The Journalism School
Knight Case Studies Initiative
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Privacy and the Public Interest: the Frederick, MD, *News-Post* and the Bruce Ivins Story

Teaching Note

Case Summary

Journalists frequently enter the private world of individuals, their friends, family and colleagues in order to tell a story. Often, these subjects of the news participate willingly, and are keen to share their thoughts and feelings with a wider audience. But that is not always the case. Some people are uncomfortable in the media spotlight, especially if they are "private" figures unaccustomed to such a glare, or linked to scandal and reluctant to participate in what they see as a "trial by media." Consequently, they may shun involvement.

In such cases, media outlets must make judgment calls that take into account a range of interests, including their need to tell credible, interesting stories that compete with rival news organizations; the subject's rights and wishes to retain privacy; and the public's right to know.

This case study focuses on the Frederick *News-Post*, a local Maryland newspaper, and its struggle to balance such issues in its coverage of a local scientist suspected of mailing several deadly anthrax-filled letters after the September 11, 2001, terror attacks. Microbiologist Bruce Ivins, an anthrax expert, was the latest in a string of FBI suspects and faced arrest when he committed suicide in July 2008. Like other media, the *News-Post* learned about the Ivins investigation only after his death, and regarded the FBI's claims with skepticism given its previous wrongful accusations, and an embarrassing press history of rushing to judgment in cases where suspects were later vindicated.

Matters came to a head when Ivins' family and friends scheduled two private memorial services, and asked the press to stay away. Students step into the role of *News-Post* editors who must decide whether and how to cover the services. Doing so would clearly contravene the wishes of family members who are themselves not suspected of wrongdoing, and would disturb them as they grieve for a man who may ultimately be cleared of foul play. But the paper also knows that Ivins *could* be the killer, and, given intense public interest in the anthrax story, it suspects that other media

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are likely to attend. Students must think through these and other factors to reach a decision about the nature and extent of the paper's coverage—if any.

Teaching Objectives

What are journalism's responsibilities to the public for whom it is a self-appointed watchdog, educator and conduit of information? Journalists and industry observers have long debated the question. But journalism's responsibilities to another group—the people it covers— have been less discussed. Privacy and libel laws draw some red lines that the press cannot cross. But to a remarkable extent, the rights of journalism's subjects remain a moral and practical gray zone. This case gives students an opportunity to debate this issue. What are the press's responsibilities when it comes to covering people accused of wrongdoing, but not deemed guilty in a court of law? And what are its responsibilities when covering people related to the accused, particularly when those relatives have asked to be left alone? The use of terms such as "allegedly" provides some wiggle room for media to report unsubstantiated claims. But as the cases of the wrongfully accused Perry Mikesell and Steven Hatfill illustrate, the damage caused by such coverage can still be immense.

Specifically, the case raises questions about the extent to which people associated with someone in the news should be considered fair game, and subject to scrutiny. The Ivins family's request that media stay away from its memorial services brings students face to face with this dilemma. No pall of guilt hangs over the family, and there are strong moral imperatives for the *News-Post* to grant their wishes. But the newspaper's job is to report the news—a task it could not fulfill if it acceded to every request for privacy.

To make such a decision, media outlets must balance family rights to privacy with another consideration: newsworthiness. What makes a story worth pursuing? Is it enough that readers will find it interesting, or must it be in the public "interest"? If so, how should "interest" be defined, and by whom? On one level, the Ivins memorial services are part of an important wider story related to the anthrax attacks. They are also local events that are likely to interest readers. But what value would they and the *News-Post* actually derive from a reporter attending the services? Would benefits outweigh the costs and risks? The answers to such questions will largely depend on how students define "newsworthiness" and what they consider its key elements to be.

