

When journalists, lawyers hold hands in newsrooms

Journalism gives its practitioners a lot of leeway in communicating information to their audiences. They can write about everything and anything about anyone and get away with it because freedom of speech, freedom of thought, and freedom of expression are guaranteed by the law in most places of the world.

But journalists are not as free as a bird in the air! There are limitations to what they can write or broadcast under the laws of defamation (libel and slander), national security, public decency, etc. Because the line between freedom and limitations is sometimes thin, journalists and lawyers come to a point of convergence. Journalists stretching the frontiers of freedom and lawyers protecting them by arguing their cases or keeping them within the boundaries of the law.

That's why many media houses have in-house and "out-house" lawyers. The former are to help the journalists navigate the legal minefields as they work on stories, while the latter are the armour that fights it out in the courts or at police stations whenever journalists are in trouble with the law (read the State).

In addition to lawyers in the direct employ of media houses, there are also a myriad of non-governmental organisations rotating around lawyers to advocate for media freedom and to protect journalists from politics and politicians. These mostly offer pro-bono services to journalists as individuals or whose media houses do not have the deep pockets to fight the State or corporate power in the courts of law.

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The importance of this relationship is well recognised. However, it is not always without friction. Journalists tend to feel that lawyers see too much risk in stories that listening to them would leave most stories unpublished. Lawyers, on the other hand, see journalists as possessing a reckless streak to the point that if left on their own, they would get themselves – and their media houses – into trouble, thus losing money and creating unnecessary disruption to the business.

So how should journalists and lawyers navigate this delicate relationship to ensure mutual benefit, and most important of all, to ensure audiences are not locked out of information? I found very interesting thoughts on this topic from veteran US journalist Richard J. Tofel, publisher of Second Rough Draft, "a newsletter about journalism in our time, how it (often its business) is evolving, and the challenges it faces". The article was published online on January 22, titled "Let's talk about the lawyers: How they can help newsrooms, and behaviours to avoid". I picked out his two broad

perspectives on what lawyers should do more and less of. Below, excerpts:

The dos: "The first and most important job of a newsroom lawyer, or even just a lawyer representing a newsroom in another role, is to facilitate getting material published. This is a simple but critical point. The object is not to eliminate all risks and avoid all potential pitfalls.

Advising about how one might achieve those goals are lawyerly tasks, to be sure, but publishers are in the business of publishing, and the best lawyers never for a minute forget this. Pre-publication review of stories, for instance, should not be an exercise in taking things out of stories, but of figuring out how to let editors, reporters, and producers share with readers, listeners, and viewers what they have learned."

The don'ts: "The job of lawyers is to advise clients, who must be the decision-makers. Clients have a broader view of more than merely legal issues, or at least they should. There may be risks they choose, on balance, to run – stories to publish, statements to make in the interest of transparency or staff cohesion or garnering reader loyalty, even sometimes corners to cut.

It is decidedly not the job of lawyers to scare clients out of making these choices, and far too often over the years, I have seen lawyers who, in their zeal, get confused about this. It is also important for lawyers to stay in their own lane unless and until invited out of it... Not unrelatedly, lawyers, who are trained to spot potential risks, need to be careful not to overstate the likelihood of their occurring."

What is your experience as a newsroom lawyer or editor walking this space together?

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