

Richard J. Tofel

“Elements of Nonprofit News management” is a must-read for anyone starting, running, or working at a nonprofit news organization.

More than 135 nonprofit news organizations have launched across the United States over the past five years — about double the number of startup nonprofit newsrooms that were created in the previous five-year period, according to the Institute for Nonprofit News. But starting a nonprofit news organization requires more than great journalism, it necessitates a solid revenue strategy, operational infrastructure, legal representation, and much more.

In “Elements of Nonprofit News Management,” Richard J. Tofel, the former president and founding general manager of ProPublica, offers actionable strategies to help nonprofit newsrooms and news entrepreneurs build sustainable organizations.

Drawing on his years of experience in managing and running a nonprofit newsroom, Tofel shares how to:

- Draft a strong mission statement
- Create a business plan
- Devise a fundraising strategy
- Build a Board
- Sustain organizational culture
- And much more



RICHARD J. TOFEL | ELEMENTS OF NONPROFIT NEWS MANAGEMENT

THE LENFEST INSTITUTE

Elements of Nonprofit News Management

Elements of Nonprofit News Management

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Elements of Nonprofit News Management

By Richard J. Tofel



Foreword

When someone decides to start a news organization, they do so to publish groundbreaking investigations that change laws or empower underserved community members to share their stories. It's not to process payroll, deal with legal questions, manage a board of directors, or any number of other critical logistical and business processes.

But you can't have one without the other.

Groundbreaking journalism doesn't occur in a vacuum. Publishers need business savvy and the operational infrastructure to support their missions.

Nobody knows that better than Richard J. Tofel. He spent more than a decade at ProPublica where he was the first employee, founding general manager, and then president from 2013-2021. He oversaw all of ProPublica's business operations — including communications, legal, fundraising, finance, board development and human resources. I've known and admired Dick for decades starting with our time together at The Wall Street Journal where he served in an array of mission-critical roles including Assistant Publisher.

That's why The Lenfest Institute for Journalism is proud to publish the book you're holding, "The Elements of Nonprofit News Management," which includes wisdom and insights from Dick's decades of leadership. It includes some material taken from Dick's columns for ProPublica and his Second Rough Draft newsletter, as well as from articles published in venues including the Columbia Journalism Review, although even that has been revised and substantially expanded.

The Lenfest Institute's sole focus is to develop and support sustainable business practices in service of important local journalism. We have been heartened by the growing movement of nonprofit news organizations across the country. But to truly serve their communities and fill gaps in our news ecosystems, these organizations will need to continue to grow and scale their businesses to reach new audiences.

That's why we undertook this project with Dick. The book features practical advice, invaluable lessons, and strategies for how to organize and manage a nonprofit news organization that will help news entrepreneurs and their enterprises grow and thrive.

We hope you'll keep this book as a reference and revisit it as you confront difficult or challenging decisions. And we invite you to visit the free online version of the book at nonprofitnewsmanagement.org which has additional resources, documents, and templates that you can copy and adapt for your own needs.

—Jim Friedlich, Lenfest Institute Executive Director & CEO

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1

GETTING STARTED

Editorial vision

All great news products must in some sense begin with a visionary editor.

All great news products must in some sense begin with a visionary editor. Many news nonprofits reflect the vision of a founding editor; some, like The City in New York, the new Baltimore Banner and the forthcoming Ohio Local News Initiative and Houston Local News Initiative, may start instead with committed donors on a mission. That's fine. But even if the money comes first, there is no substitute for a clear editorial point of view and an analysis of the gap you are seeking to fill in your particular news ecosystem. That analysis should cover what is missing that you intend to supply as well as what is not, or is at least beyond your scope. Here's the most important part of that:

My own journalistic hero is Barney Kilgore, who built The Wall Street Journal in its modern form, running it first as editor, then effectively as publisher, from 1941 until 1967. I had the privilege of writing his biography, and began the book by describing a meeting Kilgore attended in 1958 with a group taking control of the New York Herald Tribune in what turned out to be a last (and ultimately unsuccessful)

attempt to save that publication. The Herald Trib was then one of the nation's two leading general interest newspapers, the voice of the establishment Republican Party; the meeting was specifically encouraged by President Eisenhower. But the paper was in trouble, having effectively lost its battle for local dominance with The New York Times during and just after World War II.

Kilgore brought a short memo of critique to the meeting. Its most devastating lines were these: "It is not, as it now stands, a bad newspaper. But it is a little too much of a newspaper that might be published in Philadelphia, Washington or Chicago just as readily as in metropolitan New York."

As journalists across the country seek to build and rebuild a raft of new and renewed news organizations in the wake of a business crisis that has now lasted more than 17 years, this is, I think, the most critical point. Successful news offerings must be distinctive. It is no longer possible to prosper with a product or service that feels commoditized. As Kilgore understood more than six decades ago, readers don't have time for it.

When people approach me about how to shape a successful publication, this is always the first thing we discuss. The most promising ideas and teams have already embraced this challenge; with those who have not yet fully focused on distinctiveness, this is the critical dimension on which I seek to help them sharpen their thinking.

It's especially important not to convince yourself that you're simply going to do something that's already being done, only better. That way lies self-delusion. Visionary editors seek to do things differently, to cover beats newly discovered or long since abandoned, to serve audiences that are just emerging or have been neglected, to present stories in new ways, using new tools or techniques.

"If you build it, they will come" is not an editorial strategy for the 21st century.

Such editors also have a vision for how their work is going to break through — how they will not only do excellent journalism, but also capture attention for it. “If you build it, they will come” is not an editorial strategy for the 21st century.

And editorial vision these days also requires a strong sense of what sort of team is to be assembled: What are the key roles? What sort of newsroom culture is sought? What news values will inform the work?

If you have begun with an editor who has cogent answers to all these questions, great. If not, your first essential task is to find one. If you have (or are) an editor of talent and promise whose views on some or all of these questions remain unfocused, it’s critical to sharpen them before you embark on the adventure.

Mission: What's the aim? What's not?

The most important thing for a successful nonprofit of any sort is a clear mission. This is a simple and direct statement of what you are in business to do — and, by implication if not explicitly, what you are not trying to do. Your mission is not the place for buzzwords or euphemisms. Nor is it the place for compromises, especially not of the “let’s do both” variety.

A well-crafted mission statement, tightly phrased and properly promulgated, can inspire companies and the people who work in them.

A well-crafted mission statement, tightly phrased and properly promulgated, can inspire companies and the people who work in them. It can help managers remember what they’re trying to accomplish and what’s beyond the scope of their enterprise. It can guide a company’s decisions about allocating capital. But to do so it must have content, and far too many mission statements lack that.

Some years ago I reviewed a short book on mission statements for The Wall Street Journal. My review began with some of the nonsense that clouds these waters in corporate America:

Alcoa is a big company. They make some of the best aluminum on Earth. Once upon a time, they made all of the aluminum, but that is another story. Our story is about vision. What is Alcoa's vision? "At Alcoa, our vision is to be the best company in the world." What?

Hershey is a less-big company. They make some of the best chocolate on Earth. Hershey has a 65-word mission. It includes "Undisputed Marketplace Leadership" and "top-tier value creation" from a "portfolio of brands." Not one of the 65 words is "chocolate." Huh?

Gillette used to be yet another leading corporation. It once said that its vision was to "build total brand value by innovating to deliver consumer value." Its vision did not seem to include anything about shaving. Perhaps a mistake: Today Gillette is a part of Procter & Gamble.

