

## 1 All The News That's Fit to Print

In 1960, there was no American newspaper more acclaimed or prestigious than the *New York Times*. The *Times* was America's "newspaper of record," its most influential newspaper, renowned for its thorough reporting and aura of responsibility and credibility.<sup>1</sup> It had the third-largest weekday circulation of any newspaper in the country, around 650,000. It was sold in 12,041 cities and towns, making it the nearest thing to a national daily newspaper.<sup>2</sup>

Dubbed the "gray lady" for its reliance on text rather than pictures, the *Times* was not the easiest to read, best-written, or best-edited newspaper, but it carried more news and won more journalistic prizes than any other news outlet. The president of the United States read it, as did the pope (the international edition), and thousands of officials in Washington and around the world. It had the largest staff of any newspaper in the world, including the largest Washington news bureau and the largest foreign staff.<sup>3</sup> Each morning, the *Times* "emerg[ed] with a view of life that thousands of readers accepted as reality," observed journalist Gay Talese. For thousands of Americans, "the *New York Times* was the bible."<sup>4</sup>

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The *New York Times* started in 1896, when a thirty-eight-year-old publisher from Chattanooga named Adolph Ochs went North to buy a newspaper. Possessed of sharp features and enormous self-confidence, Ochs was the son of a German-born Jew who had emigrated from Bavaria to Tennessee in 1845 and made his way as a peddler. At seventeen, he had started out as a printer's assistant, a so-called "printer's devil," at a Chattanooga newspaper. At twenty, he bought the *Chattanooga Times* and over the next eighteen years built it into a profitable paper.<sup>5</sup>

Ochs intended to purchase the *New York Times*. Started in 1851 by a young politician named Henry Jarvis Raymond, the *Times* initially prospered. It gained acclaim in the 1870s for exposing the corruption of Boss Tweed and his political machine in New York. In 1884, it abandoned its traditional support for Republicans and endorsed Grover Cleveland for president. This move caused Republican readers and advertisers to abandon the *Times*.<sup>6</sup> By 1896, the newspaper had an anemic circulation of 9,000 and was losing \$1,000 a day. One contemporary critic described it as "the most picturesque old ruin among the newspapers of America."<sup>7</sup> Bearing a letter of recommendation from President Grover Cleveland (which he had gotten simply by writing the president and asking for it), Ochs offered \$75,000 for the paper.<sup>8</sup>

Ochs transformed the *Times*. By cutting its price from two cents to a penny, he tripled its circulation within a year. Seeking to appeal to the city's elite, he announced his intention to run a "decent, dignified, and independent" newspaper, a model of objectivity and impartiality that would give "the news, all the news, in concise and attractive form" "without fear or favor, regardless of any party, sect, or interest involved." The slogan "All the News That's Fit to Print," adopted in 1896, was a jab at competing "yellow" papers, such as Pulitzer's *New York World* and Hearst's *New York Journal*, which were lurid, partisan, and sensational. There would be no comics, no gruesome murders, no screaming headlines in the *Times*; Ochs wanted "a paper that would not dirty the breakfast linen." An early slogan was "Will Not Soil the Breakfast Table."<sup>9</sup>

Headlines were discreet. The editorial page was bland and wholesome. There were few pictures. The *Times*' specialty was breaking news, accurately and thoroughly reported. The paper began covering financial news, the stock market, the real estate market, and court proceedings. In 1914,

the *Times* made newspaper history when it was the first to report on the sinking of the *Titanic*. In 1918, it was the only newspaper in the world to publish the entire Treaty of Versailles (83,300 words). The paper detailed every development in World War I, and this cemented the newspaper's reputation for complete and accurate reporting. Never cutting costs when it came to news and putting the profits back into the paper became a hallmark of Ochs's leadership.<sup>10</sup> Politically, the newspaper was moderate, supporting the government and capitalist growth. The *Times* became the newspaper of the Establishment. Ochs had worked hard to bring himself up from impoverished roots and did not want to jeopardize his empire with unconventional views.<sup>11</sup>

