A NEW AGE FOR NEWSPAPERS: DIVERSITY OF VOICES, COMPETITION AND THE INTERNET

HEARING

BEFORE THE

SUBCOMMITTEE ON COURTS AND COMPETITION POLICY

OF THE

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HOUSE OF REPRESENTATIVES

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A NEW AGE FOR NEWSPAPERS: DIVERSITY OF VOICES, COMPETITION AND THE INTERNET

TUESDAY, APRIL 21, 2009

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS AND
COMPETITION POLICY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:07 p.m., in room 2141, Rayburn House Office Building, the Honorable Henry C. "Hank" Johnson, Jr. (Chairman of the Subcommittee) presiding.

Present: Representatives Johnson, Conyers, Gonzalez, Jackson Lee, Chaffetz, Goodlatte, and Smith (ex officio).

Staff Present: Christal Sheppard, Majority Counsel; Anant Raut, Majority Counsel; Elisabeth Stein, Majority Counsel; Rosalind Jackson, Majority Professional Staff Member; Stewart Jeffries, Minority Counsel; and Blaine Merritt, Minority Counsel.

Mr. JOHNSON. This is the Committee on the Judiciary, the Subcommittee on Courts and Competition Policy, and this meeting will now come to order. Without objection, the Chair will be authorized to declare a recess of the hearing, and I will now recognize myself for a short statement.

The newspaper industry is facing hard times. Newspapers report losing millions of dollars a week, and clearly this is an unsustainable situation. So, as a result, it is nearly impossible to open a newspaper, turn on cable news, or even go online without reading about another newspaper threatened with the closure of its doors forever.

A key contributor to this phenomenon is the ongoing reduction in advertising revenue. Advertising revenue, which was once the lifeblood of the newspaper industry, has decreased by 25 percent in the last year alone; and over the last 15 years, public preference for news consumption has dramatically shifted from print media to online sources; and in that time, online readership has grown from essentially 0 to 63.2 million people. This has contributed to a vicious cycle as readership declines and newspapers earn less in advertising revenue, which results in less content, which results in fewer readers, and on and on, with no end, infinite.

So most would agree, however, that online news is not a complete substitution for print media. Because of the digital divide, not everyone has access to the Internet or the news online. As print media disappears and content is moved online, entire segments of our society are being cut out from their access to the news. Thus,

the elderly, the economically disadvantaged, niche markets, and some physically challenged individuals are disproportionately harmed by the decline in print media.

In this light, access to print media, particularly print media that covers the national news from a local perspective, and also the local news, becomes increasingly important.

Another negative consequence of the decline of newspapers is the erosion of responsible journalism. Over the last decade, economic pressures have resulted in layoffs of journalists and newspaper staff. The loss of jobs is bad enough, since every job must be protected in this economy.

Compounding the problem is the harm to the first amendment of the United States Constitution. I have always considered, as many others have, the media to be our fourth branch of government. It provides a check on government and private fraud and abuse that may be lost to local and regional newspapers close to Washington, DC, and international bureaus.

Even the wire services, by the way, Associated Press, I think UPI went out of business at one time, but it is back in operation, unlike its former self.

In addition, local news only of importance to small areas and niche markets may be lost forever if the smaller newspapers are unable to survive. In fact, it is exactly this premise that the marketplace of ideas is harmed when there is not a wide dissemination of information from diverse sources that led Congress to allow newspapers to collaborate by joint operating agreement as long as editorial content was kept separate.

And you all excuse me. My voice is leaving because of the pollen count.

As more and more newspapers merge and ownership of papers is consolidated, the free flow of information in the marketplace of ideas is therefore restricted. This poses an enormous risk to our democracy. And if Congress does not act or something does not change, it is certain that a major city in the United States will be without a major newspaper in the very near future. Kind of like global warming is upon us much sooner than anticipated.

And today, we discuss remedies and whether the current business model of newspapers is sustainable. I look forward to hearing the suggested solutions to this problem from today's witnesses.

I will now recognize my good friend and colleague, Mr. Jason Chaffetz, from the great State of Utah for his opening remarks.

Mr. CHAFFETZ. Thank you, Mr. Chairman. I appreciate your calling this hearing of the Courts and Competition Policy Subcommittee, and I appreciate all of you being here today.

About a month ago, this Subcommittee considered the antitrust implications of the Troubled Asset Relief Program, otherwise known as TARP. That program of course deals with the financial institutions that have received hundreds of billions of dollars in taxpayer support. Today, we consider the health or lack thereof of the newspaper industry. Like the banks, the newspaper industry is in dire straits. Unlike the banks, the newspaper industry is not seeking a government bailout. I hope this continues to be the case, as I could not support such a bailout. Because of the protections of the freedom of the press, any such bailout could be constitu-

tionally problematic, especially if it came with the types of constraints that were used with the TARP funds.

The newspapers' plight is largely the result of the newspapers' failure to adjust to the changes in the marketplace. The biggest change has been the advent of the Internet. The Internet has facilitated the dissemination of news in a variety of forms, from blogs and streaming videos to online versions that were established with established news sources such as the Wall Street Journal and even, yes, Twitter, which I managed to send out that I was attending this event here today.

So print newspapers must compete with this multitude of online sources for their readers' attention at the very moment that their main revenue source, advertising, is drying up. The question we need ask ourselves is, why is the advertising drying up? It is moving to be more focused media, including cable television and, yes, of course the Internet. Loss of this revenue threatens the ability of the newspapers to use their strongest weapon; i.e., robust news departments full of eager reporters to compete against each other for cheaper new forms of news gathering.

Some entities, notably the Wall Street Journal, have been very successful in monetizing their content. Others, like the New York Times, have tried and subsequently abandoned efforts to try to charge for certain news stories. However, with the rise of a la carte pricing for online music, it seems possible that there are a variety of pricing schemes that will ultimately prove successful, even if a number of news outlets go out of business in the meantime.

Which brings us to the crux of this hearing. I mentioned a few moments ago that the newspapers have not requested a bailout. They haven't. But that does not mean that they do not have powerful friends on Capitol Hill. Last month, Speaker Pelosi sent a letter to Attorney General Holder requesting that the Antitrust Division take into account changes in the newspaper marketplace, including for advertising, in the event of a merger of Bay Area newspapers.

While it is appropriate for the antitrust agencies to take into account changed circumstances in evaluating mergers in newspapers or any other industry, this Committee should be wary of granting any new antitrust exemptions. This is particularly true given that the newspaper industry already has an antitrust exemption known as the Newspaper Preservation Act.

Since the 1970's, the newspapers have been able to combine operations to save money without fear of antitrust enforcement; yet, such joint operating agreements have failed to save the newspaper industry as a whole. Newspapers will only be profitable when they adjust to an ever changing marketplace. History has taught us that the marketplace is the best place to determine how to price goods and services. I am hopeful that this Committee will take a hard look at any efforts to allow newspapers to discuss or make agreements regarding the pricing of their online content.

I would note specifically in where I represent, the State of Utah, we have the Deseret Morning News and the Salt Lake Tribune who thrive in their ability to contrast their editorial content and compete with various news report services, at the same time share a department that consolidates some of the advertising functions and other issues. So I have seen that in my own community.

And, with that, I would like to yield back the balance of my time, and look forward to hearing from each of our witnesses here today. Thank you, Mr. Chairman.

Mr. JOHNSON. Thank you. And I appreciate your statement.

We are going to go now directly to my colleague, the Ranking Member of the Judiciary Committee, my good friend Lamar Smith.

Mr. SMITH. Thank you, Mr. Chairman.

Thomas Jefferson once said "Information is the currency of democracy. Without access to all the facts, Americans cannot make informed voting decisions and our democracy is threatened."

Journalists have a responsibility to present information with fairness and objectivity. At their best, the news media help promote our democracy. Unfortunately, too often the media have fallen short.

