

LAW ENFORCEMENT AND THE MEDIA: INFORMATION LEAKS AND THE ATLANTA OLYMPIC BOMBING INVESTIGATION

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HEARING

BEFORE THE

SUBCOMMITTEE ON TERRORISM, TECHNOLOGY,
AND GOVERNMENT INFORMATION

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

ON

EXAMINING THE LAW ENFORCEMENT INFORMATION LEAKS DURING
THE ATLANTA OLYMPIC BOMBING INVESTIGATION

DECEMBER 19, 1996

Serial No. J-104-104

Printed for the use of the Committee on the Judiciary



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LAW ENFORCEMENT AND THE MEDIA: INFORMATION LEAKS AND THE ATLANTA OLYMPIC BOMBING INVESTIGATION

THURSDAY, DECEMBER 19, 1996

U.S. SENATE,
SUBCOMMITTEE ON TERRORISM, TECHNOLOGY,
AND GOVERNMENT INFORMATION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:37 a.m., in room SH-216, Hart Senate Office Building, Hon. Arlen Specter (chairman of the subcommittee) presiding.

Also present: Senator Leahy.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. The hearing of the Senate Judiciary Subcommittee on Terrorism will now proceed. The subject matter of our hearing today focuses on the Atlanta Olympic bombing investigation and, with particularity, on the incidents related to Richard Jewell, who was first a hero in the incident, later a suspect, and still later exonerated, and the course of the law enforcement investigation of that case and the treatment by the news media of the incident.

We will be considering, in addition, other matters where there have been leaks from law enforcement, apparently, with substantial news coverage. There has been some suggestion in the past that law enforcement uses leaks in order to prejudice their cases or build cases. I am not saying that was present in this situation. There is an impact as to the effect of the case on hindering the investigation. Specifically, there may be some suggestion here that the substantial focus on Richard Jewell impacted adversely on law enforcement in finding the real culprits, who have not yet been apprehended. That is a subject we will be discussing with the Director today.

Also, the issue of the news media response is a matter of substantial importance. It may be that these hearings will lead to legislation as to tightening the rules against leaks as to law enforcement officers, but the Constitution is plain that there shall be no law impacting on the freedom of press, speech, religion, and other items covered under the first amendment.

I think that nobody said it better than Thomas Jefferson that if there were a choice of newspapers without government or govern-

ment without newspapers that the choice that Jefferson would make would be newspapers without government. We appreciate the rights of the news media to do the reporting as they see fit. There is the collateral question as to their own restraint, and there is a precedent in the Unabomber case where CBS had restrained itself from making publications.

We have a distinguished panel, in addition to the Director of the FBI: Mr. Jay Black, who is professor of media ethics at the University of South Florida; Mr. Paul McMasters from The Freedom Forum, First Amendment Ombudsman; and Mr. Steven Geimann, senior editor of Communications Daily, of Washington, DC.

I would like to yield at this time to my distinguished colleague, Senator Pat Leahy.

**STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR
FROM THE STATE OF VERMONT**

Senator LEAHY. Well, Mr. Chairman, I will put into the record a statement, but I would just note a couple of things. Yesterday, as we know, we heard the shocking news that a supervisory FBI agent was arrested for spying, and I know you have been following that case closely from another committee, and the Director has briefed me on that. As shocking as it was, it indicates that the FBI does not hesitate to investigate their own. It will now go to trial and we will let the judicial process follow, but it shows they do not shy away from their own Bureau in such investigations and I know that this was an extensive one involving significant leadership within the FBI in carrying out the investigation. There are several other significant investigations going on, some that we could not discuss here, but I mention that only because I know the Director has only so much time and I appreciate him being here during this time.

On the matter that we will talk about, the Richard Jewell matter, I think of what Paul McMasters, who will testify later, said in his statement that for Jewell to be singled out simultaneously by the FBI and the media as a suspect in a terrorist bombing has to be among everyone's worst nightmare. And, of course, it is. I commend the Director for acting quickly after this leak occurred to order an internal investigation as to what has happened, and I would hope that when that investigation is done it will be used as a model of determining what not to do in the future, because that was a disservice both to law enforcement and to the media.

I don't question the enormous pressure that must have been on everybody, on the media and on the FBI, during that time. Obviously, the whole world was watching. This was not one of those crimes that occurs—a similar bombing could have occurred here or almost anywhere else and it might have been a blip on the evening news. This became worldwide, hourly updates, sometimes half-hourly updates, in the news and literally billions of people were aware of it. But I would assume that we will get to the bottom of that.

The very last thing is, I know the Federal court decision which came down on export restrictions on certain encryption software yesterday is not one you may have had a chance to review, but, Director Freeh, with my concern on what I thought has been a mis-

guided policy by the administration on restricting the export of encryption, it is probably safe to assume that you and I may have a chance to discuss this latest court case and whether it goes up on appeal or whether we try one more time on a legislative fix.

Mr. Chairman, I commend you for having this, and I know time is of the essence and I will, as I said, put my whole statement in the record.

Senator SPECTER. Thank you very much, Senator Leahy.

[The prepared statement of Senator Leahy follows:]

PREPARED STATEMENT OF SENATOR PATRICK LEAHY

Yesterday, we heard the shocking news that a supervisory FBI agent was arrested for spying. One element of that arrest should be reassuring: It demonstrates that the FBI is not shying away from investigating its own, no matter where the investigation leads. Second, what we have is a complaint and an arrest; no indictment, no trial and no conviction. We must now let the judicial process unfold.

At this difficult time for the FBI, which is simultaneously pursuing several ongoing significant investigations, I commend and appreciate the Director for being here. His appearance and statement here today should reassure the American people that he fully understands that thorough, professional and aggressive law enforcement and respect for the privacy and civil rights of citizens can, should and will go hand-in-hand.

What happened at Olympic Park in Atlanta in July is deeply disturbing. A warped criminal set off a bomb that killed and wounded many people gathered for a quadrennial event that brings out the best in all the countries of the world. That was bad enough. But for some individuals it got worse.

Paul McMasters, who will testify later, got it right when he said in his written statement that to be "singled out simultaneously by the FBI and the media as a suspect in a terrorist bombing" has "to be among everyone's worst nightmare." This is what happened to Richard Jewell. Over the course of a few days, Mr. Jewell saw his image soar from private citizen to celebrated hero, and then, on the word of anonymous law enforcement sources, sink to the depths of suspected terrorist. In the aftermath of the media frenzy that disrupted Mr. Jewell's life, I am sure that he and his family are trying to pick up the pieces and move on.

Ironically, the spotlight focused on Mr. Jewell has been so intense that when his name was cleared, the effect may be to help restore his reputation to him.

We still do not know exactly who leaked Mr. Jewell's name to the news media. The FBI Director should be commended for acting quickly after the leak occurred to order an internal investigation into what happened and who was responsible. That investigation has not yet been completed.

What happened to Richard Jewell is deeply disturbing to me, to the American people, to the FBI Director and to the thousands of diligent employees of the FBI. The result has been a disservice to both law enforcement and to the news media, leaving the public more skeptical about the information it receives from official agencies and the press.

It is worthwhile to understand that most criminal investigations and prosecutions receive no official comment or coverage at all. When a high-profile incident occurs, the law enforcement agencies involved often must cope with extreme and sometimes competing pressures, in addition to solving the crime. They must reassure the public that an investigation is underway, respond to news inquiries, and still pursue an investigation covertly to protect agents, evidence and the privacy of the people whose actions may be subject to examination.

Many criticisms have been leveled at how the press handled the information supplied by law enforcement officials about the Atlanta bombing investigation. Many of these criticisms may be fair, and some journalists may have overstepped their bounds out of zealotry. But no law enforcement agency or prosecutor should try a criminal case in the press. I place the responsibility squarely on law enforcement officials to ensure that only appropriate information is made public.

To the extent that one or more FBI agents suffered from "loose lips" about the Atlanta bombing investigation, I am sure that this Director will get to the bottom of it.

On a different issue, Director Freeh, I am sure you have not yet had an opportunity to study the federal court decision declaring export restrictions on certain encryption software a violation of First amendment free speech rights. But after we all review this decision, and set about putting our national encryption on a sound—

and constitutional—footing, I hope that we will be able to discuss this issue in more detail.

Senator SPECTER. Today's hearing will not take up the issue as to the FBI's interrogation of Mr. Richard Jewell. There has been a question raised as to the propriety of that investigation, whether there were any subterfuges used, but that issue will be deferred until a later time because the Office of Professional Responsibility is conducting an investigation on that matter.

We had wanted Mr. Jewell to testify and the subcommittee has been in contact with his counsel regarding that request, we will have him at a later date. Although we had hoped to do this earlier, we understand the delays necessary with the Office of Professional Responsibility. Since the Director is not in the position to reply to any issues as to the propriety of the handling of Mr. Jewell, it works out best to have Mr. Jewell at a later time so we do not have those issues raised by Mr. Jewell without having Director Freeh in a position to respond to that.

I think it is important to note the impact on Richard Jewell and on his family, especially on his mother. He is a 33-year-old security guard who was in the area where he had noticed a suspicious knapsack. He told the Georgia Bureau of Investigation. They examined the knapsack and pushed people away. A bomb was noted in the knapsack. Despite the precautions taken at that time, one person was killed and some 111 people were injured.

So at that moment, he was a hero and later he was a suspect, subjected to tremendous newspaper publicity. The questioning by the Bureau will be inquired into at a later date, so that the focus of our hearing today will be upon the law enforcement news leaks, what the FBI policy is on that, what the FBI has had to do about that and the experiences of that in the future. As Senator Leahy has noted, the Pitts matter is in the news today. We will, as I have already suggested to the Director, have some line of inquiry, to the extent that he can talk about it. Hardly a day goes by without some terrorist problem—the incident in Peru, another matter which we will touch on briefly.

For now, Director Freeh, thank you for coming and the floor is yours.

STATEMENT OF HON. LOUIS J. FREEH, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION, WASHINGTON, DC

Mr. FREEH. Thank you very much, Mr. Chairman and Senator Leahy. Good morning. I appreciate the opportunity to appear before the committee again. Mr. Chairman, let me thank you for your consideration to postpone, albeit briefly, the inquiry with respect to the interview of Mr. Jewell. As you noted, the Office of Professional Responsibility is conducting an investigation. I will be required to make certain judgments, perhaps, and I do very much appreciate your deference to that time when I can respond to that publicly.

With respect to the matters before the committee today, my policy regarding unauthorized and intentional disclosure of investigative information is very, very clear. It is absolutely prohibited and the penalty can include dismissal, as well as prosecution. Law enforcement is charged with protecting the public we serve. That is our highest responsibility, and it is a responsibility, in my view,

that includes protecting those not charged with a crime from the potentially destructive effect of public identification and subsequent media attention. The distinction between being a subject and being charged is sometimes lost.

Leaks of investigative information are equally harmful to law enforcement, as you noted, Mr. Chairman. The public confidence upon which we depend is damaged, investigative opportunities are lost forever, and the lives of our agents can be put at risk. Ultimately, prosecutions can be jeopardized. In today's environment when law enforcement at all levels is joined together in a common investigation, we are all harmed, regardless of the sources of the leak.

Because of the nature of law enforcement, we often find ourselves in possession of the most sensitive information in Government. In my view, every unauthorized release of raw investigative information is an irresponsible breach in the integrity of the criminal justice system. There is only one proper forum for its release and that is in a court of law or before a congressional committee.

Further, we collect information for exclusive purposes, to investigate and prosecute criminals or to protect the national security. I am mystified by those in law enforcement, including anyone in the FBI, that believe that it is acceptable to so disrespect the criminal justice process by leaking investigatory information. I am at a loss to explain their motivation and apparent willingness to cause so much harm to the process to which we have devoted our lives.

Conversely, I do not fault the media when sensitive information is published or broadcast. To the contrary, it is a fundamental part of our democratic system that the media vigorously pursue information about the inner workings of Government. As I said in a message to all FBI employees in April of 1994, I firmly believe in the First Amendment and a free press. The news media have important rights and properly use them to convey vitally important information to the public. This process is essential to the well-being of our Nation.

I have been very, very directly, and I would characterize it as passionately involved in getting the message out to our employees with respect to my position against unauthorized disclosures. Although I have furnished this to the committee, I would like to just read very briefly from several teletypes that I have sent to all of my employees over the course of my tenure as Director.

On April 9, 1994, I again teletyped all of my employees as follows:

Of great concern to me at this time are a number of recent incidents involving the public disclosure of FBI cases and other issues that threaten the FBI's hard-earned reputation, and moreover may even endanger lives, compromise investigations, and erode the rights of defendants. I want to make it clear that the improper release of information, including classified, sensitive, investigative, grand jury or Title III, will not be tolerated, and violators, regardless of position, can expect the maximum punishment. All FBI employees should understand that I have a zero-tolerance policy in regard to the unauthorized disclosure of information.

In that same communication I said,

The disclosure or discussion of investigations, ongoing cases, or pending or ongoing trials is not appropriate and violates FBI policy and, in some cases, the law that we have taken a solemn oath to uphold. Employees cannot decide for themselves which laws or regulations they will obey or disobey.

In a later communication I reminded people again that,

Consistent with longstanding policy detailed in the manuals, FBI employees, outside of narrow, well-articulated exceptions, should neither confirm nor deny the existence of an ongoing investigation. Consistent with my beliefs, as well as with longstanding policy, FBI employees designated to speak with the news media should always speak on the record. Background and off-the-record discussions are inconsistent with our guidelines and practices. FBI employees at every level should be reminded that both our guidelines and good judgment preclude answering hypothetical questions or offering personal opinions.

In another teletype I wrote,

I cannot overstate the importance of ensuring that the overriding commitment to issues such as ongoing investigations, due process, privacy rights of individuals, and the protection of sensitive investigative techniques must be paramount. Investments of resources, reputations, and even lives are at stake.

Finally, in another communication earlier this summer I wrote that,

Leaks can jeopardize people's rights to a fair and impartial investigation. Furthermore, they undermine the confidence the American people have in the FBI to investigate crimes pursuant to the rule of law.

Our experience has been that, for the most part, the media acts very responsibly when they do learn of investigative information, the disclosure of which could have serious public safety ramifications. As you noted, Mr. Chairman, CBS learned in advance of an impending arrest and search in the Unabomber investigation. Rather than potentially jeopardize lives in the investigation, CBS and Dan Rather held up broadcasting until it was safe to do so. Such responsible handling is not uncommon.

The FBI has neither a policy nor practice of leaking the name of any suspect for any reason, as I had set forth in my teletypes. It is directly contrary to the Attorney General's media guidelines. It is directly contrary to my clear policy. Since becoming Director, I have issued, in fact, what has been known as the Bright Line Policy. As part of that policy, I have for the first time put all FBI employees on notice that unauthorized disclosure of information to the news media or anybody else will result in dismissal and prosecution.

There are cases pending right now, cases which I cannot publicly discuss, where significant and costly investigative strategies had to be canceled and major prosecutions jeopardized as a result of media leaks. As this subcommittee knows, and as Mr. Leahy has pointed out, I have ordered an internal inquiry to determine the facts surrounding the unauthorized disclosure of information to the media after the bombing in Atlanta. The ongoing inquiry is being conducted by the Office of Professional Responsibility and seeks to uncover all information pertaining to any possible improper actions by FBI employees or employees of any other agency.

In fact, Mr. Chairman, when I appeared before you on August 1, 1996, you asked me about the bombing and I said as follows:

There are a good number of leads. There are a number of suspects that they are looking at, but as my SAC made clear yesterday, nobody has been charged with a crime. We have had several suspects in the case already who we focused on and once we focused on them, they washed out as suspects because we developed evidence which was exculpatory. The fact that somebody's name has surfaced or may surface, as you know from conducting investigations, doesn't mean anything. It certainly doesn't mean that the person is guilty of anything. It certainly doesn't mean that people should speculate as to guilt. We work very carefully to get the evidence we need to go into court. We also know that it is very clear that nobody rushed to judgment on making accusations. We regret many times, that in some investiga-

tions, people's names surface as suspects who are later proven not to be connected. We want to avoid that. We should avoid that at all costs.

When I have the results of the OPR review, if any misconduct by any FBI employee is identified, I assure that I will act immediately, consistent with all of my teletypes and my Bright Line Policy. The implications for the FBI and its ability to be perceived as dealing with people within the law is grave. There can be no margin for error born out of misconduct when it comes to an individual's rights, both because of the legal consequences and for the public's support—support which the FBI depends on to meet its responsibilities. Nevertheless, I do not yet know what has happened with respect to the leaks in the Atlanta case and I need to reserve judgment until I know the facts.

As you know, and as Senator Leahy pointed out, that was a particularly unusual situation to the extent that there were 15,000 accredited reporters in Atlanta. We know there were several other thousand reporters who were not accredited by the AOC.

Let me just conclude by giving you some numbers with respect to the media disclosure investigations the FBI has undertaken in the last 5 years. Between 1992 and 1996, we have opened and worked 48 Office of Professional Responsibility inquiries addressed specifically to unauthorized disclosures to the media. Eight of those inquiries resulted in disciplinary action, one resulted in a dismissal, 15 are currently pending, and 24 have been closed. Thirty-one of those cases were referred to our Disciplinary Unit and action was taken in 31 of those cases.

With respect to unauthorized disclosures in classified matters or espionage cases, between that period 1992 to 1996, we opened 42 espionage "x" cases, as we call them. None of the subjects of those cases were FBI employees. Twenty-five of those cases have been closed and 17 are pending. That gives you a scope of the number of matters addressed to this issue that we have worked.

Let me just conclude by again assuring you, Mr. Chairman, and the committee that with respect to leaks and unauthorized disclosures, I intend to continue not only to make clear my position, which I think is quite clear within our Agency, but to react very swiftly and very decidedly if I find evidence of such disclosures.

Senator SPECTER. Thank you very much, Director Freeh. The Atlanta pipe bombing case obviously was a very serious terrorist attack—1 fatality, 111 people injured. As yet, there has not been an arrest made in the case. Recently, the FBI made a public announcement on a reward, trying to find leads in the case.

