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All the ethics that's fit:
Jayson Blair, Judith Miller and the ethical culture
at The New York Times

A thesis presented

by

James A Chiavelli II

To

The School of Journalism

In partial fulfillment of the requirements for the degree of

Master of Arts

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Journalism

Northeastern University

Boston, Massachusetts

December 2009

All the ethics that's fit:
Jayson Blair, Judith Miller and the ethical culture
at The New York Times

by

James A Chiavelli II

Abstract of Thesis

Submitted in partial fulfillment of the requirements
for the degree of Master of Arts in Journalism
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ABSTRACT

Ethics codes promulgated by media companies and organizations in the United States have shifted emphasis. From the early ideals about the public's right to know, the pursuit of truth, and protection of subjects' privacy, they have increasingly focused, explicitly or not, on the protection and promotion of companies' (and in some cases, union workers') economic interests. Looking at the Code of Conduct of The New York Times, specifically, through the prism of the missteps of reporters Jayson Blair and Judith Miller, I conclude the Times' primary consideration has been its own interest and not ideals such as ethics or truth. Finally, I examine some suggestions for improving journalism ethics, at the Times and across journalism.

NOTE ON RESEARCH

I took as my starting point for this thesis the paper "Conflicted Interests, Contested Terrain: Journalism ethics codes then and now," by Lee Wilkins of the University of Missouri School of Journalism and Bonnie Brennen of the Diederich College of Communication at Marquette University; professor Wilkins was kind enough to provide me a pre-publication copy in 2004, when I wrote an earlier version of what is presented here as Chapter 1. Their argument was in part that the codes of ethics promulgated by media companies are more focused on maintaining those companies' economic interests than on pursuing ethical journalism.

My literature review focused on the history of U.S. journalism ethics up through the resignations of New York Times reporters Jayson Blair and Judith Miller, to understand the history and context in which the reporters and their employer operated; a review of stories published by both journalists for the Times; commentary by other journalists about Blair, Miller and the Times; and recommendations produced by ethicists and others for potential reforms to journalistic ethics codes. Except in one minor instance I did not interview principals. Blair, Miller, Howell Raines and other Times editors have written and in some cases spoken extensively about the issues that arose out of Blair's and Miller's journalism in the early 2000s; their own words tell their stories here.

I believe that a fair reading of the history and literature supports Wilkins' and Brennen's argument. (Further, that reading suggests, though I do not pursue this argument, that for-profit media companies may not be structurally capable of prioritizing ethical journalism; this is a topic for future research.)

Finally, I examine concrete suggestions, based on the writings of media critics and ethicists, for changes to the Times' and other organizations' ethics codes, e.g., severely curtailing

anonymous sources; random spot checking of reporters' stories for accuracy; engraining skepticism of "official" news sources; and creating or fostering independent, nongovernmental organizations, such as a national news council, that might help "police" the media industry.

ACKNOWLEDGMENTS

This thesis would not have been possible without the support and indulgence of Northeastern University and my colleagues in the offices of Government Relations and Community Affairs and of Marketing and Communications. I also owe thanks to the hundreds of journalists with whom I worked during nearly two decades in newsrooms, and alongside whom I acquired the rudiments of a working set of ethics.

The soldiers and civilians of the International Security Assistance Force, and many Afghan friends, kept me alive and reasonably sane in Afghanistan in 2005 and 2006. Tashakor mikonam.

Stephen Burgard, director of the School of Journalism, taught the ethics class that was the true inspiration for this thesis, and for which I wrote the paper that evolved into Chapter 1. Jennifer Rivers Cole, director of the Environmental Studies Program, held me to a strict schedule to complete the first draft. My committee — professors William Kirtz and Nicholas Daniloff of the School of Journalism and William Fowler of the History Department — provided essential guidance and shared their time and the insightful suggestions that are primarily responsible for whatever final value this thesis represents (I take full credit for the errors). To these incomparable members of an incomparable faculty: Thank you.

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INTRODUCTION and ARGUMENT

Ethics is, briefly, as colloquially understood, a set of rules by which we morally, "rightly," live, work, or do both. In the workplace, ethics are often imposed by employers or developed for a profession or a specific work situation, to guide employee behavior individually and collectively. In the field of journalism, ethics codes largely sprang up among professional associations of editors and journalists in the early 20th century, both to enhance the reputation of journalists and to establish a set of principles by which journalists should operate so as to achieve a good result — an unbiased, fact-based delivery of the news to the general public.

In very short order, however, journalism codes became somewhat narrowly focused; by the late 20th century they spoke largely, if not exclusively, of so-called conflicts of interest. Conflicts of interest, briefly defined for this context, are matters that may influence the journalist's dispassionate presentation of the facts — for instance, accepting a gift from the subject of a current or future story, or an investment in the stock of a company about which one reports. Many of the conflict-of-interest rules speak at least nominally to maintaining the credibility of journalists and the media organization for which they work. Increasingly, however, conflict-of-interest rules have been imposed by employers as methods of controlling the value of their employees' work and averting the theoretical dilution of that value, to the detriment of both the original ideals and "good journalism."

This paper will explore the development of ethics codes in journalistic — primarily newspaper — organizations through the 20th century, as they shifted from the initially more idealistic beginnings of a shared journalistic enterprise to more overtly economic considerations;

indeed, some newspaper chains impose their ethics codes exclusively on business office employees, including advertising salespeople, and not on journalists.

Specifically, I will look at the ethics rules imposed by The New York Times on its journalists — not on its "employees" generally, because the rules apply to newsroom workers and not those in other departments or those working at the highest levels of management. It will look at both the formal Code of Conduct and the unwritten, but potentially far more powerful, shaping factors of culture, management style and overt economic pressures on The Times and its editors. To some extent, this exploration will touch on union behavior, specifically that of The Newspaper Guild, in helping shape the culture in which employees and companies have written and applied ethics codes.

Finally, I will examine what "went wrong" in two highly notable examples — those of Jayson Blair and Judith Miller — and explore some attempts to revise the behaviors or written code that either led The Times into difficulty or allowed it to go astray.

However, underlying my study is the belief that, whatever its stated ideals, a code of ethics is primarily a mechanism by which an employer, in this case a newspaper, furthers its commercial goals — and that, as a necessary corollary, the primary relationship between Times ownership and Times journalists is primarily economic, not journalistic or even "ethical" as ethics is broadly, perhaps classically, understood.

Two millennia ago, Aristotle pondered the nature of ethics in a number of works, among them his "Politics." He noted that even the finest sets of rules are not enough by themselves. "Good laws, if they are not obeyed, do not constitute good government," he wrote. "Hence there are two parts of good government; one is the actual obedience of citizens to the laws, the other

part is the goodness of the laws which they obey."[1] At The Times, both difficulties can be perceived: an inadequate, or commercially focused, "code of conduct," and a lack of adherence even to that code by both managers and employees.

The result in Blair's case was, of course, a string of plagiarizing and fabrications; in Miller's case, The Times' conduct helped the Bush administration make a case for starting a war with Iraq. Yet because ethics codes are primarily internally and not externally focused — that is, focused on a worker's relationship to the company's purpose, and not on outcomes beyond the workplace — the personal consequences for Blair were far more severe than for Miller. Because The Times' perceived its reputation to have been harmed more directly by Blair's conduct, The Times' reaction in his case was more expansive and urgent.

That set of reactions — as well as suggestions for the expansion of the list of matters properly considered "ethics" in a newsroom context — will be reviewed in the final chapter.

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[1] Aristotle, "Politics," Book 4 Part 8, Internet Classics Archive at MIT, classics.mit.edu/Aristotle/politics.html

CHAPTER 1: The development and state of U.S. journalism ethics codes

The First Amendment to the U.S. Constitution protects, among other rights, "freedom of speech and of the press" from interference by the federal government (and, under the penumbra of the Fourteenth Amendment, by state governments and smaller government entities such as counties and municipalities)[2]. However, the organization, goals, aspirations and operating procedures of press enterprises, so long as they do not break the law, are entirely within their owners' discretion. Freedom of the press, as journalist A.J. Liebling's adage proclaimed, belongs to those who own one. Thus it has been with codes of ethics for press organizations. There has been a give-and-take with media workers, individually and as represented by labor organizations, but ultimately the proprietors of media enterprises have set the rules for what constitutes ethical behavior by their employees individually and collectively — and have thus established American journalism's ethical tone.

The first appearance of newspaper ethics codes corresponded roughly with the 1933 birth of the American Newspaper Guild — which, a year after its founding, approved a recommended code of behavior for its members. Today, most major U.S. news organizations also have ethics codes, leading to a situation in which the 29,000 members of Guild (now a division of the Communications Workers of America)[3] can find themselves operating under sometimes conflicting sets of rules and expectations. This has resulted, of course, to disagreements. While legal and judicial authorities have from time to time intervened in these disagreements, setting limits on both media-outlet owners and the Guild, the decades-long clash reflects a conflict

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[2] Anthony Lewis, "Make No Law: The Sullivan case and the First Amendment," pp. 83-84
[3] 29,112 as of August 2008. James Erik Abels, "The Newspaper Guild's New Pitch: Survival," Forbes.com, Nov. 21, 2008.

between group values as often as it does individual conflicts of interest or other ethical transgressions.

The history of American newspapers is not synonymous with the history of journalism ethics. Clearly the press with which the founding fathers of the United States were familiar — and which they still chose to protect constitutionally — was primarily partisan, more prone to report opinion in the interests of party than to report objective, truthful news in the public interest, and sometimes more inclined to score political points than, at times, even profit.[4] An early American journalist saw the news as "a business,

> and the news to him was the same thing that silver was to Paul Revere or glass to Henry William Stiegel – which is to say a product of his own manufacture, to be molded into whatever shape he thought would be most pleasing to his customers. … "Professions of impartiality I shall make none," wrote editor William Cobbett, who then went on to prove it by describing his competitor Benjamin Franklin Bache as a "crafty and lecherous old hypocrite."[5]

As time passed and Americans spread across the continent and crowded into cities, newspaper entrepreneurs of the late 19th century such as Joseph Pulitzer and William Randolph Hearst found that selling crime, sex and sensation rather than partisan loyalty could also be profitable.[6] That era survived into the 20th century, but eventually the public grew weary; news organizations began to reshape themselves "in response to a growing public disillusionment with the press, especially after its World War I coverage," and in the wake of Upton Sinclair's 1920 novel The Brass Check, "a scathing indictment of journalism."[7] That was when news and media-

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[4] Eric Burns, "Infamous Scribblers: The founding fathers and the rowdy beginnings of American journalism," p. 12 et passim
[5] Burns, pp. 12-13
[6] Richard Campbell, Christopher Martin and Betty Fabos, "Media & Culture: An introduction to mass communication," 2005 update, pp. 270 et seq
[7] Lee Wilkins and Bonnie Brennen, "Conflicted Interests, Contested Terrain: Journalism ethics codes then and now," in Journalism Studies, Vol. 5, No. 3 (August 2004) p. 299.

workers' organizations began writing the first ethics codes — in an "attempt to rationalize and idealize professional practice."[8]

In 1923 the American Society of Newspaper Editors (ASNE) crafted one of the first codes. The Canons of Journalism, according to the ASNE, were "framed from a social responsibility perspective that maintains the public welfare is a fundamental concern of daily journalism."[9] The code's first and second principles were that newspapers should "serve the general welfare by informing the people and enabling them to make judgments on the issues of the time," and that "freedom of the press belongs to the people." The Canons of Journalism concludes, "These principles are intended to preserve, protect and strengthen the bond of trust and respect between American journalists and the American people."[10]

The Guild, founded in 1933 both to represent the financial interests of newspaper workers and to "raise the standards of journalism and ethics of the industry," followed the ASNE's lead in formulating its own code of ethics and predicating it on respect for the public interest. The Guild's code of conduct articulated seven principles, among them:

- That the newspaperman's first duty is to give the public accurate and unbiased news reports, and that he be guided, in his contacts with the public, by a decent respect for the rights of individuals and groups.
- That the equality of all men before the law should be observed by the men (sic) of the press; that they should not be swayed in news reporting by political, economic, social, racial or religious prejudices, but should be guided only by fact and fairness.
- That the Guild should work through efforts of its members, or by agreement with editors and publishers, to curb the suppression of legitimate news

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[8] Wilkins and Brennen.
[9] Wilkins and Brennen.
[10] American Society of Newspaper Editors, Canons of Journalism, found at http://www.media-accountability.org/library/USA_canons_1923.doc (accessed October 2009) See Appendix A.

> concerning "privileged" persons or groups, including advertisers, commercial powers and friends of the newspaper.[11]

Like the ASNE, the Guild had no authority to impose its ethics code on its members, or on the newspapers for which those members worked. But taken together as an expression of journalistic principles, the Guild code and a "freedom of conscience" resolution passed by the Guild at the same time, uphold

> (F)reedom of the press, the public's right and the journalist's responsibility, rather than a privilege of owners and publishers to "exploit." … Ultimately the resolution challenges Guild members to frame their work based on a mission of social responsibility and to strive for "integrity" in their reportage of news and to refuse to distort or suppress the news.[12]

That, of course, is the ideal view. A contrasting interpretation of the Guild's push for an ethics code is that creating such a code was

> a means by which journalists can negotiate their social status and enhance their public legitimacy. It underpins their claims to autonomy and status. In common with people in other white-collar occupations, including professors, doctors, scientists, and lawyers, journalists have sometimes claimed professional status by virtue of possession of specialized skills that are exercised ethically and objectively.[13]

In short, by promulgating an ethics code, journalists hoped to gain a social, and thus economic, benefit, whatever the code's idealistic underpinnings. Those twinned motives embody the push-and-pull of the development of journalism ethics in the United States.

To the extent the Guild code addresses conflicts of interest, it is in the proscription against being influenced by "friends of newspapermen" and in its final line, urging reporters to

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[11] American Newspaper Guild, Code of Ethics, found at http://www.newsguild.org/index.php?ID=1574 (accessed October 2009). See Appendix B.
[12] Wilkins and Brennen, p. 300.
[13] Robert A. Hackette and Yuezhi Zhao, "Sustaining Democracy: Journalism and the politics of objectivity," p. 55

"avoid any demeanor that might be interpreted as a desire to curry favor with any person."[14] However, in modern times, "conflict of interest" has come to constitute virtually the entire discussion of ethics codes — indeed, "conflict of interest" has become shorthand for unethical conduct in almost every profession.

Beginning in 1977, the Guild fought and won a signal legal battle in challenging codes of ethics, when the Pottstown, Pa., Mercury imposed an ethics code on its staff. In a case that stretched over a decade and saw the National Labor Relations Board overturn one of its own administrative judges, and a federal court overturn the NLRB, the board ultimately found that the Mercury had illegally imposed an ethics code on its employees without negotiating with the Guild, as required under the National Labor Relations Act. Further, the board — considering the case a second time, after remand from the U.S. Court of Appeals for the District of Columbia — determined that a newspaper publisher might impose an ethics code only insofar as it addresses "the protection of the core purposes of the enterprise" and its penalties are not excessive.[15]

Although the board did not define the "core purposes" that would make an ethics code legal under its interpretation of federal labor law, it did provide examples from the Pottstown Mercury's code to illuminate the limits of such codes. For example, the board examined the code's prohibition on accepting gifts and found "significant differences between a gift from a news source which is designed to influence news coverage on the one hand, and a 'freebie' given relatively indiscriminately."[16]

The board cited as an illegal interference in employees' private lives a provision requiring employees to "conduct their personal lives" outside the office in such a way that they

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[14] Guild.
[15] National Labor Relations Board (NLRB), Peerless Publications Inc. (Pottstown Mercury) and Newspaper Guild of Greater Philadelphia, Local 10, Case 4-CA-6985, pp. 3-4.
[16] NLRB, p. 5.

did not reflect adversely on the Pottstown Mercury.[17] It also eyed two provisions — one requiring reporters to "seek news that serves the public interest, despite the obstacles," and another saying "the news media must guard against invading a person's right to privacy" — and speculated that a news source's right to privacy might be considered an obstacle to be overcome in seeking the news, thus making the code itself potentially self-contradictory.[18]

Clearly the Mercury had imposed an indefensible and overly broad code of ethics. The legacy of the legal dispute, as interpreted by the Guild's legal counsel years later, has been that ethics codes must be "narrowly tailored" to meet a newspaper's legitimate objectives and "appropriately limited in applicability."[19] Equally apparent is that many newspapers have taken the Pottstown Mercury ruling into account in crafting their ethics codes, though conflicts have still arisen. But in emphasizing such concepts as "the public interest" and sources' "right to privacy," the Mercury's code seem almost backward-looking when compared to the increasing focus of such codes on protecting the commercial viability of the enterprise and the media worker (though cloaked in more idealistic rhetoric).

