

Public interest and individual taste in disclosing an Irish minister's illness in J. Petley (ed.) *Media and Public Shaming: Drawing the Boundaries of Disclosure*, London: I.B. Tauris/Reuters Institute Oxford, 2013. 165-178.

The media's changed approach to disclosing political illness is very clearly evident from the coverage of two British prime ministers, Winston Churchill and Tony Blair. Churchill's stroke in June 1953 went unreported. The absence of media comment was not simply achieved because the illness was kept secret within a close political circle. Three newspaper proprietors actively agreed to withhold the truth about Churchill's health from the British public. Given the scale of this collusion between members of the political and media elites it is little wonder that the episode has been described as "one of the most audacious cover-ups in modern political history" (Price, 2010:146-7). It would be difficult to argue that Churchill's illness was a private matter as the stroke prevented him from adequately doing his job - a key point in this chapter that considers the right of media organisations to disclose private health matters of politicians. Historian Peter Hennessy has written about the "near senility" of Churchill a year following his stroke while also quoting Harold Macmillan's alarming description of the Prime Minister:

Churchill is now often speechless in Cabinet, alternatively, he rambles about nothing. Sometimes he looks as if he is going to have another stroke... He was always an egoist, but a magnanimous one. Now he has become almost a monomaniac (See Hennessy, 2000: 196)

In his diary Macmillan also wrote about "a kind of conspiracy we were all in" - half a century later this type of concealment is no longer possible in Britain. There is

now an acceptance that medical information about senior politicians should not be withheld from the public - in part due to greater openness with the public and in part due to the advance of communications methods which makes keeping secrets much more difficult. In the latter regard, when Tony Blair took ill in 2003 there was widespread coverage that the Prime Minister had suffered a “heart scare” (Wintour and Boseley, 2003).

There has been longer acceptance in the United States about the public’s right to know about the health of their elected representatives. Revelations about the level of concealment about the medical condition of President Woodrow Wilson, who suffered a stroke in 1919, was an influencing factor. The extent and seriousness of Wilson’s health problems was withheld not just from the American public but also members of his cabinet. Indeed, documents released in December 2006 led one authority to conclude: “This is the worst instance of presidential disability we've ever had. We stumbled along . . . without a fully functioning president” [for a year and a half] (Milton Cooper, 2007). Three decades after Wilson’s illness was withheld news that Dwight Eisenhower had suffered a heart attack was widely reported in September 1955 (See Historic Films Archive). It should be noted, however, that White House staff still sought to manage information about the president’s condition so as to minimise political damage to his position (See Lasby, 1997).

Disclosure in the United States extends beyond elected representatives to incorporate the principle that the public has a right to know about the health of a candidate seeking political office. Many well-known figures have been questioned in public about their medical history. Examples in recent times include Senator John McCain in his White House bid in 2008. If he had been successful, McCain would have been the oldest first-term president in American history. In May 2008 *Time*

magazine published an article under the headline, 'How healthy is John McCain?' which detailed the Republican candidate's recent medical history including specifics about surgery for skin cancer. Readers were informed that, "the [McCain] campaign says it expects to offer enough documents and medical opinions to lay to rest any concerns about the candidate's condition" (*Time*, 2008). Others to have faced similar levels of scrutiny include Dick Cheney as vice-president to George W. Bush and Rudy Giuliani when he was mayor of New York.

Medical information that reaches the public domain can obviously be damaging for the individual concerned, as was the case for Thomas Eagleton in the 1972 presidential contest. The career of the Democratic vice-presidential candidate ended with release of information that he had undergone electroshock therapy. In American politics, however, not only is a candidate's health an issue in determining their electability but once in office holders of political positions are now obliged to accept that their medical records are a matter of public information. In this regard, the results of the "first routine periodic physical examination" of US President Barack Obama was published on the White House website in February 2010 (White House, 2010). A subsequent report from his physician - which included specific detail on Obama's cholesterol and blood pressure - declared him 'fit for duty and predicted he would remain so for the remainder of his presidency (Daily Beast, 2011)

Controversy over the issue of a placing a politician's medical history in the public domain balanced alongside their health privacy has not just been a British or American dilemma. For example, the suppression of information concerning the well being of Francois Mitterrand when he was president of France ultimately made its way to the European Court of Human Rights. The Court concluded that it is the duty of the media to report on the health of political figures in certain circumstances (Plon

(Societe) v France EHRR 2004). Similar debates have featured in several countries in more recent times including in Canada (Smith, 2011), Botswana (Keorapetse, 2011) and India (Jagannathan, 2011).