For example, an analysis by Investors Business Daily shows that journalists contributed 15 times more money to Democrats than Republicans during the most recent election cycle. In the 2008 campaign, journalists who gave to Senator Obama outnumbered those who contributed to Senator McCain by a 20-1 margin. A UCLA study rated 18 of 20 major news outlets as more liberal than the average voter. Just two scored as more conservative than the average voter. A Gallup Poll found that only 9 percent of Americans say they have a great deal of trust and confidence in the mass media to report the news fully, accurately, and fairly. The Gallup Poll also found that more than twice as many Americans say the news media are too liberal rather than too conservative.

These studies reveal a troubling trend. Unfair news reporting exists, and can influence elections at the expense of qualified candidates. In fact, Newsweek editor Evan Thomas estimated that the media's influence in the 2004 presidential election was worth maybe 15 points. That is a huge impact. And the media's influence was even greater in the 2008 presidential campaign. They may well have determined the outcome of the election.

Not all members of the media contribute to this problem. Many journalists with varied political views work hard to report the news fairly. But the media can and must do better.

Recently, as the Ranking Member just mentioned, Speaker Pelosi sent a letter to Attorney General Holder asking him to take into account current market realities when evaluating any newspaper mergers in the Bay Area. Speaker Pelosi sent this letter in acknowledgement that the fundamentals of the newspapers' business have changed. Subscriptions are down, and advertisers have new and different ways of targeting their sales. This economic reality has resulted in a number of newspapers filing for bankruptcy, cutting back on the days that they print papers, or going to an all-online format.

And continuing the consolidation of newspapers may contribute to increasingly biased coverage. When there are two or more papers in the city, there in an incentive to compete vigorously to provide the most accurate and pertinent news to readers. When one company, such as the New York Times or the Tribune Company, owns papers in multiple cities, there is a risk that the editorial biases of the big city papers will find their way into other markets.

Our democracy is strongest when the American people make informed voting decisions based on accurate information about the major issues facing our country, such as homeland security, the cost of energy, immigration, educational reform, health care, and economic growth. Journalists are aware of their responsibility and should be held to a high ethical standard because of their tremendous influence on public opinion and debate. When journalists strive for the truth, the media are a tremendous asset to our society. When journalists falter, so too does our democracy.

It is up to the American people to demand objectivity in the media regardless of whether they get their views online, from television, or in a newspaper.

Mr. Chairman, as we discuss the consolidation of newspapers, we must also address the larger issue of inaccurate and biased reporting that has become too common today. Before journalists can expect the American people to buy their reporting, they must first restore the American people's trust in the news.

Thank you, Mr. Chairman.

Mr. JOHNSON. Thank you for your comments also, Mr. Ranking Member. And even though I have tried very hard to put this out of my mind, I must confess that I inadvertently left out the fact that Mr. Smith is Ranking Member of this Subcommittee as well.

Without any further adieu, ladies and gentlemen, we are going to hear from a man who needs no introduction. So I will yield to the great Chairman, Mr. John Conyers from Michigan.

Mr. CONYERS. Thank you, Mr. Chairman. You have a lot of friends on this Subcommittee. That is all I can say.

This is a very complex hearing. We are asked to come to the assistance of an economic institution that, to quote Rupert Murdoch, who I have never quoted before in my life, says in his submitted statement, "Since the founding of our country, newspapers have been a cornerstone of our democracy. And I submit this statement in the hope that Congress will take all appropriate steps to help ensure that newspapers continue to be a vibrant and important part of our free society for the foreseeable future."

This is the one person in the United States of America that owns more media than anybody I know of, and he is telling us how important it is that the media remains free and viable because it is an historic predicate. So this really gets us off to an interesting start.

Now, in 1996, I think it was in October, in the spirit of full disclosure, I was arrested in front of one of the newspapers in Detroit. I think the offense was disturbing the peace. There were other arrests made. One was Marianne, the late Marianne Mahaffey, the President of the Detroit Council. The other one was a labor organizer named John Sweeney. There were others arrested. I got a call in to James Hoffa, who was around there at the time, and peace activist, civil right advocate Al Fishman. And what we were doing was protesting the merger of the two newspapers, the Detroit Free Press and the Detroit News. Now, for some reason, I don't have any idea why, our arrest, we were given a trial date, too, but somewhere along the line the case was dropped. I don't remember even if I had a lawyer.

So I don't come to this hearing with any bias or premeditated hard feelings or ill will toward the newspaper industry. As a matter of fact, we invited the Detroit News and the Detroit Free Press to come to the hearing to be a witness.

Did they ever respond? You went to the Newspaper Association? Okay. So they will speak for them.

But just to make sure I purge myself of any bad memories or ill will or hard feelings, I am going to ask their editors if I can meet with them now that they are in bad shape. Maybe I should help them.

There is another thing that puzzles me. Professor Robert McChesney for years has been one of the people complaining with me about the undemocratic practices commonplace in the newspaper industry. Now, I think he has surfaced as one that is urging us that there are many grave and important reasons why we should rush in now and help them. So I will be calling my old friend Bob McChesney to help get me into the correct and fair alignment that will be required for us to determine what it is we do in the Committee.

Now, newspapers remind me of automobile corporations; you never hear from them until they are on the verge of disaster. I mean, "How are you doing?" "Everything's fine. Doing great." And then all of a sudden they need help, and they need a lot of help and they need it fast. That is how the former Secretary of Treasury called the leaders of the House and Senate together. You remember that evening. He called them together, and he put three sheets of paper on the table, the leaders of the first branch of government, as far as I am concerned.

And he said: First of all, I want extraordinary powers that no treasurer has ever had in history. And then he said, second: I want $700 billion, and I want it fast. And then the third sheet of paper, he said: I don't want this to be reviewable by either the courts or the Congress.

And so we are always put under the gun, and I am anxious to lay out my feelings before we go into this subject matter, not just for today's hearing, but afterwards, to see if we can all be as friendly as our Chairman, who everybody is his friend on this Committee, including me, and let's—can we all be friends together, everybody, on whatever positions that develop as this hearing goes on?

So I thank you for your time, Mr. Chairman.

Mr. JOHNSON. Thank you, Mr. Chairman. And I have always admired your even-tempered service on this Committee. That evenness has been marked by passion. And so I really appreciate the way that you run the full Committee, and I myself aspire to be just like you and so I am proud to be serving on this Committee, this Subcommittee, with you.

And ladies and gentlemen, I have finally in fact become enlightened instantly; because I mentioned that Mr. Smith, my good friend, is Ranking Member of this Subcommittee, but I was trying to keep the great Howard Coble out of my mind but I can't do that, either. Mr. Coble is the Ranking Member, and we appreciate his service.

Now, what I will do now is I will introduce the witnesses for today's hearing. Well, we have Mr. Goodlatte, the gentleman from Virginia, who is next for a statement. You may proceed, sir.

Mr. GOODLATTE. Thank you, Mr. Chairman. But I don't have a statement at this time.

Mr. JOHNSON. Well now, that is rather untypical, Mr. Goodlatte. I guess you are saving the ammo for a full assault later during this hearing.

Okay. And also, we have the very quiet warrior. Mr. Gonzalez from Texas is here. Did you wish to make an opening statement, sir?

Mr. GONZALEZ. Mr. Chairman, I will be very, very brief. I wasn't going to make one, but I just want to put our witnesses' minds at ease. I don't believe that your testimony today, that you would be prepared to address bailouts or campaign contributions. And I don't believe those are the questions that will be coming from Members of this Committee. The issue at hand is, and I truly believe this and I think all my colleagues would join me, is that laws have utility and meaning only when they are relevant to a society. The question today is whether antitrust laws as they relate to the printed media are relevant in what has transpired and what has been a technological revolution, which has been adopted by the majority of Americans, which truly jeopardizes the very existence of the printed media. So I am hoping that our witnesses will be able to shed light.