To take one example, in 2002 the Guild skirmished with California's Monterey County Herald over a Herald ethics code proposal, which included this broad language: "Employees may not engage in outside activities for compensation or otherwise without prior written approval of the publisher, which may be given or denied in the sole discretion of the company." The Guild local chapter, in a memo to its members, queried: "Should a copy editor be required to seek the

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[17] NLRB, p. 6.
[18] NLRB, p.7.
[19] Barbara L. Camens and Dexter J. Baxter, "Bargaining Codes of Ethics," confidential memo to Guild locals, p. 2.

Herald's permission before he can coach his daughter's basketball team?"[20] The issue — which, to re-emphasize, in no way involved the "public interest" or any other canonical principle of journalism — was resolved in negotiations for the Guild's 2003 contract with the Herald.

In August 2003, the Guild's own national newspaper, The Guild Reporter, speculated with concern about a renewed emphasis on ethics codes by media organizations in the post-Jayson Blair fallout (a fuller discussion of the Blair episode, and The New York Times' code generally, follows in Chapter 3). The Times' revamped code, the Guild Reporter opined, was an attempt "by publishers to monopolize their employees' energy and intellect under the guise of 'ethics'," and the Reporter simultaneously expressed outrage that the Washington Post was establishing an ethics hotline to allow workers to "anonymously snitch on a coworker for alleged wrongdoing."[21]

Recall that the Guild's stated view, embodied in its own ethics code, is that journalism ethics revolves around protecting the public interest. In contrast, however, the Guild's internal communications focus strongly if not solely on protection of individual members from what the union believes is undue disciplinary action and what it labels violations of members' integrity. The Guild's actions and sometimes inactions reflect that priority. In the wake of the Blair incident at the Times, the Guild came in for a rare public lashing by Jeff Jacoby, a conservative columnist for The Boston Globe:

> (N)owhere in this gusher of news and comment can you find the views of The Newspaper Guild … because like all labor unions, The Newspaper Guild exists for one reason: to promote its members' economic interests. Those include higher pay, better benefits, easier work conditions and less discipline — all of which

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[20] San Jose Newspaper Guild, Local 39038, "Monterey Bargaining Bulletin," found at www.sjguild.org/mbb24.htm (accessed fall 2004).

[21] The Guild Reporter, "Ethics Flap-Doodling," Aug. 15, 2003. The Post added insult to injury, the Reporter charged, by hiring the Pinkerton Agency — notorious for a history of union busting — to staff the hotline.

> rank higher on any union's list of priorities than tightening professional standards or advancing the public good.[22]

Indeed, even a cursory reading of the Guild's 2003 "Bargaining" memo makes it clear that protection of jobs, not protection of ethical standards, is the goal. Local units are urged to "vigorously resist the unilateral imposition of a new code of ethics" to protect their members.[23] And it offers this advice: "Remember, ethics is a two-way street – just as journalists should guard against direct conflicts of interest, they also should have the right to safeguard the integrity of their work, such as reviewing substantive changes to their material and protecting the confidentiality of their sources."[24] The two-way street, it must be noted, runs between protection of the employers' businesses and protection of the employees' integrity; it does not seem to pass Public Interest Way.

In fact, in the Guild's so-called model contract — a set of ideal provisions used as a basis for negotiating — there are allowances for reporters to withhold their bylines for any reason; to review any substantive changes to their work before publication; to be consulted on any proposed clarification or correction of that work; and to respond, in print, to any critical letter to the editor that is published.[25]

There are several more illustrative cases in which ethics rules were challenged, by both Guild and non-Guild journalists, on grounds that appear to be of questionable relationship to the public interest. For example, a Tacoma, Wash., reporter sued her employer over a transfer after she refused to stop her active public involvement in a gay-rights referendum in Washington

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[22] Jeff Jacoby, "The Bottom Line for Teachers Unions," The Boston Globe, May 22, 2003.
[23] Camens and Baxter, p.6.
[24] Camens and Baxter, p. 8.
[25] Camens and Baxter, p. 12.

State, despite management warnings.[26] The Tacoma News Tribune had promulgated an ethics code defining conflicts of interest as all situations in which readers might be led to believe that the news reporting is biased, including situations in which reporters participate in high-profile political activity.[27] The reporter, who had covered an education beat, had been admonished in 1987 for joining an abortion-rights rally; had been transferred to the copy desk in 1990 for her public involvement in the referendum issue; and had been issued a formal warning in 1994 after she testified before the state Legislature on gay rights. She sued under Washington's anti-discrimination statute for reinstatement to her reporting job, but the state Supreme Court ruled in 1997 that it would violate the First Amendment to force a newspaper to breach its "editorial integrity and credibility." The court cited the Pottstown Mercury case as upholding "reasonable rules" for ethics codes to protect the news organization.[28]

In April 2003, the San Francisco Chronicle fired high-tech writer Henry Norr after his arrest at an anti-war rally. The Chronicle cited both his public activism and his falsifying of a time card — he claimed a sick day for his day in jail. In an April 2003 interview, Norr said his editors knew of his political slant and activities through memos he had written, and also said "there were a number of Chronicle people who went to those anti-war marches, and one columnist wrote about his participation. It wasn't against the Chronicle's rules at that time." One colleague, defending Norr, said Norr had told his editors ahead of time he would be out of work,

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[26] Washington State Supreme Court, Sandra S. Nelson v. McClatchy Newspapers Inc., Case 62943-9, February 20 1997, at http://www.tvw.org/modules/opinions/629439_o.htm (accessed October 2009).
[27] Washington State Supreme Court.
[28] Washington State Supreme Court.

because he expected to be arrested at the rally.[29] Instead, Norr claimed, management targeted him alone after he gave a radio interview during one march[30] — that is, after he provided content to a competing news medium as well as potentially embarrassed the Chronicle. After Norr's firing, the Chronicle posted a "clarification" of its ethics policy, reading that "our responsibility as journalists can only be met by a strict prohibition against any newsroom staffer participating in any public political activity related to the war."[31] It did not specify that only those journalists who covered some aspect of the War on Terror or the conflicts in Iraq or Afghanistan would be in conflict of interest under the policy.

The Guild fought on Norr's behalf and reached a private settlement with the Chronicle in 2004, ostensibly over the protest as cause for the firing. Concerning the charge of falsifying a time card, Norr said, "In fact my termination letter goes on to say that even if I hadn't falsified my time card, they still wouldn't let me back into the newsroom."[32]

On at least one occasion, the Guild has tried to use a media company's code of ethics against its officers in what was essentially a publicity stunt, albeit one that pointed out the one-sidedness of the code. When an NLRB administrative law judge ruled, after holding hearings, that Belo Corp., owner of the Providence Journal, was guilty of 27 violations of federal labor law, the Guild publicly demanded that the publisher and general manager of the newspaper be disciplined. Belo's "Code of Business Conduct and Ethics" required that employees obey all laws, rules and regulations or face discipline.[33] Belo's general counsel responded that the ruling

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[29] Jim Sparkman, Chronwatch blog, at www.chronwatch.com (accessed September 2006). See also Adam Tanner, "San Francisco Chronicle Journalist Suspended Over Antiwar Protest," Reuters, March 29, 2003. Norr claimed a sick day because he was "sick of the war."
[30] David Bacon, "A sick day," LA Weekly, May 9, 2003.
[31] Bacon.
[32] Bacon.
[33] Providence Newspaper Guild, "Guild Leader" newsletter, Aug. 18, 2003.

was under appeal and that the "outstanding individuals you name have certainly not been found guilty of any illegal conduct that would require disciplinary action."[34] The Guild labeled that a double standard, noting that Belo once tried to fire an employee for drunken driving even though a jury had acquitted him. With a Shakespearean flair, the Guild called Belo's policy "full of integrity and promise but signifying nothing."[35]

By the mid-1980s, according to one study, about 60 percent of news organizations in the United States had ethics codes — most written since the 1960s and many rewritten in the late 1970s and early 1980s. They were almost always "imposed by management — an element that continues to characterize code development."[36] Such codes focus overwhelmingly on defining and preventing conflicts of interest, "particularly whether journalists could participate in political activities of various sorts … and whether and how journalists could earn additional income."[37] A theme began to develop, intended or not: "management often was viewed as having different obligations from news workers."[38] This is evidenced in the 2003 rewrite of The New York Times' code which, one critique noted, essentially said that "Times employees, but not management, must act in such a way as to maintain reader trust."[39]

This chasm appears to be the norm at other large papers as well. For instance, the Minneapolis Star Tribune in September 2004 issued a memo telling newsroom employees "it isn't acceptable" for them to attend an upcoming Bruce Springsteen concert that was also a fund-raiser for liberal causes, and complaining about the "proliferation" of political bumper stickers in the employee parking lot. "It should be obvious that we can't engage in political activities," the

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[34] Ian Donnis, "Belo doesn't bite on ethics apple," Providence Phoenix, Aug. 29, 2003.
[35] Providence Newspaper Guild, op. cit.
[36] Wilkins and Brennen, pp. 301.
[37] Wilkins and Brennen.
[38] Wilkins and Brennen.
[39] Wilkins and Brennen, 306.

managing editor's memo read. In response, a trio of workers sent out a company-wide email pointing to the company's own "marketing partnerships with various sporting and cultural activities," including sponsorship of a politically conservative evangelist's revival meeting in St. Paul.[40]

By 2004, the Guild argued that ethics codes were largely about economic, not journalistic, outcomes. Its newsletter editorialized:

> All the fences and boundaries newspapers are using to hem in intellectual property, barring journalists from expressing any thought that hasn't been processed first by the corporate machine, ultimately are grounded not in some grand vision of unbiased democratic discourse but in the economic health of the parent corporation.[41]

Indeed, some of the latest struggles between the Guild and media companies focus on ethics codes that do not touch upon newsroom practices in any fashion. In Woonsocket, R.I., where the Morning Call employed 90 Guild members, the local Guild chapter filed a complaint with the NLRB in December 2003 over a new code of conduct for the advertising department. In Fall River, Mass., the Guild was working in 2003-2004 to arbitrate a dispute with Journal-Register Co., owner of the Fall River Herald News, over a newly imposed code of conduct that "applies to commercial issues, not editorial ethics," after concerns expressed by federal regulators over alleged insider trading by its employees.[42]

In fact, the Herald News' 38-page Employee Handbook contained 10 pages under the rubrics "Your Responsibilities" and "Code of Business Conduct and Ethics." Workers were told to avoid conflicts of interest relating to "the Herald News' business dealings"; to not disclose

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[40] Mike Mosedale, "Stribulations: Ethics, the Boss and the newspaper of the Twin Cities," City Pages, Sept. 15, 2004. The Guild denounced the "unilateral communication" and vowed "to the fullest extent possible" unless the new rule were negotiated.
[41] The Guild Reporter, "What do ethics codes really protect?" April 23, 2004.
[42] Guild official who requested anonymity, personal interview, July 28, 2004.

"business information and trade secrets," such as "marketing strategies"; to obey all securities trading laws, including insider-trading laws; and to avoid "unethical or illegal business practices," such as stealing other companies' trade secrets or offering cash or other items of value to potential customers.[43] The handbook makes no mention of any journalistic ethics; indeed, the only "responsibilities" and "ethics" items applicable to newsroom employees are those applicable to all employees generally, such as instructions to maintain a neat personal appearance, not drink alcohol or use drugs on work time, not use Herald News computers for personal business and not distribute literature during work time.[44]

The Guild's legal protest against such rules as "don't steal" and "don't drink at work" reinforces the message of the Guild bargaining memo: that all ethics rules are subject to negotiation. That Journal Register Co. published such a handbook speaks volumes about its approach to journalism, which appears to be that the newspaper business is first and foremost a business. In fact, it is explicitly so; in 2004, the mission statement of this media company, which publishes 23 daily newspapers, speaks of a desire to publish products "that generate better reach for our advertisers, greater opportunities for our employees and record results and increased values for our shareholders."[45] The New York Times' ethics code puts "its economic health on an equal footing with the public trust,"[46] according to one critic; Journal Register stands on only one foot. But perhaps Journal Register is simply being candid, or realistic.

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[43] Herald News Employee Handbook, pp. 28-36.
[44] Herald News.
[45] Journal Register Co., "Mission Statement," at www.journalregister.com (accessed fall 2004). An updated "New Business Model" statement accessed in October 2009 is similarly focused exclusively on commercial concerns.
[46] Wilkins and Brennen, p. 306.

There is, of course, no such thing as neutral ethics. "Codes are framed by specific ideological, political and social influences that exert preferences, pressures and constraints."[47] The cynical version of the "golden rule," that "he who has the gold makes the rules," apparently applies in ethics as in other aspects of commercial life. As the Chronicle's Henry Norr observed in 2003:

> The notion that you can control what employees do outside of work, and that that's a meaningful standard, is a new idea. It's also a uniquely American concept. In other countries, codes are written by journalists to defend their rights. The codes here are written by management to tell reporters what they can't do.[48]

Norr observed correctly that in journalism today, codes written by media workers are mainly about defending their rights vis-à-vis management, and codes written by management are mainly about restricting media workers from acting in such a way that they damage the organization's franchise. While the Guild's original code of ethics talks about the public's right to accurate information and the reporter's duty not to suppress unfavorable news, the Guild's public legal actions and private correspondence show that, in fact, the union is first and foremost interested in protecting workers and their jobs (and thus, it is worth noting, the continued existence of the Guild). Newspapers' ethics codes are about protecting newspapers' competitive advantage by not diluting readers' faith in the product and not permitting workers to share their knowledge or skills with potential competitors — when they touch on journalism at all. (Note that the Journal Register model makes no pretense about the primacy of money over journalism.)

The "central challenge of contemporary journalism," one prominent journalism ethicist suggests, is "the tension between public expectations of socially conscious journalism, the core

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[47] Wilkins and Brennen, p. 308.
[48] Bacon.

beliefs of the profession, and the economics of corporate conglomerates."[49] Where ethical standards by either the employees' or employers' representatives fail to give proper guidance for negotiating that "central challenge" — or, perhaps inadvertently, send entirely the wrong message — is where tensions have multiplied or gone unresolved. The following chapters examine specifically The New York Times' ethics code and its failure to head off the Jayson Blair fabrications and, later, the Times' rewritten code that failed to anticipate or address the extraordinary case of Judith Miller's pre-Iraq War reportage.