There was considerable debate in India in August 2011 when the Congress party confirmed that Sonia Gandhi had been diagnosed with a medical condition requiring surgery abroad. The lack of information about the nature of Gandhi's medical diagnosis led one commentator to ask a question that has universal application: "How can the nation's most powerful political leader, virtual chief executive of the ruling party, not let us know that there was something for us to be concerned about?" (Jagannathan, 2011). Providing an answer to such a question in the United States or in the United Kingdom - to go by recent cases mentioned previously - would seem fairly straightforward. The public right to know overrides the individual politician's personal privacy. A more nuanced debate, however, arose in Canada in the case of NDP leader Jack Layton who while ill sought election as Prime Minister in May 2011. While revealing that he had been treated for cancer Layton refused to discuss the nature of his illness, and as one Canadian newspaper noted in August 2012: "A year after his death Canadians are still in the dark about what actually killed Jack Layton, who mere weeks before dying had asked voters to let him lead Canada" (Branswell, 2012).

Cultural differences alongside specific media systems and political contexts obviously influence attitudes towards public disclosure of a political leader's health matters. The availability of the internet has made concealment more difficult even for repressive regimes. For example, in late July 2012 it was revealed that the Ethiopian leader Meles Zenawi was taking 'sick leave' to deal with an unspecified illness. The official line from the Ethiopian government was that Zenawi was recovering and

would be returning to work in a short space of time but rumours quickly spread on dissident websites that Zenawi had cancer (Gettleman, 2012). Zenawi died in a Belgium hospital some weeks later.

These different national experiences raise the issue of why and when health matters are considered matters for public disclosure. Many news organisations subscribe to the view that private lives should remain private unless public trust is broken when certain standards of behaviour are not met (integrity) or when private actions conflict with public positions (hypocrisy) (Sanders, 2008, 86). More often than not controversy emerges over exposure of marital infidelities but in the area of health there remains a contested dividing line between the public's right to know and a politician's right to privacy.

Providing answers is not straightforward - and raises editorial and ethical challenges for news journalists. Developing "a coherent expectation as to what represents appropriate ethical journalistic performance" (Starck, 2001: 145) involves ethical considerations beyond legislation and regulatory codes. The difficulty for journalists and news organizations is that wider public consideration of these issues is generally framed against discussion of privacy laws and restrictions on reportage. But unlike in the case of other public figures - celebrities, for examples - politicians with their ability to make decisions over people's lives are in a different space. It is hard not to argue that voters should be aware of the medical condition of candidates who seek to run their country, or to be reassured that an elected office holder is healthy enough to undertake the duties of office.

The following sections in this chapter offer a specific case study that addresses many of the questions concerning the news media, politicians and medical information. It does so by examining in detail the experience in Ireland in late 2009

when the broadcast of information about the health of the country's Finance Minister, Brian Lenihan, became a matter of public debate. In particular, the article examines the television news broadcast at the source of the controversy. Unlike, examples from other countries this Irish case was examined by the regulator authorities.

CASE STUDY: TV3 IN IRELAND

Brian Lenihan, who died on 10 June 2011 from pancreatic cancer at the age of 52, had in the post-2008 period achieved international recognition well beyond that normally received by a public office holder who was neither a head of government nor a head of state. This strong recognition factor was largely on account of Lenihan's role as Ireland's Finance Minister at the time of the dramatic collapse of the Irish economy (See Rafter, 2011). Lenihan was appointed Finance Minister in May 2008 at a time when the economic troubles for Ireland's national fiscal position and banking system were first emerging into the public domain (See Rafter, 2011). Under his stewardship a State-supported scheme for the Irish banking system was introduced which guaranteed the assets and liabilities of the six main financial institutions to the order of €440bn.