A fourth area for discussion is media competition. David Simon and his colleagues at the *News-Post* suspect that other media outlets will ignore the family's wishes and try to penetrate the services. The *Los Angeles Times* has already scooped the *News-Post* once with its article on Ivins' suicide. The *News-Post* could find itself scooped a second time if the *Washington Post* sends a reporter and the Frederick paper does not. Should this influence Simon as he makes his decision? Students should discuss the importance, benefits and perils of media competition on newsroom decision-making in general, and in particular within the *News-Post,* which as the local publication faces a number of concerns and considerations that papers from further afield do not.

The issue of public trust in media permeates the case. The press had in the past undermined its credibility by intensely scrutinizing—even hounding—suspects in the anthrax case who later proved to be innocent. Subjecting the Ivins family to similar pressure, especially if Bruce Ivins were cleared of suspicion, might not just be unethical, it could further erode public confidence in the *News-Post* and other media. While this concern is not uncommon, particularly among journalists, its full meaning is often left unexplored. Does it really matter what the public thinks of the press? Students should consider the implications for media outlets of diminishing public faith in journalism, and consider the ramifications for broader society and for democracy itself.

The division of the case into Parts A and B obliges students to confront the limits of their moral stands. If they argue that the *News-Post* should stay away from the funeral before the FBI publicizes its evidence against Ivins, what about after that evidence is made public? Does the fact that the *Washington Post* covers the August 6 memorial significantly alter the equation for covering the August 9 service? By delving deep into their own reasoning, students will begin to understand how relative ethical stances can be.

Class Plan

Use this case in a class about journalism ethics, the challenges faced by local versus national media, or reporting techniques and strategies.

Pre-class questions. The case comprises two parts. Distribute only Part A before the class, and make copies of B to distribute during class discussion. Help students prepare for class by assigning the following questions:

1) What obligations does the press have towards its subjects?

We found it useful to engage students ahead of class by asking them to post brief responses (no more than 250 words) in an online forum. Writing short comments challenges students to distill their thoughts and express them succinctly. The posts also highlight talking points ahead of class, and identify specific students to call upon during the discussion. Asking students to recapitulate their online responses in class—rather than simply reading the homework—keeps the discussion spontaneous and lively.

In-class. Before class starts, write a timeline of key developments on the board as a visual reference point for students. Also, take a vote before class begins to find out how many students favor sending a reporter to the August 6 memorial service. Then take a vote at the end of class, to see if there has been any shift in opinion during the debate.

Choose any of the following questions to open an 80-90 minute discussion. The questions will depend on the goals of the class. In general, choosing to discuss three or four questions in depth is preferable to trying to cover them all. Distribute Part B about three-quarters of the way through the class to introduce fresh material into the debate, challenge students' current thinking, and encourage them to them to parse what factors drive their ethical analysis.

a) Does Assistant City Editor David Simon have a dilemma at the end of Part A? (B?)

b) Is the August 6 memorial service a newsworthy event? If so, why?

c) Does the public have a "right to know" what occurs or is said at this service?

d) What are the pros and cons of media attending the event? Students should conduct a cost-benefit analysis for each of the various players—including the Ivins' family, the local community, and the newspaper itself. Consider the possible impact on their relationships with one another, and discuss how the *News-Post*, as a local newspaper, may have concerns about attending that are different to those of a national paper like the *Washington Post*.

e) David Simon cites his experience in New York on September 11, 2001, as influencing his thinking about how reporters cover tragedy in general, and how to cover the Ivins memorial in particular. Do you think September 11 is a useful analogy for his current predicament?

f) You are David Simon at the *News-Post*. How, if at all, would confirmation that Ivins was guilty of sending the anthrax letters impact your decision to cover the first service?

g) Would you think differently about attending the services if you worked for a local television station, as opposed to a local newspaper such as the *News-Post*?

h) Is there another way for the *News-Post* to get the same information it would get by attending the memorial services? Students should consider alternative strategies—including approaching the family or guests before or after the services, and obtaining a copy of eulogies read during the services. Outline their strengths and weaknesses.

i) Imagine that the *News-Post* has decided to cover the first memorial service, and has sent you as the reporter. How would you handle the assignment logistically? Possible issues for discussion include whether it is ethical to report conversations overheard at the memorial, and how, if at all, to identify yourself as a journalist upon entering the building, entering the memorial service, and talking/listening to those around you.