[49] Wilkins and Brennan, p. 308, paraphrasing Howard Gardner, Mihaly Csikszentmihalyi and William Damon, "Good Work: When excellence and ethics meet"

CHAPTER 2: Jayson Blair's fabrications and The Times' response

Jayson Blair's name may now be synonymous with journalism scandals. A New York Times employee from 1999 to 2003, he compiled a high error rate while reporting for the newspaper's metro section; after his promotion to the national desk in 2002, he covered such major stories as the Washington, D.C., sniper killings and the domestic impact of and reaction to the war with Iraq. He resigned in May 2003 after evidence of plagiarism came to light, and an investigative team from The Times began looking into all 73 national news stories Blair had written between October 2002 and May 2003; they discovered that roughly half were suspect, and published a story about this discovery in May. A month later, the top two editors at the Times left the newspaper.[50]

Blair's deceptions were clear violations of the broad rule under which journalists are understood to work, e.g., reporting the truth and accurately depicting the sources of information. His prolific writing and apparent commitment to working long hours, however, and his occasional "exclusive" story, such as a 2002 story about the arrest of Washington-area sniper suspect John Muhammad[51], came after decades of movement toward a journalism ethos that increasingly emphasized the commercial underpinnings of the profession — by focusing on conflict-of-interest provisions that protected against dilution of the employer's product, rather than the basics of honesty and accuracy.[52] The Times Code of Conduct for newsroom employees in 2003, at the time Blair's misconduct was uncovered, focuses almost exclusively on addressing

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[50] Times staff (Dan Barry, David Barstow, Jonathan D. Glater, Adam Liptak and Jacques Steinberg, et al.), "Times reporter who resigned leaves long trail of deception," The New York Times, May 11, 2003, p. A1.
[51] Times staff.
[52] As presented in previous chapter.

conflicts of interest throughout its 53 pages, with section headings such as "Personal Relationships with Sources," "Providing Financial or Other Advice," "Sorting Out Family Ties" and "Investments and Financial Ties."[53] The code's opening statement discusses the importance of "avoiding conflicts of interest or an appearance of a conflict" as a matter of preserving the newspaper's "impartiality." It is not until item 13 of its opening section that the code references the Newsroom Integrity Statement that addresses "such rudimentary professional practices as the importance of checking facts, the exactness of quotations, the integrity of photographs and our distaste for anonymous sourcing."[54] In fact, while the investigation uncovered numerous instances of Blair acting contrary to provisions of the Integrity Statement, it reported or suggested no violations of the newsroom's Code of Conduct.[55]

The Integrity Statement, posted on an internal site and not broadly promulgated, does address basics such as falsifying quotes and plagiarizing other publications — after this framing sentiment: "*No one needs to be reminded* that falsifying any part of a news report cannot be tolerated"[56] (italics mine). A "statement" is, to belabor the point, not a "code of conduct," but like the Code, the Statement frames its discussion in terms of The Times' authority, reputation and standing — "the integrity of the newspaper" — and avoidance of conflict of interest, and not the integrity of individual journalists, the public's right to know, or commitment to truth.[57]

Blair's career began to unravel publicly on April 28, "toward the end of his remarkable run of deceit," when a reporter at the San Antonio Express-News — a former Times intern who

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[53] The New York Times, "Ethical Journalism: Code of Conduct for the News and Editorial Departments," January 2003. Hereafter, Times Code. See Appendix D for excerpts.
[54] Times Code, p. 6.
[55] Times staff.
[56] The New York Times, Newsroom Integrity Statement, December 2000. See Appendix C.
[57] Integrity Statement. See Appendix C.

had worked in the newsroom with Blair[58] — called the Times to say Blair's story about a missing soldier's mother in Texas appeared to have been plagiarized from her story.[59] Over the next two days, the Times' national editor, Jim Roberts, questioned Blair about the similarities, which included the same quotes and descriptions of the woman's house. Roberts discovered, based on discrepancies in Blair's account of his travel, that Blair had never been to San Antonio.[60] On May 2 The Times published an editor's note about the story and announced that Blair had resigned; Blair sent a statement to the Times expressing remorse and mentioning "personal problems."[61] In the course of his investigation, Roberts further discovered "the likelihood of inaccuracies, plagiarism, piped (false) quotes and faked datelines in many other Blair stories," and managing editor Gerald Boyd formed a committee to begin looking into several months of Blair's stories.[62]

Howell Raines, The Times' executive editor, returned May 1 from vacation and decided that, because Boyd's committee was composed of editors who had supervised Blair, they were in "an impossible conflict-of-interest situation"; so Raines named in their place a team of reporters and editors, under assistant managing editor Al Siegal, to conduct an investigation into Blair's stories.[63] Raines said he only then read Blair's personnel file, beginning with Blair's summer internship at the Times in 1998, and learned the reporter "had a history of being warned by

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[58] Seth Mnookin, "Hard News: Twenty-one brutal months at The New York Times and how they changed the American media," pp. 103-104
[59] Mnookin.
[60] Howell Raines, "My Times," The Atlantic, May 2004. Blair had no hotel receipt from Texas; he told Roberts he had slept in a rented car. Roberts then discovered the car-rental agency had been closed at the time Blair said he rented the vehicle.
[61] Raines.
[62] Raines.
[63] Raines.

supervising editors about mistakes that required printed corrections."[64] He also saw for the first time, he said, an April 1, 2002, memo from metro editor Jonathan Landman that stated: "We have to stop Jayson from writing for The Times. Right now."[65] Landman wrote that he was motivated to write the memo because Blair's "mistakes became so routine, his behavior so unprofessional."[66]

Blair, a young African-American, began his career at The Times with a summer internship in 1998 while he was a student at the University of Maryland. He wrote 19 stories. "He did well. He did very well," recalled one of his editors, though another recalled, "he was better at newsroom socializing than at reporting."[67] Times editors, assuming incorrectly that he had graduated from college as expected, invited Blair to return for an "extended internship" in June 1999. He was assigned to the police bureau, writing many stories and working long hours while at the same time earning rebukes for being "too sloppy in his reporting and in his appearance."[68] In November he was promoted to "intermediate reporter," a step on the way to a full-time staff reporter position, and assigned to the metro desk, covering local businesses stories. There, according to metro editor Jon Landman, Blair was "a study in carelessness"; he was cautioned about his diet of alcohol, cigarettes and junk food, and told that he "needed to cut down on mistakes and demonstrate an ability to write with greater depth."[69] In 2000, editors warned the news staff in general that too many mistakes were making it into print, and Landman wrote a memo about the importance of accuracy: "It's what we are and what we sell."[70] But Blair

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[64] Raines.
[65] Raines.
[66] Times staff.
[67] Times staff.
[68] Times staff.
[69] Times staff.
[70] Times staff.

> continued to make mistakes, requiring more corrections, more explanations, more lectures about the importance of accuracy. Many newsroom colleagues say he also did brazen things, including delight in showing around copies of confidential Times documents, running up company expenses from a bar around the corner, and taking company cars for extended periods, racking up parking tickets.[71]

Nevertheless, in January 2001, Blair was promoted to full reporter, based on the decision of a committee headed by Boyd, also an African-American, who was then assistant managing editor. Landman said he opposed the promotion but "wasn't asked so much as told" that Blair would be moving up. Landman recalled that the publisher and executive editor had "made clear the company's commitment to diversity, 'and properly so.'"[72] Boyd insisted to the investigating team that Blair's promotion was not based on race. "He was a young, promising reporter who had done a job that warranted promotion," Boyd said.[73] But one Times critic wrote that while Boyd habitually "was careful not to be seen as giving black reporters special treatment … behind the scenes he fought to make sure they were considered for top postings."[74]

After September 11, 2001, Times reporters were assigned to write "Portraits of Grief," a series of short profiles of each victim of the terrorist attacks. Blair asked to be excused from the assignment, saying he had lost a cousin in the attack on the Pentagon. He provided editors with the relative's name; the investigating team later contacted the dead man's family, who said Blair was not related.[75] In October 2001, Blair wrote a story about a September 11 memorial concert at Madison Square Garden that required such extensive corrections, on two successive days, that it drew the attention of Raines, then the new executive editor[76]. In January 2002, Landman

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[71] Times staff.
[72] Times staff.
[73] Times staff.
[74] Mnookin, pp. 50-51.
[75] Mnookin.
[76] Mnookin, p. 116. The Times would later determine Blair hadn't attended the concert, but watched it on television at a bar.

evaluated Blair, writing that his correction rate was "extraordinarily high," and sending a copy to Boyd and another editor with a note saying there was "big trouble I want you to be aware of."[77] Boyd told Blair in a private meeting that he was "blowing a big opportunity" and should turn his life around.[78] Blair turned to another editor to seek advice about "his considerable personal problems"; she advocated psychological counseling, and Blair took a two-week leave of absence.

Blair's errors continued upon his return, prompting Landman's "stop Jayson" memo and a reprimand in April; Blair again took time off, and returned to work under more close supervision[79]. He began seeking a new assignment at the Times, and was finally moved to the sports desk, whose editor got a warning from Landman to "be careful." In October, after a few months ostensibly assigned to sports but actually still writing local new stories and briefs[80], he was shifted to the national desk because of the series of sniper killings in his hometown area in Maryland, where it was thought he could be helpful.[81] "No one was asking my opinion. What I thought was on the record abundantly," Landman recalled[82]. Raines told the investigating team that he and Boyd chose Blair to work on the sniper story because he was "hungry," and that they did not tell Roberts, the national editor, about Blair's error rate or leaves of absence because he had improved and "we do not stigmatize people for seeking help."[83]

Two stories that Blair wrote about the sniper case drew official complaints. Six days after his assignment to the sniper coverage team, Blair, citing unnamed sources, wrote that local authorities were on the verge of extracting a confession from suspect John Muhammed when a

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[77] Mnookin.
[78] Mnookin, pp. 117-118.
[79] Mnookin, p. 118. Blair later said "he was treated for drug and alcohol dependencies" during his leaves.
[80] Mnookin, pp. 118-119.
[81] Mnookin.
[82] Mnookin.
[83] Mnookin.

federal prosecutor ended the interrogation because of a feud with local authorities over jurisdiction.[84] Washington bureau reporters "raised questions about Blair's story even before it ran," based on both the substance and the ability of a newly reassigned reporter suddenly finding sources willing to leak information. They urged Times editors to include caveats in the story, which were added.[85] Still, both the prosecutor and the FBI issued statements saying Blair had the story wrong (local police later told Times investigators that Muhammed was arranging for a shower, not being interrogated or confessing, when the federal prosecutor arrived). No one asked Blair to identify his sources, and Raines sent him a congratulatory e-mail for "great shoe-leather reporting. … I am very impressed and most grateful."[86] Nick Fox, the editor who supervised the sniper team, under Roberts, said, "I can't imagine accepting unnamed sources from him (Blair) as the basis of a story had we known what was going on … that the metro editors flat out didn't trust him."[87] By contrast, Raines walked by the metro desk and taunted editors with one of Blair's front-page sniper stories, saying, "At least national knows how to get good work out of this guy."[88]

On Dec. 22, Blair wrote another front-page story, again citing unnamed sources, explaining that "all the evidence" pointed to the guilt of Muhammed's accomplice, Lee Malvo, as the actual sniper.[89] A Virginia prosecutor held a press conference to denounce the story, saying he did not believe investigators actually leaked the information "because so much of it is

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[84] Jayson Blair, "U.S. Sniper Case Seen as Barrier to Confession," The New York Times, October 30, 2002, Page A1
[85] Mnookin, p. 121
[86] Times staff; also at Mnookin, p. 122.
[87] Times staff.
[88] Mnookin, p. 123.
[89] Blair, "Teenager's role tangles case against older sniper suspect," The New York Times, December 22, 2002, Page A1.

dead wrong."[90] Boyd asked Roberts to contact the prosecutor to explore his concerns; Roberts did so, and said the prosecutor complained to him about leaks, not raising the possibility that Blair had fabricated the story.[91] Raines himself compared Blair's story to what the Washington Post had reported and found no "major discrepancies."[92] Raines later said of the two Blair sniper-case stories, "I'm confident we went through the proper journalistic steps."[93]

Blair kept covering the sniper case, but was also assigned stories about the home front of the war with Iraq. On April 26, 2003, his interview with Juanita Anguiano of Los Fresnos, Texas, whose son was the only U.S. soldier still listed as "missing in action" in Iraq, ran on the front page.[94] San Antonio Express-News Macarena Hernandez read the story and "recognized entire passages of her (earlier) piece — lifted nearly verbatim." A former Times intern, with Blair in 1999, she called a Times editor she knew to convey her anger. That editor contacted Boyd, who talked to Roberts, to begin looking into the allegation of plagiarism.[95] Blair said that he could have mixed up his notes with copies of the San Antonio story, which Roberts found "fairly implausible."[96] At about the same time, a Washington Post reporter assigned to interview Anguiano noticed the similarities between the Times and Express-News stories, and told his paper's media reporter, who began working on a story about the possibility that Blair had committed plagiarism.[97]

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[90] Times staff.
[91] Times staff.
[92] Mnookin, p. 123
[93] Mnookin.
[94] Blair, "Family Waits, Now Alone, for a Missing Soldier," The New York Times, April 26, 2003, p. A1.
[95] Mnookin, pp. 103-104.
[96] Mnookin, p. 105.
[97] Mnookin.

Roberts and other Times administrators continued questioning Blair and looking into his reporting methods, eventually determining that he had never actually traveled to San Antonio, had used extensive material from Hernandez's story and also lifted material from an Associated Press story about Anguiano. Before they could take disciplinary action against him, Blair, through union officials, submitted his resignation from the Times.[98] Roberts and Fox decided to begin looking at Blair's other national news stories, and after calling some of the purported sources, Roberts said, "It was becoming clear by the minute that all these stories were screwed up."[99] Boyd pulled Roberts off that investigation and named a team to look into it; Raines soon returned to the Times and named a different team. Blair sent both Boyd and Raines an email saying that he was seeking counseling and that "I regret what I have done. I am deeply sorry."[100] As other media, including the Washington Post, New York Post, CNN and Washington City Paper began to investigate Blair's reporting[101], The Times on May 2 published a story by Jacques Steinberg addressing the San Antonio story plagiarism.[102]

The Times investigative team that Raines appointed published a 13,000-word package on May 11, including pieces of Blair's stories that it found problematic. "A staff reporter for The New York Times committed frequent acts of journalistic fraud," it began, and continued:

> He fabricated comments. He concocted scenes. He lifted material from other newspapers and wire services. He selected details from photographs to create the impression he had been somewhere or seen someone, when he had not. And he used these techniques to write falsely about emotionally charged moments in recent history …[103]

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[98] Mnookin, p. 130.
[99] Mnookin, p. 131.
[100] Mnookin.
[101] Mnookin, p. 132.
[102] Jacques Steinberg, "Times Reporter Resigns After Questions on Article," The New York Times, May 2, 2003, p. A30.
[103] Times staff.

The main story — which carried no byline, but rather a note inside the newspaper listing the staff who worked on it — ran on the front page of The Sunday Times. It said Blair "repeatedly violated the cardinal tenet of journalism, which is truth," and explained both how he did so (employing his cellular phone and laptop, which "allowed him to blur his true whereabouts," as well as using a photo database to write accurately about places he had never seen firsthand[104]) and describing the several instances in which he did so.

