

JOURNALISTIC ONUS OF PROOF AND STANDARD OF PROOF: TRUTH- TELLING IN OUR CULTURE WAR

by Howard Rotberg



Paul Berton, the editor-in-chief of my local Canadian newspaper, the *Hamilton Spectator*, loves to criticize through the use of name-calling and savage editorial cartoons, the duly elected President of the United States, Donald Trump. Surely we have enough corruption in the office of our Canadian Prime Minister Justin Trudeau, to provide the grist for this journalistic mill, but jumping on the hate-Trump bandwagon is so much easier – especially since there are few adverse repercussions and the Trump haters seldom feel the need to give real explanations for their hatred, thinking that name-calling is enough. For example, on November 7th, Berton penned a column entitled, “When people believe Trump’s lies rather than independent media reports, you know we’re in trouble”.

Is Trump-bashing a form of virtue-signalling? And are big media still independent and truthful? Do they even care to

produce unbiased reporting or is every article an opinion piece? And how can they get away with articles that state that every contested statement made by Trump is “without evidence” or “baseless”? For example, the media often states that concerns about election fraud are without evidence, but there is plenty of evidence – it is just that the media source doesn’t care to discuss the evidence.

Doubtless, the hate-Trumpers were shocked that despite their constant inducement of Trump Derangement Syndrome, the American people gave at least 72 million votes to their hero and who knows what the final tally will be after investigations on election fraud that the mainstream media dares not cover.

Berton writes, “many of us are completely baffled by the fact that Trump was able to attract so many voters after four years of chaos, incompetence, indulgence, negligence, corruption, fabrications and outright lies.”

He acknowledges in a column the previous week that many people have cancelled their newspaper subscriptions because they think that the paper is too tough on Trump. But in the same column, Mr. Berton says many “find (Trump) erratic, unstable, dishonest, opportunistic, egotistical, nasty and just plain dumb.” (Again without facts or other proof.)

There is no coverage in these papers of the astounding censorship being applied to conservative opinion by big tech platforms like Twitter, Facebook and Google. If the media cannot be relied on to advance our fundamental liberties and instead refuse to cover the loss of our liberties, they are “in trouble” and justifiably so.

There is little coverage in Berton’s paper of Trump’s successes in foreign policy, his not engaging in hard-to-understand foreign wars, respecting Israel while steering Sunni Arab regimes into peace treaties with Israel, taking a

long overdue tough position on trade with China, forcing other members of NATO to pay a fair share of the budget, ordering the death of the ISIS leader and two of the senior terrorism masters in Iran. Trump's domestic policies aided a healthy economy (until Covid 19 arrived) and his support of historical black colleges and special opportunity zones, and his support for school choice raised his level of support from the black community to new heights. But the media is little interested in all of that; and instead serves as warriors to protect the interests of "elites" in education, politics, the bureaucracy and media, all of which reacted to their loss of power by a historic rudeness against the President.

It doesn't seem to occur to Mr. Berton that mainstream media lie often and lie big. Such media for four years was complicit in an attempted coup against the President of the United States. The two main elements of the media attempted coup were the fake Russian collusion allegation and the improper impeachment process improperly based on an innocuous email. Then, the media attempted to hide two more important stories – firstly, the pay for play Joe and Hunter Biden effected by their acceptance of large sums of money from America's main competitor, China, and money from a Russian oligarch, all denied by Joe Biden lies and proven beyond a reasonable doubt by emails and other documentation from one of the business partners, a reputable former Navy officer named Tony Bobolinsky; secondly, the refusal of the mainstream media to cover the apparent and large election mischief that has left the election result up in the air, yet the media has annointed itself to "call " the election and name Biden as "President-elect" when there is no new president until the States certify their results and the Electoral College meets to vote.

The Canadian Broadcasting Corporation, or CBC, is another public sector captive of the Leftist-Islamist-Globalist alliance. As the news is being broadcast, the CBC runs "bottom lines" of significant stories. Notwithstanding that major

Republican lawsuits have been launched and they have not been decided, the CBC wrote on November 13th: "As legal blitz flops, Trump supporters back false claims."

There are reputable lawyers working on these claims, such as Sidney Powell and Rudy Giuliani, and they have spoken publicly about the claims, but leftist pro-Democrat media will not report that.

As a former practicing lawyer, I understand the legal concept of "burden of proof" or "onus" of proof; that is, which side in a legal dispute has the onus to prove its case, and to what legal standard must that case be proven? How might this relate to journalism?

In criminal law, where the government wants to sanction the accused with a loss of freedom through a jail sentence, we hold the government to a high standard – it must prove, by legally admissible evidence, the guilt of the accused "beyond a reasonable doubt". But in a civil case, we allow the plaintiff to obtain judgment against the defendant as long as the case is proven "on the balance of probabilities". Note that in criminal cases in liberal democracies like the United States and Canada the accused doesn't have the onus of *disproving* his guilt, but it is the government that has the onus of proving the guilt of the accused. And in the civil case the onus of proof, to the civil standard (the balance of probabilities) is on the plaintiff as it is surely unfair to make a defendant come to court and disprove something.