The controversial policy intervention, however, did not stave off ongoing difficulty. By late 2010 the banking and fiscal situation in Ireland was judged to have reached the point where external intervention was necessary and the increasingly beleaguered Irish government agreed a €85bn bailout deal with the International Monetary Fund and the European institutions. Set against this background it was not unsurprising that the incumbent coalition government was swept from power in parliamentary elections in February 2011. Lenihan's Fianna Fail party suffered

dramatic seat losses. The outgoing Finance Minister was returned as his party's sole representative in the Dublin region although it was clearly that he was seriously ill during the campaign. Despite the government's record - and the hardship policies implemented - there remained considerable public sympathy for a popular politician coupled with widespread acknowledgement of the fortitude with which he was battling his illness.

The first public indication that Lenihan had medical issues emerged on 16 December 2009. The Finance Minister was absent from a parliamentary debate on a draconian budget that he had announced the previous week. The limited information released - and published initially online and reported by the broadcast media - was repeated the following day, 17 December 2009, when *The Irish Times* reported that the Minister was undergoing a minor medical procedure which "had been brought forward" - he had been due to go into hospital for "an elective treatment" - although the spokesperson declined to comment on the condition (Anon., 17 December 2009). Other newspaper articles contained greater detail. The *Irish Independent* reported that Lenihan admitted himself to hospital early "after suffering discomfort and missing out on sleep with a suspected hernia problem" but that "government officials and aides stressed... there was no great concern over his medical condition" (Sheehan and Smyth, 2009). In subsequent days it was reported that Lenihan had returned home from hospital (McConnell, 2009).

On 24 December 2009 Andrew Hanlon, head of news at TV3 the national commercial television service in Ireland, learned from a source that Lenihan's illness was far more serious than had previously been acknowledged. It was subsequently reported that rumors had been circulating "in media and political circles" in the days prior to Christmas to the effect that Lenihan was more seriously ill than previously

reported but that journalists had failed to substantiate these rumours (See Foley, 2009, and McGurk, 2010). Hanlon and his station's political editor Ursula Halligan were able to confirm that the hernia story was incorrect and that, in fact, the Minister had been diagnosed as suffering from pancreatic cancer. Halligan contacted the Department of Finance, which expressed concern at the broadcast of the news on Christmas Eve. In light of this concern, TV3 decided to hold the story until 26 December 2009. Lenihan had already informed some people about his diagnosis including Taoiseach (Prime Minister) Brian Cowen (Bardon, 2009) and businessman Peter Sutherland (Carsweld, 2010). But, as he subsequently explained, he had decided not to tell some members of his immediate family until after Christmas (See De Breadun, 2010).

On 26 December 2009, TV3 told the Department of Finance it was planning to broadcast the story in its 5.30pm news bulletin.¹ The Department indicated its preference that the story was not broadcast but in light of TV3's decision a statement was released to the station. The story led TV3's main evening news at 5.30 on 26 December 2009. The segment dealing with Minister Lenihan's medical condition was 7 minutes and 4 seconds, and was divided into three elements: two lives interviews and a prepared package. The bulletin structure had been agreed by senior editorial staff so that "in each of the packages the tone was serious and within the confines of journalistic objectivity, sympathetic to the issues" (TV3, 2010). The item

The bulletin opened with the programme presenter Colette Fitzpatrick revealing the dramatic news: "TV3 News has learned that the Finance Minister Brian Lenihan has been diagnosed with cancer. Our political editor Ursula Halligan is at

¹ In a move which the added to subsequent criticism, TV3 on the afternoon of 24 December 2009 issued a news release advising that its main evening news bulletin would broadcast a "story of national importance."

Government Buildings this evening. Ursula, how serious is this?” Halligan’s initial contribution was to acknowledge the question - “Certainly, Colette, it is very serious” - following which she recalled that Lenihan had been taken to hospital with a suspected hernia prior to Christmas.

We all understood it was a minor procedure. It now turns out the problem is much more serious than a hernia. TV3 understands that initial tests revealed that the minister is suffering from a malignant tumor. The precise location, and severity of which, will be assessed in the next few days as he undergoes more tests.

The interview confirmed the nature of the illness although no additional information was provided about the Minister’s condition. Indeed, at no stage during the broadcast did any of the four participants express an opinion on the actual diagnosis. The first interview - between Fitzpatrick and Halligan - avoided speculation about the medical - or political - implications from the news revelation. Halligan observed in response to a questions about possible political consequences that it was “far too early to talk about what this means, where it might go, because of course the Minister continues to undergo further tests.”

