTSIDE THE BELTWAY, Apr. 13, 2006, http://www.outsidethebeltway.com/archives/comedy_central_censored_mohammed_south_park/.

⁴² Klausen rejects the idea that protests reflected from a "clash of civilizations", instead arguing that they were orchestrated by politically-motivated actors. JYTTE KLAUSEN, CARTOONS THAT SHOOK THE WORLD 129 (2009). For more historical context, see Oleg

University Press accepted the book proposal, and Professor Klausen included the cartoons in the manuscript, along with other depictions of Mohammed stretching back centuries from both Muslim and non-Muslim sources, such as a 19th-century engraving showing the prophet in a scene from Dante's *Inferno*. Citing fear of violence, the university insisted on expunging all the images before the book went to press.⁴³

So, where can you see the *Jyllands-Posten* drawings, to come to your own judgment about whether they are something you should be allowed to see? Wikipedia. Without fanfare or drama, Wikipedia has a remarkably complete narrative of the whole affair, and all twelve cartoons.⁴⁴ They are in thumbnail form on the main article page so as to minimize offense to visitors not expecting them.⁴⁵ A click and they are full resolution. On the discussion page, instructions are provided explaining how to configure one's browser not to see them.⁴⁶ There the editors' statement is as pithy and elemental as Tony Snow's introduction of himself as an unnamed source: "Images or details contained within this article may be graphic or otherwise objectionable in order to ensure a quality article, and complete coverage of its subject matter."⁴⁷ The naïveté that there can be a "neutral point of view" on sensitive subjects—something often abandoned by the world-weary press—here makes a difficult decision into an easy one.

It turns out, then, that the most effective bulwark against the fear generated by the threatening stranger, rather than the censorious government official, may be an institution whose governance is as diffuse and anonymous as the threat itself. If Wikipedia founder Jimbo Wales tried to censor the cartoons by fiat—perhaps fearing for his own safety—he would lose control of his "newsroom." The very qualities that so often make Wikipedia inane

Grabar, *Seeing and Believing*, NEW REPUBLIC, Nov. 4, 2009, at 33 (discussing the history of images of Muhammad).

⁴³ Statement by John Donatich, Director of Yale University Press, Sept. 9, 2009, available at <http://yalepress.yale.edu/yupbooks/KlausenStatement.asp> (last visited Jan. 19, 2010). Reactions to the Yale University Press decision were generally critical. See Anne Applebaum, *Chipping Away At Free Speech*, WASH. POST, Sept. 15, 2009, at A19; Patricia Cohen, *Yale Press Bans Image of Muhammad in New Book*, N.Y. TIMES, Aug. 12, 2009, at C1; Oliver Kramm, *Committed to Free Expression? What Nonsense*, TIMES (LONDON), Sept. 28, 2009, at 29; James F. Smith, *Caught Up in a Cartoon Controversy; Mohammed Images Left Out of Brandeis Professor's Book*, BOSTON GLOBE, Aug. 22, 2009, at 1. In late 2009, a Duke University professor published a book of thirty-one images of Muhammad, including those that had been removed from Klausen's book. GARY HULL, MUHAMMAD: THE "BANNED" IMAGES (2009).

⁴⁴ Wikipedia, *Jyllands-Posten Muhammad Cartoons Controversy*, http://en.wikipedia.org/wiki/Jyllands-Posten_Muhammad_cartoons_controversy (last visited Apr. 6, 2010).

⁴⁵ The archived talk page contains the full discussion about where to put the images. See Wikipedia, *Talk:Jyllands-Posten Muhammad cartoons controversy/arguments/image-display/Archive 1*, http://en.wikipedia.org/wiki/Talk:Jyllands-posten_muhammad_cartoons_controversy/arguments/image-display/archive_1 (last visited Apr. 6, 2010).

⁴⁶ See Wikipedia, *Talk:Jyllands-Posten Muhammad cartoons controversy/arguments/image-display*, http://en.wikipedia.org/wiki/Talk:Jyllands-posten_muhammad_cartoons_controversy/arguments/image-display (last visited Apr. 6, 2010).

⁴⁷ Wikipedia, *Talk: Jyllands-Posten Muhammad cartoons controversy*, http://en.wikipedia.org/wiki/Talk:Jyllands-posten_muhammad_cartoons_controversy (last visited Apr. 6, 2010).

and unreliable are the qualities that here make it a beacon in troubled times, an institution that, at least in this narrow but crucial sense, should make professional journalists proud.