An April 19, 2003, story about wounded Marines in a Maryland hospital[105] was "false from its very first word," the dateline Bethesda; Blair had never been there or met the Marines he claimed to have interviewed, and one Marine with whom he allegedly spoke by telephone denied the quotes attributed to him in the story.[106] On April 6, Blair had written about a church service in Cleveland attended by a minister whose son had died in Iraq; Blair never attended the service and his story used verbatim passages from stories in other news media, including The Washington Post.[107] On March 27, he wrote about the family of Army Pfc. Jessica Lynch, who was captured and rescued in Iraq[108]; he described their home, land and family history and quoted family members. Many of the details about the home, its location and the family history were incorrect, and no family members recall having spoken to Blair.[109] On March 24, he wrote about the Gardner family of Maryland who waited for word about their missing Marine son in Iraq,

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[104] Times staff.
[105] Blair, "In Military Wards, Questions and Fears from the Wounded," The New York Times, April 19, 2003, p. A1.
[106] Times staff.
[107] Times staff.
[108] Blair, "Relatives of Missing Soldiers Dread Hearing Worse News," The New York Times, March 27, 2003, p. B13.
[109] Times staff.

describing vividly their home and demeanor[110]. In fact he had talked to them by telephone from New York, taking the home description from photos.[111] In all, the Times investigative team found problems with 36 of 73 articles Blair had written between October 2002 and April 2003, and said that "spot checks of the more than 600 articles he wrote before October have found other apparent fabrications"; an email address was offered for readers to report any other problems with Blair's stories.[112]

Many of Blair's fabrications were exposed by his expense reports, or lack of them — the investigators found no expense reports for purported lengthy trips to other parts of the country, and in some cases, found that Blair had filed reports for goods and meals purchased in Brooklyn that he claimed were in Washington. Because an administrative assistant, not an editor, reviews expenses, they did not raise questions about Blair's reporting. Cell phone records and computer logs also showed he was frequently in New York when he claimed to be writing from other parts of the country.[113]

The investigative team uncovered many of the facts of Blair's career, but left much unaddressed: which editors had seen Landman's "stop Jayson Blair" memo and why they ignored it; why no one asked Blair to reveal his sources after his sniper story had been seriously challenged; and if Blair's hiring and promotion were the result of affirmative action rather than journalistic ability. "It did not confront in any serious way the question of whether Blair got a pass … because he is black and every editor knew the publisher and the executive and managing

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[110] Blair, "Watching, and Praying, as a Son's Fate Unfolds," The New York Times, March 24, 2003, p. B1
[111] Times staff.
[112] Times staff.
[113] Times staff.

editors were passionately committed to newsroom diversity."[114] At a May 14 staff meeting about the Blair problems and their impact on the newspaper and its reputation, Raines himself addressed the race issue that was left untouched by his reporters' investigation. Raines told his colleagues that he favored "aggressively providing hiring and career opportunities for minorities,"[115] and that while he did not consciously "favor" Blair,

> (Y)ou have a right to ask if I, as a white man from Alabama, with those convictions gave him one chance too many by not stopping his appointment to the sniper team. When I look into my heart for the truth of that, the answer is yes.[116]

Raines later recalled telling colleagues that, on race, everyone must find "a ditch to die in. And let it come rough or smooth, you'll find me in the trenches for justice."[117] Howard Kurtz, the Washington Post's media reporter and host of CNN's "Reliable Sources," suggested on air the day of the story announcing Blair's resignation, "this was a promising young black reporter. I wonder if a middle-aged hack would have gotten away with 50 mistakes and still be at that job."[118]

Less than three weeks later, both Raines and managing editor Boyd announced they had resigned from The Times. Publisher Arthur Sulzberger, who had blamed only Blair and defended his editors in The Times investigative piece, and told reporters at the May 14 meeting that he would refuse to accept Raines' and Boyd's resignations, had in fact fired them.[119] (Raines himself would later write, "I was dismissed."[120])

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[114] Ken Auletta, "Backstory: Inside the business of news," p. 59
[115] Auletta.
[116] Auletta, p. 60.
[117] Raines.
[118] Mnookin, p. 133.
[119] Auletta, p. 61
[120] Raines.

Blair himself would point to both drug addiction and bipolar disorder in explaining his journalistic misdeeds.[121] Raines, in his "no-holds-barred assessment" of the incident a year later, offered several thoughts critical of what he called the culture of The Times, that can be seen having enabled Blair to carry on his deceptive journalism. Among them:

- "An internal personnel system I came to think of as management by mendacity. Great work gets the great praise it deserves … and sloppy work is accepted as adequate."
- "A generation of national correspondents who resisted traveling to news events in their assigned regions."
- "Hiring mistakes are rarely shown the door at The Times, and the paper can be stuck with them for years." (He quoted Turner Catledge, a predecessor as the Times' top editor: "No one was ever fired at the Times. God was our personnel director.")
- A dispersed system of management in which editors from various sections and at various levels rarely communicated and felt no responsibility or sometimes comfort level to share their concerns horizontally or vertically.[122]

To state the obvious, none of these issues — accepting mediocre work, declining to travel to events on one's beat, keeping less-than-adequate reporters on staff and failing to share concerns with other editors — is addressed in The Times' Code of Conduct, yet each, it is clear, has a direct or indirect impact on the ethical culture of the newsroom.

The two-page Newsroom Integrity Statement explains the required commitment of Times journalists to writing and publishing the truth, but it apparently presented Blair with an opening (and, potentially, his editors with an excuse): "Writers at The Times are their own principal fact checkers and often their only ones."[123] That may be true in any news organization, journalism ethicist Tom Rosenstiel told The Times investigative team: "It's difficult to catch someone who

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[121] Jayson Blair, "Burning Down My Masters' House: My life at The New York Times," passim.
[122] Raines.
[123] Newsroom Integrity Statement.

is deliberately trying to deceive you." He suggested that any system designed to treat reporters with suspicion would destroy "the trust between reporters and editors."[124]

Raines complained of an old-boy network at The Times, supported by the contractual strictures of The Newspaper Guild, that rewarded "seniority and networking skills over talent."[125] He wanted to build "an open assignment process based purely on a correspondent's talent, performance record on big stories, and willingness to work diligently under adverse conditions," and boasted of one example: his finding a "bench warmer" on the city staff who had won a Pulitzer while at another newspaper but had "languished" at the Times "because he had somehow gotten crosswise with his bosses." He put that "bench warmer" on the Afghanistan team in 2001.[126] That example eerily parallels what the Times investigation found in Blair's case: a reporter spending time on local coverage who had, for good reason, "gotten crosswise" with his bosses, but whom nevertheless Raines and other senior editors promoted because of a perception of talent and hard work. Ultimately, that idiosyncratic management technique — based on a top editor's perception of merit rather than supervisors' recommendations, seniority or the support of peers — simply gave a serial fabricator a bigger platform.

And in fact, reporters often complained that it was Raines' personal "old boy network" that won favoritism at the Times from 2001 to early 2003. The editor moved Pat Tyler, "a fishing buddy of Raines's (sic) for more than three decades," from the London bureau to the Washington bureau as, effectively, a shadow bureau chief, unsettling then-chief Jill Abramson.[127] He instructed reporter Judith Miller, another old friend, to go "win a Pulitzer" after Sept. 11, 2001,

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[124] Times staff.
[125] Raines.
[126] Raines.
[127] Mnookin, pp. 67-69.

and told editors to "get her stories prominently into the paper,"[128] while driving off the staff the only editor "who had the knowledge and background to rein Miller in."[129] He gave great leeway to his "personal friend," reporter Rick Bragg, who essentially created himself as a New Orleans bureau and whose copy was never to see any "substantial editing," on Raines' orders.[130] And he took a personal role in promoting Blair who, during his fabrications, was dating the daughter of a friend of Raines' wife.[131]

What motivated Raines' self-described "revitalization strategy" for The Times — the fostering of a "higher creative metabolism"[132] — which included his promotion of "hungry ballplayers" such as Blair? Primarily, analogously to the Code of Conduct itself, his motivation was The Times' financial success. "We believed that the paper's long-term viability required significant improvements in the quality of its journalism," Raines wrote.[133] "If we were going to get more readers and make more money, the daily and Sunday New York Times simply had to get better — a lot better."[134]

In short, Raines' ramped-up "metabolism" for The Times, his favoring certain reporters and imposing new, idiosyncratic rules for promotion and prominent story placement, "created a culture in which a sociopath like Jayson Blair was allowed to thrive" and "sullied the most valued brand in journalism."[135] Sulzberger called Blair's case "a huge black eye" for the

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[128] Mnookin, p. 242.
[129] Mnookin. See next chapter for discussion of Miller's reporting.
[130] Mnookin, pp. 71-72. Bragg himself would resign a month after Blair, in 2002, after the Times discovered he had used an unpaid and uncredited freelancer to do some of the reporting for his bylined work.
[131] Mnookin, p. 124.
[132] Mnookin, p. 43.
[133] Raines.
[134] Raines.
[135] Mnookin, p. 227.

newspaper.[136] "There has never been anything like this at The New York Times," said Alex Jones, a former Times reporter and co-author of a book about the newspaper's history.[137] "The most serious journalistic scandal in the paper's history," critic Ken Auletta wrote.[138] "Collectively we agonized: 'Will the public ever trust us again?'" wrote James Poniewozik in Time, speaking on behalf of journalists in general.[139] But Poniewozik suggested the impact on journalism ultimately may have been minimal — because the public had not trusted journalists even before Blair's problems became known. He reported that 36 percent of Americans polled by USA Today/CNN/Gallup believed, in June 2003, that the media "get the facts straight" — compared to 39 percent in February 2003 and 32 percent in December 2000. "The numbers may help explain why so few people complained after Blair made up stuff about them — they assumed that that is just what reporters do," he argued.[140] Indeed, the Times investigative staff cited "few complaints from the subjects of his (Blair's) articles" as a reason his "deceits went undetected for so long."[141] In March 2003 when Blair entirely fabricated a story based on purported interviews with Jessica Lynch's family, family members said, they "were joking" about the wildly inaccurate details they had read in The Times but didn't bother to complain; "We just figured it was going to be a one-time thing."[142]

Blair himself, beyond explaining his behavior as part of his mental illness, has acknowledged his failings and apologized. "I am sorry. There is no doubt about that," he told an interviewer in March 2004. "Obviously there is a character flaw in me that allowed me to carry

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[136] Times staff.
[137] Times staff.
[138] Auletta, p. 59.
[139] James Poniewozik, "Don't blame it on Jayson Blair," Time, June 1, 2003.
[140] Poniewozik.
[141] Times staff.
[142] Times staff.

on lying."[143] He also suggested, though, that he was hardly unique. "Many would like to demonize me so they can make the case that I was an extraordinary aberration. I think there are ample examples of the fact that there will be more cases like mine." He then cited seven other specific examples, from 2003 and 2004, of reporters at major newspapers being caught in what were seen as ethical lapses, and said "there are several other violators of journalistic ethics who are still out there waiting to be caught."[144]

Blair published his memoir in 2004 in which he attempted to explain his missteps, put them in what he called a context of industry racism. At the same time, however, Blaire continued his casual relationship with truth. A drug addict and alcoholic, in recovery for a year by the time of his resignation, he wrote that he came to realize he was likely a manic-depressive,[145] and that by 2002, "my relationship with The New York Times had dissolved to the point of becoming irreparable … They just did not know it."[146]

He railed about the Times' attitude toward employees:

> If the Times had known about September 11 an hour before the first plane struck the north tower, I have no doubt that they would have sent twenty of us to the foot of the towers and then complained as we suffered from third-degree burns that we were not filing on time.[147]

Blair also argued that Raines was "dismantling the newsroom in (an) unceremoniously cruel fashion,"[148] damaging morale.

Blair complained about what he saw as the disparate attitude toward white and black plagiarists and fabricators, including Stephen Glass, fired in 1998 after his stories at the New

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[143] David S. Hirschman, "Q&A: Jayson Blair," Mediabistro.com, March 9, 2004.
[144] Hirschman.
[145] Blair, "Burning Down My Masters' House," pp. 39-42.
[146] Blair, p. 211.
[147] Blair, p. 201.
[148] Blair, p. 216.

Republic were discovered to have been almost wholly fabricated. "I don't understand why I am a bumbling affirmative-action hire when Stephen Glass is this brilliant whiz kid, when from my perspective … I fooled some of the most brilliant people in journalism," Blair wrote, recounting details of an interview he granted to the New York Observer.[149] He also recounted the high-profile firings of Mike Barnicle at The Boston Globe and Ruth Shalit at the New Republic, both white and both of whom soon found other work in journalism or a related field, while Patricia Smith, a black Globe columnist who was also fired for fabrications, and Janet Cooke, the black woman who won a 1981 Pulitzer at the Washington Post for what turned out to be a fabricated story about a child heroin addict, were driven out of the profession.[150]

Blair's book, though, displays the same pattern of either sloppiness or outright fabrication for which he was scrutinized at The Times. He writes, for instance, about seeing The Times staff report on his deceptions on the paper's front page: "I looked at the top of the story and noticed the names on the byline: Dan Barry … David Barstow …"[151] In fact, the story carried no byline.[152] He mentions, in discussing a conversation with Boyd about his drug use and rehab, that Boyd's "mother died after a long struggle with drugs. It had shaped much of who he was."[153] Boyd's mother actually died of sickle-cell anemia.[154]

Blair's fabrications destroyed career, ended the careers of two senior editors and potentially harmed the reputation of The Times. But many of the same factors, at work simultaneously with and continuing after Blair's deceptions — favoritism in the newsroom,

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[149] Blair, "Burning," p. 67
[150] Blair, "Burning," pp. 67-68.
[151] Blair, "Burning," p. 53.
[152] As mentioned earlier in the chapter; Mnookin points this out at p. 253.
[153] Blair, "Burning," p. 212.
[154] Mnookin, p. 253; also Felicity Barringer, "Gerald Boyd, Times's former managing editor" (obituary), The New York Times, November 23, 2006.

unchecked use of anonymous sources and the Times' perhaps financial impetus to promote sensational or exclusive stories — were seen in another case, that of veteran reporter Miller, which is explored in the next chapter. The internal reaction at the Times was far less dramatic; the consequences were far more serious, including allegations that Miller's stories helped propel the United States into war with Iraq.

CHAPTER 3: Judith Miller, WMD and the case for war with Iraq

Judith Miller, in contrast to Jayson Blair, was a longtime New York Times reporter by the early 2000s, trusted with several key assignments over her 28 years at the newspaper, co-winner of a Pulitzer Prize and author or co-author of four books. Her high-profile involvement in two interrelated cases became flashpoints in the discussion of journalistic ethics, both her own and those of The Times.