People were presumably paid zillions to serve up this pabulum. Don't be like them.

Big for-profit companies can often get away with euphemistic mission statements because they are, especially if they are publicly traded, ultimately in business to make money. The laws that create them say that's their purpose, although they soften it a bit by providing that the goal is make money "in the long run."

The more specific you make your mission — the more you narrow your aim, the more you focus your efforts — the greater the chance that you won't achieve your objective, and that people will know you didn't. That's scary, but it can also be very helpful.

But nonprofits can't fall back on that. They need to be in business to accomplish something, and they are much better served when it's something specific. That sounds simple, but it can be quite daunting, and here's why: The more specific you make your mission — the more you narrow your aim, the more you focus your efforts — the greater the chance that you won't achieve your objective, and that people will know you didn't.

That's scary, but it can also be very helpful. The discipline that comes with accountability is considerable. Conversely, while it's tempting to fuzz up your mission in order to obfuscate any failure to achieve it, the first person you risk fooling this way is yourself.

In crafting a mission for a news nonprofit, try to make as clear as possible what you are seeking to accomplish and, at least by implication, what you are not. Are you hoping to serve a particular group of people, defined by geography, interest or personal characteristic? Say so. Are you hoping to employ the full range of journalistic processes and techniques, or only a few? Say that, too. How will you determine whether you are successful? Include that as well. Hard thinking, up front, on these hard questions will greatly simplify your work as it unfolds.

Metrics

Simply put, if you can set the rules of the game, you are much more likely to prevail.

How do you measure whether your work is succeeding? Or, to put it in a way that makes nonprofit publishers more nervous than it should, what are your metrics for success?

Often this question arises because a funder, typically a foundation, requires some quantitative way to determine whether its investment is paying off. But you shouldn't wait for that; you should establish your own metrics before anyone else asks for them. And you should make sure they are closely tied to what you are trying to accomplish — to why you got into this in the first place.

That is why I always stress that a conversation about metrics should begin as one about mission. Once you have a clear mission, the best metrics should follow pretty naturally. I wrote a long “white paper” nine years ago about how this worked for ProPublica. I did it at the request of the Gates Foundation and to help clarify my own thinking, but mostly because I knew that if we set the standards by which we

wanted to be measured, we could get ahead of others substituting their own, less well-grounded notions of how we might determine success. Simply put, if you can set the rules of the game, you are much more likely to prevail.

That is the spirit in which you need to fix your own preferred metrics.

Make sure not to be too cute about it. As with mission, metrics aren't meaningful unless it's possible not to attain them. There is a great temptation to articulate so many criteria for success that some are almost always met. Some stories may get a large audience, and others have great reader interaction; still others inspire creativity, while a few yield change. That's all nice, but which was your goal at the outset? Defining all of them as equally desired results is dilutive at best. You risk creating a Lake Wobegon of journalism, where "all the children are above average." Again, as with mission, you might fool yourself this way, but you won't fool many others.

Money:

How much do you need?

Other than identifying a mission and an editorial vision, this is probably the most important issue a would-be nonprofit news entrepreneur should tackle at the outset. If you don't ask how much money you need, you're making the most basic error in starting a business. Moreover, to answer this question, you need a comprehensive initial expense budget, charting how much you'll spend on everything from salaries (and taxes and benefits) to freelance to office space (if any) to photos to publishing tools to marketing and beyond.

If you don't ask how much money you need, you're making the most basic error in starting a business.

In my view, it's a mistake to begin operations without at least 18 months of spending on hand; two years is even better. This is hard, and quite likely daunting. But I believe it's the better part of valor.

It's much harder to get people to contribute to a dream than to a reality; as an analogy, consider how homes that require substantial renovation sell at a considerable discount to those in pristine condition, even after taking into account the cost of fixing them up. Not everyone can envision what the finished product will look like, what a difference your news organization will make. But one set of prospective donors — the “show me” set — will likely not be motivated until you have been publishing for some time, and the donor cultivation cycle (easily six months) will further slow their eventual contributions.

So if you can't raise enough to cover 18 months in advance, you run a real risk of not being able to raise much more before your initial funds are exhausted. In addition, launching a startup may be a passion play for you, but many prospective employees will think of it more as a risk, and two years' worth of expenses in hand goes a long way toward curbing their anxiety, especially in an industry where uncertain futures abound. (ProPublica had the advantage of beginning with three years of funding guaranteed, and we were well aware of our unusual good fortune.)

This is a business: Someone needs to run it (or two someones)

Generally speaking, there are two possible models of top management reporting relationships in nonprofit news organizations. In the first, the most senior editorial executive, often called the editor-in-chief (EIC, although the person might have another title) would report directly to the board of directors. In the second, the EIC reports to the most senior business executive (often the president, but sometimes someone with a different title, such as publisher).¹

Shared ultimate authority in any organization of meaningful size is unusual, and tends to be frowned upon in traditional management theory. When Steve Engelberg and I assumed joint leadership of ProPublica in 2013, we flouted the convention. At the time, Peter Lewis of Progressive Insurance, who grew that company from 100 employees to 28,000 and founded The Management Center for nonprofits,

told us he was deeply skeptical of any such model. He grilled us for 90 minutes about how it could work, but finally conceded that it might, given the unusual circumstances of the news business, with its tradition of independence for the creators of the “product.” We thought then that it was viable and still believe that it was, and the structure remains in place at ProPublica after a transition to a new president.

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But I can’t say this is the best answer for every organization, or perhaps even for that one; I am too close to the case to be certain. It does seem clear, however, that one can outline advantages and disadvantages for each model. Proponents of a single leader reporting to the board cite a number of key factors, principally the need for a unified organizational vision and the avoidance of intramural tension between two executives at the same level. They also note — surely correctly — that the choice of model has important implications for the role of the board. Having two people reporting to the board may confuse directors and tempt them to greater interference in editorial questions, while, in this view, a business executive may shield editorial operations from such interference. More broadly, having two reports gives the board more to manage, which will require a degree of agility, and perhaps operational involvement, for which some boards may not be suited.

It seems noteworthy that most proponents of a president alone reporting to a board often, either explicitly or implicitly, envision such a person being a former editor, as is currently the case at CalMatters, The 19th and The Texas Tribune. I do worry a lot that this enormously narrows the field of possible candidates for such jobs; in my experience, very few leading editors also have strong business capacity, although these three friends of mine are exceptions. Building a business model that requires too many such people may effectively

assume a larger supply of such unicorns than our industry can produce. Proponents of two reports to the board cite a variety of factors, including an advantage in recruiting stronger EICs (and perhaps in turn an advantage in recruiting journalists throughout the organization), less institutional risk in dependence on one person (and a decreased risk of burnout) and the ability to manage succession less disruptively, as it can be staged by position. A number of observers also note that, given decades of discrimination and lack of attention to diversity in recruiting and developing editors, it may be substantially easier to achieve executive-level diversity if business leadership is separated from editorial leadership.

Separate reporting relationships may also give the EIC greater credibility with major funders, who will almost all insist on some contact with the EIC. And having a president and an EIC as peers could effectively force them to work truly collaboratively more than they might otherwise, in an era when collaboration between news and business sides, especially on issues related to audience and platform, has never been more important. (Much of the impetus for collaboration will stem from a mutual desire to avoid coming to a deadlock, and placing questions on which agreement has proven elusive before the board.) Finally, a higher-ranking EIC may give top management a better sense of the delicate pulse of a newsroom, which seems especially important amid current cultural upheavals, including a substantial increase in the unionization of nonprofit newsrooms.