Let me begin with a two-part question as to whether the focus on Mr. Jewell, the focus which turned out to be wrong ultimately—whether that has impeded the investigation of the FBI and what progress are you making at this time toward finding the culprits?

Mr. FREEH. I would certainly say that it was a major distraction to the—

Senator SPECTER. We will proceed with 10-minute rounds of questioning, for the timekeeper.

Mr. FREEH. Senator, I certainly say it was a distraction to the focus of the investigation, which was to look at all the evidence and to assess the universe of potential suspects. The time involved in focusing on Mr. Jewell, albeit briefly, because it was only several days into a couple of weeks—at the same time that that focus was being reported in the media, there was a separate, independent effort addressed to many other suspects which was continuing—the forensic collection; the leads that developed from the forensic collec-

tion, going out to identify the source of some of those components; the analysis of the 911 call.

The investigation proceeded fairly broadly at the same time that Mr. Jewell was a suspect, so I don't think it took away from the momentum or also the thoroughness of the investigation at that time. It certainly was a major distraction and certainly was an unfortunate event as it played out.

Senator SPECTER. Well, at least to the extent that law enforcement is assisted by the public in the course of an investigation. At the initial stage, when there was so much focus on Mr. Jewell, many people concluded that it was all over. Do you think that there was any impact on not having the public come forward or others come forward with leads which might have been of assistance?

Mr. FREEH. I am sure it had some impact. How great it was, I really could not assess. We have been getting, in answer to the second part of your question, literally hundreds of calls and many more people have presented photographs and videotapes to us since the appeal last week. Perhaps some of those people hesitated initially because of the publicity surrounding Mr. Jewell. So I think we probably were affected by it, but I certainly think we are on track now.

Senator SPECTER. To what extent is there an impediment coming forward when you have a man like Richard Jewell make a statement to the Georgia Bureau of Investigation—a man on the scene, a knapsack that turns out to have a bomb? Here is a citizen—of course, he is security guard himself—who steps forward and partly what he gets is becoming a suspect. What effect do you think that has on people who may want to come forward and provide information?

Mr. FREEH. I hope it doesn't have much of an effect. As a former prosecutor, as both the Senators here are, every witness who we ever asked to take the stand in a criminal trial and bring inculpatory evidence certainly has to, particularly today, give second thoughts about the cost/benefit of becoming a witness. So I am sure there are people who make that calculation and who made it in this particular case, but I hope that that is no longer true and I hope that we are getting a thorough and honest response from people who think they have information.

Senator SPECTER. Director Freeh, the appeal for public information was only made in the course of the past couple of weeks. Why did the Bureau wait so long from this July 27 incident to make that public appeal?

Mr. FREEH. There are a number of reasons. We wanted to complete our forensic examination, as well as many of the leads which were done to identify potential sources of the components. We wanted to have a good, broad database, particularly with respect to the components, before we advertised for people reporting information or suspicions about the case.

The other factor is when you make a public request like that, particularly with a \$500,000 reward, as you can imagine, you get hundreds and thousands of what we would call false leads, people who sometimes for good reasons, sometimes not for good reasons, give us names or leads or scenarios that then require a lot of man-

power. People have to go out and respond to leads, conduct interviews, find records.

In the early stages of an investigation, you generally don't want your investigators to be overwhelmed with thousands and thousands of leads without any kind of pre-selection or filtering process. It is more important in the early stages to focus on the forensics, the logical leads which develop. So, generally, if you look at most of these cases, the rewards and the public appeals generally come weeks or months—in the Unabomber case, years—after the events in question.

Senator SPECTER. Director Freeh, how long did the inquiry focus on Mr. Jewell? It seems to me it was quite a while.

Mr. FREEH. It was several weeks.

Senator SPECTER. Well, wasn't there a necessary impact with so much public attention, FBI attention, on Mr. Jewell, a distraction? You say that other evidence was being collected, but your resources are finite. Didn't that focus on Jewell have some adverse impact, perhaps a significant adverse impact on your investigation?

Mr. FREEH. It had an adverse impact. I would not call it significant. We had a squad of agents who were focused on Mr. Jewell. We had a larger squad of agents who were focused on other suspects. In fact, they were called the Other Suspects Squad and they were running out separate, independent leads during that whole period. So I don't think it was a significant impact.

Senator SPECTER. What has the FBI done specifically to try to find the source of the leaks?

Mr. FREEH. We have opened up an investigation. We opened it up immediately after the leaks. What we do in those instances is we identify what we call the primary universe of people who had information, particularly the information here that was disclosed, the identity of Mr. Jewell. The assessment—this is several months old now—identified over 500 people, 500 investigators.

Senator SPECTER. Well, what do you do? You have FBI agents who have information; they are a part of the universe to be investigated. Do you start questioning the FBI agents who are working on the case as to whether they were the source of the leaks?

Mr. FREEH. Yes, sir. I was getting to that as part of the process. The first assessment is to identify the universe. We identified approximately 10 agencies outside of the FBI who had individuals who were knowledgeable about his identity before it was released, over 500 investigators, prosecutors. And, of course, each of those people in each of those agencies has separate chains of command, so the secondary universe is much bigger. We then do a process of interviews, record checks, telephone checks, to see if we can identify what the source is. In this case, it is a very large universe.

Senator SPECTER. Well, that is a little awkward and a little cumbersome. You have your FBI investigators trying to find out the culprit in the pipe bombing case. Meanwhile, you have those investigators being investigated simultaneously by others who are trying to find out the source of the leaks. Is that what you are saying?

Mr. FREEH. Yes, we do. It is a very time-consuming process, but one which we do with great importance because of the damage and the seriousness of those leaks. We have many major investigations. The other one that you mentioned was the Unabomber case where,

beyond the investigators working on the case, we have investigators trying to identify the source of leaks in that case which were also very serious.

Senator SPECTER. Are you making any progress in determining the source of the leak in the Jewell matter?

Mr. FREEH. No, sir, neither in the Unabomber case.

Senator SPECTER. There have been some suggestions and there will be some testimony by the media experts, who will come later, that sometimes law enforcement will use leaks as a method of stimulating the investigation or perhaps activating the reporters who are secondary investigators, sometimes primary investigators. Do you think there is any substance to the claim that sometimes law enforcement uses leaks deliberately to try to stimulate the investigation?

Mr. FREEH. I think probably on some occasions it is a very valid criticism. I am sure in some places at different times, unprincipled investigators or attorneys, actually, on either side of an investigation would do that for either good-faith or bad-faith reasons. It is certainly not a policy or a practice in the FBI. It is something which we vigorously discourage, to the point of setting forth guidelines of dismissal and prosecution. I would urge anyone responsible in law enforcement to refrain from that. I think it is unlawful, I think it is criminal, and I think it destroys the integrity of our law enforcement organizations. But in answer to your question, I am sure people have done that. I hope people in the FBI have not done that. They certainly know what the penalty is if they are detected.

Senator SPECTER. Director Freeh, you say you have a zero tolerance for disclosure, but as you cite the statistics, from 1992 to 1996, 48 unauthorized disclosures, 1 dismissal, 8 disciplinary actions. Without getting into the specifics as to all of the cases, how do you square your zero tolerance level? Does zero tolerance level mean that if you find an FBI agent has made an unauthorized disclosure or leak that that individual will be terminated?

Mr. FREEH. Under our Bright Line Policy, which was not a policy in effect during most of these cases, if we find that there is a deliberate unauthorized disclosure without any mitigating circumstances, the person will be fired and prosecuted.

Senator SPECTER. Well, my red light is on so I will pick up the question as to what is mitigating if there is a deliberate unauthorized disclosure.

Senator LEAHY. Go ahead, if you want to do that.

Senator SPECTER. No, no. Go ahead, Pat. I will yield to you now.

Senator LEAHY. Let me make sure I understand this. This is being looked into by the Office of Professional Responsibility, OPR, is that correct?

Mr. FREEH. Yes, the Department of Justice working in conjunction with us.

Senator LEAHY. And you got them involved, what, within about 48 hours after this happened, very quickly?

Mr. FREEH. As soon as we learned about it.

Senator LEAHY. Just so we understand this and so I understand what triggered that review. I mean, did you see something as you were watching the news that said "FBI agents say," or I mean

what triggered the request? That seemed to be very, very fast movement on your part.

Mr. FREEH. It was my request and it was triggered when we were discussing the bombing case. I was receiving a briefing, in fact, in our operations center and the news flashed on the television that the local newspaper in Atlanta had published a special edition headlining Mr. Jewell as a suspect. And my reaction was very quick and very loud to that and we opened up the investigation immediately.

Senator LEAHY. Now, the Bright Line Policy started when, again?

Mr. FREEH. January of 1994.

Senator LEAHY. In December of 1993, you placed a high-level—as a matter of fact, an Assistant Director of the FBI, on administrative leave because of comments that he had made on a pending prosecution. In fact, I think that was administrative leave with pay until his retirement about a month later.

Mr. FREEH. Yes, sir.

Senator LEAHY. Did that action tend to trigger the Bright Line Policy of yours?

Mr. FREEH. It was certainly a factor in that. It was, in my view, a very serious breach of the already existing policies. The Bright Line Policy was an attempt for the first time to move unauthorized disclosures up higher on everyone's radar screen.

Senator LEAHY. Now, when do you expect the OPR report to be finished? Do you have any idea?

Mr. FREEH. On the leak investigation?

Senator LEAHY. On the Atlanta investigation, yes.

Mr. FREEH. I would say within the next week or so.

Senator LEAHY. If that showed that it came to the same level as December 1993, would you expect that the—let me back that up a little bit. If the OPR report showed that an FBI agent had been involved at least to the extent that the Assistant Director was in December 1993, would you expect that the action you take would be at least as severe?

Mr. FREEH. Yes. I would fire him and recommend that he or she be prosecuted.

Senator LEAHY. What is the prosecution? What crime would they be prosecuted under?

Mr. FREEH. Most of that material, even at the early stage, was being presented to a grand jury. There were subpoenas being issued, so there would be an obstruction of justice violation, for starters, and probably a few other things.

Senator LEAHY. On these guidelines—you mentioned the Attorney General's guidelines, yours, and how prosecutors and other department personnel are supposed to deal with the press during these investigations. The guidelines recognize, "comments about or confirmation of an ongoing investigation may need to be made." That obviously states the realities of the situation. Do those guidelines countenance the release of the names of any suspects in an investigation? Would there be a circumstance where the names of suspects in an investigation may be released?

Mr. FREEH. Yes. The guidelines provide that in, I think "extraordinary cases" is the phrase—for instance, a fugitive—where we have a very strong suspect in a case and we believe the person is

a fugitive, the guidelines would authorize the release of names, photographs, identifying data so the public, as well as law enforcement, could respond to that. But those would be very limited circumstances.

Senator LEAHY. Obviously, you feel that those circumstances were not met here?

Mr. FREEH. They were certainly not met here.

Senator LEAHY. Do you think these guidelines need to be changed in any way?

Mr. FREEH. I don't think so. I think they need to be enforced, not only from the Director but from the rest of our leadership and management. We have to make it absolutely clear what our message is and what the position is and what the importance of this integrity represents for law enforcement and then be able to vigorously and fairly enforce it when there is a violation.

Senator LEAHY. The guidelines also talk about getting approval from either the U.S. attorney or the Department division before releasing material to the media. Was there any such approval obtained that you are aware of?

Mr. FREEH. No, there was not.

Senator LEAHY. And Senator Specter has gone into the issue of whether this may have held up the other investigation. You made some allusion to this earlier—a number of law enforcement agents were working on this investigation besides the FBI. What was that number again? It was fairly significant.

Mr. FREEH. Ten separate agencies, and again over 500 investigators spread across those 10 agencies.

Senator LEAHY. Now, I have looked at a lot of these press accounts. They say that Mr. Jewell was a suspect and they quote law enforcement sources or senior law enforcement sources. Then you go down through and I don't find the FBI listed. Are you fairly confident that the FBI were the law enforcement sources that the media spoke of?

Mr. FREEH. I don't know, Senator, to be honest with you. I can't rule out that it was one of the FBI employees. I hope that it wasn't, but I don't really know at this point. The other issue, you know, beyond that is each of those—just take 10 people in 10 separate agencies reporting up to their chains of command, their supervisors, their ASAC's, SAC's, police commissioners. So the 500 people is only the primary bottom-line universe, which is why it is such a difficult matter to detect.

Senator LEAHY. Now, when they had the press conference—and I watched here just recently—where the reward was offered, an FBI agent came out wearing a backpack similar to apparently what your lab feels was involved. A call went out to anybody with videotapes, photographs, and so on. Had I been there at that time, I would have paid a lot of attention to that, and I think back just on the videotape that I sent my sibling or somebody else to take a look at.

But tell me again why such a request couldn't have been done earlier. I mean, sometimes people just go back and either throw pictures away or don't pay much attention. I would think that one of the things that you would be hollering for is for anybody who had film, had matters there and anything that might make them

focus down on that. Why do it now? Was the time of it influenced at all by the clearing of Mr. Jewell and the other things going on or is that coincidental?

Mr. FREEH. That was coincidental. The backpack which you pointed out which you saw actually took several months to reconstruct. The backpack, as you can imagine, was blown literally to hundreds and thousands of pieces. We early on thought we had the right make of that backpack. That changed several times. We had agents going literally around the country to manufacturers, to Army ordnance, to surplus stores.

The worst thing that we could do would be to put the wrong backpack on somebody at an earlier stage and get even more problems, not only the evidentiary problems of us having identified the wrong pack, but putting out in a video image the wrong evidence. So in terms of that pack, that took literally weeks and months to reconstruct and we wanted to be certain we had the right product before we advertised it.

Senator LEAHY. I assume that you were getting some pictures and other things before you made the request.

Mr. FREEH. Yes. Early on—in fact, several days after the bombing, we started to receive what turned out to be hundreds and then thousands of photographs, videotapes. We have had a team of analysts and agents, several dozen of them at different times, reconstructing and putting together and viewing each and every one of those frames, including the video cameras.

That process was ongoing even during the period that Mr. Jewell was a suspect, and one of the reasons that we now have a very certain timeframe as to when the backpack was put there was because of the photographs and the reconstruction, the interview of the people who took the photographs, and the creation of a time sequence. So, that investigation was not impeded or slowed down by the initial focus on Mr. Jewell.

Senator LEAHY. Thank you. Thank you, Mr. Chairman.

Senator SPECTER. Thank you very much, Senator Leahy.

Director Freeh, I would like to continue with the question that you were responding to when my time ran out on unauthorized leaks without mitigating circumstances. Referring to the 48 unauthorized disclosures, 1 dismissal, and 8 disciplinary actions, without taking the time at the hearing today, as I think it would be inappropriate to talk about specific cases in any event without a preliminary screening, I would like to go through those with you, or have our staffs do that, to see the distinction you made between dismissal and disciplinary action.

What do you have in mind by way of mitigating circumstances? It seems to me if somebody makes an unauthorized leak which violates the confidentiality of the FBI and is an invasion of someone's privacy that your bright line would call for a dismissal. Why not?

Mr. FREEH. Senator, I will be happy to give you a couple of instances. In fact, I have some specifics where I don't need to mention the name or the agent, and I will be happy to give your staff more of these. These actually all pre-date the Bright Line Policy—two of them do, but let me give you one in specific.

We have the case we called 870, and the date of this event was July 1992. Again, that preceded the bright line test. The agent was

censured for commenting to a reporter about a pending case after specific instructions from his SAC prohibiting communicating with the media. The conduct was mitigated by the fact that the comments were limited and spontaneous and may not have contributed to the published news article.

Senator SPECTER. But the agent in charge made a specific instruction not to comment?

Mr. FREEH. Yes.

Senator SPECTER. And the agent did make a comment?

Mr. FREEH. Yes. There was disciplinary action.

Senator SPECTER. Now, what is a spontaneous comment?

Mr. FREEH. Senator, I don't know the circumstances. I can certainly get those for you.

Senator SPECTER. Well, spontaneity has a lot of definitions, but people in law enforcement, people in positions of authority, have to be circumspect. We can all say something is spontaneous.

Mr. FREEH. I agree with you.

Senator SPECTER. If an agent makes a comment after he is specifically instructed not to do so to a reporter, it doesn't sound too mitigating to me.

Mr. FREEH. I don't disagree with you, but——

Senator SPECTER. I would like to find out more about that case, not now, but later.

Mr. FREEH. OK. There is another one. The agent's quote with respect to a pending case appeared in a newspaper, but was mitigated by his belief that the comment would prevent a press release. The conduct was mitigated by the fact that he did not intend to disclose information for publication and there was no adverse impact on the case. I am not trying to justify these. I am just trying to give you what, prior to the line bright line test, were considered mitigating circumstances.

Senator SPECTER. Well, I understand the information you have there is limited. Let us take that up outside the hearing room. Let me go on to a number of other questions because we have a limited time and we have another panel.

When Senator Leahy asked you what criminal charge could be brought, you mentioned obstruction of justice and that was the only one. That is a fairly tough charge to prove and when you talk about leaks, whether it actually comes within that ambit might be very problematical. It sounds to me as if you could use some square legislation on the point with some pretty tough criminal penalties, don't you think?

Mr. FREEH. We certainly could discuss additional legislation. There are criminal penalties to the 6(e) rule violation, which is the disclosure of grand jury information. There are specific——

Senator SPECTER. That is only part of it. There are likely to be disclosures on matters like the Jewell case long before it goes to a grand jury.

Mr. FREEH. That is correct.

Senator SPECTER. You had referred in the draft of your statement to CBS voluntarily withholding information on the Unabomber case, and I know that with some frequency requests are made to the news media. They have the discretion under their constitutional rights to make the final judgments, and we all re-

spect that. However, I think it is very interesting that you have mentioned that and I think an elaboration of that would be helpful both by way of praising the news media in this instance for what they did and also by way of amplifying how it is important for law enforcement that some of the information be withheld.