In 2001 and 2002, Miller's series of stories, specifically on the subject of Iraq's purported weapons of mass destruction program, "helped … the Bush administration bolster the case for war."[155] Some of the stories proved to be so "stunningly inaccurate"[156] that The Times ran an unprecedented, lengthy editor's note in May 2004 criticizing much of the reporting or story play in the newspaper, though declining to name specific reporters; four of the stories were by Miller[157]. In 2005, Miller served nearly three months in jail, on a federal contempt citation; she refused to name the source who leaked to her the name of covert U.S. agent, in violation of law. The leak allegedly came from within the Bush administration, in retaliation for the agent's husband's public opposition to assertions about Iraq's attempt to acquire weapons of mass destruction.[158]

Miller began work at The New York Times in 1977, after several years of working for other media outlets, including National Public Radio and the monthly magazine The Progressive. She held a master's degree from the Woodrow Wilson School of Public and International Affairs

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[155] Franklin Foer, "The Source of the Trouble," New York Magazine, May 31, 2004.
[156] Foer.
[157] Times editors, "The Times and Iraq," The New York Times, May 26, 2004, p. A10
[158] Don Van Natta Jr., Adam Liptak and Clifford J. Levy, "The Miller Case: A notebook, a cause, a jail cell and a deal," The New York Times, Oct. 15, 2005, p. A1.

and had a strong interest in the Middle East[159] that grew out of travel to the region. After covering a variety of beats, including the securities industry, Congress and foreign affairs, she was in 1983 named chief of The Times' Cairo bureau, where she oversaw much of the coverage of the Middle East.[160] In 1990 she became the newspaper's special correspondent for the Persian Gulf crisis, which developed from Iraq's invasion of Kuwait.[161] During the current Iraq War, she was embedded for four months with the U.S. Army unit tasked with finding potential weapons of mass destruction (WMD) created by the regime of Iraqi leader Saddam Hussein.[162]

During this period she worked on two books: "One, by One, by One," an account of Holocaust denial or distortion in six countries, published in 1990, and "Saddam Hussein and the Crisis in the Gulf," co-written with Harvard political scientist Laurie Mylroie, also published in 1990 as the Persian Gulf crisis unfolded.[163] After the brief 1991 war in the Persian Gulf, Miller again took several assignments for he Times, and completed or co-authored two more books: "God has Ninety-Nine Names," a 1996 look at the rise of Islamic extremism, and "Germs: Biological Weapons and America's Secret War," co-written with two fellow Times journalists and published in 2001.[164]

In January 2001, Miller and a group of colleagues wrote a series of stories on the growing threat posed by Osama bin Laden and his group al-Qaida. That series received the Pulitzer Prize for explanatory journalism in 2002, and a television documentary based on Miller's reporting for

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[159] Judith Miller, "Biography," www.judithmiller.org (accessed March 2009). Hereafter "Biography."
[160] "Biography".
[161] "Biography".
[162] "Biography".
[163] "Biography".
[164] "Biography".

the book "Germs" won an Emmy Award the same year.[165] In 2002 the television series "Frontline," based a series about terrorism on work by The Times team, which won a DuPont Prize.[166]

Socially, Miller had formed strong relationships with foreign-policy establishment figures in Washington and elsewhere. She had lived with Les Aspin, then a congressman, who later became secretary of defense under President Clinton[167], and had dated fellow Times reporter Richard Burt, who became President Reagan's assistant secretary of state.[168] In both cases, she used them as named sources for stories.[169] Miller had access to several Mideast leaders, including Saddam Hussein, Hosni Mubarak of Egypt and Yasser Arafat of the Palestinian Liberation Organization.[170] NPR reporter Nina Totenberg recalled, for a profile of Miller, a party in the mid-1970s at which King Hussein of Jordan spotted Miller and shouted, "Juuuuuuddddddy!" She responded, "Kiiiinnnnggg," Totenberg remembered.[171] She once rode a tractor with Moammar Qadafi, Libya's leader.[172] "She's a passionate person — she gets caught up in her sources passionately," an anonymous colleague said.[173] When Miller was The Times' deputy Washington bureau chief, Spy magazine's gossip columnist suggested: "Miller has been enriching the lives of high-level sources around Washington with her own very special brand of

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[165] "Biography".
[166] "Biography".
[167] Foer.
[168] Foer.
[169] Foer.
[170] Foer.
[171] Foer. Spelling as in the original; illustrates the informality of the relationship between a journalist and a head of state.
[172] Lynne Duke, "The Reporter's Last Take," Washington Post, Nov. 10, 2005, p. C1.
[173] Duke.

journalistic involvement."[174] Among collegial relationships established at the Times, Miller once shared a summer house with Arthur Sulzberger Jr. and his wife[175]; they were "longtime friends" by the time Sulzberger was named publisher of his family-run newspaper in 1992, though they rarely socialized after that, according to one source.[176] Journalist Seth Mnookin called her, simply, "extremely well connected."[177]

Miller's career and style often earned the enmity of colleagues and competitors. "With her seemingly bottomless ambition — a pair of big feet that would stomp on colleagues in her way and even crunch a few bystanders — she cut a larger-than-life figure that lent itself to Paul Bunyan-esque re-tellings. Most of these stories aren't kind."[178] The stories range from distaste with personal style to allegations of journalistic misdeeds with the support of, or at least lack of supervision by, others in the Times news operation. "She had a reputation for sleeping with her sources … for bigfooting her way onto other people's beats; for raining down torrent of abuse on clerks, travel agents and drivers; and for cutting down her colleagues."[179] In 2005, she told a Washington Post profiler, "It's quite conceivable that some people really don't like me. That's OK. I don't like everybody."[180]

Saying "some people" may have understated the depth of dislike she engendered, at the Times and within broader journalistic circles. A few quotes and examples may suffice. "She's a shit to the people she works with," one anonymous coworker told a reporter.[181] A Cairo

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[174] "J.J. Hunsecker," quoted in Foer. "Hunsecker" further suggested Miller had a romantic relationship with Lee Atwater, President George H.W. Bush's top political strategist.
[175] Seth Mnookin, "Unreliable Sources," Vanity Fair, January 2006.
[176] Auletta, p. 146.
[177] Mnookin, "Unreliable."
[178] Foer.
[179] Mnookin, "Unreliable."
[180] Duke.
[181] Foer.

correspondent recalled her trying to "intercept" a mid-1980s interview he had scored with Boutros Boutros-Ghali of Egypt, who later became U.N. secretary general, claiming "seniority."[182] A Washington reporter recounted Miller complaining that a story he had just written was too soft on Democratic candidate Michael Dukakis during the 1988 presidential campaign — and saying Atwater, then heading George H.W. Bush's Republican campaign, agreed with her, which meant she had shared with him the contents of the story before publication.[183] "She had gotten too close to her sources," the writer, Adam Clymer, said later.[184] Newsweek reporter Christopher Dickey, who in August 1985 traveled to Morocco with Miller, recalled comparing notes of an interview with a military general and found that Miller had recorded lines from Dickey as having come from the general:

> I doubt that Judy ever made that mistake again, but it taught me something about her that I've seen confirmed several times in the years since. Judy's great talent as a reporter is in gaining access. Full stop. She doesn't always know what she has when she's got it, and she isn't always good at analyzing what she's heard when she hears it.[185]

The Times itself, in a 2005 profile, called Miller "a divisive figure" in the newsroom.[186] One former colleague remembered Miller dubbing herself "Miss Run Amok." "I said, 'What does that mean?'" Douglas Frantz recalled for The Times profile. "And she said, 'I can do whatever I want.'"[187] In December 2000, while working with Miller on the al Qaida series, writer Craig Pyes wrote a memo to his editors asking that his byline be removed from one story, and saying:

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[182] Duke.
[183] Duke.
[184] Duke. Miller told Duke she didn't recall either episode.
[185] Christopher Dickey, podcast, Newsweek On Air, Oct. 20, 2005.
[186] Van Natta Jr. et al
[187] Van Natta Jr. et al.

> I'm not willing to work further on this project with Judy Miller. … I do not trust her work, her judgment or her conduct. She is an advocate, and her actions threaten the integrity of the enterprise, and of everyone who works with her. … She has turned in a draft of a story of a collective enterprise that is little more than dictation from government sources over several days, filled with unproven assertions and factual inaccuracies.[188]

When Bill Keller became editor of the Times in July 2003, he told Miller she could no longer cover Iraq and weapons issues, but, said Keller — her boss — "she kept kind of drifting on her own back into the national security realm."[189]

Despite complaints about collegiality and the Pye memo, in the months and years after Sept. 11, 2001, Miller became the Times' primary reporter on the George W. Bush administration's buildup to war with Iraq, specifically — because of her career and interests — writing about the allegations that Saddam was seeking or had acquired weapons of mass destruction. Between Sept. 11, 2001, and May 26, 2004 — the date of the long note from the editors critiquing Times coverage of the weapons of mass destruction issue — Miller had written or co-written more than 300 bylined stories for The Times. The editors' note mentioned six stories in particular as problematic, for their content and for their placement in the newspaper.

In October and November 2001, The Times published two stories on Page A1 alleging Islamic terrorists were being trained in a secret camp in Iraq, and that Iraq was providing the terrorists with biological weapons. Patrick Tyler's October 26 story, reporting intelligence sources as saying Czech officials confirmed a meeting between Iraqi officials and 9/11 hijacker Mohammad Atta — information that itself was later discredited — mentioned deep in the story that Iraqi defectors reported seeing or participating in terrorist training camps in "a bend of the Tigris River just southeast of Baghdad." Tyler noted that the report "has yet to be independently

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[188] Quoted by Howard Kurtz in "Reporter, Times are Criticized for Missteps," Washington Post, October 17, 2005, p. A2.
[189] Kurtz.

confirmed."[190] Chris Hedges' November 8 story cited "two defectors from Iraqi intelligence" who said they worked at such a camp. "The camp is overseen by the highest levels of Iraqi intelligence," he wrote. Hedges noted that the interviews were arranged by Ahmed Chalabi, an Iraqi defector and head of the London-based Iraqi National Congress exile group.[191]

On Dec. 20, 2001, Miller wrote for Page A1 a story that began:

> An Iraqi defector who described himself as a civil engineer said he personally worked on renovations of secret facilities for biological, chemical and nuclear weapons in underground wells, private villas and under the Saddam Hussein Hospital in Baghdad as recently as a year ago.[192]

On Sept. 8, 2002, Miller co-wrote another A1 story that reported, "Iraq has stepped up its quest for nuclear weapons and has embarked on a worldwide hunt for materials to make an atomic bomb, Bush administration officials said today." The story reported that the United States had intercepted "specially designed aluminum tubes" for uranium enrichment that had been bound for Iraq; it referred to earlier reports, in the Times, of Iraqi defectors saying the country was ramping up its nuclear program. It quoted unnamed Bush administration officials as saying the United States could not wait for "hard evidence" of an Iraqi nuclear program, because "the first sign of a 'smoking gun' … may be a mushroom cloud."[193] Five days later, on Sept. 13, Miller and Gordon co-wrote another article on the same topic, this time acknowledging — deep in the story — an internal debate in the Bush administration over the aluminum tubes but still giving more weight to the uranium-enrichment argument:

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[190] Patrick Tyler, "Czechs Confirm Iraqi Agent Met with Terror Ringleader," The New York Times, Oct. 26, 2001, p. A1

[191] Chris Hedges, "The School: Defectors Cite Iraqi Training for Terrorism," The New York Times, Nov. 8, 2001, p. A1

[192] Judith Miller, "Iraqi Tells of Renovations at Sites for Chemical and Nuclear Arms," The New York Times, Dec. 20, 2001, p. A1

[193] Michael R. Gordon and Judith Miller, "U.S. Says Hussein Intensifies Quest for A-bomb Parts," The New York Times, Sept. 8, 2002, p. A1.

> Senior officials acknowledged yesterday that there have been debates among intelligence experts about Iraq's intentions in trying to buy such tubes, but added that the dominant view in the administration was that the tubes were intended for use in gas centrifuges to enrich uranium. George J. Tenet, the director of central intelligence, has been adamant that tubes recently intercepted en route to Iraq were intended for use in a nuclear program, officials said.[194]

On Jan. 9, 2003, Gordon wrote an article saying that the International Atomic Energy Agency challenged the Bush administration's argument about aluminum tubes. The director, Dr. Mohammed Elbaradei, told The Times that the tubes "are not directly suitable" for uranium enrichment. The story also noted, "American intelligence was never of a single mind on the question of aluminum tubes," though noting that President Bush had made them part of his case for going to war against Iraq.[195]

Finally, on April 21, 2003, Miller — then embedded with an American military unit, Mobile Exploitation Team Alpha (MET Alpha), charged with looking for WMD inside Iraq — filed a story that began:

> A scientist who claims to have worked in Iraq's chemical weapons program for more than a decade has told an American military team that Iraq destroyed chemical weapons and biological warfare equipment only days before the war began, members of the team said. They said the scientist led Americans to a supply of material that proved to be the building blocks of illegal weapons, which he claimed to have buried as evidence of Iraq's illicit weapons programs. [196]

The scientist also claimed that Iraq had helped al Qaida, and had sent unconventional weapons to Syria to hide before the U.S. invasion. Miller noted that, under the terms of her embedding agreement, she was able neither to interview the scientist herself nor visit his home — though she was able to see him from a distance, "clad in nondescript clothes and wearing a

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[194] Gordon and Miller, "White House Lists Iraq Steps to Build Banned Weapons," The New York Times, Sept. 13, 2002, p. A13

[195] Michael R. Gordon, "Agency Challenges Evidence Against Iraq Cited by Bush," The New York Times, Jan. 9, 2003, p. A10.

[196] Judith Miller, "Illicit Arms Kept Till Eve of War, an Iraqi Scientist is Said to Assert," The New York Times, April 21, 2003, p. A1

baseball cap" — and that her story was held up for three days and approved by military censors, who asked her to delete specific reference to weapons materials.

The Times note — "From the editors: The Times and Iraq," published on May 26, 2004 — cited these seven stories in particular, four by Miller, as examples of

> coverage that was not as rigorous as it should have been. In some cases, information that was controversial then, and seems questionable now, was insufficiently qualified or allowed to stand unchallenged. Looking back, we wish we had been more aggressive in re-examining the claims as new evidence emerged — or failed to emerge.[197]

The editors said that many of the stories came from the same small group of Iraqi exiles, notably from or arranged by Chalabi, and were often confirmed to reporters by Bush administration officials who had received their information from the same exiles. Their specific criticisms of the six stories:

• The October and November, 2001, stories of terrorist training camps in Iraq "have never been independently verified," but relied solely on "Iraqi defectors."

• The December 2001 story about pre-war WMD facilities was based on information from an Iraqi defector that turned up no evidence of such facilities. "(I)t looks as if we, along with the administration, were taken in," the editors wrote. "And until now, we have not reported that to our readers."

• The Sept. 8, 2002 story about aluminum tubes "should have been presented more cautiously," and "administration officials were allowed to hold forth at length" about Saddam's nuclear ambitions while doubts were "buried deep" in the 3,600-word story.

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[197] Editors, "From the editors: The Times and Iraq," The New York Times, May 26, 2004, p. A10.

• The Sept. 13 follow-up story noted that the tubes "were in fact a subject of debate among intelligence agencies" but that "appeared deep in an article on Page A13, under a headline that gave no inkling that we were revising our earlier view."

• The January 2003 piece "was reported on Page A10; it might well have belonged on Page A1."

• The April 2003 article's claims of Syrian and al Qaida involvement "were then, and remain, highly controversial." "The Times never followed up on the veracity of this source or the attempts to verify his claims," the editors wrote.

"Some critics of our coverage during that time have focused blame on individual reporters," the editors wrote, but "the problem was more complicated. Editors … were perhaps too intent on rushing scoops into the paper" and articles that made "dire claims about Iraq tended to get prominent display," while those challenging the administration's and defectors' stories were "sometimes buried."[198]

Four days later, Daniel Okrent, The Times' "public editor," or ombudsman, offered his own critique, of both the coverage and the editors' note. He said readers of The Times stories would have received "the impression that Saddam Hussein possessed, or was acquiring, a frightening arsenal of weapons of mass destruction seemed unmistakable. Except, of course, it appears to have been mistaken."[199] He called it "flawed journalism," and blamed both editors and reporters, saying the "failure was not individual, but institutional." Among the problems he cited: "a hunger for scoops"; reporters' desire to write stories worthy of the front page; lack of re-

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[198] Editors.
[199] Daniel Okrent, "Weapons of mass destruction? Or mass distraction?" The New York Times, May 30, 2004, Page B2.

examination of past stories; "coddling" sources who turned out to be untruthful; and an end-run by some editors and reporters around the normal editing chain of command.[200]

Okrent noted that internal critics at The Times had "raised substantive questions about certain stories" but these critics had not been heeded. He did not note that external critics had also raised concerns, in public forums, and were also unheeded. Foremost perhaps among these is Jack Shafer, the media critic for the online journal Slate and a former newspaper editor in Washington and San Francisco; he wrote at least six critiques of Miller's reporting specifically in 2002 and 2003. In December 2002, he questioned Miller's story that said a Russian scientist may have given Iraq "weaponized" smallpox because of her heavy reliance on unnamed sources.[201] In July 2003, he wrote that, 100 days after Baghdad had fallen, "none of the sensational allegations about chemical, biological or nuclear weapons" that Miller had reported, based on the information of Iraqi defectors, "have panned out." He noted that Miller herself suggested, in print, that the failure to find WMD lay with "chaos, disorganization, interagency feuds, disputes … and shortages of everything from gasoline to soap" on the U.S. military's part,[202] not because the stories "from her sources inside Ahmad Chalabi's Iraqi National Congress"[203] were wrong. In August 2003, Shafer suggested she had been "duped" by Saddam's own claims to have WMD, and said "no journalist bit harder on the Iraqi defectors' claims" about WMD than Miller, whose "extreme closeness to her sources blind[ed] her."[204]

When The Times editors' note appeared, Shafer applauded the newspaper for "acknowledg[ing] its shortcomings" in WMD coverage. While "there aren't enough 'Judith

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[200] Okrent.
[201] Jack Shafer, "Leak of the week: Madame Smallpox," Slate, Dec. 6, 2002.
[202] Miller, "Chronicle of Confusion in the Hunt for Hussein's Weapons," The New York Times, July 20, 2003, Page A12.
[203] Shafer, "The Times scoops that melted," Slate, July 25, 2003.
[204] Shafer, "Judith Miller: Duped?" Slate, May 29, 2003.