Now, I am going to apologize to my colleagues and to the witnesses that I probably will be absent for much of the testimony. We have your written statements. There is a hearing going on in Energy and Commerce that will require that I be there as we prepare to mark up the energy bill. But again, I just want to thank my colleagues and hope that we have a fruitful afternoon.

I yield back.

Mr. JOHNSON. I thank the gentleman for his statements. And without objection, other Members' opening statements will be included in the record.

So now I am pleased to introduce the witnesses for today's hearing. We have two distinguished panels of witnesses to assist us today. Our first panel features Carl Shapiro, the Deputy Assistant Attorney General for Economics At the Antitrust Division of the Department of Justice. Mr. Shapiro is also the Transamerica Professor of Business Strategy at the Haas School of Business, and also a Professor of Economics in the Economics Department, at the University of California Berkeley. He previously served as Deputy Assistant Attorney General for Economics in the Antitrust Division of the U.S. Department of Justice from 1995 to 1996. He later founded the Tilden Group, which was also a senior consultant with Charles River Associates, an economic consulting company.

Welcome, Mr. Shapiro.

Mr. SHAPIRO. Thank you very much.

Mr. JOHNSON. Our second group of panelists will testify after Mr. Shapiro has concluded. Our second panel features Mr. Brian Tierney, Chief Executive Officer of Philadelphia Media Holdings LLC and a publisher and CEO of the Philadelphia Inquirer. Mr. Tierney is a nationally recognized expert in branding, marketing,

and advertising, and he is also an accomplished entrepreneur in addition to being a lawyer. Nobody can really hold that against you, Mr. Tierney. At least not today, anyway.

His leadership of Philadelphia Media Holdings marks the first time the papers are under private ownership. This is since 1969. Mr. Tierney has received numerous industry related awards. And we want to welcome Mr. Tierney.

Next, we have Mr. John Nichols. Mr. Nichols is a journalist and author, and has written about politics for American newspapers and magazines since the 1970's. He is the Editorial Page Director of The Capital Times newspaper in Madison, Wisconsin, and writes about politics as a correspondent for the Nation magazine. Mr. Nichols is the author of many books on American politics and media issues, and he is also one of the co-founders of Free Press, the Nation's media reform expert and, actually, media reform network. He has been honored by numerous journalistic organizations for his editorial and column writing as well as his investigative reporting. Welcome, Mr. Nichols.

Next, I will introduce Mr. Bernard Lunzer, who is the President of the Newspaper Guild Communications Workers of America, which is affiliated with the AFL-CIO and the International Federation of Journalists. Mr. Lunzer was elected T&GCWA President and CWA Vice President in May of 2008. From 1979 to 1989, he worked in the newsroom in advertising, circulation, and promotion-marketing at the St. Paul, Minnesota Pioneer Press. Mr. Lunzer is also an integral part of the Newspaper Guild, and we welcome him here today.

Our next witness will be Mr. Ben Scott. He is the Policy Director at the Free Press. And I thank Mr. Scott for his service in regularly testifying before Congress and the FCC. Before joining Free Press, Mr. Scott was a legislative fellow for then Representative Bernie Sanders out of Vermont. He has been quoted in publications, including the New York Times, Wall Street Journal, Los Angeles Times, and Salon, and featured as a commentator on MSNBC, BBC, PBS, C-SPAN, NPR, and local stations across the country. He is the author of several scholarly articles on American journalism and he is co-editor of the books Our Unfree Press and also The Future of Media. Welcome, Mr. Scott.

And then we have Professor C. Edwin Baker. Professor Baker is the Nicholas Gallicchio Professor of Law at the University of Pennsylvania, and he teaches constitutional law, mass media law, and freedom of speech, and is the author of Media Concentration and Democracy: Why Ownership Matters. Professor Baker is also the author of a pending article on Viewpoint Diversity and Media Ownership. Welcome, Professor Baker.

The last witness on today's panel is Mr. Dan Gainor, who is the T. Boone Pickens Fellow and Vice President of Business and Culture for the Media Research Center. Mr. Gainor has served as an editor at several newspapers, including the Washington Times and the Baltimore News American. Mr. Gainor also has extensive experience in online publishing, holding the position of Managing Editor for CQ.com, which is the Web site of Congressional Quarterly. And he is also the Executive Editor for Change Wave. Mr. Gainor has made many radio and television appearances and is published

in a wide variety of publications including Investors Business Daily, the Washington Times, the Chicago Sun Times, the Orange County Register, the New York Post, and the Baltimore Examiner. Welcome, Mr. Gainor.

And we thank you all for joining us here today.

I wanted to ensure that today's panel would be fair and balanced with equal representation from those on all sides of the issue. As part of that goal, we invited several entities to testify today that could emphasize the newspaper perspective, along with Mr. Tierney. And one such witness, Rupert Murdoch, Chairman and CEO of News Corporation, was not able to appear personally, but he has submitted his written statement for the record. And, without objection, that statement will be submitted for the record. And, without objection, the witnesses' statements will be made a part of the record in their entirety.

We would ask each one of you to summarize your testimony in 5 minutes or less. To help us keep the time, there is a timing light at your table. When 1 minute remains, the light will switch from green to yellow and then to red when the 5 minutes are up. If anybody is colorblind, please raise your hand now.

Mr. Shapiro, will you now proceed with your testimony, sir?

TESTIMONY OF CARL SHAPIRO, DEPUTY ASSISTANT ATTORNEY GENERAL FOR ECONOMICS, ANTITRUST DIVISION, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. SHAPIRO. Yes. Thank you very much, Mr. Chairman. I appreciate the opportunity to appear before the Subcommittee on Courts and Competition Policy. As somebody who has had some experience being an expert witness in court, I particularly appreciate Chairman Conyers' suggestion that we all be friends together.

As you noted, I have been a Professor at UC Berkeley for about 20 years. During that time, I have been studying and practicing antitrust economics. One particular area of interest to me has been how advances in information technology, including the Internet, have affected a wide range of businesses, markets, and competition. I in fact wrote a book about these topics about 10 years ago. So the issues facing the newspaper industry are familiar to me and of interest to me as well as of course to the Antitrust Division in the Department of Justice.

Newspapers play a unique and important role in our democracy. I myself very much enjoy sitting down in the morning with a cup of tea and reading the newspapers, and I count myself as a better citizen for what I learn while I sip my tea.

Today, newspapers are facing financial pressures, most notably from the current recession on top of the challenge posed by the Internet. As a result, newspapers are experiencing a painful and ongoing decline in circulation and advertising revenues.

Now, how does antitrust enter into this picture? Antitrust is the cornerstone of our free enterprise system. Antitrust is critical to ensure that the public obtains the full benefits of competition. This is especially true in industries experiencing technological change where competition can and does often spur innovation, including innovative business strategies and business models. And I noted

that some of the other witnesses discuss some of the plans they have for such business models.

Today, a wide ranging and healthy debate is taking place about the future of the newspaper industry, with different participants adopting different strategies for survival and success. This is the essence of the competitive process that the Antitrust Division is dedicated to protecting.

Our antitrust laws are over 100 years old. They apply to declining industries as well as growing ones. They apply during tough economic times as well as during good times. They have proven flexible and effective in addressing a wide range of economic settings and industries, including industries experiencing the pressures of new technologies. And the Antitrust Division has experience in a range of industries where these conditions hold.

Nonetheless, some have suggested that the antitrust laws are somehow unsuited for the newspaper industries. We at the Justice Department disagree. If anything, the interest Congress has expressed in preserving editorial and reportorial diversity makes antitrust enforcement in the newspaper industry all the more important. And Speaker Pelosi's letter to Attorney General Holder indicated as much.