The interview with Halligan was followed by a second live interview in which the Fitzpatrick spoke with Professor John Crown, a consultant oncologist in Dublin. The decision to interview a medical expert was taken, TV3 later said, in line with its normal practice to provide expert background information on complex issues “to ensure a thorough, objective and impartial report” (TV3, 2010). Crown had been contacted on 24 December 2009 and informed a story was being prepared about a

politician who had been diagnosed with cancer. He agreed to be interviewed so long as he was not asked to comment on the illness of any individual but was invited to provide general information about the disease. In explaining his approach, Crown noted: “The disclosure that a well-known figure had been diagnosed with cancer can increase public awareness, encouraging people to avoid risk factors to the disease, and highlight the need for greater investment in research and in treatment” (Crown, 2010).

In linking between the Halligan and Crown interviews Fitzpatrick confirmed for the first time the specific cancer illness:

There we’ll leave it. [to Halligan] Well, TV3 understands that the minister has been diagnosed with pancreatic cancer. John Crown is a consultant in oncology at St. Vincent’s Hospital in Dublin. John, what does a diagnosis of pancreatic cancer mean?

Crown provided general and factual medical information on the disease including the implications of both timely and untimely diagnosis. During his interview Crown did not refer to Minister Lenihan nor did he refer to a prognosis of any specific patient noting that “Most patients are not candidates for surgery; the disease has spread a little bit. And under those circumstances the aims of the treatment are really about more in the area of control, comfort, survival, prolongation, rather than outright cure.”

The final element of the coverage was a prepared package on Lenihan’s role as Finance Minister, which included archive footage. The decision to include this report was taken to highlight the central role the Finance Minister played in national

life and to reinforce the public interest argument for the broadcast. The package was complimentary of Lenihan's performance and concluded with the text: "Few would disagree with Brian Lenihan's ability to tackle the many economic problems he has encountered over the past 18 months. The hope now is that the new challenge he is facing can also be overcome."

REACTION AND FALLOUT

In the aftermath of the TV3 broadcast on 26 December 2009 Brian Lenihan maintained silence. On 4 January 2010 his department issued a media statement following which he did a radio interview and briefed political journalists. He said that he would not be making a formal complaint to the broadcasting regulator. "It's an issue on which journalists and media organizations will reflect on themselves. It's a bit like politics, journalism - the only rule appears to be that there are no rules" (De Breadun, 2010). While Lenihan said he was "not concerned about it [the broadcast] in a personal sense" - which, as discussed below, had implications for the scope of the subsequent regulatory inquiry - he did question the timing of the report:

It is in the public interest that people know the state of health of the Minister for Finance and I quite accept that. On the other hand, I would question whether there was any real interest served in disclosing it on St Stephen's Day as distinct from January 4th (De Breadun, 2010).

The Minister's 400-word statement confirmed the TV3 story that in the week before Christmas 2009 he has had received a cancer diagnosis (Department of Finance, 2010). In the period between 26 December 2009 (the TV3 broadcast) and 4 January 2010 (the Minister's statement) there was significant public discussion about Lenihan's illness. The initial reaction was defined by universal sympathy for the Minister and considerable criticism of the broadcaster. It is the latter reaction that is of interest in this article.

TV3's main television competitor, the state-owned RTE, followed-up the initial report of Lenihan's illness later on 26 December 2009. RTE did not name the original source of the initial information or indicate that it had itself confirmed the accuracy of the medical information. "The Department of Finance has refused to comment on reports that Minister Brian Lenihan has been diagnosed with cancer and would be undergoing further tests" (RTE, 26 December 2009). The state-owned broadcaster quoted a Department of Finance spokesman who repeated the statement provided to TV3. The Government Press Secretary was also quoted as saying "any Minister's health affairs were a personal matter" (RTE, 26 December 2009). In a report the following day - 27 December 2009 - RTE repeated the refusal to comment while also now identifying TV3 as the source for the original story. The report also noted that, "government sources said the reports represented an unwarranted intrusion" (RTE, 27 December 2009). Interestingly, in initial newspaper reports following up the TV3 story the nature of source confirmation varied from attributing the information to its own "authoritative sources" in *The Sunday Times* on 27 December 2009 to a reference to the Minister's "suspected illness" in the *Irish Independent* on 28 December 2009