Miller' bylines to satisfy me" in the editors' list of troubling stories, Shafer said, "it's a start." But he also joined with Times editors in spreading the blame: "the last time I checked, The Times had yet to distribute pressroom keys to Miller, giving her power to print whatever excites her fancy. Editors aided and abetted every one of the flawed stories."[205]

Part of the problem, said critic Franklin Foer, was that while many reporters relied on Chalabi and his group for information about Iraq, "none of them went so far as Miller in cultivating Chalabi." Because Miller "relies on her well-placed, carefully tended-to connections," rather than digging deep for sources or documents, she was more vulnerable to the problem of bad sources, whether in the Iraqi National Congress or its allies in the Bush administration, the profile suggested.[206] Further, Miller allegedly became so invested in the story of WMD that she not only accepted an unusually restrictive embedding agreement with the weapons hunters[207], but also became involved in military decisions. While with MET Alpha, she allegedly objected to its plan to halt a particular search mission and called a friend, then-Maj. Gen. David Petraeus, to complain. Petraeus then convinced MET Alpha's commander to reverse his earlier decision.[208] The public-affairs officer who worked with Miller at MET Alpha told a reporter, "(N)ot many people at [the Department of] Defense liked this woman … maybe they were hoping that she'd step on a mine. I certainly was."[209] One staff officer told Washington Post

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[205] Shafer, "Mini Culpa," Slate, May 26, 2004.
[206] Foer.
[207] Shafer, "Miller's Double Crossing," Slate, May 15, 2003. Shafer notes that Miller had disclosed additional terms beyond the standard embedding agreement: to embargo a story about discovered WMD for three days; to permit prepublication military review; to not name the chemicals found by MET Alpha; to not name the Iraqi scientist who guided the team.
[208] Foer.
[209] Foer.

reporter Thomas Ricks: "It's impossible to exaggerate the impact she had on the mission of this unit, and not for the better."[210]

Ricks, among others, cited Miller's own email to a colleague in Iraq about the origin of many of her stories — Ahmed Chalabi. "He has provided most of the front-page exclusives on WMD to our paper," she wrote to John Burns, the Baghdad bureau chief.[211] Another Post writer suggested: "She appeared to act as a liaison of sorts between the Army and Ahmed Chalabi of the Iraqi National Congress."[212] (Miller later denied her email was meant literally, calling it "journalistic shorthand."[213]) Chalabi — whose niece worked for The New York Times in Kuwait, a fact never disclosed by The Times' editors' note[214] — was the target of a U.S./Iraqi raid in May 2004, with U.S. officials alleging he was passing secrets to Iran.[215] Asked by a reporter if he regretted having fed the press weapons of mass destruction information that proved not to pan out, he said: "No … We are in Baghdad now."[216]

Many saw the effects of Miller's incorrect reportage as far more serious than Blair's. Shafer, in July 2003, flatly charged Miller with helping lead the United States to war:

> Because the *Times* sets the news agenda for the press and the nation, Miller's reporting had a great impact on the national debate over the wisdom of the Iraq invasion. If she was reliably wrong about Iraq's WMD, she might have played a major role in encouraging the United States to attack a nation that posed it little threat.[217]

Her reporting affected more than the national agenda, according to the Washington Post's Ricks. He alleged Miller's stories "had an insidious effect on intelligence estimates," and quoted

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[210] Thomas Ricks, "Fiasco: The American military adventure in Iraq," p. 382.
[211] Ricks, p. 383.
[212] Duke.
[213] Ricks, p. 383.
[214] Okrent.
[215] Ricks, p. 388.
[216] Ricks, p. 389.
[217] Shafer, "The Times scoop that melted."

a "senior military intelligence officer" as saying: "The media has far more effect on intelligence analysis than you probably realize." Ricks calls Miller's article of Sept. 8, 2002, on Saddam's quest for nuclear weapon materials, "flat wrong."[218] "There is blood on Miller's hands, lots of it," wrote Mediabistro's Jesse Kornbluth.[219]

And the disparate treatment of the Blair and Miller cases elicited outrage from one writer for a black-focused journal. Miller, wrote Margaret Kimberley, "makes Jayson Blair look like a paragon of journalistic virtue." She charged that Miller and the editors of the Times "are all complicit in bringing hell to the people of Iraq."[220]

It was not, however, these allegations that brought Miller a high national profile or ended her career at the Times: It was her involvement in the Valerie Plame case, in which Miller was held in jail for refusing to disclose the source of information she received on an undercover CIA operative, that brought her to widespread attention, spurred a national discussion of journalism ethics, and concluded with her resignation in 2005.

The facts are these: Former diplomat Joseph Wilson criticized the Bush administration's buildup to war with Iraq, finally going public in July 2003 with charges that some of the information released about Saddam's attempt to acquire WMD was not truthful. Wilson was married to Valerie Plame, a CIA officer who had worked undercover in Africa and elsewhere. Wilson had visited Niger on a fact-finding mission to look into the administration's claim that Saddam's agents attempted to buy yellowcake uranium there for making a nuclear weapon. Wilson concluded that was not true. Plame's name was leaked to members of the press, allegedly

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[218] Ricks, pp. 55-56.
[219] Jesse Kornbluth, "Feeling Bad for Judy: It's possible," Mediabistro.com, November 2, 2005.
[220] Margaret Kimberley, "Freedom Rider: Judith Miller and Jayson Blair," The Black Commentator, September 15, 2005, www.blackcommentator.com/150/150_freedom_rider_judith_miller_and_jayson_blair.html (accessed April 2009)

including Miller (though it was published only by syndicated columnist Robert Novak), allegedly by Bush administration officials in an indirect attempt to discredit Wilson or the CIA by arguing that Plame had advocated with her superiors for Wilson to join the mission to Niger.[221]

In June 2003, before Wilson went public but after he had privately argued with the administration's war justification, Miller met with I. Lewis "Scooter" Libby, chief of staff to Vice President Dick Cheney, at his office, under a promise that she would maintain his confidentiality as a source. She said she wanted to talk about the failure to find WMD in Iraq; Libby wanted to talk about Wilson and his Niger trip. Her notebook from that day includes the words "Valerie Flame." Shortly thereafter, a special prosecutor began investigating allegations that administration officials had revealed the name of an undercover intelligence agent, a federal crime. As a result of that investigation, in October 2005, Libby was charged with obstruction of justice, making false statements and perjury.[222] Libby was later convicted and, in June 2007, sentenced to 30 months in prison and fined $250,000.[223]

In August 2004, Miller was subpoenaed by a grand jury as part of the investigation. She resisted testifying and asked her lawyer, hired by The Times, to attempt to contact Libby to see if he would lift her pledge of confidentiality. A federal judge found her in contempt of court in October 2004 when she refused to name her source and cited First Amendment protection for the press. She was finally ordered to jail in the summer of 2005 and served 85 days before her release; that release came after she obtained from Libby a written release from her promise to maintain his confidentiality about the June 2003 meeting. On Sept. 30, 2005, she testified for

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[221] Van Natta Jr. et. al.
[222] Van Natta Jr. et al.
[223] Carol D. Leonnig and Amy Goldstein, "Libby given 2 1/2 –year prison term," Washington Post, June 6, 2007, page A1.

three hours, saying that Libby told her that Wilson was married to a CIA employee but that he did not mention the woman's undercover status or her name, which appeared misspelled in her notebook.[224] Miller herself, writing afterward about her grand jury testimony, said that she told jurors, "I believed the information came from another source, whom I could not recall."[225]

The Times had stood behind Miller publicly and financially, leaving decisions about how to proceed entirely up to her; she appealed her contempt citation up to the Supreme Court, which declined to consider it, in line with previous rulings that journalists have no right to protect their sources during grand jury proceedings. "This car had her hand on the wheel because she was the one at risk," said publisher Sulzberger.[226] Miller returned to the newsroom on October 3, 2005 after her release from jail and proclaimed her stand a victory for journalistic principles. "We have everything to be proud of and nothing to apologize for," she told colleagues.[227]

But editor Keller emailed his colleagues on October 21 calling the paper's handling of Miller's ongoing missteps "a mistake." He said he missed "significant alarm bells" in Miller's case, later determining that Miller may have misled editors about her meeting with Libby and about whether she had known about the Plame-Wilson story. He expressed concern that he had never spoken with Miller about her meeting with Libby and what information she might have had, and concluded by saying that he might have proceeded more carefully, legally and journalistically, if he had known "the details of Judy's entanglement with Libby."[228] Miller resigned from The Times on November 9, after blasting Keller's statement as "seriously

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[224] Leonnig and Goldstein.
[225] Judith Miller, "My Four Hours Testifying in the Federal Grand Jury Room," The New York Times, October 16, 2005, page A1.
[226] Van Natta Jr. et. al.
[227] Van Natta Jr. et al.
[228] Bill Keller, email to "colleagues," posted at www.msnbc.msn.com/id/9778787/ (accessed in April 2009)

inaccurate" and complaining specifically about his use of the word "entanglement." "As for your reference to my 'entanglement' with Mr. Libby, I had no personal, social, or other relationship with him except as a source," she wrote in a memo to Keller.[229] (In a subsequent note, Keller said he did not intend his use of the word "entanglement" to "suggest an improper relationship."[230])

The Times' public editor, at that time Byron Calame, took on what he called "the Miller mess" in an October 23, 2005 column, and laid out three serious concerns he said had been raised by the federal investigation: first, the tendency by top editors to move cautiously to correct problems about prewar coverage; second, the journalistic shortcuts taken by Miller; and third, the deferential treatment of Miller by editors who failed to dig into problems before they became a mess.[231]

He suggested The Times, at minimum, review Miller's work, address its rules for granting confidentiality to sources, and address "the apparent deference to Ms. Miller by Arthur Sulzberger Jr., the publisher, and top editors of The Times, going back several years," including the free hand given to her to shape the legal strategy of her grand jury fight.[232] "It is the duty of the paper to be straight with its readers, and whatever the management reason was for not doing so, the readers didn't get a fair shake," he wrote.[233]

Former colleague Clymer added nuance to the idea that Sulzberger treated Miller differently because of their longtime friendship. He told the Washington Post: "I never saw any

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[229] Katherine Q. Seelye, "Times Editor Expresses Regret Over Handling of Leak Case," The New York Times, October 22, 2005.
[230] Bill Keller, "Times Editor's Memo to Staff on Judith Miller," The New York Times, November 9, 2005.
[231] Byron Calame, "The Miller Mess: Lingering Issues Among the Answers," The New York Times, October 23, 2005.
[232] Calame.
[233] Calame.

evidence that he did protect her, but I am very much aware of editors believing they couldn't do much about her because they *thought* he was protecting her."[234]

The ethical issues raised by Miller's career from 2001 through 2005 are the subject of the next chapter, which will examine both The Times' extant ethics code, the trends in ethics codes that helped define the journalistic environment in which Miller operated, and the potential for revisions that might address some of the concerns raised over her stories and her conduct.

Miller, for her part, has said in several instances she regrets that her stories on weapons of mass destruction were incorrect, but maintained they were based on solid reporting from sources. In November 2005, she told the BBC: "I'm deeply sorry our intelligence community got it wrong. I am deeply sorry that the president was given a national intelligence estimate which concluded that Saddam Hussein had biological and chemical weapons and an active weapons programme."[235]

In an interview with National Public Radio's "On the Media," though, she defended her record and her closeness to her sources, in response to a question about whether that friendliness impaired her ability to sort good from bad information:

> You know, I'm a journalist. Those lines don't get blurred. But yeah, I do hang out with sources. If I was hanging out with fellow journalists, I usually wasn't learning anything. If I was hanging out with, you know, national security policy wonks, I tended to learn something. … look at my record and look at the record of stories, and you'll see that about 90 percent of them are not only accurate but were front-page stories that have been widely praised. And I think that, you know, the record will answer that question.[236]

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[234] Duke.
[235] BBC, "Miller 'sorry' for WMD inaccuracies," BBC News, November 30. 2005, news.bbc.co.uk/2/hi/programmes/newsnight/4486750.stm (accessed April 2009)
[236] Bob Miller, interview with Judith Miller, "On the Media," National Public Radio, November 11, 2005, www.onthemedia.org/transcripts/2005/11/11/04 (accessed April 2009)

CONCLUSION: Some suggestions to build a more ethical news organization

In the wake of the Blair revelations, The New York Times named several committees to investigate how Blair was able to elude discovery and to recommend ways to avoid a recurrence. The committees focused on newsroom operations, training and performance management, as well as internal communications; the results were released in July 2003. Out of the committed reports grew several new editorial positions, among them a standards editor, a career-development editor and a public editor, which other news organizations would call an ombudsman.[237] Former magazine journalist Okrent took the public editor position for an 18-month, non-renewable contract; one of his first high-profile issues to consider was that of Miller's reporting on weapons of mass destruction. Among the new practices introduced in the wake of the committee reports were mandatory annual employee reviews; a formal mentoring program for new employees; and management and budget training for editors. "When I became foreign editor, nobody ever taught me how to evaluate a writer, how to deal with a budget," said Bill Keller, Raines' successor as executive editor of The Times. "We were taking people whose job it is one day to go out to a barricade and the next day they're managing people."[238]

In taking these steps The Times recognized that an ethical news organization requires more than a code of conduct addressing conflicts of interest — that, in fact, proper management, clear standards and some form of post-publication appeal by complainants can work to deter fraud and abuse and, after publication, potentially address such issues. However, the new mechanisms did not represent the entire array of potential ethics rules the times might have implemented.

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[237] Mnookin, "Hard News," pp. 234-235.
[238] Mnookin, "Hard News," pp. 235-236.

