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Deep Throat, Deep Digging, Deep Trouble

[Note: Arrange phone call from “Karl Rove”]

It’s a great privilege to be here at Vanderbilt. Ralph McGill, the finest newspaper editor ever to emerge from this campus as editor and later publisher of the Atlanta Constitution, described Vanderbilt as “a sort of Tibet, high above other plateaus I had known.” And he got kicked out his senior year. But he writes glowingly of the place, including his favorite professors, Mims in English and Reinke in biology. It is interesting who and what you remember, many decades out.

Having returned from my sojourn in the real world, I feel I should convey some large intergenerational wisdom to you, and I have thought and thought and what I come up with is this: If at first you don’t succeed, don’t take up skydiving.

I have another piece of wisdom, which is that journalism matters. Journalists are the professional observers of the life of our community, including our global community. We may all get frustrated or annoyed at the way a particular story is reported, we may even take some personal offense over something, but two roles have proved critical in a functioning democracy: an independent judiciary to enforce the law and the limitations on government power, and an independent press, free of government coercion and mandates, that can see things and learn things for themselves and report to the people without fear of government reprisal. The fundamental philosophy of the First Amendment comes from John Stuart Mill and others, that free speech is its own corrective. The best antidote for false speech or faulty ideas is more speech and more ideas. “Let truth and falsehood grapple,” wrote John Stuart Mill. Far better to tolerate wrong or wrong-headed statements than to have others deciding what people may or may not say.

One of the big stories in the news these days is about a secret source, or actually two secret sources, who whispered to a few reporters that a very visible critic of President Bush was married to a covert operative of the CIA, Valerie Plame Wilson. It’s a crime to reveal the name of a covert agent, so a special prosecutor is building a case against the president’s deputy chief of staff, Karl Rove, and the vice president’s chief of staff, Scooter Libby. This all began, of course, with the so-called “16 words” in President Bush’s State of the Union speech in 2003 saying that Iraq had tried to buy uranium from Niger, an obscure country in central Africa three-fourths of which is the Sahara Desert. Valerie’s husband, Joe Wilson, was a career foreign-service officer and former ambassador in a number of African countries, and he was sent by the CIA to Niger to investigate the reports, which had first come through British intelligence. Joe Wilson

came back and said there was nothing to the report. Months later, Bush used the “sixteen words” as part of a string of assertions by Bush, Dick Cheney, Condi Rice and others that Iraq had weapons of mass destruction, “no doubt.” So several months after the State of the Union speech, Wilson wrote an op-ed column saying he had confirmed months before the speech that the report wasn’t true.

As the war started looking like a quagmire for Americans, the sixteen words became Exhibit A for charges that the Bush administration had lied to justify the war. The administration, instead of admitting an error and claiming that the war was fully justified anyway, set out to discredit Joe Wilson and did that in part by suggesting he was on a junket arranged by his wife, who, they added, worked at the CIA. The only actual report of this in print was by Robert Novak, the curmudgeonly old right-wing columnist who appears on various TV food-fight shows throwing mashed potatoes at liberals. But at least two other reporters, Judith Miller of the New York Times and Matthew Cooper of Time, had gotten the same tip from two sources on the condition of anonymity. And when a Justice Department prosecutor was appointed to track down the leak to Novak, these two reporters were subpoenaed to reveal who the leaker was.

The reporters challenged those subpoenas on First Amendment grounds, a detail I’ll come back to in a minute, and their case went all the way to the U.S. Supreme Court, which refused to extend to them a previously recognized journalist’s privilege to protect informers. Time decided to comply. Judith Miller still refused and was sentenced to jail for contempt of court.

When I roamed this campus 33 years ago as a student, and as journalist who was editor of the Hustler, there was another scandal in the headlines about anonymous sources. It was the Watergate scandal, being pursued mainly in the Washington Post by two young reporters who were relying heavily on unnamed sources. We learned later, as Richard Nixon’s presidency was crumbling, that one of the most important of those sources was a well placed but unnamed government official whom the Post people referred to among themselves as Deep Throat, an intentional muddling of a contemporary porn flick and the journalism concept of “deep background.”