Some have suggested that antitrust enforcement at the Justice Department in the newspaper industry is mired in the past, failing to account for today's business reality. Our investigation in any given matter is highly fact intensive. I would like to assure the Committee and the public that we are dedicated to conducting a legal and economic analysis that reflects current business reality and accounts for emerging trends in the newspaper industry.

Thank you.

[The prepared statement of Mr. Shapiro follows:]

DEPARTMENT OF JUSTICE

STATEMENT

OF

CARL SHAPIRO
DEPUTY ASSISTANT ATTORNEY GENERAL FOR ECONOMICS
ANTITRUST DIVISION

BEFORE THE

SUBCOMMITTEE ON COURTS AND COMPETITION POLICY
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

ENTITLED

"A NEW AGE FOR NEWSPAPERS: DIVERSITY OF VOICES, COMPETITION AND THE INTERNET

PRESENTED

APRIL 21, 2009

Good afternoon, Mr. Chairman and members of the Subcommittee. I appreciate the opportunity to appear today before this new Subcommittee, on behalf of the Department of Justice, to discuss the challenges facing the newspapers and the important role of antitrust in protecting and preserving competition during these troubled times.

I was recently appointed as Deputy Assistant Attorney General for Economics in the Antitrust Division; I previously held this same position during 1995-1996. I have been a Professor of Business and Economics at the Haas School of Business at the University of California at Berkeley since 1990.

I am an economist who has been studying competition, antitrust, and competitive strategy, for over thirty years. One strand of my research and applied work has focused on the antitrust treatment of mergers between competitors. Another strand has focused on the competitive strategies of firms whose markets that have been transformed by information technology. As the title of this session indicates, with the advent of new technologies and the proliferation of online content, the newspaper business is entering a new age.

During the course of our nation's history, newspapers have been considered the keystone to the proper functioning of our democracy. An informed electorate helps to ensure a responsive government of the people, by the people, and for the people. However, over the years the newspaper industry has not been static; rather, it has faced various pressures from new technologies and changing tastes. Within my lifetime, it was common for many communities to have at least two daily newspapers: a morning paper and an afternoon paper. With changes in American

lifestyles and the ways in which information is shared and transmitted, afternoon papers generally were eclipsed by morning papers. In response, seeking to preserve independent voices in the community, Congress passed the Newspaper Preservation Act in 1970, which I will discuss below.

Today, newspapers are once again facing significant pressures, most notably from the current sharp recession on top of the challenge posed by the Internet. Newspapers are experiencing a painful and ongoing decline in circulation and advertising revenues. According to the Newspaper Association of America, weekday newspaper circulation declined from 55.2 million in 2002 to 50.7 million in 2007, an 8% drop, and this was before the onset of the current recession. Similarly, total print advertising decreased from $44.9 billion in 2003 to $34.7 billion in 2008, a 23% decline. Newspaper revenues from classified advertising has been declining much faster, dropping from $15.8 billion in 2003 to $10.0 billion in 2008, a 37% decline. For many newspapers, declining revenues have been accompanied by heavy debt incurred by owners of newspapers before the current economic challenges. As a result, the continued viability of many newspapers has been put in serious doubt.

How does antitrust enter into this rather gloomy picture? While newspapers have served as a keystone to democracy, for over a century sound competition policy has been the cornerstone of our Nation's economic foundation. Vigorous antitrust enforcement promotes and protects a robust free-market economy, thus harnessing the power of competition to pressure businesses to lower their costs, improve their products, and generally find ways to better serve consumers in order to stay in

business. Ensuring that anticompetitive agreements, exclusionary conduct, and mergers do not distort market outcomes has helped American consumers obtain more innovative and high-quality goods and services at lower prices. For this reason, antitrust enforcement has rightly enjoyed substantial bipartisan support through the years, and this support has in turn greatly enhanced the effectiveness of antitrust enforcement.

Antitrust is critical to ensure that the public obtains the full benefits of competition. This is especially true in industries experiencing technological change, where competition spurs innovation, including innovative business strategies and business models. In the newspaper industry, major changes are taking place in terms of the creation and distribution of content and in terms of the business models adopted by those who incur the costs necessary to create content, especially content that is relatively costly to provide, such as investigative journalism. A wide-ranging and healthy debate is taking place about the future of the newspaper industry, with different participants adopting different strategies for survival and success. Among the many possibilities being considered are new revenue models for traditional newspapers, user-supplied online content including blogs, open-source approaches like wikis, crowd-sourcing, and non-profit news organizations. This is the essence of the competitive process that the Division is dedicated to protecting.

Congress passed the Newspaper Preservation Act in 1970. 15 U.S.C. § 1801. The opening sentence of the NPA articulates the "public interest of maintaining a newspaper press editorially and reportorially independent and competitive in all parts of the United States." The NPA exempts from antitrust liability certain types

of joint newspaper operations, so long as two or more newspapers (owned or controlled by two or more owners) remain in a given locale, and so long as these newspapers maintain separate staffs and independent editorial policies. 15 U.S.C. §§ 1802-1803. However, the NPA does not grant an unlimited antitrust exemption. It expressly states that antitrust immunity shall not apply to any joint operating arrangement ("JOA") or party thereto "[e]xcept as provided in this chapter" and it specifically enumerates those activities on which JOA newspapers are permitted to collaborate. 15 U.S.C. § 1803 (c). Thus, for example, there is nothing in the text or the legislative history of the NPA suggesting that Congress intended to immunize the acquisition by one JOA partner of the other partner's newspaper. Indeed, that would be directly contrary to Congress's goal of ensuring independent and competitive editorial and reportorial voices.

In reviewing mergers, the Antitrust Division applies Section 7 of the Clayton Act, which prohibits the acquisition of stock or assets "where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." Section 7 reflects the Congressional judgment that merger enforcement should be able to arrest anticompetitive transactions in their incipiency, to forestall the harm that would otherwise ensue but be difficult to undo. Thus, merger enforcement standards are forward looking and, while we often consider historic performance in an industry, the primary focus is to determine the likely future competitive effects of a proposed merger.

The Division, and the Federal Trade Commission, with which we share merger enforcement authority generally, have jointly developed Merger Guidelines that describe the inquiry the agencies will follow in analyzing mergers. "The unifying theme of the Guidelines is that mergers should not be permitted to create or enhance market power or to facilitate its exercise." Merger Guidelines 0.1.

There are a variety of issues the Division grapples with in analyzing the facts of any newspaper merger. For example, besides the two local daily newspapers seeking to merge, there may be a national daily newspaper and a local community weekly available in a particular community. The Division needs to collect and examine the facts to determine whether these offerings are sufficiently competitive with each other, both for advertisers and readers. If a significant number of readers highly value yesterday's sports scores, for example, a community weekly is not likely to be considered a viable competitive option for a daily for these readers. At the same time, if many readers highly value information regarding local issues, such as a local school board vote or policy, a national daily is not likely to be considered a viable competitive option for those readers. We ask similar questions with regard to advertisers.

We also take into account the fact that newspapers generally receive revenues from both subscribers and advertisers. Since advertisers are willing to pay more to appear in a newspaper with more readers, newspapers, like other media, have an additional incentive to attract subscribers. If advertising revenues decline, newspapers may have an incentive to raise their subscription prices. Competition with another newspaper can prevent such increases of subscription prices, especially

as regards traditional readers who are in the habit of reading a local daily newspaper, to the benefit of the reading public.

Ultimately, following Section 7 and our Guidelines, our analysis of a proposed merger of two local daily newspapers will depend upon the extent to which subscribers and advertisers would shift to other media in response to a price increase. Measuring substitution patterns of this type requires a detailed, fact-intensive inquiry. As technology advances, and as demographics shift, that inquiry could lead to a different result in the future than it would have in the past, in a given locale. Newspapers are hardly unique in this respect. Technological change and shifting consumer preferences over a period of decades have altered the competitive landscape in other media as well; for example, in video programming, some cousumers have shifted over time from broadcast television to basic and pay cable television as well as direct broadcast satellite.