If two executives are to succeed in such parallel roles, mutual respect and mutual self-restraint are essential, allowing each to defer to the other's prerogatives and responsibilities. It is not realistic to expect that senior executives will always agree. It is realistic — I have lived it — to expect them to agree on who is ultimately responsible for what, and to accede outside their areas of direct responsibility. For instance, it should be the president's job to decide how large an expense budget is affordable, and how much of it is required for business operations, while it should be the EIC's job to decide how the remaining funds — the news budget — are deployed. At the same time, if optimal decisions are to be made day to day, people in such a

structure must have both a capacity for compromise (most of the time) and a tolerance for interpersonal conflict (on the rarer occasions when that is necessary).

It would also be an important responsibility of a board operating under such a model to constantly be assessing whether the partnership of the president and EIC remains functional.

Moreover, if both executives are to report to the board, they need to be selected (if simultaneously) very much as a pair, and then replaced, over time, with a keen eye to the compatibility of the individuals involved. It would also be an important responsibility of a board operating under such a model to constantly be assessing whether the partnership of the president and EIC remains functional.

Of course, the decision we are focusing on here does not occur in a vacuum, apart from the personalities and experiences of the human beings involved. In particular, if a former editor with successful business experience, or substantial demonstrated business acumen, is available, it may be compelling to make that person a sole chief executive, especially initially (as was the case at ProPublica and The Texas Tribune).

In the absence of such a figure, and in the abstract, my own inclination is toward having both the EIC and president reporting to the board. But, as I hope the paragraphs above make clear, there are significant arguments to the contrary.

2

MONEY: WHERE TO GET IT

Gifts of money are the indispensable fuel of nonprofit journalism. This next section considers a range of key questions and concerns about where that money can come from, and how it should be deployed.

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Foundations — institutional and otherwise

There are, broadly speaking, three types of donors. The first — and the one that comes most often to the minds of outsiders — is the institutional foundation. By this I mean not just (or even necessarily) entities organized as private foundations under the tax laws, but places staffed by people whose job is to give away other people's money, usually the money of the deceased.

**Gifts of money are the indispensable fuel
of nonprofit journalism.**

There are three key things to bear in mind about institutional foundations, other than their shrinking market share in philanthropy itself. First, they are not doing you a favor by giving you their money — it is their job to give it to someone. Second, they tend to be relatively fickle donors, with strategies changing as staff turns over and fashions shift. Finally, while foundations like to believe they have a high tolerance for risk, in practice many rarely invest in completely

unproven nonprofits. (There are exceptions to these rules, and bless them.) The bottom line: Institutional foundations are much more likely to be in your second wave of donors than your first.

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I don't mean to dissuade anyone from seeking institutional foundation support, but it is necessary to recognize that such donors are, in several important respects, the least desirable type. On the plus side, they tend to travel in packs (another symptom of risk aversion), so that if you can attract one, others may well follow. But drawbacks include their fickleness, especially risky when a new foundation president is appointed, often resulting in a "strategic review" having nothing to do with how your organization has been performing. Then, too, particularly for small grantees, there is considerable paperwork that often accompanies institutional foundation grant applications (even if pro forma, with the decision on the grant already effectively made) and periodic grant reports (the vast majority of which, in my experience, seem to go unread).

Rich people — where the money is

Willie Sutton, a noted bandit, once told a reporter (perhaps apocryphally) that he robbed banks “because that’s where the money is.” In the last century, those seeking philanthropic support, for similar reasons, would have looked to institutional foundations. Philanthropy was dominated for much of the century by the institutions left behind by such industrial giants as Andrew Carnegie, John D. Rockefeller, Sr., and Henry Ford, institutions originally driven by what Carnegie wrote in 1889 in “The Gospel of Wealth.” Referring to the wealthy who do not share their bounty during their lifetimes, he asserted, “the man who dies thus rich dies disgraced.”

**Wealthy people do not need to give
their money away, and it’s important
to remember that.**

Carnegie didn’t actually take things quite that far; he did give away a large part of his fortune, as did both Ford and Rockefeller (likely the most effective successful philanthropist at least until Bill Gates, and perhaps still). But in our own century, the Carnegie Corporation and

the Rockefeller and Ford foundations have been overtaken by the new wealth forged in the technology revolution of the last 40 years. MacKenzie Scott, the former wife of Jeff Bezos, gave away in 2021 about five times as much as Ford, Rockefeller and Carnegie combined.

This brings us to the second cohort of donors, increasingly the one with the greatest potential for giving. They are what are euphemistically these days called “high-net-worth individuals”—more commonly, rich people. Often they operate through family foundations, sometimes even with paid staff, but the decision-makers usually remain those whose money is involved, frequently the same people who made the money.

Compared with institutional foundations, these people tend to be less fickle, provided you can realize the dream you sketched or sustain the level of performance that attracted their support in the first place. They are often willing to take more risk, including coming in earlier. That said, the dynamic here is different: Wealthy people do not need to give their money away, and it’s important to remember that. When they do so, sincere gratitude is in order. Ideally, and especially over time, more of your support will come from this group than from the first.

Program grants and general operating support

Larger contributions generally come in two flavors, with strings attached and without. The term of art for the former is “program” support and for the latter, “general operating” support.

Larger contributions generally come in two flavors, with strings attached and without. The term of art for the former is “program” support and for the latter, “general operating” support. A program grant may specify the subject area of reporting, the type of reporting or a geographic focus, or it may be tied to some special project or specific undertaking. General operating support is for whatever you need to do the work.

Clearly, general support is always preferable from the recipient’s point of view, but sometimes program support is all that’s available from a particular donor. Many institutional foundations and even a few wealthy individuals offer only program support. If that’s the donor’s policy or invariable practice, there’s no use arguing about it. If a donor makes both types of grants, it’s almost always worth seeing if you can nudge them to more flexibility.

Even program support should (and usually does) have a general support component, often denominated as an allowance for “overhead.” The theory of this is that any activity draws on general resources, such as office space, central administrative staff and top management time. If you accept too many program grants that either lack an overhead component or have allowances that are too small, you will quickly find your organization under financial pressure. Don’t do that.

Standard overhead allotments range from 10% to 20%, and these are rarely negotiable with a particular donor, but there has been some movement in recent years toward higher allotments, as there should be. It remains a blot on the record of many institutional foundations that they spend more on administration as a percentage of their own spending than they offer to grantees as a proportion of their grants. There is no good excuse for this.

Funder vs. editorial priorities

After almost 40 years in and around the news business, I have come to believe strongly, as I said earlier, that all successful news organizations start with visionary editors. There are no exceptions. But funders will frequently have agendas on what deserves more coverage. It is a significant error to let them supplant your editors' vision, and never ends well.

Yes, in the short run, chasing funder fads can be lucrative — but the key phrase there is “short run.” I will always remember a Fortune 500 CEO who sat on the Dow Jones & Co. board of old. A taciturn Midwesterner by birth, he rarely spoke at board or committee

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meetings. But when he did it was often to say one word, Yoda-like: "Focus." He was right. Don't let transitory money distract you. This is one of the pitfalls of program support. If you are offered such support for a project you were already considering, or which your

And even as you maintain that discipline in the funding you seek out and accept, make sure you also maintain it in how you organize your newsroom.

editors think fits with your work, great — by all means, accept it. But if funders want you to go beyond your mission, or move away from your priorities, you need to have the discipline to decline.