DISTRIBUTE PART B

j) What do you think of Anne Hull's piece? Do its contents vindicate the *Washington Post*'s decision to send her to the August 6 memorial service?

k) Two significant details have changed by the second service: evidence against Ivins is now public, and the *News-Post* knows that, since the *Washington Post* covered the first service, it will likely cover the second. Do these facts change the situation, and mean that Simon should reverse his previous course and now send a reporter to the event?

l) What does the *News-Post* stand to win or lose by not sending a reporter to the second service?

Suggested Readings

Bill Kovach and Tom Rosenstiel, *The Elements of Journalism*. Three Rivers Press, New York, 2001.

SYNOPSIS: The small but succinct book subtitled "What Newspeople Should Know and the Public Should Expect," includes a number of sections that relate to themes raised in the case. These include "Who Journalists Work For," and "Journalists Have a Responsibility to Conscience," which provide context for Simon's own dilemma about whether to send a reporter to the memorial service.

Michael Hoyt, "Peripheral Vision and Wen Ho Lee," *Columbia Journalism Review*, November/December 2000.

SYNOPSIS: In this article, Michael Hoyt looks back at the *New York Times*' faulty coverage of Wen Ho Lee, the nuclear scientist suspected of selling secrets to the Chinese, and notes the "tension in investigative reporting, in particular, between the urge to marshal an argument and the need to question a story's hypothesis." The article, other CJR stories related to the Lee case, and the Editor's Note that the New York Times subsequently issued on the issue, give students a parallel example to that of the Ivins case.

http://backissues.cjrarchives.org/year/00/4/currents.asp

Janet Malcolm, *The Journalist and the Murderer*. New York: Vintage Books, 1990.

SYNOPSIS: In this book, Janet Malcolm explores the relationship between a journalist and his or her subject, including the dynamics of an interview; the moral obligations of the former to the latter; and the motivations and agendas that influence journalists. Malcolm examines these issues through the story of journalist Joe McGinniss, who was given unlimited access in the early 1980s to Jeffrey MacDonald, a doctor accused of killing his wife and children. Originally sympathetic to MacDonald, McGinniss began to change his mind about his innocence. But rather than reveal his change of heart, he continued to send MacDonald letters of support and pose as his friend in order to ensure access. MacDonald, who was ultimately found guilty of the crimes, was horrified by McGinniss' portrayal of him as a psychopathic murder in his book, *Fatal Vision*, and sued the journalist for fraud. He received $325,000 in an out-of-court settlement with McGinniss' publishers.

David Pritchard (ed.), *Holding the Media Accountable.* Bloomington: Indiana University Press, 2000.

SYNOPSIS: This collection of articles by various contributors examines media accountability systems, their structures and flaws. Chapters including "The Routine Nature of Journalistic Deception" and "Why Unhappy Subjects of News Subjects Rarely Complain," provide

students with context for the Ivins case, and the issues that it raises relating to journalistic ethics and the rights and role of the subject in a story.

Tom Goldstein (ed.) *Killing the Messenger*, ("Part 1: Reporting on Public and Private Matters"). New York: Columbia University Press, 2007.

SYNOPSIS: In his introduction to Part 1 of this compilation of media criticism, Tom Goldstein writes: "The boundary between what is private and what is public is ever shifting and elusive. In the context of newsgathering, a constellation of questions is raised, cutting to the bone of how journalists decide what is newsworthy." The section includes a range of useful material relating to reporting on public and private matters, including the *Harvard Law Review* article by Louis Brandeis and Samuel Warren that became the "foundation for the development of privacy," and a sampling of editorials by William Allen White, an editor at the *Emporia Gazette* in the early 20th century, outlining "his quaint but principled philosophy of what is printable and what is not."