When Ochs died in 1935, control of the *Times* passed to his forty-four-year-old son-in-law, Arthur Hays Sulzberger. Sulzberger was very different from Ochs. Unlike Ochs, who pulled himself up from hardscrabble roots, Sulzberger hailed from a wealthy and socially prominent Jewish family that made a fortune in the textile import business. Sulzberger attended the elite Horace Mann School and Columbia University and was permitted to indulge a taste for fine things. While a student at Columbia, Sulzberger met Iphigene Ochs, Adolph Ochs's only child. When Sulzberger married her in 1917, he was asked to join the *Times*. In 1918, he started as assistant treasurer and in 1919 was made vice president. Asked for advice on how to become the publisher of a great paper, he replied: "You work very hard, you never watch the clock, you polish up the handle on the big front door. And you marry the boss's daughter."<sup>12</sup>

Sulzberger vowed to continue Ochs's mission of comprehensive and responsible journalism. At the same time, he expanded the paper's scope and influence. Recognizing the need for interpretation in a world of increasing complexity, he introduced columns labeled "news analysis." News columns were written brightly, clearly, and concisely. The paper acquired a new urbane and sophisticated personality. It printed more and larger photographs, and the layout of the paper became attractive. There was more news on specialized subjects.<sup>13</sup> During World War II, Sulzberger made a crucial decision that turned the *Times* into the preeminent newspaper of the country. He put a sharp limit on advertising and devoted maximum space to news. The *Times'* claim to seriousness was practically unassailable.<sup>14</sup>

Ochs had separated news and opinion in an age of highly partisan journalism, but Sulzberger did not believe that opinions would interfere with the objectivity of the news. To him, an independent newspaper owed the public “responsible opinion.”<sup>15</sup> During Sulzberger’s tenure, editorials spoke out on major issues with a strong concern for foreign policy. In 1938, an editorial supported U.S. involvement in the war. Under Ochs, the *Times* had described itself politically as “independently democratic.” Sulzberger dropped “democratic.” The paper supported Republican candidates four times and Democrats three times under his leadership. Editorial opinions came from the editorial board, not from Sulzberger, who had a policy of not injecting his personal views into the paper. Because this policy kept him off the editorial page, he wrote letters to the editor that were published under his pseudonym “A. Aitchess” [AHS].<sup>16</sup>

Sulzberger was a handsome, well-dressed man, often considered glamorous because of his sophisticated lifestyle and the cachet of the *New York Times*. Trim and square-shouldered, he gave the impression of being tall and dominating, though he was actually of average height. Sulzberger brooded over the paper’s day-to-day operations. He carried in his front pocket a small, black, gold-cornered pad on which he scribbled observations about headlines and stories, or if he found a newsstand that didn’t sell the *Times*.<sup>17</sup> Daily, he fired off memos he called “blue notes,” because they were printed on blue paper. Editors received hundreds of these notes annually, filled with questions, critiques, and story ideas.<sup>18</sup> In his three-story brownstone on the Upper East Side, Sulzberger read the paper in bed each morning in an unusual ritual. Attired in a maroon-and-navy dressing gown, he would tear off the precious front page and editorial page and put them aside on his pillow. He would peruse the least important pages first, then his favorites, making notations and correcting errors with a red pencil.<sup>19</sup>

The *New York Times* was a family empire, but Sulzberger described it as a “public trust.” “We tell the public which way the cat is jumping,” he would say. “The public will take care of the cat.”<sup>20</sup>

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In 1960, the *New York Times* occupied a massive structure at 229 West 43rd Street off Broadway. The fourteen-story Gothic gray-stone building, which resembled a French chateau, stretched an entire city block from Forty-third to Forty-fourth Street. It was a news factory amidst a theater district.<sup>21</sup>

A million words flowed into the building daily, from 47 foreign correspondents, 10 domestic bureaus, 158 New York City reporters, 400 domestic correspondents, and several wire services. Editors culled this down into a still-bulky average of 145,000 words in the *Times* daily edition and 450,000 in its Sunday edition. It was the fattest, thickest newspaper in the country. A copy of the Sunday *Times* dropped from a plane for delivery in a rural area accidentally hit an ox and killed it.<sup>22</sup>