And even as you maintain that discipline in the funding you seek out and accept, make sure you also maintain it in how you organize your newsroom. Division into silos based on funding is a really bad idea. You need to manage your newsroom coherently and holistically, with the structure dictated only by editorial considerations, not funding ones.

That's one key reason why only a very small number of editorial employees should ever, in my judgment, interact with funders. One of the least successful models I have seen is that in which subordinate editors or reporters are empowered to seek out their own funding (or even tolerated if they go off on their own trying to do so).

Whose money should you take?

Just as there is some money you should forego, are there also people and institutions from whom you shouldn't solicit or even accept donations? My view on this is more permissive than that of many others, and I want to explain why.

Just as there is some money you should forego, are there also people and institutions from whom you shouldn't solicit or even accept donations?

If you start making a list of people whose money you won't take, I think you're also making a list of people who might not be able to expect you to cover them fairly in your news work. Is the liberal billionaire George Soros, for instance, acceptable but the conservative billionaire Charles Koch not? Why? If the answer relates to their politics, should your readers believe you when you claim nonpartisanship?

Many organizations place two restrictions on acceptable funding that I simply don't understand. One is to ban corporate contributions. ProPublica gets very few of these, but I have never grasped the logic of why we shouldn't take them. Where do the people who favor such a ban think our other donors got the money they are giving us? Corporations, in almost every case. That's where almost all wealthy people's fortunes come from, and it's just as true of almost all foundation endowments. A ban on corporate contributions seems to me to invite some sort of pointless money laundering.

If you don't know who's giving you the money, what possible conflict could it pose?

Next is a fairly common aversion to truly anonymous contributions, in which the recipient really does not know the source of the money. (With so much of philanthropy these days flowing through investment companies like Fidelity, Vanguard and Schwab, this happens quite a lot.) Again, I simply don't get the problem. If you don't know who's giving you the money, what possible conflict could it pose? Yes, I acknowledge that you could later learn you had received a gift you wish you hadn't, but then you can always give it back. And, at least at ProPublica, over my 14 years there, we never had a truly anonymous gift unmasked, either by the donor or anyone else.

Smaller donors

Smaller donors in large numbers bring many of the advantages of larger wealthy donors without the concentration of risk. As we have seen in recent years in politics — especially in the presidential campaigns of Barack Obama, Bernie Sanders and Donald Trump — this source of funding has enormous potential. In news, public radio also provides some inspiring examples. Bear in mind, though, that fundraising from large donors, with whom you should have individual relationships, and from smaller donors, where that is impossible, are fundamentally different. The former is an art and the latter, largely a science, so the staff you need to manage the two sources will likely be different.

For nonprofit digital newsrooms in particular, a word of caution: Smaller donations in large numbers are, at best, a third-wave revenue source, and are unlikely to be meaningful until your content is fairly widely known and distributed. For ProPublica, it didn't happen until we had been publishing for more than eight years. By 2020, however, it accounted for almost 20 percent of revenues, from more than 40,000 donors.

Why do they give?

It is important in any business to understand what motivates the people from whom your revenue derives. For nonprofit news, there seem to be four different strands of motivation. First are those concerned about the threats to journalism from the modern business crisis of the press, which provided the impetus for creating these organizations in the first place. This is what drives many of us in journalism, and we are not alone. I am frequently struck by how many of our large donors, for instance, are former high school newspaper editors.

First are those concerned about the threats to journalism from the modern business crisis of the press, which provided the impetus for creating these organizations in the first place.

Next, and especially in the last six years, come those who may or may not care about journalism per se, but who are deeply worried about threats to our democracy, and see the critical role the press can and

must play in safeguarding it. It is this group that Trump drove into our corner by the hundreds of thousands; the threats, obviously, remain.

In addition, from the beginning, there have also been funders who care about particular issues — criminal justice, education, health care, racial or gender equity, environmental concerns and more — and see the important role of journalism in surfacing and addressing these concerns. A powerful argument can be and has been made that, in this sense, almost all philanthropic funders should consider investing in nonprofit journalism.

Finally, particularly in recent years, a fourth group of potential funders has emerged: those focused on specific local communities or, in a variant of the journalism-centric donor, those especially worried about the decline of news at the local level. Unfortunately, so far the latter motivation seems more prevalent than the former — that is, there is more national than local funding of local journalism. However, some early signs are emerging of a change in this trend in some places, and I remain hopeful about the growth of local funding, fueled in important part by the continued decline of local newspapers and the growing awareness of it.

Donor independence and transparency

I believe most of the answers to questions about the proper relationship between donors and the journalists they fund are analogous to guidelines developed long ago about the appropriate relationship between advertisers and the traditional news organizations they funded.

I was a lawyer as well as a publisher, and this entire debate reminds me of another one from about 25 years ago, as Internet distribution of news content first became widespread. At that time, conferences and papers — and then courts — asked how the new medium would change the law of libel. The answer, in the main, was that it would not change it very much. The elements of libel, and its key principles, endured. Sure, some new facts emerged, and old rules had to be applied to them. But that was the ultimate point: The rules were generally not new ones.

Perhaps the best way to think about this problem is to recall some of the rules long ago developed about the proper role of advertisers — and limits on that role — and then to consider what these rules suggest as answers to similar questions about donor funding.

Old rule: Transparency is key in these relationships. Thus, it's important, to begin with, to know who a publication's advertisers are, and have some rough idea of what they are spending. In legacy print, the identity of advertisers was almost always clear (and trade association rules sometimes helped ensure this in marginal cases), while rate cards and various tracking services helped police the question of who was paying how much.

With donors, much greater precision is available via tax returns on Forms 990 filed with the Internal Revenue Service. But two important matters remain. First, is a news nonprofit making public, ideally through its own website, Schedule B from its 990, which reveals how much each donor contributes? My own view (and the practice of ProPublica) is that any even arguably significant contributions should be disclosed in this way. Without such disclosure, it is impossible for anyone to gauge whether the publisher is maintaining its independence in the face of donor pressures. Surely we don't want to see publishing suffer the corrosive effects that "dark money" is inflicting on our politics. And if your auditors try to suggest — as I have seen some do — that you might be violating the privacy of donors by disclosing this, tell them, nicely, that they don't seem to understand what business you are in.

Surely we don't want to see publishing suffer the corrosive effects that "dark money" is inflicting on our politics.

One aside: It is important to note that when donors contribute to for-profits, as an increasing number of institutional funders have been doing, there is a 990 only on the donor side to serve as a mandatory disclosure vehicle. Again, there is the question of disclosing the appropriate schedule, but beyond that, for-profit journalism organizations taking donations from public charities should consider themselves under an obligation to disclose a range of details about this funding, including its annual amount. Certainly, they should not take steps to conceal it, just as they would never do with advertisers.

The next area in which transparency is critical is determining whether particular content a publisher distributes is advertising or sponsorship, on the one hand, or news, opinion or analysis on the other.

One way in which transparency should be limited in nonprofit journalism is in the relationship between the governing board and editorial content. To be sure, governing boards have fiduciary responsibility for the nonprofit overall. But especially given that these boards often include major funders, it is probably the best practice (and was ours at ProPublica) that boards not be aware of the content of stories until they are published. The necessary fiduciary responsibility can be exercised in monitoring editorial performance on a post facto basis.

Old rule: Advertisers cannot dictate editorial content, and shouldn't know about it in advance with any specificity. The practice in legacy media was also fairly clear here: Advertisers could choose the section of a publication or broadcast against which their advertising would appear. Topic pages or sections or broadcast segments were often created in part to attract such advertising. But advertisers were never — at least at high-quality publications — permitted to advertise against particular stories, or indeed to know about them before they were published.

