

**MEDIA, SOCIETY, DEFAMATION**

**- A NEW ERA?**

**Geraldine Kennedy**

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I am taking the opportunity to broaden the debate beyond the new Defamation Act, 2009 to look at the main threats to press freedom from the Editor's perspective today.

Journalists like to think that press freedom is all about them. But, it is not. It is about the public's right to know; their right as citizens. The freedom of expression, enshrined in the Constitution, is their freedom and we exist to serve their right to know in a democratic society.

That reality, which for me is a principle, governed my decision to publish Colm Keena's controversial story on the payment of monies to then Taoiseach, Bertie Ahern, while he was Minister for Finance. I make no apology – and I never have – for taking the steps required to bring that story to publication in the public interest and to protect journalistic sources in so doing.

The freedom of the press is one of those simple phrases that cover a world of complexities. As we all know, it is an essential cornerstone of democracy, a major component of the eternal vigilance that is essential to political and economic freedom. It is among the first items for removal on the agenda of every authoritarian government but it is also under more or less permanent pressure from a variety of other, less obvious, more obscure sources.

We are fortunate to live in a country and one of the few regions of the world in which press freedom is accepted as a fundamental right. Yet, it is salutary to note that Ireland is listed a joint 14th – alongside Estonia, Jamaica and St Lucia - in the latest annual Freedom of the Press survey published recently by an independent American advocacy group. The list is generally headed by Scandinavian countries and we are much higher up than Britain, the US and France. But it is also salutary to note that two EU countries fell into the report's second category of having only a "partly free" press – Italy, because of intimidation from the Berlusconi government and organised crime, and Romania.

Journalists in Ireland fortunately can go about their work without having to share their Russian colleagues' very real fear of murder – although we should also remember that it is just over a decade since Veronica Guerin was murdered in open daylight on the Naas Road because of her journalistic activities. While we are generally free to do our jobs without fear of physical intimidation – although some journalists, including myself at one stage, have had Garda protection – there are a myriad of more subtle threats than the blunt instruments of violence or State power which affect the freedom of the press on a daily basis.

Few people in positions of power, whether they are elected politicians, bureaucrats or business people, like the media – except, of course, when it is doing their bidding or being complimentary to them. The relationship between politicians and journalists tends to be a love/hate one. They know, as we know, that

in practice it's a fluid relationship. Politicians may love us when they are in opposition and apparently on the same side in challenging the government and ferreting out information about its activities. Once in government themselves, they tend to exhibit the same tendencies of everybody in power – dislike of the media for endlessly asking awkward questions, quibbling about their actions, and interfering with their efforts to get across their message.

Few governments ever admit to having pursued the wrong policies; but many claim that everything would have been fine if only they had got their message across to the electorate.

Much as journalists and politicians know that they need each other, they should also know that we do not work for each other or even do the same job. It is as important for journalists to remember that as it is for politicians.

It is easy for journalists to become advocates for one policy or another – and there is nothing wrong with that, as long as they don't lose sight of their main role, which is to maintain a healthy scepticism, question everything, presume nothing, and put all the facts and truths that they know before their readers.

Our job is to keep the public informed about what is going on. One of the most famous old definitions of news – news is what someone somewhere doesn't want you to know – is still the best. Governments, political parties, companies, wealthy businessmen, institutions of all kinds from banks to charities spend very large amounts of money on – to put it politely – trying to get their message across to the public or – to put it less politely – trying to manipulate the media and thereby manipulate the public.

That it is important for the media not to allow itself to be manipulated goes without saying. But that is much easier said than done. There are often fine lines to be drawn between allowing and facilitating debate and the free flow of rival ideas and, on the other hand, ensuring that a newspaper does not simply become a playing field for rival teams of spin doctors and vested interests.

In practical terms, in the day to day experiences of the media, the freedom of the press depends on a number of factors. Some of the major ones, of which I have personal experience, include the media's own behaviour; its ability to protect its sources; and its financial strength. I'd like to deal with each of those issues in turn.

As I've mentioned, people in positions of power tend to dislike the media because it frequently gets in the way of their plans, simply by doing its essential job of informing the public. Thus, they are very ready to limit the powers of the press once given any excuse to do so. Unfortunately, the excesses of the media, mainly of the tabloid press, sometimes gives them just such an excuse in areas like privacy. We saw how

close the Government came to introducing a privacy bill alongside the recent changes in the Defamation Act and, we should admit it, for understandable reasons. How many members of this Government and/or their families have had their privacy invaded by the media for reasons of prurient rather than public interest?

It is important that the media, like all other institutions of power and influence, uses its power and influence responsibly and is prepared to admit mistakes when it makes them. For this reason, *The Irish Times* has always been a strong advocate of a Press Ombudsman and Press Council to provide redress to people who feel aggrieved and act as a standard-setter for all elements of the media, including the Irish editions of British newspapers.

The protection of sources is, in my view, one of the fundamental requirements of a free press, which is why we fought our recent court battle with the Mahon Tribunal about the protection of the source of a document which led to the resignation of the former Taoiseach right up to the Supreme Court. We won a landmark judgment, enshrining the principle of journalistic privilege and the protection of sources in Irish law for the very first time last July. That right to protect sources was severely diluted in November, however, when the Supreme Court took the unusual step of penalising *The Irish Times* by awarding all costs against us. It would be a mistake to think that a new frontier has been crossed.

The media is only as good as its sources. We have had over the years many good investigative journalists, but we don't have any investigative powers. We can't compel people to answer questions, demand discovery of documents and all the other powers which are, rightly, reserved to the legal system.

We can observe, doorstep, question, analyse, challenge officialdom and we rely strongly on good sources to point us in the right directions and to tell us what is happening. In my experience, many of the best sources are people who act for the highest motives – they see something going on which they believe to be wrong or an abuse of power or trust. Some sources' motives may not always be so pure: they may be driven by vindictiveness or revenge. It is always up to the journalist to determine in so far as they can the reliability of the information they receive. Whatever a source's motive, however, he or she must have the full protection of anonymity and they must be able to rely upon the assurances of journalists that they will not reveal their identities to anyone. Time and again, in the western world, we have seen the importance of anonymous sources in putting an end to abuses and malpractices by governments, companies and religious and other institutions. I am very pleased that *The Irish Times* fought for these objectives.

One of the factors which *The Irish Times* had to weigh up in defending this case was the potential cost of both a major fine if it lost and the substantial legal costs of the case itself. You could say that we received a mixture of both.

This brings me to the importance of financial independence and the financial strength of the media.

In our world, there are two basic methods of funding the media, state ownership or commercial companies. The former is generally restricted, for historical reasons, to broadcasting and has led to well-known pressures and problems with governments over the years. The latter range from multinational, publicly-quoted companies to trusts like *The Irish Times* - which also has to stand commercially on its own feet.

To be truly independent the press must be financially secure. It has always been susceptible to general financial pressures or, directly in the form of advertising linked to editorial demands or, indeed, to advertising withheld by governments, companies or organisations in retaliation for the expression of views they did not like. While the latter has always been part and parcel of the daily pressures on press freedom – and one which all media organisations worth their salt can resist without great difficulty – a more general financial security has become the major concern for the media at present.

The reason, of course, is the internet, which has changed our lives in many positive ways already and will continue to change them in the future. The internet poses a new challenge to the traditional structure and business model of the newspaper industry in ways that we cannot yet see clearly. There is no doubt in my mind that there will continue to be a demand from readers for independent print journalism.