Four thousand workers each day walked through the revolving door, where they were greeted in the marble lobby by a sentimental inscription chosen by publisher Arthur Hays Sulzberger: "Every day is a fresh beginning... every morn the world is made anew."<sup>23</sup> The slogan, "To Give the News Impartially, Without Fear or Favor," was displayed at various places throughout the building.<sup>24</sup> The heart of the building was the third-floor newsroom, a cavernous block-long space so vast that the presiding editor had to use a microphone to page his staff. Each morning three hundred workers seated themselves behind rows of gray metal desks.<sup>25</sup> When news came in, it was fed into typewriters, edited by graphite pencils, and swirled through purple-inked mimeograph machines. The staccato clacking of the manual typewriters was so loud that it created a seeming bubble of privacy around each writer.<sup>26</sup>

At four each afternoon, the tapping of typewriters stopped, and copy was stuffed into pneumatic cylinders and whooshed through tubes down to the composing room on the fourth floor, where it was hand-set into page forms. After a few hours, molds of the pages were sent down chutes to the press room in the basement and used to cast printing plates. When the "let go" order was given, the presses began warming up, and newsprint was sent up from the subbasement to be put through the presses with such force and speed that the fifteen-story building shook.<sup>27</sup> Finished papers were whisked from the loading platform to waiting planes at LaGuardia, or put onto trucks, to be dropped in piles at newsstands in the city and remote suburban locales.<sup>28</sup>

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The *New York Times* was the product of an army of reporters, managers, accountants, typists, editors, copyreaders, and fact-checkers. It was the work of desk clerks, critics, news assistants, typesetters, truck drivers, printers, and delivery boys. Lawyers also toiled quietly and unglamorously behind the scenes.

Until the mid-1960s, the *New York Times* didn't have a legal department—somewhat surprising, given the scope of the newspaper's operations. Since Ochs's tenure, the paper had relied on a small, outside law firm for advice on legal matters. Alfred Cook, of the law firm of Cook, Nathan, and Lehman, one of the leading Jewish law firms in the city, represented Ochs when he bought the *Times* in 1896 and remained counsel to the paper until the 1940s. At the time, Jews were not accepted into mainstream law firms and were effectively segregated into their own legal practices.<sup>29</sup>

Louis Loeb, a lawyer for the Cook firm and Cook's son-in-law, began handling the *Times*' legal affairs in the 1930s. Loeb became a revered figure at the paper, known to every executive. Loeb was such an important voice at the *Times* that he was even asked to write editorials from time to time. From 1948 to 1968, Loeb served as *Times* general counsel. In his words, he “specialized in the *New York Times*.”<sup>30</sup>

Loeb stood at around six feet tall and weighed a little over two hundred pounds. He was physically imposing but not fearsome. A gregarious, affable conversationalist, Loeb was in high demand as a master of ceremonies, especially at the prestigious New York Bar Association, which he led for many years. Loeb dressed flashily in brightly colored striped suits with pearl stickpins at the collar. Albinism, a lifelong condition, gave him lustrous white hair and nearly translucent skin. Because he had very weak eye muscles, all his life he wore thick, black-framed glasses that lent him a myopic and slightly confused expression.<sup>31</sup>

Loeb, like Sulzberger, hailed from a prosperous family of German Jewish immigrants. Loeb's father had started out as a dry goods peddler in Alabama and went on to start a Birmingham department store. When Loeb was a child, the family moved to New York, where Loeb attended fine schools—Philips Exeter, Yale University, and Columbia Law School. As a

senior at Yale, Loeb gained renown as an actor when he mastered more than four hundred lines of blank verse for a single performance in the title role of *Tamburlaine the Great*.<sup>32</sup>