In the newer environment, it is not at all clear why these standards should be relaxed. The risks of advertiser influence that gave rise to the rules in the first place remain. (If advertisers can choose which stories to subsidize, the pressure on publishers to produce stories amenable to those advertisers, and not to produce others, can become overwhelming.) But some nonprofits have convinced themselves that asking particular donors to fund specified stories is somehow acceptable. This is in neither their interest nor, in the long run, that of the funders, because it poses a significant risk to the reputation of the grantee.

One way to understand why it is a mistake to blur this previously bright line is to recognize that it puts funders in a preferred position with respect to what should be editorial confidentiality. If a source, for instance, or a public official asks the specific focus of a forthcoming

story, reporters and editors generally reserve the right to decline to say. But how can this be justified if one or more funders have already been told? And conversely, what is the point of policies that wall off nonprofit governing boards (which may include large general support funders) from advance knowledge of editorial schedules if project funders have been permitted to purchase this same knowledge?

It should be noted that this resolution of the proper role of funders can pose special challenges in the case of crowdfunding. One of the clear early lessons in this sphere is that specificity of output helps drive results. This is almost certainly one of the reasons why crowdfunding has proven more effective for documentary film projects (where the end of the story is often clear before work begins) than for investigative journalism (where, at least for the best work, it is not).

Old rule: Diversifying the number of advertisers you have is one of the most critical ways of assuring continued independence. Diversity of funding sources makes enormous business sense. It is the best insurance against shocks and challenges of all kinds. But beyond that, such diversification also fosters editorial independence, as the influence of a single funder or even type of funder declines.

Old rule: But no matter what you do, and what rules you have in place, you may sometimes need to remind advertisers of the limits of their influence. Editors, in fact, do well not to think much of advertisers (or donors) at all. That is the job of publishers. When editors are too eager to please funders, unfortunate compromises can ensue. When they refuse to do so, they can actually strengthen their news operations.

The classic case of this sort occurred nearly 70 years ago, when General Motors squared off against The Wall Street Journal. GM was then the largest company in the world, and the largest advertiser in American newspapers. The Journal, then on the rise and just creating the idea of a national newspaper but still not widely known among broader publics, published two stories that angered GM management. The first effectively forced auto manufacturers to drop their opposition to a dealer sales tactic they did not like, and the second unveiled the designs of new cars in a manner that threatened short-term sales.

GM retaliated by ceasing all advertising in The Journal, and briefly even cutting off relations between GM publicists and Journal reporters. But The Journal, under the legendary publisher Barney Kilgore, held fast. As the paper editorialized once the dispute became public, “the fact that a company happily chooses to advertise with us cannot be allowed to put the newspaper under any obligation to the advertiser which breaches its obligation to all its readers.” In short order, GM backed down publicly, and The Journal actually gained prestige from the fight. Within 10 years, it was the nation’s third-largest paper; 25 years after the battle with GM, it was the biggest. As a young ad salesman who later went on to head advertising for the paper recalled, “Our future was assured.”

The rewards for compromising principles are transitory, while those from the preservation of independence and integrity can be enduring.

This is a tale all publishers should bear in mind when confronting pressure from advertisers — or donors. The rewards for compromising principles are transitory, while those from the preservation of independence and integrity can be enduring.

Earned revenue

One common dream of every nonprofit, including nonprofit news organizations, is to achieve “sustainable” revenues.

One common dream of every nonprofit, including nonprofit news organizations, is to achieve “sustainable” revenues. And the most sustainable revenues are those that are “earned,” received in exchange for goods or services. That is to say, capitalism works. Except when it doesn’t, which is why nonprofits exist, and why they depend on contributions of various sorts.

In the early days of the current wave of nonprofit journalism, many observers, especially in some of our leading institutional foundations and graduate schools, posited that there was some magic in diversifying the number of revenue sources a newsroom could draw on. They would count them up — three was better than two, four even better. This was largely a fallacy, albeit one based on an important insight.

The insight is that diversification of revenue sources is critical for a healthy nonprofit. Two donors of \$500 are better, all else being equal,

than one of \$1,000, and 1,000 donors of a dollar each are even better. The reasons include bolstering editorial independence and being less vulnerable to the moods or changing circumstances of any one donor. Moreover, as noted, earned revenues, precisely because they are transactional, are likely to be more sustainable.

But each source of revenue requires a different type of effort, and the transaction costs (especially in staff time) can be considerable. In my observation and experience, \$1 million in contributions is far better than \$900,000 in donations and \$5,000 each in net advertising, data and syndication sales. Indeed, we can measure the difference: It's about 9% better (assuming roughly the same cost of obtaining the donations).

A good bit of the silliness about counting revenue sources has faded in recent years, but one vestige is what I often see in a nonprofit's effort to count various kinds of donations as different "revenue streams," unrelated to others. Yes, there are important differences in raising money from institutional foundations, wealthy people and smaller donors ("members") solicited through email and direct mail. Yet while the techniques of approaching these constituencies differ significantly, I think it's very important to remember that all are donors, giving out of belief, and that none of these relationships are, at base, transactional.

I will never forget one enormously smart observer of the field, a distinguished figure at Harvard, who wasn't sure about earned revenue, but seemed confident that, without it, sustainability for nonprofit news would prove elusive. I remember chuckling as I looked out that person's office window: What about Harvard? I asked. It feels sustainable to me after more than 375 years. In fact, if I look forward 375 years, I believe Harvard is one of the American institutions I am most confident will persist, notwithstanding limited earned revenue. There are many fundamental differences between for-profit and nonprofit organizations, but one of the most critical is that nonprofits cannot be sold. They can merge, or absorb other organizations, or even be given away, but you can't buy them — there is no one to pay, and while nonprofits have balance sheets, they do not have what bankers might call "enterprise value."

One consequence of this is that, where many for-profit ventures (especially in their early stages) focus on revenues as a key indicator of progress, nonprofits look more closely to net results (growth in reserves) or even just expenses (which must, ultimately, be offset). This is especially true of earned revenues. If you take in \$2 million, for instance, from a series of live and virtual events, that's great; only a very few nonprofit news organizations in this country achieve such a result. The events have intrinsic value, of course, in serving attendees, building lists and brands, pursuing mission. But it makes a big difference whether that \$2 million in revenue cost \$500,000 or \$1.9 million to produce. In the former case, you have a revenue stream that will meaningfully and directly offset other news costs; in the latter, you don't.

That's why, in any effort to raise earned revenues, managers need a solid accounting of what the revenue is costing them: not just what bills are incurred to mount the events, but also how many employees, paid what salaries and benefits, are spending what proportion of their time bringing in those revenues. The same analysis needs to be undertaken for advertising or data or syndication or film rights sales. I don't want to be misunderstood here. More (net) earned revenues are generally better than less. Sources of net earned revenues are worth exploring and exploiting.

That said, almost 15 years into the current flowering of nonprofit news, very few organizations have developed any meaningful amount of earned revenues. (ProPublica puts its figure for 2021 at less than 1% of total revenues.) When you see that frequently as a common thread across hundreds of efforts, I think the world is trying to tell you something.

3

THE BOARD

Nonprofit boards are somewhat paradoxical. Like for-profit and foundation boards, they are recruited mostly by the staff whom they then serve as bosses. But while corporate and foundation boards are usually lucrative, nonprofit boards are (one hopes) costly to serve on, so retention, instead of being relatively easy, becomes a constant staff effort.