In past newspaper merger investigations, the Division has performed a factual aualysis to determine whether other media outlets, such as radio, television, and new media, are in the same relevant market as local daily newspapers. In those past investigations, we have found sufficiently strong competition among local daily newspapers to define these products as a relevant market. These conclusions are perfectly consistent with the observation that newspapers have been losing subscription and advertising revenues to other media. A relevant market consists of products that could profitably be monopolized; some degree of competition across market boundaries is the norm. But changes in technology, and in consumer preferences for their sources for news and entertainment, may well make it possible

that the facts surrounding a particular future merger or acquisition involving two local newspapers could lead us to conclude that consumers' preferences are such that other media outlets provide a sufficient competitive constraint to alleviate concerns raised by that merger.

Even if we find that local daily newspapers form a relevant antitrust market, that conclusion certainly does not end the analysis. Before concluding that a merger between the two remaining local daily newspapers in a given community should be enjoined, we still need to investigate further to determine if the merger will significantly harm competition. The Division is in general receptive to the argument that a proposed merger generates sufficient synergies to benefit consumers, notwithstanding the resulting loss of competitiou. That receptivity certainly applies to newspaper mergers.

Especially in today's economic environment, we may be faced with the contention that the newspaper being acquired is a failing firm and thus the merger should be allowed to proceed. In that case, we would analyze the extent to which the assets of the weaker local newspaper, including reporting staff, innovative features, or other valuable attributes of the paper, would exit the market if not acquired by the stronger local newspaper, or whether they could go to other competitors, or support a new competitor.

The Division has considerable experience evaluating claims by merging parties that one of them qualifies for the failing firm defense. Strict requirements must be met for that defense to be invoked, and rightly so. For a free market economy to work to harness the power of competition, rivals must not be able to

short-circuit the competitive process, to the detriment of consumers, unless the alternative is imminent exit, which would also involve a loss of competition. Unfortunately, this type of "tough love" may come into play with increasing frequency during the current economic challenges, simply because we are likely to see an uptick in the number of mergers in which the acquiring firm asserts that the acquired firm (or division) is failing.

Newspapers play a vital role in our society. The Antitrust Division continues to work to protect competition in the newspaper industry. We believe that antitrust analysis is forward-looking and flexible enough to take into consideration the economic and technological pressures facing newspapers as we continue to make market-by-market and case-by-case factual determinations pursuant to the antitrust laws. Vigorous antitrust enforcement will guarantee that this important industry will be as competitive as possible, and that American consumers will have available to them more, rather than fewer, options for getting uews and information.

Mr. JOHNSON. Thank you, Mr. Shapiro. And we would now begin the questioning. And I will begin by recognizing myself for such time as I may consume.

Mr. Shapiro, Attorney General Eric Holder has stated that he is open to reexamining government antitrust policies that limit mergers in the struggling newspaper industry. In your view, is a new antitrust exemption for newspapers necessary?

Mr. SHAPIRO. We do not believe any additional exemptions for the newspaper industry are necessary. We believe the antitrust laws, as I have indicated, can work well in this industry, reflecting as well the Newspaper Preservation Act.

Mr. JOHNSON. Well, tell me, do you believe that print media and online media are within the same product market and interchangeable?

Mr. SHAPIRO. Print media and online media often do compete, for example, for advertisers' dollars. The exact contours of the relevant antitrust market will depend on the specific facts and specific matter that will depend on the time period, the locale, and the products involved.

Mr. JOHNSON. And I would like to know from you, is it prudent—considering antitrust policy and economic efficiencies of acquiring businesses and also considering the public good, is it prudent to remove impediments to further consolidation in the newspaper industry?

Mr. SHAPIRO. Well, to the extent that antitrust can be an impediment, the goal is to prevent consolidation that will substantially lessen competition and harm consumers. That I would not really call an impediment; I would call it protecting the public interest.

Mr. JOHNSON. Thank you.

I will now recognize the Ranking Member of the full Committee, Mr. Lamar Smith, for his questions.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Shapiro, I just had a question or two for you. Could you give us an example of a merger between two newspapers or of two newspapers that you would question? What would the dynamics be that you would not necessarily approve of?

Mr. SHAPIRO. The situation where we would tend to be most concerned would be two local daily newspapers in the same town, the only two, where our investigation revealed that they were substantial direct competitors for readers or for advertisers or both.

Mr. SMITH. Would you consider in that case a city that had a morning and an afternoon newspaper and you had one of the papers purchase the other, would you consider that to be questionable?

Mr. SHAPIRO. That certainly could be. And those situations have arisen in the past.

Mr. SMITH. And would you give me a real life example—I realize it is totally hypothetical—of two papers that currently exist in the United States somewhere, in some city, that you would question if one were to purchase the other?

Mr. SHAPIRO. Well, there is—I am not sure whether you want real life or hypothetical. But we do have an ongoing litigation involving two newspapers in West Virginia where the acquisition took place, and the Antitrust Division is challenging that.

Mr. SMITH. That is the kind of example I was looking for. Thank you, Mr. Shapiro.

Thank you, Mr. Chairman.

Mr. JOHNSON. Thank you, Mr. Smith.

And I will now turn to our distinguished Member from Texas, Mr. Gonzalez.

Mr. GONZALEZ. Thank you very much, Mr. Chairman.

Let me ask you, Mr. Shapiro, how would you describe the purpose of antitrust laws?

Mr. SHAPIRO. To protect competition; in particular, by preventing abuses by monopolies, by preventing mergers that substantially reduce competition, and by policing cartels.

Mr. GONZALEZ. And it is competition within—this is obvious—in the industry itself? What I am saying is, like—I am trying to describe it, and I apologize. Newspapers to newspapers, TV stations to TV stations, a certain type of enterprise to that certain type of enterprise. Right? Let me ask you, where is the competition to newspapers in America today? Is it among, between themselves, or is it something totally different, a whole different medium that is out there? Isn't that the real competition? And what we are discussing here is the old laws may not accommodate the flexibility given to newspaper enterprises to compete with basically an information service that is a different platform? I mean, that is what we really have.

So I guess, if I am hearing you right, you are saying we can remain with the same antitrust model, and the newspapers will still have the flexibility to adopt business practices that will allow them to compete with these other delivery systems?

Mr. SHAPIRO. The antitrust laws will not, should not stand in the way of creative business practices and models that are part of the competitive process and create efficiencies and serve consumers. I know some of the later panelists want to pursue new business strategies, and there is no reason the antitrust laws would stop that so long as they in fact are pro-competitive.

Mr. GONZALEZ. It is interesting, and I think the next witnesses—and I am going to be gone for part of their testimony but I hope to be back—will shed some light on that. I think they are going to look at it as from their business experience. And I understand where you are coming from, and I agree with you. I think if you listen to Chairman Conyers where we are all so rooted in the antitrust philosophy and the tremendous benefits that we have derived from it, but the world has changed. And the question then comes, we may not have a certain enterprise or certain industry because we are worshipping at this altar of what once was sacrosanct, which was the antitrust laws and what they attempted to accomplish. There won't be anyone to protect. There won't be any survival. That is what I am getting at.

I am really worried that the printed media is really faced with a do or die situation that may encompass what we may have found objectionable in a different setting years ago. That is all I am saying. And I still don't think that we are going to lose the integrity of the process and the enterprise and the professionalism, because the truth is that is what distinguishes the printed medium from so many of the others.

Now, I believe that you are saying they can just transport that quality product and have it delivered by this different platform of delivery system. I don't think it is going to be that easy. I just don't think. And even if it is, then you still have lost the traditional printed media. You won't have a newspaper to sit there with your morning coffee or tea. And maybe it is generational, I just have got to have it. I don't like looking at this at the coffee shop in the morning, to be honest with you.