Loeb went to work for Cook, Nathan, and Lehman after law school. Soon afterward, he married Cook's daughter, Janet. Before long, Loeb was assigned to handle legal matters for the *Times*. Like the paper itself, the *Times*' legal representation was a family affair, passed on to the son-in-law.<sup>33</sup> Loeb became close to Sulzberger and worked with him in difficult negotiations with the American Newspaper Guild in the 1930s. Loeb sustained Sulzberger's position that the guild, which was under strong Communist Party influence, should not win control of the *Times*' editorial staff.<sup>34</sup> Loeb was held in high regard by his colleagues on the management side and also by union negotiators. He was said to be a man of such judicial temperament that his clients were tempted to ask him if he was sure which side had retained him.<sup>35</sup>

In 1940, Sulzberger asked Loeb if he would work more regularly as legal adviser to the *Times*. Loeb suggested to Sulzberger that he come up to the *Times* office half a day each day. He would maintain his partnership with the Cook firm. By 1941, he was spending four hours a day at the *Times* and four at his law office. In 1947, when Cook retired, Loeb needed to find another firm. A Yale classmate invited him to join the firm of Lord Day & Lord. After Loeb agreed, he went to see Sulzberger, who said that he had been concerned about what would happen when Cook retired and that he believed the *Times* should be represented by a firm that had continuity. Sulzberger decided that the *Times* would follow Loeb to Lord Day & Lord. Loeb called it "one of the greatest thrills of my professional career."<sup>36</sup>

Lord Day & Lord, established in 1845, was one of the city's oldest and most prestigious law firms. It was known as a "carriage trade" and "admiralty house," meaning that it represented shipping companies and wealthy private clients. The firm, at 25 Broadway, had a nineteenth-century aura about it. Many of the paintings in its office were of hunting horses and tall ships or photographs of partners in mutton chops and Civil War uniforms. By the 1950s, it was the epitome of stuffy, proper, "white shoe" practice.<sup>37</sup> Herbert Brownell, who had been attorney general under Eisenhower, was the most prominent member of the firm. Not surprisingly, the firm was conservative both in politics and in matters of legal strategy. Lord Day

& Lord would represent the *Times* until 1971, when they split over the paper's decision to publish the Pentagon Papers. Arthur Ochs Sulzberger, Arthur Hays Sulzberger's son, *Times* publisher from 1963 to 1992, once remarked that it "was a well-established firm numbering among its clients the Cunard Line." "Whether they were traumatized by the loss of the Titanic, I really can't say. But they certainly were cautious."<sup>38</sup>

Loeb came up to the *Times* building most working days, had an office and a secretary, and talked regularly with the top editors and managers. When he first started, his office was on the fourteenth floor. The desk he used was the original desk that Ochs had when he first came to the *Times*. He then moved to the tenth floor near the editorial board. A private phone connected Loeb's office on Lower Broadway with the *Times*' executive suite, bypassing two switchboards.<sup>39</sup>

Loeb's work centered on the business activities of the *Times*. Loeb drew up employment contracts, contracts for paper and ink, and negotiated building leases and advertising deals. Libel suits were only a minor portion of his responsibilities. Contrary to what is often assumed, libel was not a major liability for the *Times* before 1960. Loeb boasted that, excepting one judgment for around \$25,000, the paper never paid more than a dollar in judgments in a libel suit in the years that Lord Day & Lord represented the *New York Times*.<sup>40</sup>

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Libel is a civil cause of action that protects personal reputation against false and defamatory statements. A defamatory statement is one that seriously lowers a person's reputation; it exposes a person "to hatred, shame, obloquy, contumely, odium, contempt, ridicule, aversion, ostracism, degradation or disgrace [and] deprives one of their confidence and friendly intercourse in society."<sup>41</sup> It "injures [a person] in his profession or trade, [and] causes him to be shunned or avoided by his neighbors."<sup>42</sup> According to an authoritative legal treatise, the *Second Restatement of Torts*, "a communication is defamatory if it tends to so harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him."<sup>43</sup> Historically, defamation had a moral dimension. Accusations of having committed a crime, engaging in



professional incompetence, having a promiscuous tendency, or a “loathsome illness”—a venereal disease—were considered defamatory *per se*, meaning that the plaintiff didn’t have to introduce evidence as to why the charge would damage their reputation.<sup>44</sup>