Only this year have we learned who Deep Throat was and, equally important, what motivated him to be a secret source for the Washington Post. It must be difficult for you to understand the fascination of my generation with the identity of Deep Throat. Watergate was like one huge real-life soap opera, full of Faustian characters, including burglars with rolls of cash in their pockets and an address book with White House phone numbers, a spy who wore a bad red wig, a jowly, drawling southern senator with bushy bouncing eyebrows, the discovery that the president secretly tape-recorded conversations in his office, Tennessee’s own U.S. Sen. Howard Baker repeatedly and lyrically intoning about Nixon, “What did he know and when did he know it?”, and a showdown in which the U.S. Supreme Court unanimously rejected the president’s claim of executive privilege and ordered that the president turn over his tape recordings to the prosecutor. And then there were the transcripts of those tapes, revealing a president who used an expletive about every fourth word, with the result that “expletive deleted” became as much a part

of the language in 1974 as “yadayada” a generation later. There were so many weird things that a satire movie called “Dick” came out a few years ago – yes, two decades after Watergate – purporting to explain all the weird, incomprehensible things about Watergate as attributable to two giggly teen-age girls who walked Nixon’s dog.

But nothing quite matched the mystery of Deep Throat, who would meet Bob Woodward in a garage in Arlington, just across the Key Bridge from Georgetown. Their signal to meet consisted of a message on page 20 of Woodward’s New York Times and the position of a potted plant on Woodward’s balcony, a system that Woodward even today does not really understand.

And after 33 years, we know that Deep Throat was the No. 2 man at the FBI, the chief operative of the legendary J. Edgar Hoover, Mark Felt. Why did he do it? Why would the second-most-powerful person in the FBI resort to whispering secrets to newspaper reporters about an FBI investigation of the president of the United States?

Well, there was resentment. When J. Edgar Hoover died, Mark Felt hoped to get the top job, but it went to an outsider, a Nixon patsy named L. Patrick Gray, who proceeded to violate everything Hoover had stood for by yielding repeatedly to White House efforts to suppress threatening lines on inquiry about Watergate. Felt was committed to truth, even if it led to the White House, or maybe even especially if it led to the White House, and his only practical conduit for pursuing that truth was to tell the one reporter who was actually on the story, Bob Woodward.

But this was by no means a case in which an anonymous source simply whispered in a reporter’s ear and the reporter turned around and wrote a story quoting “an anonymous source.” Woodward and Bernstein conducted scores, even hundreds of interviews, with people who feared for their jobs and also wanted to be off the record, and from those they pieced together this puzzle we know as Watergate. Deep Throat’s role was to show up now and then to assure the reporters they were on the right track, to redirect them if they were missing something. Their editors encouraged this huge expenditure of time, because their judgment was that it was an important story.

This was a highly principled enterprise. Woodward and Bernstein weren’t just spilling rumors irresponsibly. First, they made a fundamental decision of news judgment, that this was an important story – a story worth months of their time, a story important to their readers. Second, they had standards. This was a very unusual story, with very few actual documents, heavily reliant on information gleaned in scraps from many people, but they said that they would not publish any information unless at least two knowledgeable sources independently verified it. They made a couple of important mistakes using all these sources, but their reports were generally quite accurate.

Watergate, and specifically the relationship of Bob Woodward and Deep Throat, changed America and American journalism in at least three important respects:

First, it solidified the proposition that government officials were not trustworthy and that political leaders lied. The government cover-up and deception about Vietnam under Lyndon Johnson started this ignominious decline, and Watergate gave it new

momentum. Ronald Reagan came into office declaring “government IS the problem.” But that is a topic for another day.

Second, Watergate and the Woodward-Bernstein chronicles inspired a generation of investigative journalists, journalists who were skeptical and anti-establishment and kept digging despite all kinds of obstacles thrown up by the bad guys. Alternative newspapers, like the one I’m associated with in Atlanta, started springing up and challenging political misconduct at the local level. News organizations fought for more openness in government. They fought libel cases, big ones, one after another. People sued newspapers a lot back then, and the reason they don’t sue much today is that the newspapers stood firmly on the first amendment and defended their right to criticize and even to make mistakes in the pursuit of informing the public. Journalists successfully resisted subpoenas for their testimony, and reporters who went to jail – and a few did, just like Judith Miller – were heroes of the cause of the free flow of information. Back then, the Supreme Court supported the First Amendment and open government and wanted to create room for the press to play the role of watchdog.

Third, and perhaps least recognized, it became clear how important a knowledgeable, but anonymous, source can be in getting at the truth. In the movie “All the President’s Men,” based on the Woodward-Bernstein book about their reporting experience, Deep Throat as portrayed by Hal Holbrook warns Woodward, “You’re missing the overall,” meaning the larger picture.

Here’s the conversation, with references to former Attorney General John Mitchell and Nixon chief of staff H.R. Haldeman, along with a campaign prankster named Donald Segretti, plus Senate Edmund Muskie, at one time the frontrunner for the Democratic presidential nomination that year, 1972, and Sen. George McGovern, the eventual Democratic nominee, who lost to Nixon in a landslide.