There was limited on-the-record political reaction. Minister's Lenihan's constituency colleagues' from two opposition parties (Ireland has a multi-seat electoral system) issued brief statements. They criticised TV3 for "an appalling invasion of privacy" and coverage that was "absolutely inappropriate"(Quoted in Collins, 28 December 2009). The report was met with a barrage of commentator criticism ranging from "disgraceful" (McGurk, 2010) to "an insensitive invasion of a popular politician's privacy" (Foley, 2009). The broadcast was discussed in early January 2010 on TV3's nightly current affairs programme. The presenter - veteran journalist Vincent Browne disagreed with the approach taken by his employer: "I think the timing was wrong and it should have been delayed" (Anon, 2010). As well as hostility from other media organisations, TV3 received "hundreds of complaints from viewers" (Power, 2010). Many critical letters were published in the national newspapers where the focus was on privacy and the timing of the broadcast. In the words of one letter-writer: "The announcement of a private and personal situation by TV3... truly marks a watershed for the fourth estate in the country" (Higgins, 2009).

There were some supporting voices. Columnist Kevin Myers congratulated TV3 for "their courage and their sensitivity in breaking the dreadful news..." (Myers, 2010). He argued that it was a journalistic duty to report such a story - and that suppression of the truth should only be considered in cases such as when the life of a kidnap victim was at stake or in matters of national security. Taking issue with political figures who had lambasted TV3 on privacy grounds, Myers noted: "he is a politician; we are in the media. We report on you. No minister is sick in 'private', and no-one is taking advantage of anyone" (Myers, 2010). These differing ethical perspectives highlight the universality of the issues in the Lenihan case and the

conflicts that emerge for journalists in fulfilling their multiple roles including journalists as citizens and journalists as seekers of the truth (Harcup, 2002, 101).

The Compliance Committee of the Broadcasting Authority of Ireland (BAI) has a statutory role in adjudicating complaints against Irish broadcasters. In the Lenihan-TV3 case, the BAI received 88 written complaints, fourteen of which were considered by the Compliance Committee in the context of existing broadcasting legislation and a published code of standards. Section 48(1) of the Broadcasting Act, 2009 requires that news reports are fair to all interests concerned and are “presented in an objective and impartial manner” (Broadcasting Act, 2009). Section 3.5.2 of the BAI’s Code of Programme Standards requires that: “factual programming shall not contain material that could reasonably be expected to cause undue distress or offence unless it is editorially justified and in the public interest” (Code of Programme Standards, 2007).

The complainants objected to the TV3 news broadcast broadly in terms of invasion of privacy, that is was inappropriate to report on health matters and the timing of the broadcast. The emphasis is similar to the situation in the United Kingdom with press complaints where privacy cases seem “to generate most public concern” (Frost, 2004, 101). Complaints labeled the broadcast “sensationalism at its worst and grossly unethical” (Ref. 37/10), “a brand of cheap and tacky journalism” (Ref. 46/10), and “not in the public interest” (Ref. 80/10). In its submission to the Compliance Committee, TV3 acknowledged that the news report had “caused genuine upset” and accepted that the timing was a “sensitive and contentious matter” (TV3, 2010). Nevertheless, the station considered the timing legitimate and noted that, while of a sensitive nature, it was not in a position to choose when news emerged. TV3 argued that its motivation “ was entirely driven by its professional obligation to report

the news as and when it happens, in an objective, impartial and fair manner as required by Statute and by TV3's license" (TV3, 2010).

The station argued that the report was a legitimate news story supported by two essential elements - firstly, that it was in the public interest and, secondly, that the story was professionally sourced. In terms of the public interest argument, TV3 reasserted its initial view that as Lenihan held the important public position as Minister for Finance at a time of national financial crises then "the diagnosis of a serious condition may relate to Minister's Lenihan's performance of his official duties as Minister for Finance either now or in the future" (TV3, 2010). TV3 said the story was "sourced without impropriety" and was based on a minimum of two sources independent of each other. The station asserted that it had only dealt with the appropriate channels in the Department of Finance. "There was no intrusion into the family life of personal background of the Minister and no filming of the Minister, his family or his home" (TV3, 2010). The station acknowledged that "journalism is an imperfect trade and TV3 accepts that others may reasonably have different views as to how the news should be presented" (TV3, 2010).