The law of libel is ancient. Libel dates to the Middle Ages when the king’s courts intervened in verbal arguments between men of great wealth and power. Because disputes over the reputations of magnates of the realm often resulted in violence, the creation of new criminal penalties for defamation was one way of halting breaches of the peace.<sup>45</sup> When civil actions became increasingly common around 1600, the tort of defamation came into being. The civil action, for which the remedy is the payment of money damages, became the most popular method of dealing with defamation between individuals. Libel laws, both civil and criminal, were transplanted to the United States with the rest of the English common law. Criminal libel was rarely employed in the United States and fell almost entirely out of use by the twentieth century.<sup>46</sup> The tort of libel, by contrast, was commonly used (*New York Times v. Sullivan* was a civil libel case).

With its antiquated and convoluted terminology, libel was—and still is—one of the most complex areas of law. Libel has been described as “perplexed with minute and barren distinctions,” “a mausoleum of antiquities peculiar to the common law and unknown elsewhere in the civilized world.”<sup>47</sup> Before 1964, a person who sued for libel didn’t have to prove the statement in question to be false; its falsity was presumed. The presumption of falsity reflected the old English notion that it didn’t matter whether a statement was true or false since it harmed a person’s reputation either way. The plaintiff didn’t have to show actual injury to their reputation, only that the statement had the potential to harm their reputation. Libel was judged under the rule of strict liability, meaning that the publisher was responsible for its statements regardless of their intent or state of mind at the time of publishing. A careless mistake, or one made in good faith, would subject a newspaper to liability no less than an error made with ill will, or malice. The only way a publisher could defend itself was by proving that the statement fell into one of a few narrow categories of statements that were “privileged,” legally justified or excused, or more commonly, by proving the truth of the statement, “in all its particulars.”

Truth was a complete defense to libel, but as a practical matter, proving the truth of a statement “in all its particulars” was difficult even if the statement was in fact true.<sup>48</sup>

These stringent laws reflected the high value placed on reputation. Reputation is defined in the law as “the estimate in which [a person] is held by the public in the place [one] is known.”<sup>49</sup> Reputation was often regarded as a form of property, generated by one’s efforts, “slowly built up by integrity, honorable conduct, and right living.”<sup>50</sup> For businessmen and professionals, a good reputation was essential to career and commercial success. Historically, a woman’s reputation for chastity determined her marriageability. A good reputation “makes friends...creates funds...draws around [one] patronage and support and opens...a sure and easy way to wealth, to honor, and happiness,” it was said.<sup>51</sup> A good reputation was often described as a person’s most prized possession—one’s “greatest pride” and “choicest treasure.” One was thought to “own” one’s reputation, like one owned the fruits of one’s labor. An injury to reputation created “far more pain and unhappiness...than any physical injury could possibly occasion.” To rob a man of his reputation was “a crime against the community as well as against the individual,” and it was “the duty of the community to punish it.”<sup>52</sup>

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Like most major newspapers, the *New York Times* had an elaborate system to prevent and defeat libel claims. It was structured around the newspaper’s advantages as a well-funded corporate institution with well-trained, highly paid attorneys. The *Times* used its financial and legal muscle to intimidate, frustrate, and wear down libel plaintiffs and convince them to abandon their claims.

Each year dozens of individuals sent angry letters to the *Times* threatening to sue for libel. Sometimes the claims were valid; the allegations were indeed false. More often, the threats were baseless and mere harassment. Some saw filing a libel claim as a way to vent their anger over an unflattering statement. According to one *Times* attorney, in nine times out of ten, starting a lawsuit was “the safety valve blowing off,” and the case never went to trial.<sup>53</sup>

When the *Times* received one of these threats, the lawyers used a standard procedure. First, they fired off a sternly worded response denying liability or error. "Although the *New York Times* is always ready to correct any error in its columns which is called to its attention, we must advise you that our attorneys have informed us that the article of which you complain was a true, correct and fair report . . . and that it was published as a matter of news and in good faith, and there is nothing for us to do other than to await the presentation of your attorneys," read the letter.<sup>54</sup> If the plaintiff asked for a retraction or correction, they warned them that the initial charge would be repeated with the correction, scandalizing them all over again. If the complainant persisted, the attorneys would try to get them to back down. If the alleged libel was based on an official or public hearing, the lawyers would inform them that such reports were privileged and could not be the basis of a libel action.<sup>55</sup>