DEEP THROAT: Can't you understand what you're onto?

BOB WOODWARD: Mitchell knew?

DEEP THROAT: Of course, Mitchell knew. Do you think something this size just happens?

BOB WOODWARD: Haldeman had to know, too.

DEEP THROAT: You’re getting nothing from me about Haldeman.

BOB WOODWARD: Segretti said...

DEEP THROAT: Don't concentrate on Segretti. You'll miss the overall.

BOB WOODWARD: The letter -- the letter that destroyed the Muskie candidacy, the Canuck letter, did that come from inside the White House?

DEEP THROAT: You're missing the overall.

BOB WOODWARD: But what overall?

DEEP THROAT: They were frightened of Muskie and look who got destroyed. They wanted to run against McGovern. Look who they are running against. They bugged. They followed people. False press leaks, fake letters. They canceled democratic campaign rallies. They investigated democratic private lives. They planted spies, stole documents, and on and on. Don't tell me you think this is all the work of little Don Segretti.

The “overall” was that Watergate – meaning burglars breaking into Democratic headquarters to bug the place – was just a little piece of an organized operation to sabotage opponents’ campaigns, misleading the voters, and laundering campaign contributions to pay for it all. It was a fundamental attack on the roots of American democracy, a fraud on the voters. And it was Mark Felt, the anonymous source, the man who read all the reports from the hundreds of FBI interviews and all the FBI field work on Watergate, who had the big picture and could let the reporters know what they were onto.

This is a story fundamental to the operation of a democracy. While the Watergate investigation, and I guess the Rove-Libby investigation, are seen as liberal causes challenging a conservative administration, I think it is fundamentally a conservative position: that government power should be limited, and government should not abuse the machinery of government to suppress opposition or to deceive the American people. It is odd to me that the conservative establishment rose up against George Bush not over this clear violation of law and anti-democratic practice but over a Supreme Court nominee.

The problem in this case is that anonymous sources were not the whistle-blowers like Deep Throat, helping reporters know and understand an insidious misbehavior by people in authority. These anonymous sources, Rove and Libby, were the ones misbehaving, the ones in power. And the awkward ethical position of the reporters was that they had committed themselves to protecting those who were misbehaving. Judith Miller even agreed to refer to Scooter Libby as a “former Hill staffer,” to further hide the White House role in this vengeful attack on Joe Wilson and accomplishing the additional insidious effect of making it look like Congress was the department of government that was doing the manipulating of the news.

It’s worth understanding the legal posture here. The laws and rules of procedure governing criminal and civil cases give every party, including prosecutors and criminal defendants, and right to bring forward all relevant evidence on the issues before the court. That means if somebody is in possession of documents or information related to the case, a party can subpoena that person to testify about what they know. Usually, there’s not a big deal. A person witnesses an automobile accident, and they’re a witness. A police officer investigates a case and is a witness. I may be a journalist, but if I’m standing outside Chili’s and see the accident that happened there recently, I can be called as a witness.

But there are a number of exceptions to this rule, because the law says some things are more important than having every bit of evidence. First, the Constitution itself says you may not be compelled to testify against yourself. “You have the right to remain silent,” says the Miranda warning. Second, husband may not be compelled to testify against his wife, or a wife against her husband. The marriage is more important than the trial. A doctor may not be compelled to disclose information received from a patient, because we do not want to discourage people from speaking candidly and fully to their doctors. Similarly, a lawyer may not be compelled to give evidence against a client, because the principle of the right to counsel is worthless if you cannot disclose all the facts to the lawyer and seek the best counsel. There are others, but the idea is that society values some things more than full disclosure in court. And it is that concept that lies behind the idea that journalists should not be compelled to disclose the names of people who provide them information. There is a higher social need, in the watchdog role that news organizations perform, and it is part of the freedom of the press established in the First Amendment.

The U.S. Supreme Court, many years ago, recognized this concept. The cases arose from a reporter who had been allowed access to the drug community in Louisville to write about the sale and use of drugs, and that reporter refused to testify about the drug use and transactions he had observed during the reporting of the story. Two other reporters had written about the Black Panthers, one after being given access to the Panthers’ headquarters during a demonstration and the other after interviewing various Panther leaders.

In a very divided set of opinions, the court basically established that someone who subpoenas a reporter must show that there is cause to believe the journalist has clearly relevant information, that the information can’t be obtained in some alternative way, and that there is a compelling and overriding interest in the information. That was the point that Judith Miller and Matt Cooper lost on, and why Judith Miller ended up in jail to maintain the confidence.