This is not about Wikipedia versus the mainstream media. The nearly-unanimous decision by the press establishment to back down here—a situation guaranteed to repeat for other topics—may be rational, if regrettable. Yale did not want to endanger its community over a single book. This is precisely what makes the less-externally-accountable Wikipedia—and other distributed Internet enterprises—a friend and colleague to the press. No doubt one of the factors going into Yale's decision was that these images too sensitive to publish are in fact available to anyone who wants to see them within ten keystrokes and five seconds. Google indexes them because it indexes everything; we do not see the availability there as a moral choice to approve or abominate. Wikipedia retains them because its editors are everywhere and nowhere. Its script is refreshingly different from that of the press, and together they comprise a form of informational biodiversity that assures survival of an idea across a range of hostile environments.

Wikipedia and the press can even outright cooperate. *New York Times* reporter David Rohde is one of several press correspondents who have reported from dangerous areas outside the green zones of the world. A veteran who covered the massacres of Srebrenica, he was kidnapped while pursuing a story outside Kabul.⁴⁸ He was held for nine months. In order to support delicate negotiations, word of his abduction was appropriately held back by the *Times* and other mainstream media.⁴⁹ Wikipedia was among them, with a critical mass of editors assiduously keeping Rohde's entry silent on the matter.⁵⁰ (Rohde escaped his captors in June, 2009.⁵¹)

The Internet revolution is young—it is properly dated to be about a decade old, pegged to mainstream adoption of broadband. We lucked into phenomena like Wikipedia, an idea famously so profoundly stupid and improbable that even its founder never came up with it. (Jimmy Wales's original idea was for a more traditional encyclopedia, Nupedia, with commissioned articles; the wiki at first was just a place for back room comments and suggestions.⁵²) Mediating Web sites like Talking Points Memo⁵³

⁴⁸ *Times Reporter Escapes Taliban After 7 Months*, N.Y. TIMES, June 20, 2009, at A1.

⁴⁹ *Id.*

⁵⁰ Noam Cohen, *New Rules in Wiki World*, N.Y. TIMES, Aug. 25, 2009, at B1; Seth Finkelstein, *Read Me First: The Moral Quandary of Involving Wikipedia in Online "Censorship,"* THE GUARDIAN, July 9, 2009, at 2; Richard Perez-Pena, *Keeping News of Kidnapping Off Wikipedia*, N.Y. TIMES, June 28, 2009, at B4.

⁵¹ Tom Coghlan, *Journalists Escape from Pakistan Prison Thanks to Game of Draughts*, TIMES ONLINE, June 22, 2009, <http://www.timesonline.co.uk/tol/news/world/asia/article6550415.ece>; Adam Ellick, *With Plan and a Hidden Rope, Captives Escaped the Taliban*, N.Y. TIMES, June 22, 2009, at A1.

⁵² Wikipedia, Nupedia, <http://en.wikipedia.org/wiki/Nupedia> (last visited Apr. 5, 2010); Posting of Timothy to Slashdot, *The Early History of Nupedia and Wikipedia: A Memoir*, <http://features.slashdot.org/features/05/04/18/164213.shtml> (Apr. 18, 2005, 13:00 EST).

lead the way in showing how traditional media and new media can be a whole more than the sum of their parts.

An important cluster of work to be done here is to ensure that important ideas can reach people who want to absorb them. It is not enough for the *New York Times* to publish world class news. It must take active steps to reach those whose governments or peers prefer they not see it. Well over half a billion people have their Internet activities routinely and automatically channeled away from unapproved sites and topics.⁵⁴ With a few tweaks to existing protocols, we can change the entire playing field from the current cat-and-mouse stalemate of filtering and circumvention.

RSS protocol—"really simple syndication"—allows information from one source to be automatically incorporated into another. The Herdict project collects reports of Internet blocking in real time from the people who are trying to get somewhere and cannot.⁵⁵ Put the two together, and any number of people and institutions can step forward to allocate a small and quiet piece of their Web presence to a feed of the contents of censored sites. Suddenly an attempt to filter a Web site automatically results in its contents being mirrored to thousands of other places. The more people try to see it and cannot, the more mirroring takes place. Google and Bing merrily index everything, and searching for a forbidden phrase finds it available anywhere. Imagine if the press could devote its energy to ferreting out truth from lies, important from trifling, and see its results ricocheted from one participant to another. The only thing more powerful than the *Post* and the *Globe* following on the heels of the *Times* is if the readers themselves can become part of the process, passing on a vital word rather than expecting experts alone to do it, and to face the consequences. Indeed, we can change Hypertext Protocol itself in a way that had once occurred to its inventor but got lost in the shuffle: if your computer cannot get somewhere, it could automatically ask nearby computers if they had recently been there and can share what they saw.

Not only can people help distribute content, but they can help to assure its integrity. Photos can be changed and texts altered, and as we shift to a world of Google Books served from a cloud and Kindles that can have

⁵³ Talking Points Memo is a web-based media organization that "specializes in original reporting on government and politics and offers breaking news coverage, investigative reporting, high profile guest bloggers and a book club." About TPM Media, <http://www.talkingpointsmemo.com/about.php> (last visited Apr. 5, 2010).