But that is—and I understand that this is a sincere belief that you hold, and I will just wait and reserve my own opinion until we hear the witnesses and I read their testimony. But thank you for the benefit of your knowledge and study.

Mr. SHAPIRO. Well, let me just say thank you for that. I also can't do without my newspaper in the morning. That is why I mentioned it.

The fear that newspapers will close or the industry will be in grave trouble, we are here to protect competition. And of course that means if a company is in sufficiently bad shape, we have a failing firm doctrine, and so greater antitrust flexibility is allowed in certain circumstances. And that doctrine has been in place for 40 years in the newspaper industry following the Supreme Court decision. So it is not in anybody's interest to have there be no newspaper in any of our towns, and antitrust would not lead to that result.

Mr. GONZALEZ. Again, and I don't know the various opinions that are going to be expressed after your testimony. There may be some that would disagree with you. And maybe it is not necessary, and I don't want to have to rework, modify, or alternate something that is so basic and that we have depended on for so long but it appears to me that there may be some adjustments that may have to be made. I do not know. But, again, I thank you for your testimony this afternoon.

Mr. SHAPIRO. You are welcome.

Mr. JOHNSON. Thank you, Mr. Gonzalez.

I will now turn to Mr. Bob Goodlatte, a very cerebral Member of the Judiciary Committee as well as this Subcommittee. You may proceed, sir.

Mr. GOODLATTE. Thank you, Mr. Chairman.

And, Mr. Shapiro, welcome. Does the Justice Department have any role in approving the Joint Operating Agreements under the Newspaper Preservation Act?

Mr. SHAPIRO. Yes.

Mr. GOODLATTE. And, if so, how many JOAs has it approved in the last 5 years?

Mr. SHAPIRO. I am not sure of the number.

Mr. GOODLATTE. Can you get that for us and submit it to the Chairman of the Committee?

Mr. SHAPIRO. That would be fine. Yes.

Mr. GOODLATTE. Thank you. What factors do you consider in reviewing the JOAs?

Mr. SHAPIRO. Well, let me just clarify. The Antitrust Division looks at these, but it is the Attorney General's decision about whether to approve them.

Well, we follow the language of the Newspaper Preservation Act, which requires that the JOA include not more than one newspaper that is not failing and that the operating agreement be in the public interest.

Mr. GOODLATTE. To follow up on Mr. Smith's question, you stated that the Antitrust Division takes into account both the readers and the advertisers when it considers the impact of a proposed merger in the newspaper industry, But you didn't really tell us how you balance that. Do you place more weight on readers or more weight on advertising? How do you arrive at a conclusion that is appropriate?

Mr. SHAPIRO. I would say both groups we view as consumers or customers of the newspapers. They are both sources of revenue typically. I believe in most matters a balancing really isn't needed. When we have seen a loss of competition, we believe that both readers and advertisers would be harmed by an anti-competitive merger.

Mr. GOODLATTE. It is clear that online advertising has changed the economics of the newspaper industry. Last Congress, this Committee took a look at the proposed deal between Google and Yahoo for search advertising dollars. At that hearing it was alleged that Google already had a dominant position in search advertising. How does Google's dominance in search advertising affect the Department's review of newspaper mergers, particularly as to how such a merger would impact advertisers?

Mr. SHAPIRO. When we look at a proposed newspaper merger, we are looking at the choices that advertisers would have and the extent to which the newspapers compete directly for each other—excuse me, for advertisers. Alternative choices for those advertisers, be it search advertising, be it television, radio, other media, would all be considered in our analysis. And we would typically—we would see a problem with the merger if the extent of direct competition between the merging parties was significant, even though there would typically be some competition; that is, advertisers would spend some of their money on these other media, including Google.

Mr. GOODLATTE. In his written testimony, Mr. Tierney of the Philadelphia Inquirer calls for expedited Department of Justice review of these Joint Operating Agreements, and he also calls for a limited antitrust exemption for newspapers to discuss new business models. How would the Department view such an exemption?

Mr. SHAPIRO. Well, we generally don't believe exemptions are the way to go. We feel the antitrust laws are flexible and have proven that flexibility over many years.

In terms of specific discussions among newspapers to pursue a new business model, those could easily be handled without running into antitrust problems. Obviously not price fixing discussions, but discussions about a legitimate new business enterprise. And if there are concerns about that on occasion we can issue a Business Review Letter to give assurance to companies who are doing something that is not or not clear to them how it would be treated by the Antitrust Division.

Mr. GOODLATTE. Are these Joint Operating Agreements always entered into by newspapers in the same market, the same SMSA,

if you will? I mean, are they always newspapers within the same city?

Mr. SHAPIRO. To the best of my knowledge, yes.

Mr. GOODLATTE. How many cities still have more than one daily newspaper?

Mr. SHAPIRO. I could not give you a number on that. It has declined, to be sure.

Mr. GOODLATTE. Thank you very much, Mr. Shapiro.

Mr. Chairman, I would ask that the statement by Rupert Murdoch, the Chairman and CEO of News Corporation, be made a part of the record.

Mr. JOHNSON. Yes. Thank you, Mr. Goodlatte. And so it will be done, without objection.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. JOHNSON. You are welcome.

Mr. Shapiro, I thank you for your testimony here today and the time spent today.

And we will now move to our second panel. Hear ye, hear ye, hear ye, the next panel come forward and assume the position.

Mr. JOHNSON. We will now begin with opening statements from Mr. Tierney. Proceed, sir.

TESTIMONY OF BRIAN P. TIERNEY, CHIEF EXECUTIVE OFFICER, PHILADELPHIA MEDIA HOLDINGS, PHILADELPHIA, PA

Mr. TIERNEY. Good afternoon, Chairman Johnson, Members of the Subcommittee. I am Brian Tierney, the Chief Executive Officer of Philadelphia Newspapers. We own the Philadelphia Inquirer, the Philadelphia Daily News, and about 30 weekly newspapers in southeastern Pennsylvania and southern New Jersey.

In 2006, I joined forces with a diverse group of local investors, men and women, Black and White, entrepreneurs, CEOs, and a union pension fund to purchase these publications, and we are the largest locally owned news organization in America.

Philadelphia Newspapers, like virtually all of our Nation's newspaper publishers, have recently faced a severe revenue decline. Consequently, we have had to make some very difficult choices in order to continue serving as the top quality news source in the Pennsylvania and New Jersey area we serve.

In order for our newspapers and other newspapers to succeed in the Internet age, in order for us to continue to serve as our country's preeminent source of local news, the newspaper publishers and journalists need greater flexibility from lawmakers and regulators to discuss and implement new and sustainable business models.

Newspapers serve as the vital source of local, national, and international information, and, as such, we provide high quality public service journalism that is critical to the functioning of a vibrant democracy. The news gathering resources and investigative arsenals commanded by our daily newspapers typically dwarf those of any other local media. In Philadelphia, for instance, we spend more than $51 million in news gathering operations, and we have more reporters on the street every day than all other local media combined.

In addition to serving as an effective watchdog of business and local government, newspapers play another role. We connect our communities to themselves. Newspapers serve as a primary source of information for other news outlets as well. Most local television stations in Philadelphia begin their news meetings by leafing through the newspaper and doling out assignments based on what we have reported that morning.

In addition, while online news sources and citizen journalists certainly add a perspective to the news, they seldom provide original reporting, and even fewer ascribe to the same professional journalism standards.

In short, many new sources of news are actually free riding on the investments in journalism made by newspapers.