Who?

Here, as in so much else, a lot of what I know I learned from Herb Sandler, ProPublica's founding donor and chairman of its board for the first decade. He had two basic rules for directors, as well as two for board meetings that I'll get to later. Directors, most of all, had to be people other directors would look forward to coming to meetings with; they must not be the sort of people who make colleagues want to avoid meetings. No amount of possible support could overcome this consideration for him.

Having said that, you need to work to set the "give or get" contribution expectation for your board as high as is feasible, and to increase it as you grow. In a very real sense, this expectation will be both an enabler and a functional ceiling on how much you can increase your budget over time.

Having diversity of all sorts on boards is very important, and for the usual reasons: to get an array of perspectives you might otherwise miss, and simply because it's the right thing to do.

Having diversity of all sorts on boards is very important, and for the usual reasons: to get an array of perspectives you might otherwise miss, and simply because it's the right thing to do. But fundraising capacity and diversification of life experience and viewpoint are, if we're being honest about it, pretty much the only reasons to put particular people on your board. What you don't need are a lot of current or former journalists (or friends of the founders) who bring neither of these virtues. And, as your organization grows, it may — and should — outgrow a number of its early directors, particularly as fundraising needs and possibilities expand. Acknowledge this, and thank them gratefully for their service.

Role

If your organization is its own 501(c)(3) — and it should be, as soon as feasible — your board is a “governing board,” and that’s a big hint of its most important role, to oversee the company and its finances: hiring and evaluating (and, if necessary, firing) the CEO or CEOs; preserving the company’s mission; approving (and, if necessary, refining) strategy proposed by top management; and constantly looking forward to make sure these tasks can be accomplished not only now, but also in the future, such as by ensuring that succession planning is in good order.

One particular requirement of a news organization’s board is to preserve and defend the independence of its editorial operations.

One particular requirement of a news organization’s board is to preserve and defend the independence of its editorial operations. This, in turn, requires a degree of humility that is not always found in the sorts of people attracted to, and attractive to, nonprofit boards, especially wealthy and powerful people.

What do I mean by that? You need your board to agree not to seek to intervene in editorial matters. Most people understand this, and will abstain from leaning on editors — to push particular story lines, for instance. The most difficult scenario, in my experience, is when a story has offended a director's friend or business associate, who then comes to your director to complain. In such a case you want the director not to get involved, to send the offended party to your editor or business leader, and also — critically — to readily acknowledge there is nothing they can do to help. This sort of admission of impotence does not come naturally to powerful people, which is why I say you are looking for people to whom modesty comes with relative ease.

If the board is to steer clear of editorial interference, where is it supposed to be involved? Most importantly, in two ways: approving (and, if necessary, modifying) strategy, and evaluating and ultimately selecting top management.

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The principal job of a board, most of the time, is to ratify and help shape a company's strategy. The strategy, of course, should flow from the mission (not the other way around) and indicate how the newsroom intends to fulfill that mission, particularly in the next few years.

There are two natural tensions that need to play out in this context: one between strategy and tactics, and the other between the role of top management and that of the board. Strategy is probably best viewed as an overall action plan and the thinking behind it; tactics are the specific steps taken to execute the strategy. One important caveat: If a particular step seems necessary to implementing a strategy — that is, if there are no alternative "tactics" — then that step should probably be considered strategic. Put another way, setting a strategy involves a set of large choices; settling on tactics involves a different

set of smaller choices. Tactics should be almost entirely the province of management, assisted (but not usually guided) by the board where that can be helpful.

As I said, the role of a board is to ratify, not create, strategy. Top management should propose a newsroom's strategy, based on its experience and what it believes are the company's capabilities. If management is merely posing strategic questions to the board, it is not doing its full job; it should also be suggesting answers. But moving from a proposed strategy to its adoption should be a collaborative process. The board, in light of its own collective experiences, and its assessment of both the company's capacity and management's ability to execute a plan, is entitled to help shape strategy and should do so. In cases where the board comes to believe that strategy needs to be reassessed in light of the passage of time or other changes, that is fully within its purview.

Having said that, however, setting strategy should be an occasional practice, not a constant one. Strategies need to be given time to play out. If the world shifts suddenly, they may need to be adjusted, perhaps considerably. But in normal times, periods of strategic implementation should be substantially longer than those of strategic development. Striking the balance otherwise runs the risk of faddism.

As I hope the strategy-tactics discussion illustrates, it is imperative that management be left to manage a new nonprofit news organization. There are two important limits on this principle. First, at least annually, as in any well-functioning organization, the board should formally evaluate the performance of the one or two members of management who report to it, and should understand how those people assess the performance of those who report directly to them.

Even more crucially, the question of management succession is an issue for the board, and not principally for management itself. This can be difficult for people who have successfully led news organizations for years, but it is necessary for the sustainability of those organizations. Managers may have views about who should and shouldn't succeed them, and boards do well to hear those views. But they should heed

them only if persuaded, and certainly not merely out of deference. In fact, it's been my observation that the longer and more successful someone has been in a senior role, the less that person may intuitively grasp the differences in a potential successor that will best serve the organization. Which is to say, the more you know, the harder it can be to know what you don't.

Meetings

With respect to meetings, Herb Sandler always insisted that every session have at least one meaningful business discussion that was both intrinsically interesting (with ample supporting materials distributed in advance) and genuinely important to the company. Beyond that, he felt strongly that each meeting should include an opportunity to hear about the work from front-line staff, ideally people the board had not met previously. We referred to this part of the meeting internally as the “show and tell,” but don’t let the name deceive you: These sessions are a significant part of the enticement of serving on a nonprofit journalism board, just as they were at Dow Jones & Co., publisher of The Wall Street Journal, during the 15 years I worked there, when it was a public company.

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Those are the two elements each board meeting should contain — authentic deliberation on a question of real importance and a reminder of the work that brings the people in the meeting together. The meeting should avoid any sense of empty theater or pointless ritual. Minimize scripts and PowerPoint; maximize conversation.

It's also important that the book prepared ahead of each board meeting contain high-quality information from management. This should include, at a minimum, the latest available financial and budget reports, including those for any month that ended 60 days or more before the meeting; the most recent available web, social media and other traffic data available for the newsroom and its most direct competitors; the latest fundraising results; updates on any previously established performance indicators; and any necessary background for that meeting's discussion topics.

Organizing the board

A couple of questions about how to organize your board are worth touching on here. First is the matter of board committees. Let's start with the basics: You'll need a small executive committee that can act on short notice between board meetings, either in an emergency (hopefully rare) or to deal with ministerial matters such as authorizing deals that require exceptional formality and can't wait. And you'll need an audit committee to review both draft financial statements and management controls with auditors. This committee should be chaired by someone with financial experience and include at least one or two others with a similar background.

I would generally advise against the creation of board strategy committees — if strategy isn't a responsibility of every director, what is?

As your company grows, you may want additional committees on nominations and governance (to screen new board members), compensation (to oversee the evaluation of top management) or to take on some unusual, perhaps short-term, task.

But I would urge that the most significant work of the board be done as a committee of the whole. In particular, I am not a fan of board development committees, as I think they can incorrectly suggest that fundraising is a specialized task, rather than a primary obligation of the entire board. Similarly, I would generally advise against the creation of board strategy committees — if strategy isn't a responsibility of every director, what is?

Because of this preference for the board to work as a group, I strongly recommend that it be limited to about 15 members, roughly the maximum number of people who can conduct a meaningful conversation.