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I’d like to pause for a moment to think about the role that anonymous sources play in our understanding of what is going on in our communities and in our world. And I’d like to do that by asking you to think about a very different situation, one not involving politics, so you don’t have to stay loyal to your team.

Suppose you are a newspaper reporter and someone comes into your newsroom, a person you judge to be perfectly normal, and tells you that she has heard that the chief surgeon at a hospital in the community had killed 30 or 40 patients a few years earlier. She has no other clues. You’re the reporter, or the editor of a newspaper. Is this a story?

How do you go about this story?

[You might start with medical examiners – people who determine the cause of death. Any unusual patterns of death in hospitals? Any investigations you know of?] Who else? Prosecutors. Same questions. Doctors. They know the rumors around their own profession.

How many of the sources you go to are likely to want you to quote them in the newspaper? Suppose you're a doctor, and you've heard a rumor, or maybe know of an actual internal investigation of one of your fellow doctors. Maybe you're a doctor who wants to uphold the standards of the profession, and you have always been concerned about this case and troubled that information hasn't come out. But do you want to be quoted in the paper?

[I often tell people, I'm not interested in quoting you; I'm interested in finding out what's going on. If I want to quote you, or need to, I'll come back and negotiate that with you.]

Let's take the concern one step further. Not only do I not want to have my name in the paper, but if this thing becomes some kind of official investigation, I STILL don't want people to know I talked with you. If the prosecutor calls and says, "I've read your story and opening an investigation," I STILL don't want people to know I talked to the newspaper. I'll help you, but you have to protect my reputation in the community and among my fellow doctors.

Let's jump ahead. Suppose a story appears in the paper, and it says that the Mercy Hospital in our community experienced an extraordinary string of unexplained post-surgical deaths five years ago and on investigating, had found in the locker of the chief of surgery 18 mostly empty vials of curare, which relaxes breathing during surgery but if administered with artificial respiration, can be fatal. Further, you report, the doctors had been alarmed and had reported this to the local prosecutor, but his investigation had failed to turn up evidence of a crime.

This story appears, and you're the local prosecutor. What do you do?

What crime do you investigate? A possible serial killer? A violation of privacy laws, in the revealing of information about an internal affairs investigation at the hospital?

Where do you start an investigation? Well, the simplest thing would be to subpoena the reporter, right, and ask – who did you talk to? Who told you this? Where did you find this information?

Or what about the suspect? Suppose the case is investigated, and the chief of surgery is charged with murder? What does his lawyer do? Subpoenas the reporter? Who did you talk to? We need any evidence you have that might point to innocence? A defendant has a right to a fair trial, and we have a right to subpoena any with evidence that might be helpful. It's part of due process. So you have to talk.

Suppose the reporter talks. What happens the next time a reporter goes around to investigate a tip? People shut up.

Well, this was a real case. The reporter was Myron Farber of the New York Times, known to his friends as Mike, and the case began with just this sort of tip in June 1975. He didn't know which county or anything. It took him 18 months of finding people reluctant to talk, but finally he learned about Riverdell Hospital in Bergen County, New Jersey.

Here's how he did the story, according to a piece he wrote recently in Smithsonian magazine this past September. After many, many interviews that led to Riverdell, the local prosecutor confirmed an investigation and provided access to the closed files. "Using names and addresses – many of them out of date – from the 1966 file, I pored over phone books, leaned on officials for death certificates, called on funeral homes and appealed to the Social Security Administration to forward my letters seeking interviews with people who might have something relevant to say. I reached out to scientists and pharmaceutical companies for arcana about muscle relaxants. Doors were slammed in my face, and telephones were slammed down in my ear. The worst moments, of course, were when I had to tell people that the death of a parent or a child, awful as it may have been at the time, was actually believed to have been suspicious. No one had ever told them that."

He tried to talk with the chief of surgery, a man named Mario Jasclevich. It wasn't Jasclevich's patients who had been dying in unusual numbers. It was the patients of a new surgeon in town. Jasclevich, during the earlier inquiry after the curare was found in his locker, explained that he had been doing experiments on dogs.

The Times wrote a story, an investigation was opened, and Jasclevich was charged with murder. His lawyer subpoenaed Farber, but Farber refused to name sources. The Times and Farber were held in contempt of court, and the Times was fined \$100,000 as a criminal penalty plus \$5,000 for each day that Farber continued to refuse. Farber was remanded to the Bergen County jail until he complied with the subpoena or until the trial ended – plus six months for criminal contempt.