By all accounts, the industry is in a real crisis. The problem, ironically, is not a readership or an audience problem. In fact, more people read a newspaper the Monday after the Super Bowl than watched the Super Bowl. In fact, in Philadelphia, more people read the Inquirer today than they did 10 years ago when you add our print and online readership together. The problem is the business model we have today and the fact that advertising revenues, which account for 80 percent of our earnings, of our revenues, have dropped by 23 percent in 2 years. Recent news reports predict a 30 percent decline this quarter alone. Classified advertisement has been hit the hardest, and dropped $4 billion just that year; and most of that is not coming back even when the economy returns.

Online advertising, which was often hailed as the industry saviour, declined in 2008 and accounted for less than 10 percent of revenue. Our online traffic in Philadelphia is up over 300 percent. You can add up every other source of news or information in the marketplace; it doesn't compete with it, but our revenue is flat.

In fact, it is interesting, here in town, POLITICO.com, which is very successful, has about 30 or so reporters, maybe a little bit more, almost all of their revenue comes from the printed newspaper product that is distributed free.

The result of these seismic shifts in advertising has been devastating. In February, our company announced that it was voluntarily restructuring under Chapter 11. The factors that led us to this difficult choice are similar to those facing publishers across the country.

But even in these trying times, our commitment to the communities we serve has remained steadfast. And I am incredibly proud of the relationship we have also built with our unions. We are working hard to find efficiencies, cut costs and preserve jobs, good jobs that a man or woman can raise their family on.

Other newspaper companies, such as Tribune company, Lee Enterprises, the Minneapolis Star Tribune, to name a few, have had to file for bankruptcy in recent months. The Seattle Post-Intelligencer is all online, but they have had to lay off 130 of their 150 journalists. So it is hardly going to be able to serve the same function in Seattle. And of course, the Rocky Mountain News closed in February. Some analysts are predicting that major cities may be left without a single daily newspaper soon unless we act.

While we may have once hoped that we could merely shift our operations online and continue operating as usual, the much small-

er revenue generated from Internet advertising has shown that we must look for another answer, and we need the freedom now to experiment with new business models.

With the critical role of daily newspapers, we at Philadelphia Newspapers believe strongly that we have the possibility to evolve. But in order to do so, however, newspaper publishers need the flexibility to explore new approaches and innovative business models without the delay, burdens, and uncertainty created by the competition laws we have now. When it comes to daily newspapers, the enforcement of antitrust laws has not yet caught up with market realities. Past enforcement actions have been premised on the now outdated view that daily newspapers compete exclusively with one another and that they dominate their local advertising markets. And in fact, newspapers' share of overall advertising has declined so much that it is less than 15 percent today.

In today's precarious and ever-changing environment, antitrust enforcers must be vigilant to ensure they are not frustrating the possibility of a reinvigorated newspaper industry. Since, for many newspapers, time is of the essence, Congress, I respectfully request, should act quickly on legislation that would, one, provide for expedited Department of Justice review of newspaper transactions that can reduce costs and achieve other efficiencies; and, two, provide limited antitrust relief for newspapers and journalists to discuss and experiment with new and more sustainable business models.

Mr. JOHNSON. Mr. Tierney, if you could go ahead and close out now. The light is green.

Mr. TIERNEY. From my own experience, antitrust concerns are preventing the industry from even the most rudimentary discussions which could potentially lead to the next big idea.

Thank you for the opportunity to appear at this hearing today. The publishing industry remains one of our Nation's foremost providers of in-depth and locally oriented news, and it is my hope today that we begin the road back. Thank you.

[The prepared statement of Mr. Tierney follows:]

PREPARED STATEMENT OF BRIAN P. TIERNEY

WRITTEN STATEMENT BRIAN P. TIERNEY

CHIEF EXECUTIVE OFFICER OF PHILADELPHIA NEWSPAPERS, LLC

Before the

HOUSE OF REPRESENTATIVES COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON COURTS AND COMPETITION POLICY

April 21, 2009

I. INTRODUCTION

Good afternoon. I am Brian Tierney, the Chief Executive Officer of Philadelphia Newspapers, LLC, the publisher of *The Philadelphia Inquirer* and the *Philadelphia Daily News* as well as the owner of philly.com. We are the leading news and information organization in the Philadelphia region, which is the nation's fourth largest media market. I joined forces in 2006 with a diverse group of local investors—men and women, black and white, a union pension fund, and the chairman of a non-union homebuilder—to purchase these publications. We have made tremendous strides in the quality of our journalism and have vastly grown our total audience. We are the largest locally owned news organization in America.

Nonetheless, Philadelphia Newspapers—like virtually all of our nation's newspaper publishers— have recently faced a severe revenue decline. Consequently, we have had to make some very difficult choices in order to continue serving as the top-quality news source that Philadelphia area residents deserve and have come to expect.

Chairman Johnson, and members of the subcommittee, thank you for holding this hearing today, as the issues facing newspapers are very serious and need immediate attention. In order to fully develop innovative business models that will enable newspapers to succeed in the Internet age, to continue serving as our country's preeminent source of local news and investigative journalism, and to preserve hundreds of thousands of industry jobs, newspaper publishers will need greater flexibility from lawmakers and regulators. This flexibility will allow us to discuss and enact the business models needed so that we can continue to inform and enrich the lives of our communities for years to come.

II. DAILY NEWSPAPERS ARE AN IRREPLACEABLE SOURCE OF PUBLIC INFORMATION THAT ARE INDISPENSABLE TO A WELL-INFORMED CITIZENRY.

Even as the future viability of daily newspapers is called into question, they continue to serve as indispensable sources of local, national, and international information. As such, newspapers provide high-quality public service journalism that is critical to the functioning of a vibrant democracy.

The newsgathering resources and investigative reporting arsenals commanded by daily newspapers typically dwarf those of any other local media. In many markets, the local newspaper has more reporters on the street than all other local media combined. As a result, newspapers are often the most effective—and in some cases may be the only credible—watchdogs of business and local government. And, of course, sending reporters into war-torn regions, providing up-to-the-minute coverage of the happenings at the White House and in Congress, and pouring extensive time and resources into investigations that may or may not pan out are all very expensive propositions. Few, if any, other media are dedicated to these missions on the same scale and at the same level as daily newspapers.

In addition to the investigations and watchdog journalism that has an undeniably positive impact on our community, I've seen in Philadelphia how the information we provide brings our citizens together. Our stories are the link between the wealthy and the disadvantaged. For example, earlier this year one of our reporters covered the homeless census in Camden, NJ. It's the kind of event that would go unnoticed if not for newspaper reporters. In his account of the event, our reporter described a group of homeless men who had established a tent city with rules, regulations, and tent

inspections. He interviewed 53-year-old Neal Floyd, whom he described as "a former truck driver whose life fell apart after he had a kidney transplant and his wife died." Ten days later, Floyd's sister in Fort Bragg, N.C., searching online for her brother, came across the article. She headed for Camden and found Floyd in his tent city. "How'd y'all find me?" he asked, over and over. She told him she found him on philly.com.

Another example would be Toys for Tots. When we discovered last December that the charitable organization had only received half as many donations as it needed, we launched an emergency campaign. On our news pages, we wrote about the shortfall and our push to collect toys. In advertising, we donated more than $100,000 in free space. As a company, we donated thousands of dollars in toys. The reaction from the community was tremendous. Some of the wealthiest citizens in Philadelphia called to pledge their financial support. At the same time, regular folks lined up at our building to drop off goods and toys. More than 40,000 toys were collected in just seven days. I'm happy to report that we helped save a lot of Christmases last year. That's the power of journalism and our brand.

Even those who do not read newspapers on a regular basis benefit from the unique reporting and information they provide. This is because newspapers serve as the primary source of information for most other news outlets. TV and radio stations, in particular, depend on newspapers for much of the local news that they, broadcast to their audiences. Most local television stations begin their news meetings by leafing through the newspaper and doling out assignments based on what we have reported. It's very rare that a local story that is not covered by the daily newspaper gets covered by the broadcast

media. That's the case because we have far more journalists than all the television stations in town combined. In addition, while online news sources and citizen journalists certainly add perspective to the news, very few provide any original reporting and even fewer ascribe to the same professional journalism standards. Rather, many sources comment on information that was initially gathered and conveyed by newspapers. In short, many new sources of news are free riding on the investments in journalism made by newspapers.