Mr. FREEH. Yes, I am happy to do that. They had, because of an authorized leak which we are now investigating, the name of the defendant, as well as the location to be searched, well in advance, 24 hours in advance of the prepared plan to effect the arrest and search. They called us before publishing the story or broadcasting the story and, of course, we told them that the publishing of that story at that point would clearly jeopardize the investigation, might affect the safety of either the subject or the agents. And they very responsibly, without further urging, agreed to hold the story. They held it specifically until we told them that the arrest had been effected.

Senator SPECTER. How frequently, Dr. Freeh, are such requests made like that to the news media to withhold publication and what are the results?

Mr. FREEH. I would say during my tenure, I have probably done that on maybe ten separate occasions. On each and every occasion, there was a positive response. The Unabomber case—again, you will recall that both the New York Times and the Washington Post, both Mr. Sulzberger and Mr. Graham, cooperated with us in the sense of assuring that the publication of the charged defendant's manuscript was done in a manner which would ensure to the best extent possible public safety.

That was an extraordinary event and I have in the past praised both Mr. Graham and Mr. Sulzberger for acceding to part of our request at that time. So this is not an unusual event and I think, as I said in my statement, I have no criticism and a lot of praise for the responsible media that have called, particularly in public safety cases and national security cases.

Senator SPECTER. Well, I think it is important to make that expressed because we do see where the disclosures are made and media subject to criticism. People at least disagree with them, so that when there is a withholding of information, it is important to praise them because nobody knows about the withholding of information. You can't tell what you withheld, obviously.

I think the Unabomber case is an important one because of the avalanche of publicity on that matter. One of the things that we have to focus on has to be repeated about the presumption of innocence in America which distinguishes our criminal justice system from any other, regardless of the nature of the offense, the publicity is devastating, and especially problematic obviously when it is wrong.

In the few minutes I have left, I want to take up a couple of other subjects, as I suggested to you privately beforehand, Director Freeh. The matter of Earl Edwin Pitts which was disclosed yesterday in the news conference that you and the Attorney General had, with the disclosure of the affidavit of probable cause which is an appropriate matter for comment.

That is a legal document which is filed which is the basis for a warrant for arrest and it is on the public record and it is sworn

to and it is clearly denominated not as conclusion of guilt, but as a statement of probable cause in the legal process. I noted that it is the second instance in the 88-year history of the FBI that someone on the inside has been arrested.

To what extent are you in a position to assess the damage of the disclosures which were made?

Mr. FREEH. Senator, we are not able to do that complete assessment at this point. Obviously, during the last 16 months when we ran the false leg operation, the undercover operation, against the charged defendant, we were not able to do what we are doing now, which is a comprehensive review and interview of many of the people that he had worked with, looking at the files and the access which he had during the period beginning in 1987 up to the present.

Senator SPECTER. That is a very long time and he was in the counterintelligence unit, correct?

Mr. FREEH. He was in counterintelligence work until approximately October of 1992, but a substantial period of time.

Senator SPECTER. So he was in counterintelligence work for 5 years where he is one of the people investigating suspects who may be spies.

Mr. FREEH. Yes, sir.

Senator SPECTER. So it is a very unique position for potential damage.

Mr. FREEH. It is a very serious position for damage and I would not underestimate the seriousness of the damage, but to do it comprehensively we are undergoing that process at this point.

Senator SPECTER. Director Freeh, with the conviction of Aldrich Ames and with the arrest of Mr. Nicholson, again presumed innocent, with serious matters set forth in the affidavit of probable cause, what is your assessment of the nature of this problem on spies within the FBI and spies within the CIA? How serious a problem is that for those two very important law enforcement agencies?

Mr. FREEH. I think it is a continuing, serious problem, and I think it is two-fold. On the one hand, there has been no cessation by the Russian intelligence services even after the collapse of the Soviet Union in 1991 to aggressively and very professionally and very effectively, at times, penetrate and recruit not just the counterintelligence service, which is the FBI in the United States, but the external service, which is the CIA. I think that aggression has been unabated even in the post-cold war era.

The second phenomenon I actually think is somewhat positive, and that is that I think the countersecurity measures, the counterintelligence programs both within the FBI and the CIA are much more effective in 1996 than ironically they were during the cold war. I think that is a deliberate result of very important changes, many changes which you have encouraged and initiated as the chairman of the Intelligence Committee, and supervised.

I actually think we have better counterintelligence and countersecurity measures in 1996 than we had at the height of the cold war. That may be why we are seeing more of these cases, but it is a serious problem, it is a continuing problem. We are number one on the radar list of the SVR, both the FBI and the CIA. That

is going to continue and we have to ensure that our defenses are better than they ever were and that our counter measures work, and I think these cases which you mention clearly show that the counter measures work.

Senator SPECTER. Director Freeh, you say no cessation by the Russians. Do we have any expectation that there will be a cessation, that the Russians will stop spying on us? Isn't this sort of a given in international relations or with respect to what the United States does as well? Last year, we were very deeply involved in the issue of economic espionage and the problems we had with some of our closest allies, like the French, and the legislation that we enacted to crack down on economic espionage. Is there any reason to believe at all that this kind of spying, as a matter of international practice, is going to be stopped?

Mr. FREEH. I don't think so. In fact, as you mention with respect to economic espionage, it has been escalating. The head of the Russian intelligence service directed his components early this year that they should specifically target economic infrastructure and make that a routine and priority part of their external activities. So I think it is probably escalating, certainly, in the economic area, and with 23 foreign external services targeting our economic infrastructure, I don't see any—

Senator SPECTER. Twenty-three foreign intelligence forces targeting our economic infrastructure—

Mr. FREEH. Yes, sir.

Senator SPECTER [continuing]. To try to find out our trade secrets to help them in trade policies?

Mr. FREEH. Right. The difference is now, thanks to the Senate, we have a statute; we have a criminal statute.

Senator SPECTER. Give the House a little credit, too.

Mr. FREEH. And the House, of course.

Senator SPECTER. Well, I think that is important to say because I think the American people ought to understand that simply because there is no longer a Soviet Union, there is still a Russia, and spying is an international practice and we have to be on our toes about it. These cases that are coming forward are not aberrational and not unusual.

I am going over time, but I will give—

Senator LEAHY. No, no, go ahead.

Senator SPECTER. Well, I am going to allow you to direct that line of questioning, Senator Leahy.

Senator LEAHY. No, no. You go right ahead.

Senator SPECTER. Well, I will do a few more and I don't want to come back for another round, so I want to finish up a couple of more questions.

Senator LEAHY. Sure.

Senator SPECTER. Well, let us bring it out into the open. Senator Leahy writes a perspicacious comment, "not that we don't do this, of course."

Senator LEAHY. You have to understand, Director, that Senator Specter, now the outgoing chairman of the Senate Intelligence Committee, and having done a superb job, I would say, in expressing the concerns about counterespionage—I served as vice chairman of that committee and also expressed concerns, and still do as

a member of the Appropriations Committee. We are both very interested in this.

Senator SPECTER. Well, Senator Leahy and I have been exchanging information going back a long time when he was the district attorney of Burlington, VT, and I was the district attorney of Philadelphia.

Senator LEAHY. Right.

Senator SPECTER. We have done a lot of work in this field for a long time, but Senator Leahy raises the question about our own practices. Would you care to comment?

Mr. FREEH. We are not an external security service.

Senator SPECTER. That is a very conservative, limited, appropriate comment. [Laughter.]

Senator LEAHY. That is right.

Mr. FREEH. We have a very active——

Senator SPECTER. Not only that, but as Senator Leahy adds, accurate, too.

One other question regarding the affidavit of probable cause with respect to Mr. Pitts, and that is the involvement of Ms. Pitts, his wife, to the extent that it is disclosed in the affidavit of probable cause, which I have not had a chance to review yet. What is it, some 80 pages? Of course, it was just filed yesterday.

Mr. FREEH. Yes, sir.

Senator SPECTER. This is sort of a sensitive matter because of the husband-wife privilege not to testify against a spouse, a very important common law privilege. That does not apply if an investigator is questioning someone. I think the privilege does not apply, but it is a matter of some sensitivity. Could you comment about the extent of the cooperation from Ms. Pitts and the concerns that the Bureau had as to having the wife give information adverse to the husband?

Mr. FREEH. Surely, to the extent that it is set forth in the affidavit. When we first initiated the false leg operation against the defendant, as set forth in the complaint, a Russian citizen, a former diplomat who we persuaded to cooperate with us, went to the home of the defendant in Virginia, knocked on the door. And, of course, this was the individual who was responsible for the initial meeting and recruitment of the defendant. This was all the allegations in the complaint back in 1987.

So he went to the door and then introduced the defendant to a series of FBI undercover agents. As set forth in the affidavit, Ms. Pitts was suspicious of the fact that this individual had arrived and that her husband had reacted so quickly, leaving the house and going to the meeting. She came to the FBI office the next day or the day after to report her suspicions, so it was not——

Senator SPECTER. Isn't that pretty unusual?

Mr. FREEH. No, in some respects. But in terms of your question, there would be no issue of a privilege because she voluntarily came and disclosed information. She did not do anything more than that. She certainly——

Senator SPECTER. Whose privilege is it, his or hers?

Mr. FREEH. Well, the courts have said that it is a privilege which goes to the nondisclosing spouse. On the other hand, it was not an

initiation by the FBI, so the privilege would not be at issue from a governmental point of view.

Senator SPECTER. Well, I think outside the judicial proceeding, it would not be applicable.

Mr. FREEH. Just to make it clear, she is not a suspect, she is not a subject, she is not charged. She was doing, in her own words in the complaint, what she thought was right.

Senator SPECTER. How much information did she provide, as set forth in the affidavit of probable cause?

Mr. FREEH. Just the fact that there was a visit by this individual and that there was a letter which had previously been received from that individual.

Senator SPECTER. The newspaper accounts today, accurate or not, I don't know, because I haven't reviewed the affidavit, made a reference to a wiretap on the house which overheard her conversation with a friend about having told the FBI about her husband?

Mr. FREEH. That is correct.

Senator SPECTER. What does that involve?

Mr. FREEH. It was a court-authorized interception and she was reporting her suspicions to a neighbor in the same vein that she then reported them to the FBI.

Senator SPECTER. One final subject for just a moment or two, and that is the incident in Peru with the terrorist group taking over the Japanese Embassy party. Fortunately, the U.S. Ambassador had departed before it occurred, but many people are held hostage. A question arises as to—and this may be really outside of your purview, but I think it is something we ought to at least ask about—U.S. assistance in there.

These terrorist groups do have international implications and we are, of course, a leader in the investigation. We do it worldwide. The FBI is not in that directly, but indirectly, with your counter-intelligence. To what extent can the United States be helpful in that matter?

Mr. FREEH. Senator, if you wouldn't mind, I would be happy to discuss that with you separately. I wouldn't want to say anything that would jeopardize the safety of the people in there in terms of what or what not the FBI would be doing.

Senator SPECTER. I certainly understand that.

Senator Leahy.

Senator LEAHY. Thank you, Mr. Chairman. I don't think it could be emphasized enough for anybody that may watch this that there isn't a cessation of attempts to penetrate our intelligence services, our law enforcement services in this country, or a cessation on economic work. It is not a case where we look simply at what we used to think of as the cold war, that we would check on what the Soviets were doing and how many missiles they might have, what their plans were, and vice versa. There are a lot of other areas and it isn't necessarily old adversaries. Some of our allies do it.

We have already had some discussion of the French. We saw the Japanese in Silicon Valley; Israel, with Mr. Pollard. We have a number of other people who have been very close friends and allies and we still find that intelligence services directly or indirectly come here. I think we have to assume in the former Soviet Union

we are going to continue to see this, and we have to assume that there are areas that we will continue to look out for.

You speak of the FBI, of course, as not being an external service, but just taking what has been in the open press, we will do that, and we have every reason to do it. After all, while the United States is the most powerful democracy history has ever known and the most powerful nation on Earth today, it is part of our own security, our security from aggression and our economic security, that there are some things that we will do.

What I worry about, though, is those who come in to infiltrate either our external agency, the CIA, or the internal FBI, and I am thinking of the infiltration being not just those who may come in from other countries, but there are criminal elements in our own country who would like to be able to do that same kind of infiltration. We saw on the news today where major figures in organized crime, or charged with being major figures in organized crime, were arrested following the life imprisonment of Mr. Gotti.

I think it is safe to say that with organized crime leaders in this country, they would love to know what you were doing internally, where you were going to get wiretaps or any other surveillance. Then I think it would be fairly safe to say that there are major drug cartels outside of what we normally think of as organized crime who would also like to know who your informants are, where the wiretaps are, where the interceptions are going to be, and what your plans are.

Would it be safe to assume, Director Freeh, that you have a constant, ongoing effort within the Bureau to make sure that you are not infiltrated by organized crime, by drug cartels, by these other criminal elements internally?

Mr. FREEH. Yes, sir, we do, and it is a very good point that you make, not just those groups, but as we investigate more and more organized gangs. There was a series of arrests in our New York office in connection with the New York City Police Department the day before yesterday—96 different arrests, 12 gangs charged with very serious racketeering offenses. Those gangs are enterprises in their own right and, as you say, they would very much like to know what the countersecurity measures are within the FBI vis-a-vis them, informants, witnesses, et cetera.

So it is an active program not just in the counterintelligence area, but really in all of our criminal areas, which is why our background investigations are so important, which is why our informant program is so important, the criminal informant program, because if we can recruit a gang member who then says that there is a local policeman or a local FBI agent who is providing information, that gives us the countersecurity measures to protect ourselves. But it is not limited, as you rightly point out, to the counterintelligence with respect to national security.

Senator LEAHY. But without suggesting that the FBI instill an atmosphere of compartmentalized paranoia, obviously there are things that you compartmentalize. Certainly, there are elements of your ongoing investigation that are kept on a very limited need-to-know basis, but beyond that, to what extent in some of these areas do you use lie detectors to reexamine or periodically check on agents?

Both of us are familiar to the extent the CIA does that. We are also familiar with the fact that that is not an infallible method, but do you use lie detectors on an ongoing basis, not triggered by suspicion, but an ongoing basis within the FBI?

Mr. FREEH. Yes, we do, in certain programs. We have done, since 1994, about 1,000 polygraphs with respect to employees who were being assigned to national security matters, for that very reason. We do not have a random polygraph plan or policy where we would just randomly polygraph someone. There are, however, many instances, including undercover operations, including investigations where we think there has been a compromise of an informant, where we will regularly give an administrative polygraph, but it is usually predicated or triggered by some known means.

One other measure we have to protect ourselves is we do a full-field reinvestigation of every employee every 5 years, which we had not done before October 1994. Actually, we were not in compliance with a national security directive going back some years. We now, on a 5-year basis, do a full-field investigation looking at assets, financial records, travel, bank accounts, things like that. That is a very strong and reliable measure of self-protection.

Senator LEAHY. In fact, let me follow up a little bit on that because you have actually anticipated a note I made to myself here. I know I have some members of the staff who handle highly classified matters, as does Senator Specter, because of our committee assignments and I know the kind of rigid background they go through for that.

I would assume, then, what you have is basically a matrix of some sort on this. Are they buying his and her Jaguars from the Nieman-Marcus catalog suddenly, or things of that nature, or I would assume something that might be a lot more subtle than that, is that correct?

Mr. FREEH. Yes, we do. But as I said, we didn't always have that. We had a voluntary system in 1993 where people filled out a form every 5 years. Then we graduated to doing criminal and credit checks. We are now doing what is the minimum, which is a full 5-year field investigation.

Senator LEAHY. A more subtle thing—and I am thinking of this article that was recently in the New Yorker magazine about an investigator getting too close to somebody who was cooperating in organized crime and developing the kind of friendship with that person which could be very good as an investigative tool, but do you also try to guard against it being so close that they may say too much, not because they want to tip them off, but just unwittingly? Are you following training on that aspect?

Mr. FREEH. Yes, training consistently, the review of informant files which are done separate and apart from the recruiting or contacting agent, the monetary records, the development of the cases that derive from informant information, a number of cross-checks. But, of course, anyone who becomes very, very close to a criminal, particularly a very sophisticated and influential criminal—that is an occasion for risk and one which we are sensitive to.

Senator LEAHY. And those who work in the department fully understand that if you go into certain levels, you are going to have

the polygraph test, and is it well understood within the department that there will be this 5-year field test?

Mr. FREEH. Yes. That is our policy now, full 5-year reinvestigation for every employee.

Senator LEAHY. I think that is good. I mean, it is a good reminder. You assume that everybody has been screened well enough when they come in there and that they are very honest. Again, I am not suggesting that we instill an air of fear and paranoia in the Bureau, but it is also a good way to help people remember they had better continue that way because there will be these checks and balances.

I don't envy you this, Director, because any time somebody is found—Aldrich Ames is one example with the CIA—you have to find yourself forever thereafter trying to prove a negative, the negative being that there is not a second person or a third person or a fourth person. And I guess to some extent you can never fully prove that and what you have to do and what the appropriate oversight committees, I suppose, have to do is to see whether as many cross-checks you can have are there and the cross-checks are effective, but are not so intrusive that they are going to make it impossible to get any work done.

Mr. FREEH. That is right, Senator. We also—and I know that you and the chairman do not, but we shouldn't lose sight of the fact that as bad as these cases are and as damaging as they are, you know, 99.9 percent of employees not just in the FBI, but the CIA, are decent, patriotic heroes, people who put their lives on the line.

The people who were working on the case that we announced yesterday—we had several hundred people, going from GS-5's to the Director, to the Attorney General, and people really in many different agencies aware of this case and, you know, we didn't think for a moment that anybody was going to compromise it in any way. The same with the cases at the Agency; there are dozens and dozens of people who work on those matters.

And we shouldn't lose sight of the fact that despite these rare, although very damaging and dangerous cases, the great numbers of CIA and FBI people are just the best people you could have and the people you would want out there on the front lines.