Appeals got Farber in and out of jail a couple of times, but he spent 40 days there before the trial ended in a not-guilty verdict. Jasclevich was found by the medical board to have committed gross malpractice, and his license was revoked. He has since died.

The editor of the Times, Abe Rosenthal, had told Farber not to worry about those huge fines, which eventually totaled \$286,000. "Every penny the Times has ever made, it has made because of the First Amendment," Rosenthal said, "and if we have to, we'll spend every last penny for the First Amendment."

In 1982, New Jersey Gov. Brendan Byrne pardoned the Times and Farber, returned \$101,000 of the fines. Byrne said their purpose had been "not to insult or frustrate the judicial process, but to stand on a noble, if sometimes imperfect, principle."

This was not a perfect case. In the end, the suspect was acquitted, because the prosecutors couldn't prove the case. Does that mean the Times shouldn't have written the story? I don't think so. Do you want to know things only if there is no reasonable doubt

about them? That may be a good standard for convicting a person, but it is not a good standard for informing the public about their political leaders or dangers in their midst. Jasclevich, I'll note, never sued for libel, in part because so much of the information was in public records, which newspapers may accurately report on without fear of a libel verdict.

Before I conclude, I might pause to give you the little secret code about anonymous sources in Washington. You hear things like "off the record" or "on background" or, as in the Watergate case, the term that gave rise to Deep Throat's nickname, "on deep background." Here's how the U.S. State Department rules describe it:

Ground Rules for [Reporters] Interviewing U.S. State Department Officials

Ground Rules

Ground rules must be agreed upon at the beginning of a conversation or an interview with State Department officials. The discussion should proceed only after you and the officials are clear on exactly how the information can be used or attributed.

On the Record

Information may be quoted directly and attributed to the official by name and title.

On Background

The official's remarks may be quoted directly or paraphrased and are attributed to a "State Department official" or "Administration official," as determined by the official.

On Deep Background

The source cannot be quoted or identified in any manner, not even as "an unnamed source." The information is usually couched in such phrases as "it is understood that" or "it has been learned." The information may be used to help present the story or to gain a better understanding of the subject, but the knowledge is that of the reporter, not the source.

Off the Record

No information provided may be used in the story. The information is only for the reporter's background knowledge.

This system is being hugely abused. The secretary of state will talk to reporters on a plane back from a foreign country under "background" rules that require that she be identified only as a "senior administration official." One time the Washington Post, protesting the excessive use of this dodge by the State Department, had a separate reporter call the White House press office and ask, "Who gave the press briefing on the

secretary of state's plane." The secretary, came the response. Now, having an on-the-record confirmation, the paper ran the story quoting the "senior administration official" and next to it put a picture of Secretary of State Cyrus Vance, with the caption, "Senior Administration Official." That got the Post barred from briefings, and the paper backed off its little rebellion about more on-the-record quotes.

I routinely negotiate the terms of an interview. In Tallahassee, the legislative staff are subject to internal rules that do not allow them to be quoted. So every time I call someone new on a legislative committee staff, they go into a routine that they will talk to me and provide as much information as they can, but I can't quote them on anything. Some of this is because the politicians want to be the ones with their names in the newspaper, some because the staff is not supposed to take political positions but merely provide policy research. This is not the same as a pledge of anonymity, for they are often just providing me public records or describing staff research. But it is an important Woodward and Bernstein eventually became heroes of their generation, but for a time they were wacko journalists, with stories that no one else could prove, that had no hard evidence or documentation, that relied on anonymous sources, and that were contradicted by denials by the White House press secretary.

During Watergate, Richard Nixon's press secretary would issue what came to be called non-denial denials. He often would say the information wasn't true. He would simply sneer that they were based on "hearsay, innuendo and anonymous sources."

All of us want to have documentation for what we put in our stories, including people identified by name. But anonymous people often are crucial.

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I ended up in a job that let me see things and do things that most people can't experience so close at hand. Journalism is a roving license to ask questions and go to see things, and try to make sense of the world or some little part of it that becomes your beat.

But a sense of the world doesn't just come out of your own head. You rely on others with specialized knowledge, sometimes knowledge belonging only to a few, and in even rarer cases, someone with knowledge that is not supposed to be disclosed. From such people, the reporter gains not just facts, or scandal, but perspective and understanding. We as a country would be much worse off without knowledgeable people who share their knowledge with the independent chroniclers of modern society, and without reporters who stand firm to protect them from embarrassment and retaliation. Journalists don't always succeed, but it is important that we try. Unlike skydivers, we will get to try, try again.

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I will be pleased to take your questions, and in the interest of free speech, even your challenges and objections.