

The Delray Democrat

The Media Rolls Over (Again)¹

Michael K. Cantwell

“That was reason no. 43 that Hillary lost.” Alan Milner

The *LA Times* and *Washington Post* refused to endorse a candidate in the presidential race. After Trump wins, *The New York Times*' boldface mega-font headline reads [TRUMP STORMS BACK](#). Joe and Mika go to Mar-a-Lago to kiss his ring. *Time Magazine* names him “Man of the Year.”

ABC's [decision](#) to pay Donald Trump \$15 million and \$1 million in attorneys' fees to settle a defamation suit emboldens Trump to sue the *Des Moines Register* and its highly respected former pollster for publishing a poll that projected Kamala Harris winning Iowa by 3 points, a state Trump ultimately won by about 13 points.

[Commenting](#) in *The New York Times* on what some media law experts saw as ABC's retreat from a winnable fight, RonNell Andersen Jones, a law professor at the University of Utah said:

What we might be seeing here is an attitudinal shift. Compared to the mainstream American press of a decade ago, today's press is far less financially robust, far more politically threatened, and exponentially less confident that a given jury will value press freedom, rather than embrace a vilification of it.

This “attitudinal shift” goes back for decades, however, and might better be called an “ownership shift.” Remember Jeffrey Wigand (“The Insider”)?

Wigand was a former biochemist and whistleblower who had been fired by Brown & Williamson after confronting the company about its addition of carcinogenic additives to the tobacco. CBS initially sought to interview him on its flagship *60 Minutes* program, but then cancelled the broadcast in the face of a lawsuit threatened by B&W.

I was fresh out of law school at the time, working for a First Amendment thinktank, and CBS's timidity in the face of the threat from B&W was the subject of much discussion among the media law experts with whom I interacted. Many believed that it had little to do with the law and much to do with the fact that Westinghouse Electric Corporation was in negotiations to purchase CBS.

B&W advanced the novel claim that interviewing Wigand would be an “intentional interference” with the settlement agreement Wigand had entered with B&W, an agreement that bound him to silence.

Such claims had almost exclusively been confined to disputes between competitors over employees or clients, not to instances where the media was seeking to publish information in the

¹ [The Delray Democrat](#), December 2024, page 1.

public interest.

CBS would not only have had a strong First Amendment defense, but B&W would have had difficulty establishing even the elements of an intentional interference claim, which requires the plaintiff to prove that the “interference” was unjustified. Given the public health threat posed by tobacco, that would have been a heavy burden.

After cancelling the episode, *60 Minutes* ultimately broadcast it – but only after *The Wall Street Journal* [published](#) the entirety of Wigand’s deposition in a lawsuit brought by the State of Mississippi seeking reimbursement for the cost of smoking-related illnesses. The information that B&W wanted to suppress was now already available to the public.

The [episode](#) of 60 Minutes included interviews with Mississippi Attorney General Mike Moore and B&W attorney Gordon Smith and included this delightful exchange of opinion regarding the dangers of tobacco:

Moore: I'm used to dealing with, with cocaine dealers uh, and crack dealers and I have never seen damage done like the tobacco company has done. Uh, there's no comparison. Cocaine kills 10, 15 thousand people a year in this country. Tobacco kills 425 thousand people a year.

Smith: [in Smith's office] Mike, its absurd to suggest that tobacco is any way like cocaine in terms of addiction. Its absolutely absurd to suggest that. Brown and Williamson makes a lawful product. They sell it and make it in a lawful way.

At the time, I remember turning to my wife and commenting, “Is he suggesting that the sale of tobacco *should* be prohibited?”

Moore characterized the information that Wigand had disclosed as “the most important information that has ever come out against the tobacco industry.”

He was right. Wigand’s testimony was central to the historic settlement among the four largest tobacco companies in the United States and 46 states, five U.S. territories, and the District of Columbia.

CBS equivocated not because of the law but out of fear that the acquisition by Westinghouse would be jeopardized.

Corporate Ownership of Media Has Corrupted the Media

There was a time when the three major broadcast networks presented the news not only to satisfy the public-service requirements of Congress and the Federal Communications Commission but for the prestige it brought. They didn’t regard news as a profit center.

CBS Chairman William Paley [famously](#) told news reporters at a meeting in the early 1960’s that they needn’t worry about what the news cost. “I have Jack Benny to make money.”

It was also a time before the networks were acquired by corporations that had nothing to do with news reporting in the latter Twentieth Century. And those corporations had subsidiaries in

controversial business covered by the news.

For example, when NBC was purchased by General Electric in 1986, one of its sister companies, GE Vernova, was involved in the manufacturer of nuclear power plants.

NBC is now owned by Comcast, which recently [announced](#) plans to spin off MSNBC, CNBC, USA, E!, Syfy and the Golf Channel into a new company. Some people worry that MSNBC will be sold and then closed.

A Silver Lining?

Trump was clearly emboldened by the settlement with ABC. Trump refers to the media with the Nazi trope “Enemy of the People” (excluding the rightwing disinformation machine, of course) and he is poking at them with a sharp stick. He is threatening to terminate their licenses.

When an opponent is fighting for its life is when it is at its most dangerous. Will the media remember and resurrect its shining moments like coverage of Watergate and publication of the Pentagon Papers?

Or has it calcified into the position taken by a *Times* reporter who once answered my claim that he and his colleagues bore a “sacred trust”—a betrayal of which was a betrayal of us all?

I find your assertion of the betrayal of a "sacred trust" is bizarrely over-emotional, hyperbolic and generally perplexing. To put it simply, in the vernacular of my profession: it's just news.