Senator LEAHY. Well, in fact, I will close with saying that my own experience in my own years in law enforcement and my experience being on oversight committees both of the FBI and the CIA—the vast, vast majority of people in law enforcement and the intelligence agencies are honest, dedicated and patriotic.

I am also well aware of the fact that when one is found who is not, the people who are usually the most angered, the most upset and the most unforgiving are their former colleagues in law enforcement or in the intelligence agencies because they see it as a black mark that they cannot accept. As long as that attitude persists, I suspect we will continue to find them.

Thank you. Thank you, Mr. Chairman.

Senator SPECTER. Thank you very much, Senator Leahy. Thank you, Director Freeh. When Senator Leahy and I talk about oversight, we are not talking about oversight on the media; we are talking about oversight on the Federal Government.

Senator LEAHY. Yes.

Senator SPECTER. That is where our oversight responsibilities lie, and we will be pursuing this matter further. We do urge you to do your utmost to find the source of the leaks—that is just wrong—and to take the appropriate disciplinary action. We will be reviewing with you those 48 cases of unauthorized disclosure so that we can get an idea as to what your standards are to give you our thinking on the subject.

I am going to pursue the question about more legislation, in collaboration with the Justice Department, with you and Senator Leahy and my colleagues, because I think it is just too vague to look to obstruction of justice as the punitive statute. I think we have to have something tailored which is right on the button and think through what the penalties ought to be.

We know how busy you are in your far-flung responsibilities, Director Freeh. We know you recently had an addition to your family, so you have got a lot of important interests. Merry Christmas.

Mr. FREEH. Thank you, Mr. Chairman. Senator Leahy, thanks very much.

Senator SPECTER. Thank you.

I would call our next panel, a very distinguished group of experts on journalistic ethics—Mr. Jay Black, Mr. Paul McMasters, and Mr. Steven Geimann. Our standard approach is to ask witnesses to testify for 5 minutes, which is inordinately brief, but it leaves us the maximum amount of time. We had hoped to conclude within the course of 11:30. We are still going to target that. We thank you for your written statements which have been presented in advance. It is very, very helpful for us to have that.

We call as our first witness Mr. Jay Black, who is Poynter-Jamison Professor of Media Ethics at the University of South Florida and, interestingly, holding down the only endowed professorship dedicated specifically to media ethics. That is quite a title and quite a position. Professor Black, the floor is yours and to the extent you can hold it within the 5 minutes, we would appreciate it. Your full statement will be made part of the record, as will all the statements.

PANEL CONSISTING OF JAY BLACK, POYNTER-JAMISON CHAIR IN MEDIA ETHICS, UNIVERSITY OF SOUTH FLORIDA, ST. PETERSBURG, FL; PAUL K. McMASTERS, FIRST AMENDMENT OMBUDSMAN, THE FREEDOM FORUM, ARLINGTON, VA; AND STEVEN GEIMANN, PRESIDENT, SOCIETY OF PROFESSIONAL JOURNALISTS, WASHINGTON, DC

STATEMENT OF JAY BLACK

Mr. BLACK. Thank you, Mr. Chairman. A disturbing national poll released last week says a bare majority of Americans think the media usually get their facts right. Fifty-three percent say journalists should be licensed, half think it should be easier for people to sue for inaccurate and biased reporting, and 70 percent think courts should be able to fine news media for inaccuracies and bias. While most said that journalists had the same traits as the rest of Americans, nearly half said news people are more arrogant; a third said they are more cynical, less compassionate, and biased. The

good news is that only 1 in 5 thinks journalists are less honest than most people.

I do media ethics for a living. It is not an oxymoron. In an earlier life, I worked as a reporter and copy editor for four newspapers. I am also the national ethics chairman for the Society of Professional Journalists, the editor of the *Journal of Mass Media Ethics*, and the author of *Doing Ethics in Journalism*. I have a Ph.D. in journalism and sociology from the University of Missouri.

As a media ethicist, I am particularly interested in how journalists make choices and I am committed to helping them to make ethically defensible ones. Like most ethicists, I believe in personal and public accountability for professionals, which is part of my dilemma here today.

One of the ironies of the growth of media ethics and the quest for accountability is their short-term cost and credibility. The more we publicize our struggles to make good decisions about how we handle the news, the more the public seems to confirm its suspicions that we don't know how to handle our unbridled powers, and thus we should be reined in.

It should surprise no one that working journalists from the media most directly involved in the Olympic bombing story were unwilling to appear here today. Fear of lawsuits, fear of Government sanctions, fear of public confidence are enough to make all but the most foolhardy or the lowliest stakeholders timid. So, today, you get to talk to three representatives from the Society of Professional Journalists, the world's largest voluntary association of reporters, editors and academic journalists.

As you will see, even the three of us don't agree about how to resolve some of the substantive issues. I trust those disagreements will show you that there are no easy answers to some of these tough questions, but the last thing we need is for even well-intended governmental interference in the enterprise of gathering and reporting the news.

It is not journalists' nature to seek solidarity. We are born out of and justifiably proud of our first amendment heritage. We are born in a defensive crouch. We operate out of a sense of negative freedom—freedom from control, whether control by government, outside critics, even from ourselves.

Much of the discussion about media ethics seem to have emerged from the premise that because the first amendment to the Constitution says "Congress shall make no law," some of us assume ipso facto that nobody shall make policies or codes of ethics or even suggestions as to how the media should ply their trade. We have very low tolerance for systematic, ongoing self-criticism, evidenced by the minuscule number of news ombudsmen, the impotence of community and national press councils, the relatively small circulation of our journalism reviews, and the fact that no media codes of ethics have ever had successful enforcement provisions.

Good and honorable people have legitimate disagreements about the extent to which a profession that wards off external controls can or should effectively monitor, let alone control its own practitioners. Coupling media ethics with negative freedom—freedom from external controls—has led to a fixation on how to keep government off our backs so we can make our own decision about mat-

ters ethical. Meanwhile, concerns over credibility and the bottom line have befuddled the ethics enterprise, as we have grown more and more aware that while the public may need us, it doesn't love us and may not even respect us.

It is not news to media observers that American mass media are commercial enterprises driven by ratings point and dollars point to sometimes egregious behavior. As such, they tend to be utilitarian in nature, opening themselves to the vast litany of charges concerning the means they employ to reach their desired ends, and it is not news that highly competitive, utilitarian businesses eat their young.

We wish the news media didn't disrupt the comfortable status quo or cause any of us discomfort or pain, but they do in the effort to create the greater good of informing and educating the citizenry about significant issues. We are in the business of gathering and distributing information. The more accurate, truthful, thorough and insightful, the less harmful its effects, the better.

Ideally, we do it out of altruism, out of a civic obligation to maintain a participatory democracy. Realistically, we do it as a constitutionally protected commercial enterprise singled out as the one business that government should leave alone so it can be part of the institutional checks and balances system that helps us govern ourselves intelligently. Therefore, it is essential to recognize that journalists have a fundamental duty to remain independent of external forces that could pollute the channels of communication.

The question is how can we, individually and collectively, make ethically defensible judgments under competitive deadline pressure, particularly when we are being manipulated by the establishment. In my written remarks, I go fairly extensively into why the Richard Jewell story was news, why it was inevitable that it was covered the way it was, why it is unfortunate that we didn't do more front-end ethical decisionmaking, and how it is that there are indeed a series of very legitimate ways, check marks, questions we can ask, ethically justifiable decisionmaking processes that journalists could use.

I would just close with the observation that we should leave that to journalists, and the more they are criticized by the public and other agencies, the more likely they are to start getting it better.

Thank you.

Senator SPECTER. Thank you very much, Professor Black. We will come back to you with some questions.

[The prepared statement of Mr. Black follows:]

PREPARED STATEMENT OF JAY BLACK¹

INTRODUCTION: ON CREDIBILITY AND ACCOUNTABILITY

A disturbing national poll released last week says a bare majority of Americans think the news media usually "get the facts right," 53 percent say journalists should

¹Jay Black is Poynter-Jamison Chair in Media Ethics at the University of South Florida—St. Petersburg, founding co-editor of the *Journal of Mass Media Ethics*, co-author of *Doing Ethics in Journalism*, and the 1996–97 Society of Professional Journalists national ethics committee chair. He has worked as a reporter and copyeditor on four newspapers in the Midwest, and has a Ph.D in journalism and sociology from the University of Missouri.

Portions of this testimony are self-plagiarized from recent articles in *Newspaper Research Journal*, *Quill*, the Society of Professional Journalists' *Task Force on Waco Final Report*, and the *Journal of Mass Media Ethics*.

be licensed, half think it should be easier for people to sue for inaccurate and biased reporting, and 70 percent think courts should be able to fine news media for inaccuracies and bias. While most said journalists had the same traits as the rest of Americans, nearly half said news people are more arrogant, and a third said they are more cynical, less compassionate, and biased. The good news is that only one in five think journalists are less honest than most people.²

So here we are today, confirming America's prejudices.

I do media ethics for a living. It's not an oxymoron. To date, I hold down the world's only endowed professorship dedicated specially to media ethics, though two others are in the works. One is funded by a major news organization, the other, by a vested interest that shall remain nameless. Mine was part of a greenmail settlement, when a wise judge resolved an unfriendly takeover bid for the St. Petersburg Times.

As a media ethicist I'm particularly interested in how journalists make choices, and I'm committed to helping them make ethically defensible ones. Media ethics, believe it or not, is a growth industry admittedly, a cottage industry by McDonnell Douglas and Boeing's standards, but a thriving little enterprise peopled by a handful of academics, a few thousand working journalists, and untold millions of amateur, self-appointed press critics.

Like most ethicists, I believe in personal and public accountability for professionals, which is part of my dilemma here today. One of the ironies of the growth of media ethics and the quest for accountability is their short-term cost in credibility. The more we publicized our struggles to make good decisions about handling the news, the more the public seems to confirm its suspicions that we don't know how to handle our unbridled powers, and thus should be reined in. It should surprise no one that "working" journalists from the media most directly involved in the Olympic bombing story were unwilling to appear here today. Fear of lawsuits, fear of governmental sanctions, and fear of public criticism are enough to make all but the most foolhardy or the lowliest stakeholders timid. So today you get to talk with three representatives from the Society of Professional Journalists, the world's largest (voluntary) association of reporters, editors, and academic journalists. As you will see, even the three of us don't agree about how to resolve some of the substantive issues before us. I trust those disagreements will show you that there are no easy answers to some of these tough questions, but that the last thing we need is for even well-intended governmental interference in the enterprise of gathering and reporting the news.

It's not journalists' nature to seek solidarity. Born with and justifiably proud of our First Amendment heritage ("born in a defensive crouch," according to Wichita, Kansas editor Buzz Merritt),³ we operate out of a sense of negative freedom: freedom from control, whether control by government, outside critics, or even ourselves. Much of the discussion about media ethics seems to have emerged from the premise that because the First Amendment to the Constitution said "Congress shall make no law," some of us assumed ipso facto that nobody shall make policies or codes of ethics or even suggestions as to how media should ply their trade. We have exceptionally low tolerance for systematic, on-going self-criticism, evidenced by the miniscule number of news ombudsmen, the impotence of community and national press councils, the relatively small circulations of our journalism reviews, and the fact that no media codes have ever had successful enforcement mechanisms. Good and honorable people have legitimate disagreements about the extent to which a profession that wards off external controls can—or should—effectively monitor, let alone control, its own practitioners.

ON RIGHTS AND RESPONSIBILITIES

How we frame the discussion of the Olympic bombing, Richard Jewell, the FBI, and the news media is significant. Do we define this issue as merely a question of weighing the rights of one vulnerable individual to avoid needless and public victimization vis a vis the right/inclination of the public to satisfy its idle or prurient curiosity, the right/inclination of the FBI to lure media into becoming coinvestigators, and the right/inclination of the news media to sell papers, make big ratings, keep on raking in enormous profits? Given that orientation, the call was a no-brainer: Media should never have taken the FBI leak and haunted Richard Jewell, and the public should have waited patiently until a real bomber was apprehended.

² Associated Press, "Poll: Public says media arrogant." Tampa Tribune, Dec. 14, 1996, p. 13.

³ Davis "Buzz" Merritt, *Public Journalism and Public Life*, 1995, Hillsdale, NJ: Lawrence Erlbaum.

Likewise, the decision is not terribly difficult for First Amendment absolutists who seem to define the issue as the press's constitutionally guaranteed right to print anything it can lay its hands on vis a vis the tendency of hypersensitive individuals and institutions to engage in short-sighted, anti-democratic censorship and prior restraint. The rule for such a journalist: Publish, and let the chips fall where they may.

It is safe to say that many thoughtful stakeholders in this debate have not grappled with the moral complexity of the issue. This is not to cast blame on them, but merely to state the obvious: When such debates are couched only in terms of conflicting rights, there is less likelihood of meeting common ground than would be the case if questions of rights are augmented by questions of responsibilities and duties.

The dialogue improves once stakeholders respectfully agree that the press and suspects and law enforcement agencies and the general public all lay legitimate claim to important rights. Indeed, there may not be an Aristotelian golden mean to be reached among the sets of such rights, so the dilemma will not be resolved if it goes no further than which rights should be compromised.

If, on the other hand, the problem is defined as entailing conflicting responsibilities as well as conflicting rights, closure becomes possible. That is because stakeholders would have engaged themselves in the process of doing ethics, of articulating their duties and obligations toward one another rather than merely staking out claims based on rights or "negative freedoms"—i.e., freedom from imposed constraints. This is worth pursuing for journalists who have been granted a great deal of freedom by our Constitution and court system to make their own judgment calls.

Coupling media ethics with negative freedom—freedom from external controls—has led to a fixation on how to keep government off our backs so we can make our own decisions about matters ethical. Meanwhile, concerns over credibility and the bottom line have befuddled the ethics enterprise, as we have grown more and more aware that while the public may need us, it doesn't love us, and may not even respect us.

It is not news to media observers that American mass media are commercial enterprises, driven by ratings-point and dollar-point to sometimes egregious behavior. As such, they tend to be utilitarian in nature, opening themselves to the vast litany of charges concerning the means they employ to reach their desired ends. And it is not news that highly competitive utilitarian businesses eat their young.

ON THE ROLE OF JOURNALISM

What role should the news media play in covering cases such as the Unabomber, Waco, Ruby Ridge, the TWA and Value Jet and other airline crashes, prison take-overs, civic disturbances, terrorist activities, and the bombing in Olympic Village in July of 1996? What is the appropriate journalistic response to calls by law enforcement agencies, or even the extremists/provocateurs themselves, for publicity, control of information or open access to news audiences? How can journalists do the best job possible? Are there any principles or guidelines journalists can turn to in such on-going and unpredictable crises?

To begin answering these questions we need to recognize the fundamental role of journalists in society, just as we need to understand the role of surgeons if we mean to intelligently discuss medicine, or the role of generals if we mean to talk about war, or the role of the FBI if we hope to understand law enforcement. We should note that it is a socially accepted role of the surgeon to draw blood, even to cut through healthy flesh to reach diseased organs, in order to create a greater good, a healthy body. Likewise it is the socially accepted role of the general to send troops into harm's way, to give orders that may result in loss of life and limb, in order to create a greater good, a safe society. And we have generally agreed that our law enforcement agencies should be given a degree of latitude in tracking down and apprehending criminals, even to the extent of causing some discomfort to the innocent, in order to maintain security and peace of mind for the lawabiding majority.

We might wish it were otherwise, but it isn't. And we wish the news media did not disrupt the comfortable status quo or cause any of us any discomfort or pain, but they do, in their effort to create the greater good of informing and educating the citizenry about significant issues.

Journalists are in the business of gathering and distributing information—the more accurate, truthful, thorough and insightful its contents, and the less harmful its effects, the better. Ideally, they do so out of altruism, out of a civic obligation to maintain a participatory democracy. Realistically, they do so as a constitutionally-protected commercial enterprise, singled out as the one business that government should leave alone so it can be part of the institutional checks and balances system that helps us govern ourselves intelligently. Therefore, it is essential to rec-

ognize that journalists also have a fundamental duty to remain independent of external forces that could pollute the channels of communication.

ON MAKING NEWS

How can journalists, individually and collectively, make ethically defensive judgment calls under competitive deadline pressure, particularly when they are being manipulated by “the establishment?”

I suspect the press was genetically predisposed to do what it did in Atlanta this past summer, that it was and still remains hardwired by old-fashioned synapses of news judgment.⁴ Relying on traditions of the craft learned in journalism schools or on the job, and reinforced by a vast public appetite for the news product, reporters and editors tend to define these events as newsworthy when:

Activities of the players in the stories (suspects and victims and, sometimes, law enforcement workers) deviate from the norm; the more the deviation, the more newsworthy the stories (the Olympics, symbolic of all that is good and right about world collegiality, stand in stark juxtaposition to a world of mindless terrorism; the bombing in a public park crowded with merrymakers; Richard Jewell, the security guard and unlikely hero; and the leak from the usually circumspect FBI were, by this criterion, inherently newsworthy);

They involve egregiously pathetic cases, which lend themselves to assumptions about the general state of the world and permit stories to be presented as simple morality tales of good or evil (the Greek tragedy of a fallen hero is poignant news, especially if the media and law enforcement created the hero/celebrity and law enforcement leaked news that the hero may have been the terrorist);

They involve ideological or, even better, physical conflict; the more clearly polarized and simplified the conflict, and the more likely the conflict happens to involve physical threats or force and involves “the establishment” or threatens a community of “innocents,” the more newsworthy is the event (the possibilities of a bombing or other acts of terrorism were so widely discussed prior to and throughout the Olympics that many may have concluded it was a self-fulfilling prophecy);

They are conveniently (physically and fiscally) reportable because of proximity to the newspaper or broadcast outlet and when there is ready access to the scene (the more photogenic the scene, the more newsworthy—an explosion and fire at night are exponentially more newsworthy than if they had occurred in bright sunshine; the more a story had been anticipated—such as was the case in Olympic Village, where security was especially high and the press and public were still nervous over what might have been a terrorist act in the TWA Flight 800 crash 10 days earlier, the more newsworthy);

They involve media-savvy individuals skilled in manipulating the media by offering themselves up for leaks, interviews, photo ops, and sound bites that permit print and electronic journalism to “package” their viewpoints and symbols (reactive reporting is less demanding and “safer” than proactive reporting);

The resolution of the story remains in suspense, as in a prolonged and public stakeout leading presumably to an arrest and trial (allowing the media plenty of time to define the “unfolding drama” and fill untold column inches and airtime with speculation in the absence of substantive news);

Competing media have allocated resources to the same stories (given the 15,000 journalists in town, how could it have been otherwise?).