Some liberal countries see legal onus differently. For example, American libel law requires the plaintiff to prove that the alleged libellous or slanderous statement was false. But in Britain, once the statement is published, the onus is on the defendant to prove it is true. It is interesting to contemplate just why the two countries have chosen opposite views of the onus.

I have become rather alarmed at the way the mainstream media deals with President Donald Trump versus the way it deals with those who oppose him. Over more than 4 years, the Democrats, the mainstream media and the big tech social and political platforms, have lied and cheated, repeated “fake news” and illegally spied and conducted unnecessary investigations (Muller) and a nonsensical impeachment hearing.

What seems to be the case is that every allegation against the President by the Leftist-Islamist-Globalist alliance is ASSUMED to be true by the Media and must be proven false beyond a reasonable doubt by the President and his many backers – a “reverse onus”. At the very least, the media allows allegations against the President, to be published at the lower standard of proof of the balance of probabilities.

And it seems that every allegation by Trump or his supporters against the Leftist-Islamist-Globalist alliance must pass the “beyond a reasonable doubt” standard of proof and the Leftists are never obligated to make certain that alleged horrible misdeeds by the man voted into office by the American people must be assumed to be false, at least false beyond a reasonable doubt.

It seems to me that the Mainstream Media and its Big Tech partners are being successful in making sure that the deck is stacked against a “conservative” President – or one, in the case of Trump, who has committed himself to the interests of the American people (sometimes called “Populism”) as opposed to the interests of the media, bureaucratic, professorial and political elites (sometimes called the “Washington Swamp” or the “Deep State“.)

It is time, in my opinion, for the media and the censoring Big Tech platforms, to meet a standard that is higher than what has been used against Trump and American conservatives, both intellectuals and regular people. This suggestion in no way affects freedom of speech. But with *freedom* comes

responsibility. How have so many in the media used their Trumpophobia to fail in this responsibility? It is useful to read the shocked responses of so many in the Left that the recent election was so close, and that Trump, their hated “orange man” came so close to winning. Frank Bruni in the *New York Times* on November 14th, said: “Those of us surprised by Trump’s and the Republican Party’s showing in this election keep being blinded by our arrogance.”

My suggestion is to keep in mind issues of onus of proof and standard of proof when we judge whether the media (whether it is print media or video media or social media), is reporting *fairly*. Understanding the concepts of onus of proof and standard of proof, should allow us to make informed judgments as to whether some media can be accepted as authoritative.

But too many in the mainstream media will report one-sided allegations that have no proof; and conversely, will fail to report facts and allegations that have a high degree of proof but the media censors what might hurt its choice of candidate. The most egregious recent example, is that the *New York Post* was alone among American media to properly report on Joe Biden’s contacts with Chinese, Russian and Ukrainian businesses and its payments to his son Hunter and himself, being a “pay for play” or bribery scheme.

To me, the more important is the event being discussed, the higher should be the media standard of proof of the facts submitted as evidence. And so, in times of war or in times of an election to high office, we should demand high standards from our media as to the trustworthiness of facts reported or media decisions not to report on important stories. Media elites should understand that media lies or refusal to report on important issues go to the very credibility of their media, and if regular readers feel lied to, they will eventually be more motivated to get the truth out – which will involve shunning the media that have become shills for a political

party or ideology, rather than endeavouring to report all sides of an issue.

Social media platforms in the United States have been allowed to publish material with absolutely no legal onus or standards to get the facts right or opinions fair.

It is sadly the case that most media have put their ideologies ahead of their journalistic duty to investigate and report fairly on the results of their investigations. In my opinion they have been captured by the Leftist-Islamist-Globalist agenda, trained in the cancel culture and cultural relativism of our Universities. The fair practice, I suggest, is to treat our citizens the way courts treat litigants, both civil and criminal, and practice a fair onus of proof and a fair standard of proof.

Otherwise the effect of censorious and misleading conduct by the alliance between big high tech corporations and one-sided media will in fact constitute a modern fascism.

Howard Rotberg is a retired lawyer and the author of four books on ideologies and values: *The Second Catastrophe: A Novel about a Book and its Author*; *Exploring Vancouverism: The Political Culture of Canada's Lotus Land*; *Tolerism: The Ideology Revealed*; and *The Ideological Path to Submission... and what we can do about it*. He writes also for various magazines such as *Frontpage Magazine*, *New English Review*, and *Israel National News*. He is the president of Canada's sole conservative values and pro-Israel publishing house, *Mantua Books*,