In its published judgement, the BAI's Compliance Committee found that the report was in the public interest; was factual and accurate; was fair, objective and impartial; and that the presentation style was professional and respectful of the Minister's role. The judgement acknowledged that some viewers may have disliked the news report and would have found it offensive but noted that, "such reaction in itself cannot determine whether the broadcast was not in compliance with the Codes" (BAI, 2010: 73). It accepted the "pivotal role" of the Minister for Finance in government and noted that, "given the current economic crisis, the significance of the

role is furthered heightened” (BAI, 2010:75). In this context, the health of the holder of the office “was in the public interest” (BAI, 2010:75)

The Compliance Committee also considered whether the broadcast of the type of illness and discussion about the illness was editorially justified and in the public interest. The Committee acknowledged the views of complainants that the news in the TV3 report was shocking but concluded that report was in keeping with the legal and regulatory requirements in terms of editorial impartiality. The Committee also noted that the context of the TV3 report was, at all times, the political position of Minister Lenihan, and that he was offered a right-of-reply through his office. The Committee recorded that the Minister’s health was in fact a matter of on-going news story in that he had been hospitalised before Christmas: “Therefore, the news story reported by TV3 was based on the developing facts of the actual illness of the Minister for Finance, and issue which was already in the public domain. It was an on-going news story” (BAI, 2010:75).

Two issues were not considered - first, whether the broadcast was an unwarranted invasion of privacy and second, the timing of the broadcast. The regulations governing the operation of the Compliance Committee mean that it is only able to assess complaints of unwarranted invasion of an individual’s privacy when they are made by the actual individual concerned, or by someone nominated by him/her. As such, the issue of privacy was not considered because neither Lenihan nor his immediate family did not complain. The Compliance Committee noted that it had no power, nor should it have the power, to consider the timing of the broadcast in light of the editorial independence of the broadcaster and the right to freedom of expression. To have done so, the Committee asserted, would have taken its remit into the realm of “editorialising” (BAI, 2010: 78). Interestingly, the Compliance

Committee did acknowledge that there might have been specific circumstances in which it might have set aside considerations of editorial independence as well as the principle that broadcasters are free to determine the context of news reports. The personal impact of the broadcast's timing could have been considered if Lenihan, a member of his family or somebody nominated by them had complained but as "no such complaint was made and therefore, there is no other context or legislative basis for the Committee to consider the timing of the report in this instance" (BAI, 2010:77).

CONCLUSION

In the aftermath of the TV3 disclosure, one of Brian Lenihan's cabinet colleagues, Mary Hanafin, then the Minister for Tourism, Culture and Sport, asserted that, "Even public people are entitled to their privacy and are entitled to be sick in private" (McKittrick, 2010). The former point is certainly true - individuals do not surrender all aspects of their private lives on becoming public figures or elected representatives. Most reasonable media organizations would support the view that private lives should remain private unless public trust is broken or when private actions conflict with public positions. But Hanafin's latter point - privacy over medical matters - is more nuanced in the case of politicians who in this specific case of disclosure are a separate category of public person. This distinction is made because value is placed on having informed citizens and knowing that those acting on behalf of those same citizens are actually capable of doing the job. The hostility heaped upon TV3 in Ireland was not just driven by the timing of the Lenihan broadcast but more specifically a belief in separating the private sphere of public figures from the public domain. This issue

features in international debates about what is understood by entitlements to privacy of public figures. An individual's right to privacy sits alongside the right to freedom of expression and the sovereign citizen's right to know about matters of public interest and importance. They are often competing interests - and the rights involved have to be balanced. So then at what point does illness require disclosure? In none of the national cases mentioned previously - or in the detailed case study presented from Ireland - would regulatory rules or ethical codes offer adequate guidance. The balance must lie with the politician and an acceptance that in such cases public interest negates privacy considerations. In addressing Hanafin's assertion - yes, politicians have a right to be sick in private but politicians by nature of their role and wider responsibilities to citizens lose the right to withhold disclosure of their medical condition.

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