The second big question about organizing the board concerns term limits. During my tenure at ProPublica we never had any. The organization had been started by Herb Sandler, and we simply never wanted to lose him; he remained an active and invaluable director until he passed away, 12 years after the founding. In a world where a board ideally contains some of your most significant funders, I have never understood why you would want to force such people to distance themselves in any way after an arbitrary period.

At the same time, there is no question that some people who were initially great additions to a board eventually overstay their maximum utility. I think the best answer for this is a vigilant board chair, alert to the need for occasional turnover — and also committed to serving for only a limited term. As a rough guideline, following a successful transition in top management, board leadership should also shift.

Advisory groups

Lots of newsrooms have a variety of advisory groups; I am a member of a few myself. There are fewer ground rules to impart with respect to these, but you might want to bear in mind the following: Some advisory groups are fundraising vehicles, “junior boards,”

They can be helpful for new organizations seeking to reach out, or to better understand their communities.

to involve donors who aren't (or aren't yet) giving at the level appropriate to board membership. There's nothing wrong with this concept, but it does require a fair amount of care and feeding; the money may not seem like a lot to your organization, but it often does to these donors. This is probably worthwhile only if your board gives at very high levels, or if you have some reason to think many of your current donors may soon have much greater giving capacity. Editorial advisory groups are as useful as your top editor deems them to be. They can be helpful for new organizations seeking to reach out, or to better understand their communities. Beyond that, I have long thought that an editorial advisory board, even if normally dormant,

can be critical if you find yourself in a crisis spurred by something you have published that is either controversial or journalistically problematic. In such a situation, an advisory board can help an editor understand when it is time to retreat or even apologize — or not. Community advisory groups are a more recent trend. On the one hand, if they help you better understand the people for whom you are producing your journalism, that's all to the good. On the other, this does not seem like a function that should be delegated to a small group, but rather a value that needs to be inculcated throughout a newsroom. Again, such a group may be helpful as a signal of openness when you are starting up, but it should never be a substitute for constant, active listening to whatever communities you are seeking to serve.

Finally, some specialized tasks may be usefully carried out by groups with narrow functions. ProPublica, for instance, has a group of data science advisers, who have been enormously helpful in thinking through particular stories and various complex problems of data analysis and presentation.

4

PEOPLE

Nonprofit news organizations are a classic example of the old saw, from pre-pandemic days, about how “the most important assets all take the elevator down each evening.” People are the heart of the matter. Herewith, a few thoughts on the implications.

Building a culture

One of the most crucial aspects of forging an effective organization is building and maintaining a culture that works.

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As with mission, no two cultures should, or really could, be the same. But workplace cultures do exist, and they evolve. If you aren't being intentional about them, they will find their own course, and you — and the people who work for you — may not like the results.

Here are some key variables to consider as you work to forge and then maintain your workplace culture:

How formal or informal do you want the place to be? Before you take what may seem like the easy route these days and opt for “informal” all the way, does that mean chains of command are meaningless to

you? That people should be able to regularly sleep in the office (if you have one)? That all members of the staff should feel entitled to join any meeting they wish? Probably not. Again, be intentional. How rigorous are your standards? Again, beware the easy answer. Do even trivial mistakes in work merit censure? How important is it that work is disappointing if exceptional effort was put into it? And whose judgments about standards are most meaningful? Those of awards judges? Editors? Readers? Board members?

How do you strike the balance between the organization serving its readers and community and serving its staff? This is especially tricky in the contemporary workplace, and is worth pointing out to staff explicitly. Ideally, you can always serve both interests; in real life, sometimes not. Having said that, it is a balance, not a binary choice, and it does need to be struck.

How do you strike the balance between the organization serving its readers and community and serving its staff?

How transparent are you prepared to be? Here, unlike with the previous variables, I do want to suggest what I think is the right answer. We in the news business depend heavily on, and frequently advocate for, transparency by others. I think we need to practice it ourselves as well. This is reflected above in the discussion about disclosing donors, but I think it should apply also to communicating with staff about how our own businesses are faring, and to how and why we are managing the place in the way that we are. “Ask me anything” sessions with staff should be regular and fulsome. Nondisclosure agreements, and especially nondisparagement agreements, seem, at least to me, largely antithetical to what we do. In addition, nonprofit news organizations should be expected to annually disclose the racial and gender diversity of their staff, both by responding to the leading industry survey and by posting on their own website.

Job classifications

I've left out the particulars of human resources policies and practices here, partly because most of it, in my experience, is not unique to journalism and also because I don't have a great deal to add to the conventional wisdom.

But there is one subject I want to highlight, because it has significant implications for two issues commanding a lot of managers' attention these days: pay equity and unionization. That subject is the seemingly mundane but practically important one of job classifications.

The central notion here is both that people in similar jobs should be treated similarly — that's a basic issue of fairness — and that it's important not to equate jobs that are fundamentally different.

The central notion here is both that people in similar jobs should be treated similarly — that's a basic issue of fairness — and that it's important not to equate jobs that are fundamentally different. So, for instance, reporters of similar experience, skill and productivity in

locations of roughly equivalent cost of living should be paid similarly (and certainly not differently on account of race or gender). But reporters and editors need not be paid similarly: The market for reporters is different from that for editors, the requisite experience is not the same, and the demand for and supply of such talent may vary differently from time to time (and place to place). The same is true for less common jobs in research, social media and engagement, product development and design, etc.

In managing for pay equity even in a nonunion environment, and for many purposes in a unionized workplace, it will therefore be wise to have as few classifications as are called for by varying tasks (to avoid confusion in roles), but also as many as a diversified staff requires (to provide clarity in responsibilities). What no one, especially managers, should want is a system that requires you, either explicitly (through a union contract) or implicitly (through any number of incentives and practices), to treat people who are doing fundamentally different jobs as if they were the same.

5

LAW AND THE NEWSROOM

One of the blessings of the American press is to operate under a legal system that generally is the world's most protective, even in our own tumultuous times. Given my own experience in this area, I want to address a few particularly important issues regarding the law and your lawyers.

The independence of lawyers — and editors

When I became the first in-house newsroom lawyer at The Wall Street Journal, the newspaper had been publishing for 100 years. Why did it take so long? Robert Potter, the company's supremely decent longtime outside general counsel, once told me that in a company where the CEO then still traditionally came from the ranks of former journalists, having an in-house attorney who reported up to that person would entail diminished independence from the newsroom for the lawyer; it was safer to have that individual in an outside law firm. By 1989 that notion had become a bit quaint, not to mention excessively costly.

Independence is not enough, however. Press lawyering at the highest level also demands a genuine enthusiasm for great journalism, a passion to see it published.

But Bob Potter's insistence on preserving the independence of newsroom counsel was spot on, and it is the ability to navigate this requirement that, in my observation, has distinguished the very

best press lawyers, beginning with my own mentor in this work, the brilliant Robert Sack (since 1998, a judge of the federal Second Circuit Court of Appeals).

Independence is not enough, however. Press lawyering at the highest level also demands a genuine enthusiasm for great journalism, a passion to see it published. At the end of the day, the independence of lawyers is designed to protect what is most crucial — the independence of editors.

Defending the journalism

Sometimes, of course, especially in our enormously litigious country, what is published may result in lawsuits. Good journalism will ultimately produce a certain number of these — if you have never been sued, you either haven't been at it long enough, or are excessively pulling your punches.