There are other criteria for news, but you get my point. The bombing was news, and so was Richard Jewell.

These news traditions are not inherently flawed or immoral. They exist for a variety of justifiable reasons, not the least of which is the public’s hunger for such news. But they are craft-based judgments, inherently non-moral. That is, as put into practice they do not necessarily entail ethical principles such as justice, minimizing harm, beneficence (doing good), treating all individuals (sources, victims, news audiences, etc.) as ends in and of themselves rather than as means to an end, acting out of virtuous motives, truth-telling, etc. The latter motives may be involved in the

⁴Brian Brooks, George Kennedy, Darryl Moen, and Don Ranly, News Reporting & Writing, 5th ed., New York: St. Martin’s Press; Patrick Daley and Beverly James, *Framing the News: Socialism as Deviance*, *Journal of Mass Media Ethics*, 3:2, 1988, pp. 30–46; Herbert Gans, *Deciding What’s News: A Study of CBS Evening News, NBC Nightly News, Newsweek and Time*. New York: Vintage Books, 1980; Philip Patterson and Lee Wilkins, *Media Ethics: Issues and Cases*, 2d.ed. Dubuque, Iowa; Brown & Benchmark; Robert Schulman, *Media in a Values Muddle*. *Journal of Mass Media Ethics*, 2:1, 1986–87, pp. 23–29; and Bob Steele and Jay Black, *The Media Coverage of Waco: A Special Task Force Report by the Society of Professional Journalists*. Greencastle, In: Society of Professional Journalists, 1993.

enterprise, but they are not necessarily so, particularly if the news media are responding primarily from craft or professional concerns.⁵

Therefore, out of unquestioned traditions, or ignorance, or indifference, or insensitivity, or prejudice, or merely out of having been coopted by the propaganda of various interest groups, journalists have real challenges when handling the complex tasks at hand.

ON MAKING ETHICAL DECISIONS

Some who have been asked to help analyze the role of the news media in this and similar crises have concluded that on the surface these appear to be no-win situations. More than one journalist involved has suggested that it is unfortunate there are no guidelines, no ethics checklists, no textbooks to turn to when such on-going crises are being covered. (Actually, there are, but they don't get consulted very often.) Based on what we've heard from many of the players in the case and inspections of numerous news and editorial items, we conclude that some of the choices made by journalists could have benefited from a more systematic application of fundamental principles of journalism ethics.

Four fundamental journalistic principles were in constant conflict in Atlanta and in the months since: seeking/distributing truthful information, minimizing harm, acting independently, and being accountable. Typically, ethical dilemmas in this field emerge when two of the principles are in conflict. In Atlanta (and in several other recent cases) all four seemed to have been pitted against one another. Our task is to determine which of these duties take(s) precedence. It is not a challenge to be taken lightly.

The principles, the first three of which are discussed in the recently published SPJ ethics handbook, *Doing Ethics in Journalism* and the fourth—accountability—as part of the just-revised code of ethics for SPJ,⁶ are not “fault” standards, but basic duties that journalists appear to share. In other words, they are not bottom lines or legally enforceable, minimal performance standards. Rather, they are ideal goals to be sought. Journalists who approach them are praiseworthy. Those who strive but fall short of the mark are not necessarily blameworthy. However, those who ignore them in pursuit of inappropriate ends are deserving of criticism.

The first broad journalistic principle of seeking and fully reporting truth demands that journalists conscientiously gather as much information as possible so they in turn can inform, engage, and educate the public in clear and compelling ways on significant issues. It also demands honesty, fairness, and courage in gathering, reporting, and interpreting accurate information. Truth-seeking also entails giving voice to the voiceless and holding the powerful accountable. Standards of practice listed beneath “Seek truth and report it” include testing the accuracy of information from all sources and exercising care to avoid inadvertent error; diligently seeking out subjects of news stories to give them the opportunity to respond to errors of wrongdoing; and always questioning sources’ motives before promising anonymity.

The second principle calls for minimizing harm. It reminds us that gathering and reporting information may cause harm or discomfort to sources, colleagues and audiences, but demands compassion and empathy and asks that those affected by journalism be treated as human beings and not just as means to narrowly defined journalistic ends. One of the eight “standards of practice” beneath this principle says journalists should be judicious about naming criminal suspects before the formal filing of charges.

The third principle of acting independently asks journalists to vigorously guard the essential stewardship role that a free press plays in an open society. It encourages them to seek out and disseminate competing perspectives without being unduly influenced by those who would use their power or position counter to the public interest, and to remain free of associations and activities that might compromise journalistic integrity or damage credibility. In remaining free of obligation to any interest other than the public's right to know, the code tells journalists to be vigilant about holding those with power accountable.

The fourth principle says journalists are accountable to their readers, listeners, viewers and each other. It says journalists should clarify and explain news coverage and invite dialogue with the public over journalistic conduct, encourage the public to voice grievances against the news media, admit mistakes and correct them promptly, expose unethical practices of journalists and the news media, and abide by the same high standards to which they hold others.

⁵ See, especially, Patterson & Wilkins, and Lambeth, *supra*.

⁶ Jay Black, Bob Steele, and Ralph Barney, *Doing Ethics in Journalism*, 2d. ed., 1995. Boston: Allyn and Bacon. See SPJ Code of Ethics, attached.

Not surprisingly, these journalistic principles are often in conflict. The task for those asked to “do journalism ethics” is to determine which of these duties take(s) precedence, and how to perform with ethics and excellence without disregarding any one or two of the principles. It is not a challenge to be taken lightly.

Once we accept the idea that all four of these guiding principles can be put to work simultaneously, some of the “tough calls” may become easier to make. And, given the fact that almost every one of the code’s standards of practice are stated in positive language, rather than as scolding negatives, journalists and their critics can adopt the idea that a code can motivate people to excellence.

Such guidelines are not arbitrary rules, or “cookbook ethics,” but thought starters or reference points that might prove of value. The time to think through these criteria is during the tranquil, non-deadline periods, so that they can be employed readily when journalists are under fire.

Journalists facing similar incidents in the future should be able to benefit from a general process of ethical justification that can be plugged in to the specific problems being encountered. In addition to balancing the conflicting principles, they would do well to ask and then systematically answer a series of good, generic questions—questions that give rise to consideration of values, principles, loyalties, duties, and consequences.⁷ It is a generalized approach to ethical decisionmaking shared by colleagues in other fields of professional ethics, but one that has only recently been found in mainstream journalism ethics literature. For instance, the Poynter Institute for Media Studies and the handbook for the Society of Professional Journalists, *Doing Ethics in Journalism*, introduced the generic process as a series of ten fairly clear questions, free of philosophic jargon yet reflecting serious philosophic issues. The questions:

1. What do I know? What do I need to know?
2. What is my journalistic purpose?
3. What are my ethical concerns?
4. What organizational policies and professional guidelines should I consider?
5. How can I include other people, with different perspectives and diverse ideas, in the decision-making process?
6. Who are the stakeholders—those affected by my decision? What are their motivations? Which are legitimate?
7. What if the roles were reversed? How would I feel if I were in the shoes of one of the stakeholders?
8. What are the possible consequences of my actions? Short term? Long term?
9. What are my alternatives to maximize my truth-telling responsibility and minimize harm?
10. Can I clearly and fully justify my thinking and my decision? To my colleagues? To the stakeholders? To the public?⁸

Having used these 10 questions to launch a general consideration of news media ethics, *Doing Ethics in Journalism* then prepared customized checklists for such concerns as accuracy, deception, plagiarism, dealing with sources, etc., and, not surprisingly, for dealing with invasion of privacy. The privacy checklist would have been especially germane to those attempting to resolve the question of how to treat Richard Jewell and the FBI leak:

1. How important is the information I am seeking? Does the public have a right to know? A need to know? Merely a desire to know?
2. What level of protection do individuals involved in the story deserve? How much harm might they receive? Are they involved in the news event by choice, or by happenstance?
3. How would I feel if I were being subjected to the same scrutiny?
4. Do I know the facts of the story well enough? What else do I need to know?
5. What can I do to minimize the privacy invasion and the harm? Can I broaden the focus of the story by including more “victims,” thus minimizing harm to a select few? Can I postpone the story without significantly jeopardizing information to the public?
6. Do I need to include in the decisionmaking other individuals to gain more perspective?
7. Should I be focusing more on the system failure or the big-issue picture as opposed to focusing intensely on individuals?

⁷The Potter Box is a series of interconnected quadrants exploring the definition of the dilemma, and the values, principles, and loyalties to be utilized. Other models and paradigms are found in almost all fields of professional ethics.

⁸Black, Steele, and Barney, *op. cit.*, p. 18.

8. Can I clearly and fully justify my thinking and decision? To those directly affected? To the public?⁹

Again, the process of "doing ethics" takes place when individuals facing a dilemma carefully and systematically work through the salient questions, assuring themselves that "branching" is based on logically and clearly resolved answers to each question.

Working through the above checklists should help journalists, subjects and sources of news stories, and bystanders realize that ethics is not a relativistic enterprise. It should not be simply a matter of making random calls, or suggesting that whereas one policy or decision is appropriate for today, tomorrow is another matter altogether. It is a matter of ethical justification and accountability.

To say a decision has been "ethically justified" does not mean the decision will be a popular one. It merely means that ethical principles have been applied in such a way that a disinterested but fully informed public—a "jury," so to speak—would agree that the decisionmaker took reasonable care and did not act capriciously. Tough ethical decisions, entailing conflicting duties and often causing some harm, rarely please all the stakeholders, including sources and audiences.

It should be evident that the distribution of information carries moral overtones—after all, journalists report about real people, with genuine needs, desires, and pains, whose welfare must be considered. Given this, and given that the American press is a relatively unfettered enterprise when compared with the world's other media systems, journalism should be carried out in accord with ethical principles and clear reasoning. Such is not always the case.

It is unlikely there will be another Olympic bombing, but there will be many events that challenge journalists in the same way this one did. Perhaps the most important thing journalists can do is prepare for the inevitable. The pressures brought on by looming deadlines and hungry competition during a major breaking story make it nearly impossible to begin, from scratch, a clearheaded decisionmaking process. Far better the discussions about decisionmaking take place ahead of time, in the calm, so the processes can be almost automatically triggered by breaking events.

FROM VISCERAL REACTIONS TO PRINCIPLED DECISIONMAKING

Despite what the public may believe, journalists confront and respond to ethical and other dilemmas in a pattern that closely resembles that of many other professionals, largely because newsrooms are run like many other offices or institutions.¹⁰ Upon first encountering and recognizing an ethical dilemma, a journalist's initial reaction often takes the form of a visceral or gut level response. If it feels right, go for it; if it feels wrong, don't. At the awkward opening moments of a group decisionmaking process, a "big foot" often weighs in with a quick, definitive, and dogmatic opinion that stifles the group's creative process. (If "big foot" is part of management, the rest of the staff can be fairly well assured of being disenfranchised from any real ethical decisionmaking. The group's choices at that point become pragmatic, not ethical.)

For example, much of the debate over publication of suspects' names has occurred at the visceral level. Spokespersons for victims' rights and press rights frequently explain their absolutist stances with a simple—and dogmatic—"We just shouldn't or should publish this information. It just seems to be the right thing to do." This position is not conducive to the rational resolution of ethical dilemmas.

At the second stage of decisionmaking—provided they have overcome the stage of gut level reasoning—journalists find themselves deferring to laws or organizational policy statements or codes of ethics or merely tradition. Despite all the good work that has gone into producing such standards, we must recognize that blind adherence to these "authorities" also shortcircuits the ethical decisionmaking process.

Most codes of ethics and laws tend to be negative in nature—they tell us what not to do; they spell out the bottom line or minimally acceptable behaviors below which we should not fall, lest we be punished.¹¹ To that extent, these codes and policy statements seldom ask us to do our own clearheaded decisionmaking. There's not a great deal of difference between a "big foot" telling us "Do it this way, because that is the way we do things around here," and someone tossing the rule book or policy statement at us. Both are forms of authoritarian control, however well inten-

⁹ *Ibid.*, p. 182.

¹⁰ The following tri-partite distinction in how journalists face dilemmas has been articulated by Bob Steele and Paul Pohlman, faculty members at the Poynter Institute for Media Studies.

¹¹ Deni Elliott, *A Conceptual Analysis of Ethics Codes*, *Journal of Mass Media Ethics*. 1:1, 1985–86, pp. 22–26.

tioned they may be, if we are expected to follow them without conscience or free will.¹²

On the other hand, some codes and policy statements really do recognize the need for exploring ethical alternatives, weighing individual and organizational rights as well as duties. These codes or policy statements come close to the third—and, in the view of most ethicists, the ideal—approach to decisionmaking.¹³

The issues are complex, and no simple rules will resolve them. Note the statement in the newly adopted Society of Professional Journalists' Code: Under the section titled "Minimize Harm," we say that "Ethical journalists treat sources, subjects and colleagues as human beings deserving of respect." Then, within a list of eight recommendations, we say, "Journalists should be judicious about naming criminal suspect before the formal filing of charges." What this calls for is ethical reflection and reasoning * * * principled decisionmaking. It is not an absolute rule, readily followed by even the most morally immature cub reporter or tabloid hack—and gleefully invoked by rainmaking libel attorneys. Rather, it asks journalists to be philosophers, to consider the nature of their obligations to one another, to think about the short and long term consequences of their decisions.

There are numerous definitions of ethics, but a common thread among them is that ethics is the philosophical investigation of the principles governing human actions in terms of their goodness, badness, rightness, and wrongness. It entails both individual and community decisionmaking; if we decide not to make a decision, that in itself is a decision that may create significant consequences. Ethical decisions should be rational, fair, eternally and internally consistent, and defensible. Looked at another way, we can say that ethics deals with "owes" and "oughts." Unlike law, which concerns itself what we can do or can get away with, ethics concerns itself with what we should do. Ethics causes us to consider the nature of our responsibilities: to whom do we owe something; why ought we behave in a particular way, etc.¹⁴

Ethics demands philosophical thinking, which may be the crux of the media's dilemma. Journalists by and large don't do philosophy. Richard Kaplar and Patrick Maines of the Media Institute explain why ethics/philosophy and journalism are strange bedfellows:

"Philosophy is a discipline that operates in the realm of the theoretical; journalism operates in the precinct houses of the real world. Good philosophers have a capacity for abstract thinking; among journalists the ability to think and express thoughts in concrete terms is prized. Philosophical discussions tend to be open ended in scope and ongoing in duration; the great questions about the nature of being and meaning of existence remain open to discussion thousands of years after Aristotle and Socrates. Journalism, in contrast, seeks to present information with a sense of finality while meeting deadlines that are clearly finite in nature. 'And that's the way it is. * * *,' as Walter Cronkite would assure us each night. Philosophy is a contemplative activity while journalism is action oriented * * *."

"At the risk of overgeneralizing, it would not be stretching too far to say that philosophers have preferred to think of themselves as thoughtful and erudite compared to journalists, whom they perceive to be unfocused if not downright ignorant and in any event barely removed from the unwashed masses. Journalists, on the other hand, think of themselves as quick-witted pragmatists; they take pride in turning out a useful product under difficult conditions, and think of philosophers as idle dreamers whose practical contributions to society are highly questionable."¹⁵

The fast-paced, deadline-oriented, pragmatic world of the news media just doesn't seem conducive to "doing ethics." Despite the increased signs of ethical activity among some of today's more thoughtful news media, and the intensified pace of research and publication about media ethics, it is difficult to conclude that it is a natural condition for the press. The hundreds of journalists who come to the Poynter Institute for Media Studies each year, taking a few days out to put their feet up and think about big questions; the numbers of media outlets that have held in-house

¹²Jay Black and Ralph Barney, *The Case Against Mass Media Codes of Ethics*, *Journal of Mass Media Ethics*. 1:1, 1985-86, pp. 17-36; and John Merrill, *Journalistic Professionalization: Danger to Freedom and Pluralism*, *Journal of Mass Media Ethics*. 1:2, 1986, pp. 56-60.

¹³Clifford Christians, *Enforcing Media Codes*, *Journal of Mass Media Ethics*. 1:1, 1985-86, pp. 14-21; Black and Barney, *op. cit.*

¹⁴William K. Frankena, *Ethics*. 2d. ed. Englewood Cliffs, NJ: Prentice-Hall, 1973; Louis P. Pojman, *Ethics: Discovering Right and Wrong*. Belmont, CA: Wadsworth, 1990; Richard L. Purtill, *Thinking About Ethics*, Englewood Cliffs, NJ: Prentice-Hall, 1976.

¹⁵Richard Kaplar and Patrick Maines, *The Government Factor: Undermining Journalistic Ethics in the Information Age*, Washington, DC: The Cato Institute, 1995, pp. 9-10.

workshops and have rewritten their codes of ethics lately;¹⁶ the Associated Press Managing Editors' year-long effort to revise their code of ethics, and the Society of Professional Journalists' current work to rewrite its venerable code; the dramatic increase in enrollment in media ethics courses in the nation's universities;¹⁷ and the growing body of literature * * * all this activity encourages one to think many journalists are swimming against the tide and are genuine in their efforts to do ethics.