Intimidation was one strategy, and stalling was another. The *Times* lawyers would drag out libel suits through motion after motion and intentional delays. The *Times* was famous for its "no-settlement" policy. Unlike many newspapers, which would settle to get rid of a case, the *Times* always made the plaintiff go before the highest court it could get to before paying anything. This policy, developed by Adolph Ochs, was known as the "Ochs policy" on libel. Ochs felt that this approach would discourage "nuisance suits" and dissuade lawyers from taking libel suits against newspapers.<sup>56</sup> Ochs wrote to Alfred Cook in 1922, "You know my views about settling libel suits. No need repeating them. I would never settle a libel suit to save a little money. If we have damaged a person we are prepared to pay all he can get the final court to award, and we accept the decision as part of the exigencies of our business. I am aware that in some cases this may cost us more than necessary, but in the long run I think it is a wise policy."<sup>57</sup> The *Times* could afford to pay its lawyers during this process, while most plaintiffs were unable to withstand the burdens of a lengthy lawsuit and eventually relented and abandoned their claims.

George Norris, an eccentric, bespectacled Columbia Law School graduate, was the *Times* in-house "libel expert," assigned to investigate libel cases full-time. Norris, who had worked at the *Times* since 1916, was utterly devoted to the *Times* and to preserving the paper's stellar record on libel. He was a feared figure on the third floor. Whenever he went to

the newsroom and approached a member of the news staff with a libel complaint, they would nervously insist, "I was off that day." No editor or reporter wanted to admit that they had been responsible for a story accused of libel. But their disinclination to have their record tarnished by a libel action motivated them to cooperate with Norris to show that the plaintiff had no case.<sup>58</sup>

Norris checked facts, tracked down witnesses, and got statements from them. He worked closely with the Lord Day & Lord lawyers handling the litigation. Norris also supervised the "libel detectives." The *Times* employed private investigators who did nothing but work on libel actions. The detectives were assigned to confirm charges on which libel actions had been brought and to "dig up dirt" on claimants. If the plaintiff already had a bad reputation, it would be difficult for them to say that their reputation had been harmed. Plaintiffs would often desist when these investigations turned up unsavory facts, as such details would come out at trial. "It is said that when a person begins a suit for libel, he is inviting an investigation into his past life—maybe, beginning with his birth," Norris quipped. "Much has been spent for such investigations. We think that they pay off, for it seems that sometimes the knowledge of someone's asking questions about him is enough for him to call it quits."<sup>59</sup>

A Midwestern pastor sued the *Times* for libel. Norris sent a detective to Chicago to investigate his record. The detective contacted his parishioners, the minister's university, and even streetcar drivers who knew him. When the detective discovered "discreditable information," the pastor dropped his complaint. Norris observed, "After thirty-five years on the defending end of libel suits, my advice to prospective plaintiffs is—don't bring your linen suit to court unless it's spotless."<sup>60</sup>

The *Times* also took measures to avoid publishing defamatory statements. Education in libel law was offered to staff, there were regular lectures on libel, and libel treatises and handbooks were placed in the newsroom. Copy editors were charged with special responsibility, as many libels stemmed from typographical errors. Lawyers conducted "prepublication review," vetting text for possible libels.<sup>61</sup>

As a result of its aggressive tactics and well-trained lawyers, the *Times* rarely paid out judgments in libel cases. Of the \$16,344,284 sought in libel claims from January 1923 to October 1949, it paid only \$43,987. Aside

from two large judgments, one for \$25,000 and one for \$8,000, only \$10,000 was paid for twenty-seven judgments.<sup>62</sup>

“It would seem,” quipped Norris, “that if anyone had an idea of getting rich quick, he would be better off looking for uranium than suing the *New York Times* for libel.”<sup>63</sup> That would soon change.