Among the possibilities The Times rejected were random fact-checking of stories, to deter or detect fraud, and sending post-publication questionnaires to sources quoted in stories, to hear their view of whether their quotes and the overall story were fair and accurate. "God is not going to stop making charismatic maniacs, so it falls to newspapers to figure out how to do a better job of apprehending them," said Nicholas Lemann, dean of the Graduate School of Journalism at Columbia University, in recommending spot-checking stories.[239] Steve Brill, publisher of the defunct magazine Brill's Content, advocated post-publication surveys. "The whole notion that you can't protect against a reporter who's determined to lie to you is ridiculous," he said. "If you have random checks, you can protect yourself."[240] Times publisher Arthur Sulzberger, however, said the size of The Times argues against spot-checking. Reporters, he wrote in an email, would realize "that the odds are slim of getting fact-checked, and some whole categories (foreign news, intelligence coverage, much diplomatic coverage) would be hard to reliably fact-check."[241] Instead, Sulzberger said, editors have become "much more aggressive about responding to signs of suspicion" about stories.[242]

The aggressive hunt for news so prized by journalism organizations, however, was also left largely unaddressed, and yet it can be seen as a major contributing factor to Blair's fabrications and Judith Miller's dogged pursuit of scoops on weapons of mass destruction. Howell Raines promised to raise the Times' "metabolism"; he told Miller to go "win a Pulitzer"; he waved Blair's front-page stories in front of his former editors as a taunt; and he told editors to

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[239] Nicholas Lemann, "The Wayward Press: Blair House," The New Yorker, March 15, 2004, p. 136.
[240] Mnookin, "Hard News," p. 239.
[241] Mnookin, "Hard News".
[242] Mnookin, "Hard News".

push Rick Bragg onto the front page with minimal editing.[243] As Lemann noted in his review of Blair's memoir,

> There was an endlessly demanding monster story: the September 11th aftermath. Because of an institutional predilection against joint bylines, lots of reporters were doing anonymous work on other people's stories. If this induced an overpowering craving for credit, well, it could be slaked if you produced spectacular, colorful material.[244]

Indeed, Okrent laid the blame for Miller's faulty reporting in part at Raines' feet, for his pushing for "flashy, front-page stories," exclusives and little follow-up before moving on to the next scoop.[245]

Lemann said that hurry-up management style, combined with cell phone and laptop technology that made reporting possible from anywhere, without any technological check on geography, "produced both the temptation and the possibility of writing stories from the field that were too good to be true, but good enough for the front page."[246] He offered a solution: "A newspaper organization can change its incentive structure so that employees don't feel that the only thing really valued is what's known in the trade as a 'holy shit!' story."[247]

There are also common mechanisms in the way journalism is practiced in the United States, and certainly at The Times, that can be viewed as directly bearing on ethics. One, for instance, is a heavy reliance on anonymous sources; another is a reliance on administrative sources for major stories — with two corollaries: acceptance of those sources as generally truthful, and reliance for "balance" on the he said/she said format, which leaves reporters

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[243] As detailed on pages 35ff, above.
[244] Lemann
[245] Mnookin, "Hard News," p. 242.
[246] Lemann.
[247] Lemann.

vulnerable when there is no contrary opinion[248]. Economics may dictate that news organizations concentrate their limited resources where the most "news" will be generated, often Washington or other government centers, where culture dictates that the sources found there are deemed "recognizable and credible by their status and prestige."[249]

Blair's use of anonymous sourcing helped protect his fabrications, and editors' failure to insist on knowing who the sources were not only enabled those fabrications but encouraged Blair to continue his behavior. Miller, on the other hand, relied on sources, named and unnamed, in positions of power, who led her and other journalists astray on weapons on mass destruction. Wrote media critic Michael Massing, "In the period before the war, U.S. journalists were far too reliant on sources sympathetic to the administration."[250]

"The essential advantage possessed by political officials is the simple control of newsworthy information," wrote a political scientist who studies media institutions[251]. On the one hand, "reporters are rarely able to establish independently the validity of the government's information" on crucial policy issues[252]; on the other hand, they are reluctant to challenge the prevailing wisdom "when there is little or no apparent division within the government or among leading national politicians with regard to an issue,"[253] and thus no contrasting sources. Furthermore, said longtime television and magazine journalist Mark Halperin, reporters can

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[248] Initially, opposition to the Bush administration's Iraq War plan by elected officials of both major parties was muted. See, inter alia, Ronald Krebs and Jennifer Lobasz, "Fixing the Meaning of September 11: Rhetorical coercion and the road to war in Iraq," paper presented to the International Studies Association annual convention, March 2006.
[249] Edward S. Herman and Noam Chomsky, "Manufacturing Consent: The political economy of the mass media," p. 19.
[250] Massing.
[251] Bartholomew Sparrow, "Uncertain Guardians: The news media as a political institution," p. 57.
[252] Sparrow, p. 58.
[253] Sparrow, p. 55.

often receive leaked information with the "tacit understanding that they will report the information in a way that will accomplish the objectives of the president or other public official who leaked the news."[254]

Indeed, a 2004 study of prewar stories about weapons of mass destruction by a researcher at the Center for International and Security Studies at the University of Maryland found problems arose "less from political bias … than from tired journalistic conventions,"[255] such as the inverted pyramid style of news writing, which teaches leading with the most important information from the most important source. This "gave greater weight to the incumbent administration's point of view on WMD issues, at the expense of alternative perspectives."[256]

Some of these issues — the quest for exclusive information, even at the cost of presenting the story in a certain fashion, and the inability to independently verify information — may be viewed through an economic lens. It is in a news organization's, and thus a reporter's, interest to generate stories that competitors do not have, and it is not in the organization's interest to delay promulgating those stories and pay, for example, an economic expert to verify a public official's pronouncements on the economy.[257] Some issues are cultural: agreements to provide anonymity to sources in exchange for information and the current journalistic construction of "objectivity" by which reporters cannot present contrasting opinions, even to the most blatantly wrong assertions, without finding someone to quote as offering those opinions. Protecting sources has become a touchstone of journalism, so much so that Miller was willing to go to jail to protect "Scooter" Libby, on the prevailing theory that one must protect a source's job or even life to gather information that only the source is willing to provide.

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[254] Mark Halperin, "Bureaucratic politics and foreign policy," in "Uncertain Guardians," p. 63.
[255] Susan D. Moeller, "Media Coverage of Weapons of Mass Destruction," March 2004, p.4
[256] Moeller, p. 3.
[257] Herman and Chomsky, p. 19.

But some critics dispute the value of anonymous sources in most if not all circumstances: "A trustworthy journalism must identify its sources, protecting them as a last rather than a first resort so that information is accountable."[258] Journalism "should not squander its credibility by fronting questionable sources."[259] Press ethicist John C. Merrill, echoing British newsman John Whale, suggests, "What is far more important than keeping a source's name secret

> is whether what the source says is true. It is hard to verify truth if the source's name is hidden from the public. This allegiance to truth and not to some person (source) who reveals information is what is important.[260]

The Times' own policy on anonymous sources was tightened in 2004, but the newspaper "continues to fall down living up to it," its public editor wrote in March 2009.[261] While the policy permits the use of unnamed sources in a news story, it requires an explanation in print when such a source is used; a study found that the Times failed to include an explanation 80 percent of the time[262], and often used an explanation that the public editor found not compelling. For example, one story did not name a woman who criticized apartment lobby décor, "for fear of offending the hostess"; another did not name a Washington Post source in a story about the handling of a cartoon strip "for fear of appearing to embarrass a colleague."[263] Said Times managing editor Jill Abramson, "when you can name sources, you have a much more authoritative first draft of history than you do with one larded with anonymous sources."[264] Yet, no major media organization has banned the use of anonymous sources, despite the inherent

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[258] Carolyn Marvin and Philip Meyer, "What kind of journalism does the public need?" in "The Press," 2005, p. 403.
[259] Marvin and Meyer, p. 407.
[260] John C. Merrill, "The Dialectic in Journalism: Toward a responsible use of press freedom," 1989, pp. 169-170.
[261] Clark Hoyt, "Those Persistent Anonymous Sources," The New York Times, March 21, 2009, p. WK8.
[262] Hoyt.
[263] Hoyt.
[264] Hoyt.

credibility concerns and despite the potential that their use can mask fabrication, bias or sloppy reportage, because presumably the organization sees a higher value in using than not using them.

What is that higher value of U.S. journalism — the end toward which all ethical rules attempt to steer journalists? Truth, suggest many scholars and practitioners of the field. Walter Lippman said American newspapermen could not be professionals until they developed the code of objectivity, which left them "devoted … to the service of truth alone."[265] Whale, cited by Merrill, claimed "an allegiance to truth" is "at the base of journalistic ethics."[266] The Times investigation of Blair wrote of the "cardinal tenet of journalism, which is simply truth."[267] (There are of course different paramount values in different systems of journalism. In state-controlled press systems, such as the former Soviet Union, the press existed "to do something helpful for the country" rather than find and expose "truth."[268]) Of course, absent a universally agreed-upon definition of truth, this raises the questions of which truths, whose truths or how much truth is to be shared by journalists. Under the First Amendment to the U.S. Constitution, as interpreted by courts over two centuries, publishers and their electronic descendants are left to make those decisions — they have "the freedom to inform well or to inform poorly."[269] The New York Times makes those choices by a set of criteria sketched broadly in its various ethics codes but writ large on every edition's front page: "All the News That's Fit to Print."

> Therefore, the Times is saying explicitly what journalists generally believe and practice: truth is what journalists consider fit to call truth, just as news is what they decide is news — nothing more and nothing less.[270]

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[265] Walter Lippman, "The American Press," The Yale Review, 1930-1931, pp. 440-441, cited in Robert A. Hackett and Yuezhi Zhao, "Sustaining Democracy? Journalism and the politics of objectivity," 1998, p. 55.
[266] Merrill, p. 169.
[267] Times staff, p. A1
[268] Merrill, pp. 101ff.
[269] Merrill, pp. 114-115, 170.
[270] Merrill, p. 170.

Rather than serious cultural change, or abandonment of many core techniques, what media organizations fall back on, critic Seth Mnookin suggested, is the inherent belief that the news business is and ought to be built on trust — between a reporter and his or her sources, editors and readers — and that trust should be the cornerstone of journalism ethics. But journalists demand trust without providing external mechanisms for news consumers to verify that trust. "Virtually all of civil society is built on unspoken bonds of trust yet we still have police forces and judicial systems," Mnookin wrote. "It's up to the journalistic community to begin better policing itself. So why isn't this happening?" He posed the question to Lemann, who responded, "The answer is very simple: I don't know."[271]

An attempt to establish a national self-policing body, the National News Council, failed; among its most outspoken opponents was Arthur Ochs Sulzberger, the father and predecessor of the Times' current publisher.[272] Sulzberger wrote, in a memo to the Times explaining his opposition, that participation would be "an unjustified confession that our own shortcomings are such that we need monitoring by a press council. … We do not wish anyone to impose standards on us."[273]

But with whom are those "unspoken bonds of trust" to be shared? When it comes to media organizations (such as The Times), employee/journalists and readers, viewers or listeners must trust the ownership with making the right ethical decisions in assigning, editing and presenting journalism. Press freedom means "a belief that the majority … should be taken

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[271] Mnookin, "Hard News," p. 239.
[272] Merrill, p. 187.
[273] Richard T. Kaplar and Patrick T. Maines, "The Government Factor: Undermining journalistic ethics in the information age," p. 55

seriously and generally comes closest to the truth and makes sound decisions."[274] But the majority of the population must rely on "a basic trust in the few people who own and control the mass media."[275] Those people, argue some critics, "have important agendas and principles that they want to advance," essentially of an economic nature, and serve the "powerful societal interests that control and finance them."[276]

What remains, then, of The New York Times' attempts at fostering ethical behavior is this: a public "code of conduct" that stresses conflicts of interest, so as not to dilute The Times' value by acts of its employees (but not of its publisher or ownership, which are excluded from the code's coverage)[277]; implementations of new management practices following the realization of Blair's fabrications, to attempt to head off future fabrications and catch "rogue employees"; a stricter (but often unenforced) policy on anonymity.

Absent are these suggested policies: a total ban on anonymous sources; an institutional skepticism of official sources; any system of fact-checking stories after publication; and support for any external mechanism by which to police itself or any journalistic organization. The former two might be seen as infringing on The Times' ability to compete for and win readers with exclusive or at least "highly" sourced new stories; the latter two would cede control of ethics — and thus, ultimately, of the ability to define "truth"— to external forces (readers or a "news council" type of apparatus).

Absent, too, is an emphasis on the earliest values of U.S. journalism ethics codes — such as that expressed in the first article of the 1933 American Newspaper Guild code, "a decent

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[274] Merrill, p. 114.
[275] Merrill.
[276] Herman and Chomsky, p. xi.
[277] The New York Times, Code of Conduct, passim.

respect for the rights of individuals and groups,"[278] or the second article of the code of the American Society of Newspaper Editors, "Freedom of the press belongs to the people."[279] When The Times published, in May 2003, its expose of Blair's fabrications, its first paragraph mentioned "a profound betrayal of trust and a low point in the 152-year history of the newspaper."[280] Its 15th paragraph quoted publisher Sulzberger saying Blair's deceptions were "a huge black eye … an abrogation of the trust between the newspaper and its readers." It wasn't until the next paragraph – the story's 16th – that writers saw fit to note that, "For all the pain resonating through the Times newsroom, the hurt may be more acute in places like Bethesda, Md.," where Blair's "fabricated (article) described American soldiers injured in combat."[281] And that is the only mention, in 14,000 words, of victims of Blair's deception outside The Times — where, in their closing paragraph, the reporters noted, "Employees accept the condolences of callers,"[282] and where managers worry that delivered copies of the daily paper "will carry the dust from the public collapse of a young journalist's career."[283]

It was left, albeit in a typically self-centered way, to Blair to suggest an alternate set of values, one that harkened back to the earliest Guild ethics code. In his memoir Blair wrote of first reading The Times staff report on his fabrications, which also detailed his drug and alcohol problems. "I felt it had been written and edited," he wrote, "with no regard to the harm it might cause the one person who had the most to lose in the situation,"[284] that is, himself. Driven out of

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[278] American Newspaper Guild.
[279] American Society of Newspaper Editors.
[280] Times staff.
[281] Times staff. "Soldiers" generally refers to those serving in the U.S. Army; the men in Blair's article were Marines. The Times' style guide has recently been revised to make that distinction.
[282] Times staff.
[283] Times staff.
[284] Blair, "Burning Down My Masters' House," p. 55.

journalism, possibly for life, Blair recognized on some level the potential value of a system of ethics in which journalism puts the story subject first.

The Times staff continued to operate with a culture, a Code of Conduct and a set of reporting practices that keep the institution's continued economic health as its major focus. One of Sulzberger's first acts as publisher, in 1992, was to convene a retreat to "get the senior (news and business) management of this newspaper to come to grips with some of the fundamental issues that had been dividing them."[285] He eventually created a joint news-business working group on hiring, and he declared "the single most important issue" for The Times to be diversity (not journalism; not ethics; not "truth").[286] He instituted staff meetings for all Times employees, at which he made presentations about "advertising and circulation numbers and other trends"[287] — again, focusing on the bottom line.

Jayson Blair's and Judith Miller's versions of the truth were fit to print on Page A1. After other media began probing their failings (of course, at least in part, an effort to boost their own readership by criticizing a higher-profile rival), The Times undertook damage control to rebuild "trust with its readers" by changing some internal operations. But its culture and its code remained firmly planted in commerce.

"The journalist's culture, of course, largely determines his or her basic ethics stances," critic Merrill wrote. "Cultures instill habits, values, desires and prohibitions."[288] The prevailing culture at The Times might be summed up as: What's fit to print is what's good for business.

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[285] Susan E. Tifft and Alex S. Jones, "The Trust: The private and powerful family behind The New York Times," p. 647.
[286] Tifft and Jones, p. 651.
[287] Tifft and Jones, p. 654.
[288] Merrill, p. 168.

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APPENDIX A

Canons of Journalism

(Adopted by the American Society of Newspaper Editors on April 28, 1923).

The primary function of newspapers is to communicate to the human race what its members do, feel and think. Journalism, therefore, demands of its practitioners the widest range of intelligence of knowledge and of experience, as well as natural and trained powers of observation and reasoning. To its opportunities as a chronicle are indissoluble linked its obligations as teacher and interpreter.