CONCLUSION

We have a long way to go before journalists are sensitized to the ethical nuances of crime coverage. It has taken decades for the profession to come to some agreement about the basics * * * simple stuff like junkets and freebies—i.e., the really egregious issues—and even then, we keep finding instances of moral primitivism out there.¹⁸ Just when we think there are some universally accepted standards for such fundamentals as truth-telling, we find NBC blowing up pickup trucks to make a point and Mike Wallace using a hidden camera on a source he had just told would not be photographed and Connie Chung telling Newt Gingrich's mother—and millions of viewers—that a little gossip about Hillary Rodham Clinton would be just between the two of them and Joe Klein lying to his media brethren, etc. It's enough to give one pause.

Nevertheless, a little optimism seems justified, given the intense interest in the subject matter and the mere fact that journalists, victims' rights advocates, students, and the general public are demonstrating increased awareness and sensitivity to the issues. And, as said at the outset, the enterprise advances once the issue is defined not merely as conflicting rights, but the articulation of ethical responsibilities.

Journalists, by and large, would like to behave and be respected as professionals. The mainstream press hates being lumped with the tabloids, but recent news events have made that distinction somewhat moot. If we want to be taken seriously as professional we need to have a code that means something to journalists and non-journalists alike. If we want to be ethical, we need to articulate our ideals, remind ourselves and others of our unique contributions to the nation's civic health, and act accordingly. If we want to continue to claim constitutional freedoms to gather and report information and ideas, we need to accept concomitant responsibilities.

¹⁶ *Taking the Pulse of the Nation's News Media*, Appendix A in Black, Steele, and Barney, *Doing Ethics in Journalism*, *op. cit.*

¹⁷ Edmund B. Lambeth, Clifford Christians, and Kyle Cole, *Role of the Media Ethics Course in the Education of Journalists*, *Journalism Educator*, 49:3, 1994, pp. 20–26.

¹⁸ Philip Meyer in his *Ethical Journalism: A Guide for Students, Practitioners, and Consumers*. New York: Longman, 1987, said "Newspaper people today are ethically confused." (p. 3)



**ETHICS CODE
APPROVED**

Code of Ethics

ADOPTED BY THE SOCIETY OF PROFESSIONAL JOURNALISTS • SEPTEMBER 21, 1996

Preamble

Members of the Society of Professional Journalists believe that public enlightenment is the forerunner of justice and the foundation of democracy. The duty of the journalist is to further these ends by seeking truth and providing a fair and comprehensive account of events and issues. Conscientious journalists from all media and specialties strive to serve the public with thoroughness and honesty. Professional integrity is the cornerstone of a journalist's credibility.

Members of the Society share a dedication to ethical behavior and adopt this code to declare the Society's principles and standards of practice.

Seek Truth and Report It

Journalists should be honest, fair and courageous in gathering, reporting and interpreting information.

Journalists should:

- ▶ Test the accuracy of information from all sources and exercise care to avoid inebriant error. Bellwether distortion is never permissible.
- ▶ Diligently seek out subjects of news stories to give them the opportunity to respond to allegations of wrongdoing.
- ▶ Identify sources whenever feasible. The public is entitled to as much information as possible on sources' reliability.
- ▶ Always question sources' motives before providing anonymity. Clearly establish in any promise made in exchange for information: keep promises.
- ▶ Make certain that headlines, news text and promotional material, photos, video, audio, graphics, sound bites and quotations do not misrepresent. They should not needlessly or highlight incidents out of context.
- ▶ Never distort the content of news photos or video. Montage, enhancement for technical clarity is always permissible. Labeled montages and photo illustrations.
- ▶ Avoid misleading re-enactments or staged news events. If re-enactment is necessary to tell a story, label it.
- ▶ Avoid undercover or other surreptitious methods of gathering information, except when traditional open methods will not yield information vital to the public. Use of such methods should be explained as part of the story.
- ▶ Never plagiarize.
- ▶ Tell the story of the diversity and magnitude of the human experience fully, even when it is unpopular to do so.
- ▶ Examine their own cultural values and avoid imposing those values on others.
- ▶ Avoid stereotyping by race, gender, age, religion, ethnicity, geography, sexual orientation, disability, physical appearance or social class.
- ▶ Support the open exchange of views, even those they find repugnant.
- ▶ Give voice to the voiceless, official and unofficial sources of information can be equally valid.
- ▶ Distinguish between advocacy and news reporting. Analysis and commentary should be labeled and not misrepresent fact or context.
- ▶ Distinguish news from advertising and clearly hybrids that blur the lines between the two.
- ▶ Recognize a special obligation to ensure that the public's business is conducted in the open and that government records are open to inspection.

Minimize Harm

Ethical journalists treat sources, subjects and colleagues as human beings deserving of respect.

Journalists should:

- ▶ Show compassion for those who may be affected adversely by news coverage. The special sensitivity of children with children and inexperienced sources or subjects.
- ▶ Be sensitive when seeking or using interviews or photographs of those affected by tragedy or grief.
- ▶ Recognize that gathering and reporting information may cause harm or discomfort. Painful of the news is not a license for arrogance.
- ▶ Recognize that private people have a greater right to control information about themselves than do public officials and others who seek power, influence or attention. Only an overriding public need can justify intrusion into anyone's privacy.
- ▶ Show good taste. Avoid junketing for formal currency.
- ▶ Be cautious about identifying juvenile suspects or victims of sex crimes.
- ▶ Be fair to criminal suspects, civil liberties and others who seek power, influence or attention. Only an overriding public need can justify intrusion into anyone's privacy.
- ▶ Refrain from criminal suspects' civil rights with the public's right to be informed.

Act Independently

Journalists should be free of obligation to any interest other than the public's right to know.

Journalists should:

- ▶ Avoid conflicts of interest, real or perceived.
- ▶ Reveal any associations and activities that may compromise integrity or damage credibility.
- ▶ Refuse gifts, favors, fees, free travel and special treatment, and limit secondary employment, political involvement, public office and service to a community organization if they compromise journalistic integrity.
- ▶ Decline unresolvable conflicts.
- ▶ Be explicit and transparent about holding those with power accountable.
- ▶ Keep focused treatment on substance and resist the pressure to influence news coverage.
- ▶ Be wary of sources offering information for favors or money; avoid banking for news.

Be Accountable

Journalists are accountable to their readers, listeners, viewers and each other.

Journalists should:

- ▶ Clarify and explain news coverage and justify dialogue with the public, not particularly, courts.
- ▶ Encourage the public to voice grievances against the news media.
- ▶ Admit mistakes and correct them promptly.
- ▶ Express constructive criticism of the news media.
- ▶ Abide by the same high standards to which they hold others.

Complete convention coverage in the November Quill

Senator SPECTER. We would like to turn now to Mr. Paul McMasters, who has been a journalist for more than 30 years. The last 10 years of his work was as an editor at USA Today, and for the last 5 years he has worked on free press, freedom of information and other first amendment issues at The Freedom Forum.

We welcome you here, Mr. McMasters, and look forward to your testimony.

STATEMENT OF PAUL K. McMASTERS

Mr. McMASTERS. Thank you, Mr. Chairman, and thank you for inviting me to participate in today's hearing. Good morning, Senator Leahy.

Richard Jewell has lived through what has to be among everyone's worst nightmare, as Senator Leahy pointed out earlier. Public outrage at the media and an outpouring of sympathy for Mr. Jewell is quite understandable. So is the intense criticism of the media, the most visible element involved in Mr. Jewell's suffering. In fact, much of that criticism has come from within the media community itself.

What often gets lost in the outcry, however, is the fact that few journalists would have ignored the leaks that put Mr. Jewell's name in play or would have downplayed the story of the FBI training its massive investigatory machinery on a lone security guard. There are solid news judgments behind the initial decision to go with the story and then to continue to follow it up, as Dr. Black has pointed out.

It also should be noted that such coverage as Mr. Jewell received is neither unprecedented nor extraordinary. Suspects in major cases often are named before they are charged. There are sharp differences among journalists and others on the ethics of the Jewell coverage, whether it was responsible or whether it was fair. Suffice it to say that journalism, as much as some would like it to be otherwise, is an evolving process, a first rough draft of history, if you will. And while it may be written in haste, it is not carved in stone. If its words can wound, they also can heal.

In fact, a careful review of the reporting in all media, I believe, will show that nearly all stories, print and broadcast, made it clear that Mr. Jewell had not been charged with any crime. I think that same reporting also pressured FBI officials to clear Mr. Jewell's name as quickly as possible.

Still, there are deep concerns about the fairness and the accountability of the press that I share, and I am not here to suggest this morning that there are not problems. What I am here to suggest is that as you, Senator Specter, have pointed out, as well as others, it would be not only unconstitutional but unwise and unnecessary for government officials to try to correct what they perceive to be unfair or irresponsible reporting. The private sector is the appropriate venue for resolving such matters, and in that regard I can assure you that the public's concerns about ethics, fairness and accountability in the media are being heard loud and clear within the media community.

Aside from a heightened sensitivity to ethics among journalists which Dr. Black mentions, there are any number of mechanisms and initiatives ensuring a healthy dose of self-evaluation and self-

help in contemporary journalism. Beyond that, there is a vast array of legal remedies available to those who are aggrieved by press coverage or tactics. Libel suits are frequent and formidable, as Thursday's decision in Miami awarding \$10 million to a plaintiff who had sued ABC underscores. Nationwide, the median amount of awards in libel cases has increased 10-fold in 4 years, to more than \$2 million each.

But many other legal problems keep the press in line, also. I am talking about prior restraint attempts, gag orders, contempt of court citations, the banning cameras in the courtroom, and the jailing of reporters for refusing to become an arm of the law, as well as a body of information called trash torts. In the face of all those facts, few could argue that there are no ways to hold journalists to account, and I would say that few could argue either that the press has been uniformly arrogant or stubborn when confronted with these kinds of complaints.

I think news executives and their lawyers seem more willing than ever to settle suits or adjust the reporting in order to avoid them, and as we all know, that happened just last week when NBC officials agreed to pay Richard Jewell an undisclosed sum of money without even being sued. There is a long list of that kind of thing happening, and for those who delight in this trend there should be some worry about democracy's watchdog fitting itself with a shorter leash and muting its bark.

Those crying for vengeance in the Richard Jewell case should consider for a moment the consequences of a press too timid or too intimidated to tell the public what it knows. Those who contend the press is not accountable to anyone are engaging in an almost willful avoidance of the facts, in my opinion.

Finally, I would just like to point out the constitutional dimension to this discussion must not be ignored or given short shrift, and I appreciate both Senator Specter and Senator Leahy mentioning that this morning. I think it is quite clear that what is ethical or responsible performance by the press may be one thing for a working journalist, another for an ethicist, and quite something else again for a Member of Congress. The resultant confusion and disagreement frustrate many who would like to see orderliness, accountability, and in some cases vengeance.

Under such circumstances, some people and some elected officials may be inclined to think there ought to be a law. Well, there is a law. It is called the first amendment and it says "Congress shall make no law." I just might add it should not even consider one.

Thank you very much.

Senator SPECTER. Thank you very much, Mr. McMasters.

[The prepared statement of Mr. McMasters follows:]

PREPARED STATEMENT OF PAUL K. MCMASTERS

Mr. Chairman. Members of the Committee. I would like to thank you for inviting me to participate in today's hearing. I am here to present a First Amendment perspective. I was a journalist for more than thirty years, the last ten as an editor at USA Today. I left daily journalism five years ago to work exclusively on free press, freedom of information and other First Amendment issues at The Freedom Forum, a financially independent, non-partisan foundation dedicated to free press, free speech and free spirit. As First Amendment Ombudsman at The Freedom Forum, I write, lecture, and serve as a media resource when First Amendment issues arise in Congress, the courts, or public discourse. I do not lobby.

It has to be among everyone's worst nightmare: Singled out simultaneously by the FBI and the media as a suspect in a terrorist bombing. With that in mind, the public outrage at the media and outpouring of sympathy for Richard A. Jewell is quite understandable. Mr. Jewell endured 88 days under suspicion by the nation's premier law enforcement agency as it investigated the July 27 bombing in Atlanta's Centennial Park during the Summer Olympics.

Much of the criticism aimed at the media for its extensive and detailed coverage of Mr. Jewell comes from within the media itself. What often gets lost in the outcry, however, is that few journalists would have ignored the "leaks" that put Mr. Jewell's name in play or would have downplayed the story of the FBI training its massive investigatory machinery on a lone security guard. The leaks that fueled this story were apparently from trusted, knowledgeable sources within the law enforcement community, perhaps the agency itself. The bombing, which killed one person and injured many others, was a significant news event about which people wanted to know every little detail, including how the FBI's investigation was progressing. Moreover, this story unfolded in a general atmosphere of deep anxiety among the American people about terrorism, particularly in light of the government's parallel investigation into the explosion of TWA Flight 800.

It also should be noted that such coverage as Mr. Jewell received is neither unprecedented nor extraordinary. Suspects in major cases often are named before they are charged. Professor David Anderson at the University of Texas law school in Austin has pointed out that it has become common practice in recent years for the media to publish and broadcast details of law enforcement investigations, including the names of suspects.

There are any number of examples: Ibrahim Ahmad, whose family was harassed after authorities targeted him initially as a suspect in the Oklahoma City bombing. Robert Wayne O'Ferrell, who was a suspect briefly in the mail bombings of a Georgia civil rights attorney and an Alabama federal judge. Or William Bennett, a Boston man identified as a suspect in the murder of Carol Stuart, who actually had been killed by her husband. The list goes on.

There are striking similarities between the Richard Jewell coverage and some of the news stories about Theodore Kaczynski in the Unabomber investigation. Members of this committee no doubt will recall that last April, one of Mr. Kaczynski's lawyers, Michael Donahoe, charged that any potential grand jury proceeding had been "permanently poisoned by the government's outrageous conduct in disclosing to the media the highly incriminating nature of the evidence taken from Kaczynski's cabin." At the time, Mr. Kaczynski had not been charged with any Unabomber crimes. U.S. News & World Report carried a story on April 22 that began: "The latest loopy loner to capture the nation's attention is really in a league of his own * * *. But in the accused Unabomber Theodore Kaczynski, a nation increasingly injured to the mumbblings and manderings of the lunatic fringe finally has a character worthy of Dostoevsky." No doubt, his attorneys would be considering legal action against the media right now if their client had not been charged.

Many journalists believe that some aspects of the coverage of Mr. Jewell ran afoul of ethical guidelines. Others believe that the highest calling of a journalist is to keep citizens constantly apprised of all developments in a high-profile news event, even though they know that later developments may refine or even negate some of their reporting. Journalism, as much as some would like it to be otherwise, is an unfolding process, a "first, rough draft of history," if you will. And while it may be written in haste, it is not carved in stone. If its words can wound, they also can heal.

An irony of this whole affair is that the Atlanta Journal-Constitution, much maligned by Mr. Jewell's lawyers, turned in a world-class performance in coverage of the Olympic Games and the bombing investigation. A careful review of the reporting in all media, I believe, will show that nearly all stories, print and broadcast, made it clear that Mr. Jewell had not been charged with any crime. The reporting also pressured the FBI to clear Mr. Jewell quickly if they could not make a case. Further, the media gave Mr. Jewell numerous opportunities to respond to leaked allegations as well as the press coverage during the time the FBI was targeting him as a suspect.

Even so, the fact that this subcommittee hearing has been convened is evidence enough that there are those who have deep concerns about the fairness and accountability of the press. I share those concerns, and am not here to suggest that the press in general or the coverage of Richard Jewell in particular is without problems. What I am here to suggest is that even if such inquiries as this hearing spring from the purest of motives and sincerest of motivations, they still can provoke an unhealthy momentum toward legislation or other "sanctions" against press freedom. The private sector is the appropriate venue for resolving such matters. In that re-

gard, I assure you that the public's concerns about ethics, fairness, and accountability are being heard loud and clear within the media community.

Most journalism organizations have ethics codes, as do many individual newsrooms. Those codes and guidelines are under constant discussion and revision, even attack. Ethics discussions are prominent on the programs at press group conventions and conferences. Aside from this heightened sensitivity to ethics among journalists, there are any number of mechanisms and initiatives insuring a healthy dose of self-evaluation and self-help in contemporary journalism. These include the corrections and clarification columns most newspapers carry, in-house media reporters, more aggressive reporting on other media, press reviews and journals, the appointment of ombudsmen to represent the readers, and the development of a robust movement called civic journalism, which seeks to improve journalists' sensitivity for and connection with the public. Perhaps the most effective force for ethical and responsible performance is reporters' understanding that their good names and reputations are on the line. Irresponsible, unethical reporting means severe damage to credibility with both the public and colleague, which is difficult if not impossible to repair.

Beyond that, those who are aggrieved by press coverage or tactics have more than adequate recourse. There is a vast array of legal weapons, which deal not only with the accuracy of reporting but the methods employed by reporters. Across this nation, newspapers, networks, and television stations face many daunting legal hurdles to getting out the day's news. Libel suits are frequent and formidable. In Philadelphia there have been 60 major libel cases filed in the last 25 years by public officials alone—many of them judges. But many other legal problems plague the press: prior restraint, gag orders, contempt of court citations, the banning of cameras in the courtroom, and jailing of reporters for refusing to become an arm of the law. Today, lawyers are making more use of other types of legal challenges—something known in the trade as “trash torts.” In these cases, lawyers go after reporters' personal lives, their telephone and credit card records, their reporting techniques, their conversations with editors and colleagues, their ethics codes, even the personal lives of their sources. Just a sampling of charges in suits against journalists in the last year or so: tortuous interference, tortuous stalking, trespass, intrusion upon seclusion, invasion of privacy, conspiracy, intentional infliction of emotional distress, intentional interference with law enforcement, and negligence.

In the face of those facts, few could argue that there are no ways to hold journalists to account.