⁵⁴ Posting of Jillian C. York to OpenNet Initiative, *More than Half a Billion Internet Users are Being Filtered Worldwide*, <http://opennet.net/blog/2010/01/more-half-a-billion-internet-users-are-being-filtered-worldwide> (Jan. 19 2010, 17:45 EST). For a survey of countries' policies on internet censorship more generally, see *Country Summaries*, in *ACCESS DENIED: THE PRACTICE AND POLICY OF GLOBAL INTERNET FILTERING* 235, 235-432 (Ron Deibert, John Palfrey, Rafal Rohozinski, & Jonathan Zittrain eds., 2008).

⁵⁵ See Herdict, <http://www.herdict.org> (last visited Apr. 5, 2010).

Orwell's works purged from afar⁵⁶—*Nineteen Eighty-Four* indeed!—physical books will become either ancient curiosities or on-demand printouts no more verifiable than their digital sources.

But nearly all of us possess a powerful machine on our laps or desks, with more storage than we could ever use. We can create protocols like that of the LOCKSS project, where libraries and individuals can share digital works for the purpose of double-checking them against one another, an insurance policy against the memory hole.⁵⁷ We should be encouraging more people—and certainly our kids, to take part in the *functions* of the press. Wikipedia ought to have a simple interface—a Dreamweaver moment like the one experienced by the Web itself—so that you do not have to know a markup language in order to fix a typographical error in an article.

But what of the trenchant objection that having citizen journalists is no more sensible than having citizen surgeons? Well, the key part of surgery is skill. Before performing surgeries, surgeons must spend years training to develop highly specialized skills. Similarly, journalism requires skill and often training. A solid story requires more than just someone asking questions of a source. That is why the press must most aggressively cover itself. It owes Fox, MSNBC, the *Times*, and the *Post* a departure from the script, a kind of scrutiny that it would give any powerful or popular outside institution.

Those values are worth sharing with the public at large, not just through the product of a well-tuned press, but through its process. We have the opportunity to enlist people in the Madisonian enterprise, to recruit them for their stories, their cell-phone tapes, their sharp eyes and minds, especially when they live and know a situation that the typical reporter can only approach as an outsider. As cameras and recorders become ubiquitous, we should engage those who aspire to tell a true story with them. Or at least we should not arrest them: in Massachusetts, a citizen recording his interaction in public with a misbehaving agent of the state is subject to a felony conviction for making an unauthorized recording of his encounter—the very recording that could unambiguously substantiate a claim of abuse.⁵⁸

⁵⁶ Jonathan Zittrain, *Orwellian Indeed*, FUTURE OF THE INTERNET, July 17, 2009, <http://futureoftheinternet.org/Orwellian-indeed> (discussing a “memory hole leak in the Kindle” that led to copies of *Nineteen Eighty-Four* vanishing from users’ Kindles).

⁵⁷ See About LOCKSS, <http://lockss.stanford.edu/about/about.htm> (last visited May 24, 2010). LOCKSS is an acronym for Lots of Copies Keep Stuff Safe.

⁵⁸ See *Commonwealth v. Hyde*, 750 N.E.2d 963, 971 (Mass. 2001) (affirming a motorist’s conviction for tape recording his interactions with police officers during a traffic stop); Daniel Rowinski, *Police Fight Cellphone Recordings*, BOSTON GLOBE, Jan. 12, 2010, at 1 (describing recent incidents in which citizens were arrested for recording police activities). The defendant in *Hyde* filed a formal complaint about officers’ actions during a routine traffic stop. While an internal investigation was being conducted, the officers brought a criminal complaint against the driver under MASS. GEN. LAWS ch. 272 § 99. The internal investigation exonerated the officers, but the driver was convicted of violating the wiretapping statute. Writing in dissent, Chief Justice Marshall noted that George Holliday, who recorded the beating of Rodney King,

The skills of professional journalist and interested citizen thus can be complementary, united by the desire to get at truth. To think that instead people should just consume the media—that they simply need to know one thing even if they want to know another—is to abandon rather than cultivate the link between the press and the public it serves and informs.

What Guy Goma experienced in two seconds as he adjusted to an utterly unanticipated reality in front of hundreds of thousands of viewers is what the press has been grappling with for at least two years: shocked realization and blind terror. What lies ahead is the rest of that sequence: philosophical resolve and, finally, determination to do our best. Let us hope that we can pick up the thread as gamely and admirably as Mr. Goma did.

would have been exposed to criminal charges had he been in Massachusetts. *Hyde*, 750 N.E.2d at 971-72 (Marshall, C.J., dissenting).