Having said that, the first and most critical objective of newsroom lawyering is not to prevail in lawsuits, but to prevent them from being

A “no surprises” approach to journalism is not only good practice, it’s also legally strategic.

filed. Once cases are filed, the costs are considerable, in terms of both cash (libel insurance deductibles are skyrocketing) and precious time lost by reporters and editors.

In seeking to prevent cases from being filed, I have learned that it's enormously important, if possible, to understand the perspective of unhappy story subjects. At least three practical points emerge: Always make sure people whose activities are being held up to

criticism, no matter how well justified, are given a fair opportunity to comment. A “no surprises” approach to journalism is not only good practice, it’s also legally strategic.

Always respond respectfully to good faith post-publication complaints, even if they are entirely off base or vituperative. Frequently, just being heard can lower the temperature of a potential plaintiff below the boiling (litigation-filing) point.

Always work to correct factual errors. Many reporters and not a few editors sometimes resist this, but refusing to acknowledge mistakes not only undermines confidence in journalism generally. In our era of radical transparency, a corrections column has, I think, paradoxically become a source of credibility; it can also occasionally defuse potential litigation.

Enabling, not controlling

One of the very first lessons I learned in legal review of stories prior to publication is that press lawyers are at the mercy of reporters. Quite simply, the attorney must assume that the facts in a story are accurately reported — which is, appropriately, the first and last legal line of defense for journalism. Sure, a lawyer can seek to double-check a pivotal fact, or an assertion that you fear is inaccurate or just wonder about. But, by and large, the pre-publication process is not a fact-checking exercise, and it would be intolerably costly for it to be otherwise. The upshot: Behind all the best press lawyers stand great reporters.

And this should be the guiding impulse for newsroom attorneys, whether on staff or outside counsel — and the executives who manage or retain them. The job of the newsroom lawyer is to enable great journalism, not to control it; to assess risks rather than to take them (or to choose not to); to see that what reporters and their editors want to publish can be safely published, not to limit publication to what may be safer.

6

SUSTAINABILITY

Finally, at the other end of the spectrum from where we began, with issues around getting started, is the aim to keep going, to build something enduring. So here are a few critical questions bearing on the sustainability of nonprofit news organizations.

Business infrastructure and sustainable growth

How fast should you grow your business operations? In two phrases: as quickly as necessary; and, given that, as slowly as possible.

One of the great advantages of digital journalism is the leverage it provides — that is, what a large proportion of total spending is devoted to news, particularly compared with legacy print publications. While a print newspaper might have devoted 85 percent of spending to things other than news, a digital operation may fairly readily devote 75 percent of spending to creating and delivering its products and services. This proportion ought to be a key indicator to keep an eye on.

Yes, you need business-support infrastructure and services — fundraising, legal, HR, finance, IT. And it's very important to continue scaling these efforts as you grow, both to keep up with demand and to make sure you are not foregoing opportunities both to facilitate the journalism itself and to increase your organizational scope. At the same time, however, never forget that business operations are support structures. There is no prize for making them bigger or fancier or more costly; they are a means, not an end.

Reserves and endowment

Almost every new news organization begins its life with no money in reserve. With luck (and prudent planning, as advocated above), it may have enough funding to operate for a year or two, time to raise additional funds to continue publishing — and ideally growing, at least a bit.

In time, however, it's critical, if at all possible, to begin accumulating an operating reserve, funds to fall back on if the economy suddenly contracts, or if the organization hits a bump of its own in the road.

I advocate doing this, first, by managing budgets in such a way that you run at least a small operating surplus each year, planning to take in a bit more than you spend, and managing growth in such a way that this occurs. If you can follow this path, any end-of-year upside surprises in funding will enhance this reserve. If you are very lucky, and happen to be offered a substantial gift that is specified as a one-time event, you should seriously consider adding that, as well, to your reserve. I do not generally favor building reserve funds into your budget — that is to say, planning for a large rather than a small operating surplus. That seems to me a recipe for retarding sustainable growth, which almost all young enterprises need to maximize.

Your goal for your reserve should be to build it initially to cover six months of operating expenses, and then eventually a full year. As your budget grows, so will the target amount for the reserve.

If you are fortunate enough to achieve these targets — it will certainly take years to do so — you might then consider moving beyond an operating reserve (money kept basically in the bank) to an endowment, an investment fund of which some portion (5% of the principal at the beginning of the year is the standard figure) is used to fund current operations, while the balance is invested for the long-term benefit of the organization.

Endowments are usually assembled employing separate fundraising campaigns. The trick is that money for an endowment needs to be raised even as fundraising for current operations continues. A successful endowment campaign will almost certainly require participation by an active fundraising board and at least a few anchor gifts of substantial size. It is very much possible to create a significant and sustainable organization without an endowment. The same cannot be said about a reserve.

Management succession

The last task for a successful leader of a nonprofit news organization is to set it up to thrive after that person leaves. This is paradoxical in at least one respect: Preparing the entity for a successful transition is very much a job in which the leader needs to play an active role. But actually conducting the transition needs to be the work of others, those — most importantly, the board — who will remain after the leader departs. Selecting leadership, as noted above, is the most important and most indispensable responsibility of the board. Both parts of this paradox can be challenging. Preparing an organization you run to be run by others evokes aspects of planning your own funeral. Try to think of it more in terms of Tom Sawyer than some tragedy.

Preparing the entity for a successful transition is very much a job in which the leader needs to play an active role.

And letting a critical decision on the organization's future be made by people who know less about its present than you do — and when you have been making countless decisions of less importance on your own for years — is a real exercise in the difficulties of letting go. Do it anyway.

That's why succession is tricky. It's also why it's ultimately necessary.

Why? What comes to my mind is a question asked by a number of candidates to succeed me at ProPublica: "What needs to be changed?" Well, I responded, if I knew what needed to be changed, I'd change it, as that was still my job. So, in a sense, I thought nothing needed to be changed. On the other hand, I told them, I was not so stupid as to think that, after 14 years under one person, with his own foibles and limitations, the company needed nothing changed. That's why succession is tricky. It's also why it's ultimately necessary.



About the Author

Richard J. Tofel is the principal of Gallatin Advisory LLC.

Dick was the founding general manager (and first employee) of ProPublica from 2007-2012, and its president from 2013 until September 2021. As president, he had responsibility for all of ProPublica's non-journalism operations, including communications, legal, development, finance and budgeting, and human resources.

He was formerly the assistant publisher of The Wall Street Journal, with responsibility for its international editions and U.S. special editions, and, earlier, an assistant managing editor of the paper, vice president, corporate communications for Dow Jones & Company, and an assistant general counsel of Dow Jones.

He serves on the board/advisory board of the American Journalism Project, CalMatters, The City, the Center for Media Engagement at the University of Texas, Austin, Harvard Public Health magazine, Outlier Media, Retro Report, the Shorenstein Center on Media, Politics and Public Policy at the Harvard Kennedy School and the Center for Media and Democracy in Israel.



About the Lenfest Institute

The Lenfest Institute provides grant funding, runs training programs, and synthesizes best practices to develop and disseminate sustainable solutions to the business challenges facing local news providers.

The Institute was founded in 2016 by the late cable television entrepreneur H.F. (Gerry) Lenfest to invest in innovative news initiatives, new technology, and new models for sustainable journalism.

As the parent organization of The Philadelphia Inquirer and founder of Spotlight PA, The Lenfest Institute is an innovator and a change agent developing scalable solutions across Philadelphia and Pennsylvania's news ecosystem that apply nationwide.