Few could argue, either, that the press has been uniformly arrogant or stubborn when confronted with such challenges. New executives and their lawyers seem more willing than ever to either settle suits or adjust their reporting in order to avoid them. Just this past year, ABC News settled a multi-billion dollar suit by Philip Morris, the Philadelphia Inquirer settled a 24-year-old libel suit brought by a former prosecutor, and a newspaper and television station in Waco settled a suit brought by Bureau of Alcohol, Tobacco, and Firearms agents and their families. CBS executives pulled a 60 Minutes segment on cigarettes over the possibility that a suit might be filed. While denying interviews with the Church of Scientology officials affected the decision, CNN nevertheless did not air a piece on dismissal of the Church's libel suit against Time magazine. And, of course, we all know how NBC officials last week agreed to pay Richard Jewell an undisclosed sum of money without even being sued.

For those who delight in this trend, there should be some worry about democracy's watchdog fitting itself with a short leash and muting its bark. Those crying for vengeance in the Richard Jewell case should consider for a moment the consequences of a press too timid or too intimidated to tell the public what it knows.

Has Mr. Jewell suffered permanent, irreparable harm? I don't know the answer to that question, but I do know this: Mr. Jewell has more than adequate legal representation. He has virtually unlimited access to the press if he chooses to use it. He has this sympathy and compassion of nearly everyone who ever heard his name. He has a healthy stash of cash from NBC for his pain and suffering. He has a letter from a U.S. attorney that is as close to an apology as an agent of government can render. He still can have his day in court if he wishes.

Those who contend the press is not accountable to anyone are engaging in an almost willful avoidance of the facts. I've already mentioned the significant legal and professional mechanisms of accountability. The ultimate accountability, of course, is in the hands of the readers who plunk down their change for the morning newspaper or the viewers who click remotes for the evening news. Believe it or not, journalists, the bosses, and their advertisers are acutely responsive to the harsh reality of economic accountability.

Even so, the press cannot deny or escape its constitutional mandate to aggressively pursue the news and to publish or broadcast as quickly and fully as possible the facts as they are known at the time—much as this subcommittee pursues a matter of public interest. Despite the real risk of embarrassment or pain to individuals caught up in that process, the press must keep the citizens informed and trust them to sort out the good from the bad, the responsible from the irresponsible, the fair from the unfair.

And the members of this committee must keep foremost in their minds that it was the FBI who put Richard Jewell's name into play. The coverage was based on "leaks," which often are used by news sources to get information into the public domain. Prosecutors who need to strengthen a case and law enforcement officers who have run out of leads frequently "leak" stories or leads to the media in an effort to flush out a suspect, an informant, or more information. This time-honored tradition often infuriates elected officials and citizens but nevertheless sometimes yields beneficial results. On their own journalists have neither the resources nor the authority to obtain suspects' names or other details of an investigation. And it should not escape the attention of this committee that much of the information, right and wrong, that Mr. Jewell and his lawyers object to can be found in the initial affidavits filed in court by FBI agents.

Finally, we must not forget the constitutional dimension to this discussion. It must not be ignored or given short shrift. I think it is quite clear that what is ethical or responsible performance by the press may be one thing for a working journalist, another for an ethicist, and quite something else again for a member of Congress. The resultant confusion and disagreement frustrate many who would like to see orderliness, accountability, and—in the case of well-publicized incidents such as the Richard Jewell coverage—vengeance. Under such circumstances, some people and some elected officials may be included to think, "There ought to be a law."

Well, there is a law. It's called the First Amendment, and it says, "Congress shall make no law." I just might add: it should not even consider one.

Thank you.

Senator SPECTER. We turn now to Mr. Steve Geimann, who is the president of the Society of Professional Journalists, representing the Nation's largest and most broadly based journalism organization with some 13,500 members nationwide.

Thank you for being here, Mr. Geimann. As with the others, your full statement will be made a part of the record.

STATEMENT OF STEVEN GEIMANN

Mr. GEIMANN. Good morning, Mr. Chairman and Senator Leahy. In addition to your introduction of me as the elected president of the Society of Professional Journalists [SPJ], I have also been a journalist for more than 22 years in radio, newspapers, wire services, and today as the senior editor of a trade newsletter that covers the communications and telecommunications industries. For 11 years, I worked at United Press International and for 2 years was its executive editor.

I appreciate the invitation to testify here this morning on an issue that has, frankly, sharply divided our profession, in some cases divided our newsrooms. I can't remember an issue that has sparked more discussion, and in some cases more disagreement, than the media's disappointing handling of the investigation into the Centennial Park bombing.

But while I am here voicing my concerns, I also want to make clear, as my colleagues have, that my purpose is to help the committee and the public understand how journalism and journalists work. I oppose any effort by the Congress to draft legislation or amend existing statute to remedy what some may think is a problem.

What happened in Atlanta wasn't a problem in search of a public policy solution. It was, quite simply, a bad patch for reporters and

news organizations that work very hard every day to distill what happens and squeeze all the information into a 60-page newspaper, a 30-minute broadcast, or now onto a 6-inch computer screen. Usually, the journalism is done to some very high standards we set for ourselves. Sometimes, we have Atlanta. What happened last July has happened before, and whether we like it or not, it will probably happen again. That is the nature of this profession and of this democracy. Enacting new law or modifying existing law isn't the solution.

The press is already using this episode to begin a wide-ranging discussion about how we all do our jobs and how we can do our jobs better. Editors, reporters, producers, and news directors across the country are already reviewing their own policies and procedures for when this happens again, especially when accusations are made based on leaks from law enforcement officials.

My organization, SPJ, is playing a key role through a rigorous discussion about our recently adopted code of ethics. A section of that code is titled simply "Minimizing Harm." We take that principle seriously, and I would say an overwhelming majority of journalists subscribe to language that urges us to be especially careful when reporting accusations made against individuals.

Our code covers the Jewell case in one simple sentence. "Be judicious about naming criminal suspects before the formal filing of charges." That is it. By comparison, I personally believe media coverage of the investigation was, in hindsight, excessive, overblown, and unnecessarily intruded into the life of Mr. Jewell. But as painful as this experience was, it now offers us a textbook example of how to deal with such stories.

Did we ask the right questions of the police? Did we push them to explain their rationale for identifying Mr. Jewell as a target rather than as a suspect? Did we adequately explain these answers to our audiences? I think not.

That Richard Jewell was subjected to a media frenzy can't be disputed. He was hounded, stalked, monitored, and photographed almost continuously after his name was leaked to the Atlanta newspaper. In some cases, stories went far beyond the original information that identified him as a target in the investigation. In fact, for a time it seemed like many editors and reporters had checked their tools into a closet in their rush to jump on the rampaging herd that needed to have a story in the wake of a tragedy.

I understand that law enforcement was under pressure to find a suspect. From all appearances, they may have leaked Mr. Jewell's name to apply public pressure on someone they thought might be the suspect. What I don't understand is why so many reporters and so many news organizations followed in lockstep by regurgitating those anonymous leaks and blasting them into bold front-page headlines. Reporters who are usually careful and thoughtful just forgot the basics.

We learned some lessons in Atlanta this summer. We found out that law enforcement could be wrong. We learned that the tyrannical pressure to gather and report news faster left us little time to do basic research. As a result, our credibility suffered just a little bit more. We will continue to discuss and debate how we handled the Jewell story. We will wrestle with how to handle information

the next time the FBI or the local sheriff gives us a tip. We will argue about the need to publish or broadcast an important story or whether to hold back and wait for more information, and this as it should be in a democracy.

We should—we must—discuss our failures and our successes in public. We must share with our readers and viewers how we cover stories. We must show the public we are ready and able to craft remedies. The public deserves such an open and honest accounting of how we do our job.

Thank you.

Senator SPECTER. Thank you very much, Mr. Geimann.

[The prepared statement of Mr. Geimann follows:]

PREPARED STATEMENT OF STEVEN GEIMANN

My name is Steve Geimann and I'm currently president of the Society of Professional Journalists, the nation's largest and most broadly based journalism organization with 13,500 members nationwide. I've also been a working journalist for 22 years, in radio, newspapers, wire services and now trade publications. I worked for a decade at United Press International in various jobs, including two years as executive editor in charge of all editorial operations.

I appreciate the opportunity to appear today with my journalist colleagues to discuss a matter that has, frankly, sharply divided our profession and in some cases even divided our newsrooms.

But while I voice my criticisms, I also want to make clear that my purpose is to help this committee and my colleagues. I do not support a role for the Congress in drafting legislation or amending existing statute to remedy what some may perceive is a problem. This is not a problem.

What happened in Atlanta has happened before. Whether we like it or not, it probably will happen again. That's the nature of my profession and this democracy. Enacting new law or modifying existing law would effectively end the free and robust press we enjoy today in this country.

The press is already using this episode to begin a discussion about how we do our jobs and how we can do our jobs better. Editors and reporters, producers and news directors are thinking and planning for the way they cover stories where accusations are made based on leaks from law enforcement officials. SPJ is playing a role through rigorous discussions on its revised Code of Ethics.

During my two decades in this business, I've covered law enforcement and other police-related stories. I've questioned cops on the beat and officials in the front office. I've worked with the FBI and other federal agencies. Never have I participated in such an overreaction to a story of great public interest, as the case of the bombing in Olympic Centennial Park and the identification of security guard Richard Jewell.

We, the media, blew it in July. Our coverage of the bombing and the search for a suspect was, in hindsight, excessive, overblown and unnecessarily intruded into the life of Mr. Jewell.

How we, the press, handled the Olympic bombing case has been debated at length within—and outside—the profession, and likely will continue to be debated. This is good. Our missteps should be carefully examined within the profession and especially within our individual newsrooms.

As sad an episode as it was, it now offers us—the press—a textbook example how to deal with such stories and more importantly how to deal with law enforcement when police and prosecutors go beyond their charge and use the press as an extension of their own offices.

That Richard Jewell was subjected to a media frenzy can't be disputed. He was hounded, stalked, monitored and photographed by the media almost continuously after his name was leaked to the Atlanta newspapers in some cases, news stories went far beyond the original information that identified him as target in the investigation.

Many reporters, editors and producers appeared to leave their tools in a closet and rushed to jump on the rampaging herd that needed to have a story in the wake of a tragedy during a global event.

Law enforcement was under pressure, certainly, to find a suspect. But the press should not follow in lock step by regurgitating what police and federal agents leak to reporters, sometimes in an effort to apply pressure on a potential suspect.

The press has for years exploited leaks from reliable sources and law enforcement officials to write about crimes. In just the past year, relations between police and press have come under increasing scrutiny as the cases become more high profile. For example, a flood of leaks followed the arrest of Theodore Kaczynski in Montana as the prime suspect in the Unabomber investigation. One such leak said Kaczynski's brother provided the critical information that led to his capture, a piece of information the family thought was private.

In the Washington suburbs earlier this year, a murder suspect dropped a plea bargain agreement when details were leaked to the Washington Post.

Last year, authorities leaked information about a Middle East businessman who was said to be a suspect in the Oklahoma City bombing. He was detained until further details were developed. And, of course, the O.J. Simpson pre-trial fiasco was riddled by a raft of leaks when police investigators and even defense lawyers showered reporters with all sorts of off-the-record information about the case. Remember the bloody ski mask? Remember the military trenching tool? Neither existed, but the press reported the details based on leaks. The leaks prompted defense lawyer Barry Tarlow in October 1994 to accuse police of leaking prejudicial information on the case.

And even before O.J., prosecutors were accused of leaking information on the investigation into the bombing of the World Trade Center in New York City. A federal judge tried to plug the leaks, to no avail.

In a celebrated case, Los Angeles reporter Bill Farr spent 45 days in jail in 1970—26 years ago—when he refused to reveal the source of a sealed transcript revealing testimony by a potential witness in the Charles Manson case. Farr said the document came from one of several lawyers under a gag order, but he never revealed his source.

The relationship between the press and the police is symbiotic. For our stories to be authoritative and accurate, we need the investigators and the police to provide us with information. Sometimes, I think we accept what these authorities have to say without asking follow-up questions. We think it's OK to accept what they say without any further context.

The SPJ Code of Ethics includes specific language regarding the use of such information. We believe professional journalists are judicious about naming criminal suspects before the formal filing of charges. That doesn't appear to have happened for Mr. Jewell.

We believe reporters should balance a criminal suspect's fair trial rights with the public's right to be informed. This requires some critical thinking on the part of journalists, and in some newsrooms they have rules regarding the way they handle such information.

But sometimes, the police need the press to advance their case, or in too many cases, to flush out additional information by focusing on a likely suspect. It is here that our problem intensifies.

I call this the "Absence of Malice" scenario. In that 1981 movie, federal prosecutors are frustrated in trying to crack a case and arrange to have a big-city newspaper reporter see some incriminating information, in hopes the story will apply pressure on the suspect. In fact, the suspect is innocent, but his reputation is sullied by banner headlines and a run of stories about the case. In the end, the reporter quits and gets a job in a small New England town.

This "Absence of Malice" scenario always hurts the press. But while we get the blame, some of the responsibility lies with law enforcement. It is the increasing incidents of prosecutors using the media as an extension of their own investigation units that is causing this problem.

As former Washington Post ombudsman Joann Byrd said in a recent Poynter Institute on-line debate: "I think the main lesson [of Jewell] is that law enforcement people may be wrong." In the same discussion, Ethics expert Bob Steele of the Poynter said: "Journalists should have pushed their sources to offer more substance as to why Jewell was now being targeted as a bad guy instead of being praised as a hero."

In Atlanta, the press performance was embarrassing. I remember listening very closely to all the reports to hear whether Mr. Jewell had been arrested, or whether he had been charged or even the basis upon which his name was even "put in play." I never heard anything, other than that the hero had now become "a target." Frankly, I'm not sure I know what a target is. Is it more than a suspect? If there's such a distinction, I'm not sure I learned about it in journalism school or in my early days as a reporter.

American Journalism Review in an exhaustive examination of what the press did noted that many newspapers pushed the limit when reporting on Jewell's involve-

ment. The Boston Globe, for example, reporting matter of factly: "This much is clear. He had a driving desire, even a need, to be a cop."

That first story in the Atlanta Journal also tested the limits and failed. The report's second paragraph said: "Jewell, 33, former law enforcement officer fits the profile of the lone bomber. This profile generally includes a frustrated white man who is a former police officer, member of the military or police 'wannabe' who seeks to become a hero." The information wasn't attributed to anyone. CNN in a broadcast the same night picked up this unattributed information and broadcast it worldwide.

Later, newspapers reported that Jewell wrote more parking tickets than the average campus police officer and crashed his police cruiser into another squad car.

I find fault with our performance in two respects. First, we are too quick to rush into print and broadcast such a thinly researched piece of information. According to the American Journalism Review account, reporters saw police outside Jewell's home, they had been given his name but without any identification that he was about to be arrested. Just a note here: The Journal also used very big and bold headlines to scream the news in the special extra edition.

The second failing is unique to the media. Once the story was out, and was whipped around the world by CNN, many otherwise careful and thoughtful reporters and editors checked their ethics and practices at the door. Editors in Dallas and Seattle discussed and considered other ways to handle the story, and a few even considered running the story but without the same. Pam Maples, national editor of the Dallas Morning News, told AJR that because Jewell's name "was all over TV," her readers expected to have more about it in the morning newspaper.

At the Seattle Times, national editor Greg Rasa said editors debated the story from the perspective of its own policy that suspects aren't named until they are charged. Jewell hadn't been charged, but Rasa told ADR: "Won't we appear foolish for being the only medium in the country not to name Jewell?"

Other newsrooms were in the same trap. Once the name was out, Jewell was fair game. We saw the same behavior when news organizations rushed to identify rape victims in the William Kennedy Smith trial and Central Park jogger cause, because the name had been leaked and reported by another news organization. Such "pack performance" prompted ABC News correspondent Ted Koppel to wonder: "Are we all prisoners of the lowest common denominator?"

Certainly, we dropped the ball big time. Reporters didn't ask the key question that could have made the difference between accurate and fair reporting and what we produced. AJR Editor Rem Rider at a recent Freedom Forum discussion said: "There was a total absence of the kind of basic skepticism in the rush to get this into the paper and on television. Even some of the inconsistencies that would have made it apparently physically impossible for him to have both planted the bomb and made the call * * * didn't seem to raise enough questions."

My colleague Bob Steele at Poynter said at a Freedom Forum Media Studies Center discussion that while news media had an obligation to report that Jewell was being investigated, "they just did a poor job of reporting that story." He said "too many journalists were overzealous in pursuing Jewell and exhuming his background. Too few journalists were aggressive in examining law enforcement officials and investigating the strengths of their case against Richard Jewell."

At the same discussion, Keith Woods of Poynter said the watchdogs turned out to be rabid. He said the early discussion of Jewell's background "was employed prematurely, recklessly and with disastrous and now embarrassing results."

The media will continue to debate our performance in this case, and likely future cases. We will have these discussions within our newsrooms, at professional meetings held by SPJ and other journalism organizations and in the occasional meetings we have with law enforcement.

This is as it should be. In a democracy, we occasionally have instances when any of the players falls short of expectations. This is true for police and prosecutors as it is of the press. I don't want to tell the law enforcement experts how to do their job and I don't want them telling me how to do mine.

I want to stress that these problems won't be solved by new or modified legislation developed here on Capitol Hill or in any state house. Such remedies would be too high a price to pay, since it would be the first step in eroding the freedom of press and freedom of speech we have enjoyed in this country for more than 200 years. Instead, through organizations such as SPJ, we're using the experiences of Atlanta to help other journalists work more responsibly, minimizing harm to innocent people.

I appreciate the opportunity to share my thoughts with the committee, and I appreciate your interest in this subject. But I think it's very important the Congress avoid attempting to step into this issue by regulating or controlling the press. That, frankly, is too high a price to pay.

Senator SPECTER. The subcommittee has tried to make it as plain as possible both in our announcement handling and our comments here today that our oversight is over the Federal Government. Our oversight is not over the media. When we are talking about legislation, we are talking about legislation which may be directed to people who leak information who have a public duty not to do that.

The tension between government and the media is historic, some fascinating historical accounts on it. The one incident which I found enormously impressive that hasn't been commented about much was the at least reported action by President John Kennedy in 1962 of stopping his subscription to the New York Herald Tribune, and that seems to be a good way to respond. Maybe that had something to do with the demise of the New York Herald Tribune. Who knows?