To the end of finding some means of codifying sound practice and just aspirations of American journalism, these canons are set forth:

(1) Responsibility — The right of a newspaper to attract and hold readers is restricted by nothing but considerations of public welfare. The use of newspaper makes of the share of public attention it gains serves to determine its sense of responsibility, which it shares with every member of its staff. A journalist who uses his power for any selfish or otherwise unworthy purpose is faithless to a high trust.

(2) Freedom of the Press — Freedom of the press is to be guarded as a vital right of mankind. It is the unquestionable right by law, including the wisdom of any restrictive statute. To its privileges under the freedom of American institutions are inseparably joined its responsibilities for an intelligent fidelity to the Constitution of the United States.

(3) Independence — Freedom from all obligations except that of fidelity to the public interest is vital.

A. Promotion of any private interest contrary to the general welfare, for whatever reason, is not compatible with honest journalism. So-called news communications from private sources should not be published without public notice of their source or else substantiation of the claims to value as news, both in form and substance.

B. Partisanship in editorial comment which knowingly departs from the truth does violence to the best spirit of American journalism; in the news columns it is subversive of a fundamental principle of the profession.

(4) Sincerity, Truthfulness, Accuracy— Good faith with the reader is the foundation of all journalism worthy of the name.

A. By every consideration of good faith, a newspaper is constrained to be truthful. It is not to be excused for lack of thoroughness, or accuracy within its control, or failure to obtain command of these essential qualities.

B. Headlines should be fully warranted by the contents of the articles which they surmount.

(5) Impartiality— Sound practice makes clear distinction between news reports and expressions of opinion. News reports should be free from opinion or bias of any kind. This rule does not apply to so-called special articles unmistakably devoted to advocacy or characterized by a signature authorizing the writer's own conclusions and interpretations.

(6) Fair Play— A newspaper should not publish unofficial charges affecting reputation or moral character, without opportunity given to the accused to be heard; right practice demands the giving of such opportunity in all cases of serious accusation outside judicial proceedings.

A. A newspaper should no invade rights of private feelings without sure warren of public right as distinguished from public curiosity.

B. It is the privilege, as it is the duty, of a newspaper to make prompt and complete correction of its own serious mistakes of fact or opinion, whatever their origin.

(7) Decency— A newspaper cannot escape conviction of insincerity if, while professing high moral purpose, it supplies incentives to base conduct, such as are to be found in details of crime and vice, publication of which is not demonstrably for the general good. Lacking authority to enforce its canons, the journalism here represented can but express the hope that deliberate pandering to vicious instincts will encounter effective public disapproval or yield to the influence of a preponderant professional condemnation.

APPENDIX B

American Newspaper Guild Code of Ethics

(Adopted by the American Newspaper Guild in 1934, at its second annual convention.)

1. That the newspaperman's first duty is to give the public accurate and unbiased news reports, and that he be guided, in his contacts with the public, by a decent respect for the rights of individuals and groups.

2. That the equality of all men before the law should be observed by the men of the press; that they should not be swayed in news reporting by political, economic, social, racial or religious prejudices, but should be guided only by fact and fairness.

3. That newspapermen should presume persons accused of crime of being innocent until they are convicted, as is the case under the law, and that news accounts dealing with accused persons should be in such form as not to mislead or prejudice the reading public.

4. That the Guild should work through efforts of its members, or by agreement with editors and publishers, to curb the suppression of legitimate news concerning "privileged" persons or groups, including advertisers, commercial powers and friends of newspapermen.

5. That newspapermen shall refuse to reveal confidences or disclose sources of confidential material in court or before other judicial or investigating bodies; and that the newspaperman's duty to keep confidences shall include those he shared with one employer even after he has changed his employment.

6. That the news be edited exclusively in the editorial rooms instead of in the business office of the daily newspaper.

7. That newspapermen shall behave in a manner indicating independence and decent self-respect in the city room as well as outside, and shall avoid any demeanor that might be interpreted as a desire to curry favor with any person.

APPENDIX C

The New York Times: Guidelines on Our Integrity

(Updated December 13, 2000)

Reporters, editors, photographers and all members of the news staff of The New York Times share a common and essential interest in protecting the integrity of the newspaper. As the news, editorial and business leadership of the newspaper declared jointly in 1998: "Our greatest strength is the authority and reputation of The Times. We must do nothing that would undermine or dilute it and everything possible to enhance it."

At a time of growing and even justified public suspicion about the impartiality, accuracy and integrity of some journalists and some journalism, it is imperative that The Times and its staff maintain the highest possible standards to insure that we do nothing that might erode readers' faith and confidence in our news columns. This means that staff members should be vigilant in avoiding any activity that might pose an actual or apparent conflict of interest and thus threaten the newspaper's ethical standing. And it also means that the journalism we practice daily must be beyond reproach.

No one needs to be reminded that falsifying any part of a news report cannot be tolerated and will result automatically in disciplinary action up to and including termination. But in a climate of increased scrutiny throughout the news business, these further guidelines are offered, to resolve questions that sometimes arise about specific practices:

Quotations. Readers should be able to assume that every word between quotation marks is what the speaker or writer said. The Times does not "clean up" quotations. If a subject's grammar or taste is unsuitable, quotation marks should be removed and the awkward passage paraphrased. Unless the writer has detailed notes or a recording, it is usually wise to paraphrase long comments, since they may turn up worded differently on television or in other publications. "Approximate" quotations can undermine readers' trust in The Times. The writer should, of course, omit extraneous syllables like "um" and may judiciously delete false starts. If any further omission is necessary, close the quotation, insert new attribution and begin another quotation. (The Times does adjust spelling, punctuation, capitalization and abbreviations within a quotation for consistent style.) Detailed guidance is in the stylebook entry headed "quotations." In every case, writer and editor must both be satisfied that the intent of the subject has been preserved.

Other People's Reporting. When we use facts gathered by any other organization, we attribute them. This policy applies to material from newspapers, magazines, books and broadcasts, as well as news agencies like The Associated Press (for example, "the Senator told The Associated Press"). In other words, even though The AP is a co-op and we are members, we do not treat its reporting as our own. When writing from a pool report, if we have not witnessed the events, we attribute them to the pool reporter. In a roundup, we may use a phrase like "reports from news agencies and New York Times bureaus." Our preference, when time and distance permit, is to do our own reporting and verify another organization's story; in that case, we need not attribute the facts. But even then, as a matter of courtesy and candor, we credit an exclusive to the organization that first broke the news. Attribution to another publication, though, cannot serve as

license to print rumors that would not meet the test of The Times's own reporting standards. Rumors must satisfy The Times's standard of newsworthiness, taste and plausibility before publication, even when attributed. And when the need arises to attribute, that is a good cue to consult with the department head about whether publication is warranted at all. In those cases when it makes a difference whether we directly witnessed a scene, we should distinguish in print between personal interviews and telephone or E-mail interviews, as well as written statements.

Fact Checking. Writers at The Times are their own principal fact checkers and often their only ones. (Magazine articles, especially those by nonmembers of our staff, are fact-checked, but even magazine writers are accountable in the first instance for their own accuracy.) Concrete facts — distances, addresses, phone numbers, people's titles — must be verified by the writer with standard references like telephone books, city or legislative directories and official Web sites. More obscure checks may be referred to the research desk. If deadline pressure requires skipping a check, the editors should be alerted with a flag like "desk, please verify," but ideally the writer should double back for the check after filing; usually the desk can accommodate a last-minute repair. It is especially important that writers verify the spelling of names, by asking. A person who sees his or her own name misspelled in The Times is likely to mistrust whatever else we print. And too often, our correction column makes it clear that someone has guessed a spelling by the sound.

Corrections. Because our voice is loud and far-reaching, The Times recognizes an ethical responsibility to correct all its factual errors, large and small. The paper regrets every error, but it applauds the integrity of a writer who volunteers a correction of his or her own published story. Whatever the origin, though, any complaint should be relayed to a responsible supervising editor and investigated quickly. If a correction is warranted, fairness demands that it be published immediately. In case of reasonable doubt or disagreement about the facts, we can acknowledge that a statement was "imprecise" or "incomplete" even if we are not sure it was wrong.

Rebuttals. Few writers need to be reminded that we seek and publish a response from anyone criticized in our pages. But when the criticism is serious, we have a special obligation to describe the scope of the accusation and let the subject respond in detail. No subject should be taken by surprise when the paper appears, or feel that there was no chance to respond.

Anonymity and Its Devices. The use of unidentified sources is reserved for situations in which the newspaper could not otherwise print information it considers newsworthy and reliable. When possible, reporter and editor should discuss any promise of anonymity before it is made, or before the reporting begins on a story that may result in such a commitment. (Some beats, like criminal justice or national security, may carry standing authorization for the reporter to grant anonymity.) The stylebook discusses the forms of attribution for such cases: the general rule is to tell readers as much as we can about the placement and known motivation of the source. While we avoid automatic phrases about a source's having "insisted on anonymity," we should try to state tersely what kind of understanding was actually reached by reporter and source, especially when we can shed light on the source's reasons. The Times does not dissemble about its sources — does not, for example, refer to a single person as "sources" and does not say "other officials" when quoting someone who has already been cited by name. There can be no prescribed formula for such attribution, but it should be literally truthful, and not coy.

Fictional Devices. No reader should find cause to suspect that the paper would knowingly alter facts. For that reason, The Times refrains outright from assigning fictional names, ages, places or dates, and it strictly limits the use of other concealment devices. If compassion or the unavoidable conditions of reporting require shielding an identity, the preferred solution is to omit the name and explain the omission. (That situation might arise, for example, in an interview conducted inside a hospital or a school governed by privacy rules.) If a complex narrative must distinguish among several shielded identities, it may be necessary to use given names with last initials or, less desirable, given names alone (Hilary K.; Ashley M.; Terry). Descriptions may serve instead (the lawyer; the Morristown psychotherapist). As a rare last resort, if genuine given names would be too revealing, real or coined single initials (Dr. D, Ms. L) may be used after consultation with senior editors. The article must gracefully indicate the device and the reason.

Masquerading. Times reporters do not actively misrepresent their identity to get a story. We may sometimes remain silent on our identity and allow assumptions to be made — to observe an institution's dealings with the public, for example, or the behavior of people at a rally or police officers in a bar near the station house. But a sustained, systematic deception, even a passive one — taking a job, for example, to observe a business from the inside — may be employed only after consultation between a department head and masthead editors. (Obviously, specific exceptions exist for restaurant reviewing and similar assignments.)

Photography and Images. Images in our pages that purport to depict reality must be genuine in every way. No people or objects may be added, rearranged, reversed, distorted or removed from a scene (except for the recognized practice of cropping to omit extraneous outer portions). Adjustments of color or gray scale should be limited to those minimally necessary for clear and accurate reproduction, analogous to the “burning” and “dodging” that formerly took place in darkroom processing of images. Pictures of news situations must not be posed. In the cases of collages, montages, portraits, fashion or home design illustrations, fanciful contrived situations and demonstrations of how a device is used, our intervention should be unmistakable to the reader, and unmistakably free of intent to deceive. Captions and credits should further acknowledge our intervention if the slightest doubt is possible. The design director, a masthead editor or the news desk should be consulted on doubtful cases or proposals for exceptions.

APPENDIX D

Ethical Journalism:
Code of Conduct for the News and Editorial Departments
The New York Times

(Excerpts from the 53-page Code of Conduct.)

Chapter 1: Introduction and Purpose

1. The goal of The New York Times is to cover the news as impartially as possible — "without fear or favor," in the words of Adolph Ochs, our patriarch — and to treat readers, news sources, advertisers and others fairly and openly, and to be seen to be doing so. The reputation of The Times rests upon such perceptions, and so do the professional reputations of its staff members. Thus The Times and members of its news department and editorial page staff share an interest in avoiding conflicts of interest or an appearance of a conflict.

2. For more than a century, men and women of The Times have jealously guarded the paper's integrity. Whatever else we contribute, our first duty is to make sure the integrity of The Times is not blemished during our stewardship.

…

9. Our fundamental purpose is to protect the impartiality and neutrality of The Times and the integrity of its report. In many instances, merely applying that purpose with common sense will point to the ethical course. Sometimes the answer is self-evident. Simply asking oneself whether a course of action might damage the paper's reputation is often enough to gauge whether the action is appropriate.

…

Chapter 3: Pursuing the News

22. Even though this topic defies hard and fast rules, it is essential that we preserve a professional detachment, free of any whiff of bias. Staff members may see sources informally over a meal or drinks, but they must keep in mind the difference between legitimate business and personal friendship. … Scrupulous practice requires that periodically we step back and take a hard look at whether we have drifted too close to sources we deal with regularly. The acid test of freedom from favoritism is the ability to maintain good working relationships with all parties to a dispute.

…

32. Staff members may not join teams covering news events for other organizations, and they may not accept payment from competitors for news tips. They may not be listed on the masthead of any non-Times publication …

…

Chapter 4: Protecting the Paper's Neutrality

38. Unless the special terms are offered by The New York Times Company or a Times subsidiary or affiliate, staff members may not buy stock in initial public offerings through "friends and family shares" where any plausible possibility exists of a real or apparent conflict of interest. Staff members may not accept allocations from brokerage firms. …

…

44. Staff members may not accept invitations to speak before a single company (for example, the Citicorp executive retreat) or an industry assembly (for example, organized baseball's winter meeting) unless The Times decides the appearance is useful and will not damage the newspaper's reputation for impartiality. …

…

Chapter 5: Participation in Public Life

62. Journalists have no place on the playing fields of politics. Staff members are entitled to vote, but they must do nothing that might raise questions about their professional neutrality or that of The Times. In particular, they may not campaign for, demonstrate for, or endorse candidates, ballot causes or efforts to enact legislation. They may not wear campaign buttons or themselves display any other insignia of partisan politics. They should recognize that a bumper sticker on the family car or a campaign sign on the lawn may be misread as theirs, no matter who in their household actually placed the sticker or the sign.

63. Staff members may not themselves give money to, or raise money for, any political candidate or election cause. Given the ease of Internet access to public records of campaign contributors, any political giving by a Times staff member would carry a great risk of feeding a false impression that the paper is taking sides.

64. No staff member may seek public office anywhere. …

…

67. Staff members must be sensitive that perfectly proper political activity by their spouses, family or companions may nevertheless create conflicts of interest or the appearance of conflict. …

Chapter 7: Obligations to The Times

81. Department heads and masthead executives may authorize other staff members to comment publicly on policies or plans within the staff members' areas of responsibility and expertise. If staff members are approached by other media or other outsiders to discuss Times content or

policy, they should refer the questioners to a masthead executive or the corporate communications department.

…

Chapter 9: Journalistic Work Outside The Times

98. Because their primary identification is with The Times, staff members who accept freelance assignments should adhere to this code in carrying out those assignments. …

…

Chapter 10: Appearing on Broadcast Media

102. In deciding whether to make a radio, television or Internet appearance, a staff member should consider its probable tone and content to make sure they are consistent with Times standards. Staff members should avoid strident, theatrical forums that emphasize punditry and reckless opinion-mongering. …

Chapter 12: Investments and Family Ties

117. Staff members should be acutely sensitive that the investments and business interests of their spouse, family and companions may create real or apparent conflicts of interest by raising questions of favoritism. Staff members will be asked when hired to affirm that to the best of their knowledge no spouse, family member or companion has financial holdings that might reasonably raise doubts about the impartiality of the staff member's reporting or editing in his or her proposed assignments. …

…

Chapter 13: Rules for Specialized Departments

134. The Times has exceptional influence in such fields as theater, music, art, dance, publishing, fashion and the restaurant industry. We are constantly scrutinized for the slightest whiff of favoritism. Therefore staff members working in those areas have a special duty to guard against conflicts of interest or the appearance of conflict. …