When you talk about self-restraint, and we were emphatic to talk about what the media has done which is good, I am fascinated by your very direct, very blunt, very explicit statement, Mr. Geimann, that the handling of Jewell was excessive, overblown, and unnecessarily intruded into the life of Mr. Jewell.

Mr. McMasters, do you agree or disagree with that?

Mr. MCMASTERS. I would not be that blunt nor that harsh. I think that there was some awfully good reporting. In fact, I am a little dismayed—and I have nothing to do with the Atlanta newspapers, but I am a little dismayed that world-class reporting both on the Summer Games and on the bombing itself was turned in by that newspaper, and yet Mr. Jewell's lawyers continue to target that newspaper, which I think has been very sound in its journalistic practices and did probably nothing different than what most of us would have done.

So I part company with my colleague on that harsh judgment. I think there were instances where we brushed up against or crossed an ethical line, but I think that that is inevitable in the process of journalism. And as I say, those kinds of things can be made up in subsequent coverage and I think were made up in subsequent coverage.

Senator SPECTER. You say you think they can be made up?

Mr. MCMASTERS. I do think that—

Senator SPECTER. You made a comment that it is written in haste, but not in stone. Now, you say it can be made up, and it may well be, probably is, that the freedom of the press is important enough to suffer a lot of problems because there are so many important things that it does. However, when you say it can be made up, I would like to pursue that with you. Not in stone? Those words are not retrievable, at least for Mr. Jewell and his mother. How can it be made up?

Mr. MCMASTERS. Well, as I pointed out in my testimony, there are many remedies, legal and otherwise, that a person unfairly or unjustly damaged or pained by such coverage has recourse to. In fact, Mr. Jewell and his lawyers have signaled that they are going to do that. In fact, they have already, as I mentioned, made a settlement with NBC without even having to file a suit. It is clear that there may be one other target of a suit from Mr. Jewell. So in that sense, there is that process.

There also is the fact that when the announcement of the letter from the U.S. attorney that cleared Mr. Jewell as a target—there were more than 20 television cameras and other media there to record that event and to tell any of the world that might have missed it otherwise that Mr. Jewell had been exonerated, in your words, and that no one from here on out should attach any guilt to him.

Never completely can anybody recover from that sort of an ordeal. I understand what you are saying there, but I am saying there is recourse.

Senator SPECTER. Well, that is the point that I would focus on, and I would use your words, "never can anybody completely recover." Damages are possible. You mentioned the \$10 million award in the ABC case. Do you think that that has any significant chance of standing?

Mr. MCMASTERS. I hope not because the facts are much different in this case, as I see them, because another jury had already exonerated ABC in this case, but the jury that head this case was not allowed to know that. The judge did not allow it.

Senator SPECTER. I think it is very important not to place any real emphasis on that award, given the underlying facts of that case and given the law. The Supreme Court has set a very, very difficult standard of malice to establish a claim on libel.

Mr. MCMASTERS. The problem, Senator, is we have seen a lot of media—

Senator SPECTER. And I was about to say I don't disagree with it, and what juries may do. This is like so many jury verdicts which are blared in headlines as abuses or excesses of the civil justice system: most of them don't stand, especially the ones in the awards against the media.

Mr. MCMASTERS. What I was going to point out is in just the past year, you have seen significant settlements of cases that were possibly winnable under just the law that you cite, the record of the Supreme Court. The Philadelphia Inquirer finally settled in a case that was 24 years old because they were just worried enough about the stakes, in this case more than \$20 million, to go ahead with it. ABC settled a suit with Philip Morris, a multi-billion-dollar suit, because the stakes were so high. CBS withdrew a story on "60 Minutes" for just worrying about whether a case would be filed against them or not, not that they are worried about whether they could win or not, but the immense costs of defending themselves.

Senator SPECTER. Well, when you talk about those lawsuits, it is easy to talk about the figures and easy to talk about the settlements, but you have to look behind those cases and take a look at what happened. These cases are not settled in the multi-million-dollar figure for costs of litigation. They are settled because people think that there is substantial liability exposure.

Mr. Black, excessive, overblown and unnecessary—what do you think? You have got to break the tie here between Paul McMasters and Steven Geimann.

Mr. BLACK. I will go with Geimann.

Mr. GEIMANN. He is my ethics chairman; I guess that is why.

Senator SPECTER. OK. Well, it is two to one. Now, what do we do about it? You want to keep Pat Leahy and Arlen Specter out of

it. There is no doubt about that, and we are not about to get into it. We have been around long enough to know better, but the ombudsmen and the journalists themselves—is there any mechanism where a man like Richard Jewell can come to the Newspaper Association and file a complaint and say, “I am not interested in money, but I would like your judgment?”

You are the best group to discipline your own members. If the courts find against him, if the juries find against them, who cares? They are just misguided. We may have to settle it and when those settlements are made, there are so many disclaimers—we are not at fault, we didn’t do anything wrong, we are protecting a source, it is costs of litigation, et cetera, et cetera. However, if there was a newspaper mechanism for saying it is wrong, that is really where it stings. Is there any such mechanism?

Mr. BLACK. There are a couple of efforts underway and there are some that failed that are being reconsidered. The National News Council was not terribly successful in its 11 years. But, interestingly, there is a lot of emphasis now on trying it out one more time, in part out of defense because of the concern of libel suits which are becoming—even the discovery process is so punitive that they grind journalists almost to a halt during that process.

But a voluntary organization or a voluntary situation like a press council where you can go and say, I relinquish my rights to sue, provided I get a hearing—most of the people who are irritated at the press just want an apology; they just want to set the record straight.

Senator SPECTER. Well, would you say that the individual has to relinquish his or her civil rights in order to get that kind of a hearing?

Mr. BLACK. That has been one of the conditions under which the press councils have operated.

Senator SPECTER. I think that is a little tough, I think that is a little tough, and you might avoid it. It might serve as a mediation process which might tone it down. Maybe we could make the finding admissible—or maybe we couldn’t. You probably wouldn’t want it admissible, except for damages and mitigation, if there has already been some punishment.

Mr. BLACK. Well, I think the people who have been going to the news councils when we have had them—and Minneapolis, MN, is about the only one that works well on a regular basis—have gone because they want essentially public cleansing. They want this cleansing light of publicity. They want the apology.

Senator SPECTER. Mr. Geimann, what do you think? How can the kind of a characterization that you have made—and I think it is courageous of you to do so; I am not saying you are right or wrong, but you are courageous—how could that be institutionalized with the media as a self-policing mechanism?

Mr. GEIMANN. For almost two decades now, Minnesota has convened a news council to hear grievances against publishers and broadcasters in that State. A couple of months ago, a fairly significant case was resolved in favor of an organization that felt it was not fairly portrayed by a television station. That decision has prompted a lot of discussion about reestablishing a national news council, as Professor Black points out.

We, as a national volunteer organization of professional and academic journalists, do not have a stand on this. We have not taken a position on this, but I have been asked by more than one person within our own membership and around the country, shouldn't this be a rule that SPJ could play? SPJ has more than 300 chapters around the country, both professional and campus chapters. That would be a logical place to start, providing a forum for people who feel a local newspaper or a broadcaster did not do a thorough or adequate job in representing the facts of a story.

It is time consuming, it is difficult. It requires more thought on our part. Clearly, the public, as a result of filing more lawsuits and gaining far greater rewards from juries in libel cases, has said that they don't believe the press is doing the job that we think that we are trying to do. I think that compels us to look very creatively at ways to develop mechanisms for people to complain about or seek some kind of remedy through an ombudsman. Thirty-three or thirty-four newspapers have an ombudsman program now. That works as a lightning rod in a community for people who are not happy about particular kinds of stories. If we could encourage that at other papers, that would be great. SPJ will certainly look at what role we can play in developing a news council sort of approach.

Senator SPECTER. My red light went on in the middle of your answer, so I yield now to Senator LEAHY.

Senator LEAHY. Thank you, Mr. Chairman. I would follow up on this a little bit. I was struck by a quote that Mr. McMasters said in his submitted statement quoting another news person, asking whether the news media has to go to the lowest common denominator. In other words, everybody assumes they are responsible and then somewhere out there, somebody runs a story that it really was an alien who impregnated so-and-so and thus-and-thus, and whatever, and so we do have to go with that?

I am not suggesting any kind of government control on this. Many of you know me too well for that. My father published a weekly newspaper and had a printing business. I am proud of my consistent stands over the years on the first amendment, but I am troubled when I see some of the things that happen. I will give you an example.

A local newspaper recently ran a front-page story and it was during a time of an ongoing foreign policy debate—foreign to us, not to the country involved—regarding activities within part of that country. The United States has sent some distinguished emissaries to help with this. One of the countries involved basically fabricated a story, saying that one of the Americans was having an affair with one of the parties to this international dispute and printed this in another country.

Even where it was printed, most people looked right at that and said this thing is so obviously false, it is so obviously outrageous, we should ignore it. A local newspaper printed a front-page picture of the person being accused, went on at great length, and then somewhere in there had a tiny caveat saying that even though some had said this story was false, basically, we are printing it to say, gosh, it could not have come at a worst time.

Now, I feel that the person involved was certainly, in layman's terms, libeled. Maybe because the person is a public official, libel

would not hold, although the other country's newspaper that began it has paid a settlement very quickly. I mean, the story was so blatantly, totally false. One or two telephone calls could have convinced—in fact, the way it was presented in the U.S. paper, it was obvious that they had to assume it was false, but they were still going to print it front page.

Now, when you see something like that, there is a reaction, and you have defenders like the first amendment like myself and others suddenly finding ourselves very, very much on the defensive. I have said over and over again the press has a first amendment right to be irresponsible, but they might have a responsibility to themselves to be responsible. Does anybody want to wade into this morass?

Mr. MCMASTERS. I share the outrage at some of the things that the press does, and that is one of the reasons that I am in the business that I am. As you say, Senator, first amendment like yourself—and in my position, that is what I do—are hard put to defend it. My wife puts it another way. She says I have job security because, defending the first amendment, we may seem a little bit paranoid here in some of our statements about worrying about what Congress might do. But that comes from some rather immutable facts, and that is that Congress last year passed an unconstitutional, as far as the first amendment is concerned, Communications Decency Act, in the opinion of one Federal court.

Senator LEAHY. Just so we could make some clarity, I would hope that you would also add that I was one of the ones who unsuccessfully tried to block that from being passed.

Mr. MCMASTERS. Exactly. I appreciate that, and you also voted against something that came within three votes of amending the first amendment, which was the flag desecration amendment. We have that and two more proposals to amend the first amendment on the agenda of the Congress this time around, so there are grave concerns among those of us who watch this that Congress will perceive this outrage on the part of the public as a mandate for fixing things because it is outrageous in some cases and people do feel that there is no accountability.

That was what I was trying to do this morning, is to point out that when the press goes over the line, there is an accountability not only among their colleagues, not only among the other media, but in the courts as well. And I have to say I applaud Senator Specter's suggestion that we come up with some ways in the media to provide more of a public accounting when these kinds of things are happening. I assure you that there are numerous proposals being considered right now and a lot of attention being paid to that.

Senator LEAHY. When we talk about the lowest common denominator, let me just use a couple of concrete examples. You have a 13-year-old rape victim; the press generally would not print her name. The fact of the rape could very well be news. You have a rapist loose in the neighborhood. There is public policy and everything else to do it, but not her name. Somewhere, a paper prints the name. It may be a very small circulation. Would you say they might be reacting in the lowest common denominator if everybody else didn't rush to print the name?

Mr. GEIMANN. Absolutely, and I think that is one of the trends that is developing here, is editors are no longer, or appear not to be making decisions on the basis of the principles and the beliefs that they have. They are justifying doing things like that by saying, well, it is out there in the public domain, therefore we look silly if we don't also have the information. Journalists have always been able to stand up and say, no, this is not right and we are not going to report this story because it is not right and it is not fair to our audience.

Senator LEAHY. So that may have been an easier one, but then let us go to a more difficult one. Once law enforcement has released—and I am not going to the propriety of that. You heard what Director Freeh said about the propriety of releasing Mr. Jewell's name. I happen to agree with Director Freeh on that, but once it had been widely released, is that a reaction of the lowest common denominator for the rest of the press to pick up and run his name?

Mr. BLACK. I think because there were 15,000 journalists in Atlanta and because the TWA downing 10 days earlier had fixated our concerns about terrorism, there was an inevitable feeding frenzy at that point. I was impressed with the New York Times' invocation of what we call the Patricia Bowman rule. We buried this on the third page. We didn't name Richard Jewell right away. We were much more circumspect at the New York Times.

What I am doing for a living is a little bit different from what Paul McMasters does for a living. I am trying to work with the individual journalists to overcome these kinds of pressures and to make these kinds of decisions ahead of time so that they are not hard-wired to just go with everything they get, but to balance the distribution of truthful, accurate information with the concerns about minimizing harm and the effort to be independent from the agencies that are going to manipulate them and, finally, to be as accountable as possible.

I just gave you the four basic points of our new code of ethics in SPJ which we have debated for the last 2 years that are now in the middle of a massive project to get out to as many working journalists as possible because what I am hearing and what you folks are hearing is very frequently the individual journalists are feeling they are being stampeded into group think and—

Senator LEAHY. Well, Dr. Black, let me ask you on this being stampeded—you know, Mr. Jewell had become a darling of the press first. Here is a hero; he found this, he alerted people, and so on, and the press basically was lionizing him. Then when they hear that he is the suspect and are told by authoritative off-the-record sources that he is the suspect, was there a certain reaction of, by God, we are going to teach him for conning us?

Mr. BLACK. No, no.

Senator LEAHY. No?

Mr. BLACK. I just think we had an absolutely classic—

Senator LEAHY. Even if it was, you got another flip-back, of course, when the FBI and Justice Department said he is not a suspect. Then they all rush back to print that front page.

Mr. BLACK. Well, we had, you know, the Greek tragedy there and this was such a simplistic story that met every traditional criterion

of what makes news that when, on the third day, you know, he rose again, or whatever, and became the suspect—or fell again—we just stayed with it. I mean, he had become a celebrity and therefore we owned him.

Mr. MCMASTERS. It should be pointed out, too, I think, that we had much worse—or comparable coverage of the Unabomber suspect, some of it before he was charged. But the fact that he was charged then kept that story from blowing up in the media's face, whereas with Richard Jewell I don't doubt that we would be talking about the case today if he had wound up being charged. As it was, it was a story that there was bad information and it blew up in the media's face.

Senator LEAHY. I think the media made a very real effort to print what was an exonerating statement. I mean, it wasn't a case of hiding that on page 3. They made it very, very clear that this man whom the world was looking at a suspect has now been cleared.

My last question, if I might, Mr. Chairman—I am very, very concerned about the public's reaction with the media. I get very concerned when I see the media as a whole, the Congress as a whole, and organized crime as a whole sort of basically in the same place in the public opinion polls. I am not too concerned as a former prosecutor about organized crime, but I think that the Congress as the third branch of Government is extremely important to maintaining the world's most powerful democracy, but also the media is extremely important.

We have free speech rights unparalleled in any significant country today or at any time in history, but I think it also helps provide the diversity that we need in the United States to keep us a powerful democracy and not a powerful dictatorship or oligarchy or anything else. But the media stays there not so much just from the Constitution, but a sense of respect.

Yet, we see when the jury slapped ABC with a \$10 million verdict here in the last day or so how people can react. Now, we can all talk about where that goes on appeal and everything else, but that jury verdict gives some indication of how the public feels. Could a jury deliver such a verdict against the media for reporting what a government official said, a law enforcement official said to them on an allegation? Are you going to face liability for correctly reporting what government agencies tell you, and does this trend cause real concerns to you?

Mr. MCMASTERS. Absolutely, it hurts, and I think it creates a chilling atmosphere. We have only one court case that I know of that exonerates the media for carrying a story that they relied upon a government source that later proved to be wrong, and that was upheld by the Michigan Supreme Court and not granted cert by the U.S. Supreme Court.

Mr. GEIMANN. I think all the people sitting up here are very concerned about the trends that they are seeing. I am very concerned about the trends and that is one reason why I feel—I don't rush to criticize willingly. These are colleagues, these are people I work with, these are people I now represent. It doesn't give me any great pleasure to sit here and criticize what journalists in this country do, but I think when missteps are made, we have to be open and

honest about identifying them and talking about them and helping other journalists not make the same kind of missteps or mistakes. There has been a chilling atmosphere. I go on radio talk shows frequently and I don't get any people who support the press. I get people who criticize the press.

Senator SPECTER. Gentlemen, thank you very much for your testimony. I believe that the thought of having a journalists group passing judgment would be a very excellent one. I have had a couple of experiences of my own where I think I had strong cases. I wouldn't get involved in litigation under any circumstance. I am a lawyer and have engaged in it, but when it is a personal matter and you get involved in litigation, it is hardly worth it. When Mr. Black talks about depositions chewing up people, I think depositions are a lot more of a deterrent than verdicts.

Senator LEAHY. But I think that we can look at this, just at what happens in that courtroom. As Americans, we have a great stake in how this country runs. We have a great stake in what our children see in this democracy. I have children who will live most of their lives in the next century. What kind of a democracy is going to be there? We can talk about the responsibility Congress has and whether we carry it out or don't carry it out, or the executive or the judiciary. But the press has a great responsibility, given this unequaled freedom.

That is all.

Senator SPECTER. Well, I think we had a significant verdict. It was 2 to 1, divided here on the Jewell case—unnecessary, excessive, exorbitant, et cetera. I think it is very constructive that we have had the dialog. It advances the matter. The subcommittee will proceed with the Jewell matter later on the issues of the interrogation, the propriety of that, and Mr. Jewell, I expect, will be a witness in this room.

So we thank you all very much and that concludes our hearing.
[Whereupon, at 11:39 a.m., the subcommittee was adjourned.]



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