Of course, more important than the affect on other media is the impact that newspaper closings and downsizing are having on individual communities and consumers. At least one recent study has demonstrated that there is considerable cause for concern. The study, released by Princeton University in March 2009, examined communities that lost newspaper coverage due to the closing of *The Cincinnati Post* at the end of 2007.[1] As a result of the *Post*'s demise, the *Cincinnati Enquirer* was the only daily newspaper covering Cincinnati and its suburbs in southern Ohio and northern Kentucky. As the study documents, the loss of the paper was particularly significant in certain northern Kentucky communities, where the *Post* historically had the largest circulation and had provided more than 80 percent of the combined local news coverage in the two papers. While this case study was small in scope and its results are not statistically generalizable, it sheds light on trends that may emerge if more markets are deprived of daily newspaper coverage. Most notably, the study found that, in towns that previously had been covered by the *Post*, voter turnout dropped, fewer people ran for public office, and more

[1] Sam Schulofer-Wohl and Miguel Garrido, Woodrow Wilson School of Public and International Affairs, *Do Newspapers Matter? Evidence from the Closure of The Cincinnati Post* (March 2009).

incumbents were re-elected. Thus, as the study's authors conclude, these results confirm that "newspapers—even underdogs such as the *Post*, which had a circulation of just 27,000 when it closed—can have a substantial and measurable impact on public life."[2]

III. DAILY NEWSPAPERS ARE FACING UNPRECEDENTED FINANCIAL PRESSURES THAT ARE HAVING AN UNDENIABLE IMPACT ON THEIR CORE MISSIONS.

By nearly all accounts, the newspaper publishing industry is in crisis. As the Project for Excellence in Journalism recently summarized, "[t]he newspaper industry exited a harrowing 2008 and entered 2009 in something perilously close to free fall."[3] The problem is not that people aren't turning to our news operations for information. In fact, more people read a newspaper the Monday after the Super Bowl than watched the big game on Sunday.

The problem is that advertising revenues, which account for approximately 80 percent of newspaper earnings, have dropped 23 percent over the past two years, and recent news reports predict an additional 30 percent drop this quarter alone. Classified ads have been hit the hardest. In one year, between 2007 and 2008, classified spending with newspapers dropped more than $4 billion. Most of that money is never coming back, even when the economy returns. Online advertising—which often has been hailed as the industry's most promising future growth engine—declined in 2008 and accounted for less than 10 percent of revenue.

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[2] *Id. See also* Richard Pérez-Peña, *In Boston, Paper's Peril Hits a Nerve*, The New York Times (Apr. 13, 2009).

[3] Project for Excellence in Journalism, 2009 State of the News Media, Newspapers, available at http://www.stateofthenewsmedia.org/2009/narrative_newspapers_intro.php?cat=0&media=4.

The results of these seismic shifts in advertising have been devastating. According to a Web site created for the sole purpose of tracking newspaper job losses, 8,097 newspaper employees have lost their job in the first three and a half months of 2009 alone.[4] It was front-page news when Sprint laid off 8,000 employees earlier this year, but fewer have taken notice of these continuously growing cuts at newspapers across the country. These numbers are reflective of far more than the recent economic downturn. Rather, they reflect a more fundamental, long-term trend—driven by the Internet—that has undermined the viability of the business model that has supported the investments made by newspapers in journalism.

The recent experiences at Philadelphia Newspapers illustrate the difficulties that newspaper publishers across the country are confronting. In February of this year, our company announced that it was voluntarily restructuring under Chapter 11 of the U.S. Bankruptcy Code. The factors that led us to make this difficult choice are similar to those facing publishers across the country: the recession and dramatic revenue declines— particularly in classifieds. I would like to emphasize that, throughout these trying times, our commitment to the communities we serve has remained steadfast. We have worked closely with our unions to identify savings while preserving jobs. We continue to be a major employer in the Philadelphia area with 4,600 employees. Because of our outstanding journalism, our unwavering dedication to community service, and our strong local presence, our publications continue to be the news source of choice in the Philadelphia region. More than two million people either pick up one of our newspapers or view our news and information online every day.

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[4] *See* Paper Cuts, available at http://graphicdesignr.net/papercuts/.

Of course, Philadelphia Newspapers is hardly alone in the hardships it has faced and, in fact, we have been more fortunate than a number of other newspaper publishers. To give you a sense of the overall state of the industry, here is a list of some of the more salient events that have occurred over the past few months:

- After posting repeated losses and failing in its efforts to find a buyer, E.W. Scripps in February shut down the *Rocky Mountain News*, which had been in existence since 1859, leaving *The Denver Post* as the city's sole major daily.

- Because the newspaper was losing money, year after year, the Hearst Corporation replaced the print edition of the *Seattle Post-Intelligencer* in March, with a scaled down online-only operation. As a result of this major overhaul, the publisher has retained just 20 of its 150-plus journalists. Hearst also has indicated that a similar fate may befall *The San Francisco Chronicle*, that city's major daily and the nation's 12th largest, if it cannot substantially cut costs or find a buyer in the near future.

- Newspapers in four Michigan markets have recently announced that they will cease publishing on a daily basis, with issues being printed only three days a week in Flint, Saginaw, and Bay City. Also, the owner of the 174 year-old Ann Arbor News plans to cease publication of the paper in July, and will establish AnnArbor.com as a web operation, while continuing distribution of a twice-weekly print product. Elsewhere in Michigan, both of the Detroit dailies recently cut home delivery to three days per week, making a more compact print version available for single copy purchase on the other days and an e-edition available daily.

- Virtually every major daily in the country has been forced to cut newsroom jobs and/or impose pay reductions in order to stem severe losses. During one week alone in March, *The New York Times, The Boston Globe,* the *Boston Herald,* the *Houston Chronicle,* the *Atlanta-Journal Constitution,* the *Milwaukee Journal Sentinel,* and *The Buffalo News* all announced substantial layoffs and pay cuts. After analyzing the breadth of recent employment losses, the Pew Project for Excellence in Journalism predicted last month that nearly 25 percent of the newsroom jobs that existed in 2001 will be gone by the end of 2009.

- A growing number of publishers are closing domestic and foreign news bureaus. Cox newspapers shut down its Washington, DC news bureau (which was founded in 1974) along with five international bureaus last December. In March, Media General similarly closed the doors of its Washington, DC News Service Bureau, which for 30 years had provided news and feature stories to all of Media General's newspapers, television stations, and Web sites.

- Philadelphia Newspapers is not the only publisher that has sought bankruptcy protection in recent months. Last December, the Tribune Company—which owns the major newspaper in cities ranging from Los Angeles and Chicago to Allentown, Pennsylvania—became the first major newspaper publisher in decades to declare bankruptcy. Sun-Times Media, publisher of the *Chicago Sun-Times* and 58 other newspapers, followed suit in late March, making Chicago the first city in the nation to have two major dailies that are insolvent. Other newspaper publishers currently in bankruptcy include: (1) *The Minneapolis Star Tribune*, which reportedly earned only half of the revenue in 2008 that it had earned in 2007 and (2) the Journal Register Company, the publisher of 20 dailies, including *The New Haven Register* and *The Trentonian*.

The above list provides but a few examples of the extreme measures that publishers in markets of all sizes have had to take in order to stay afloat. As is becoming increasingly apparent, the current climate has had an undeniable impact on the ability of many dailies to maintain their traditional levels of in-depth reporting and community service. In some cases, it has threatened their very existence. The reality is that virtually all daily newspaper publishers are being forced to make significant cutbacks. The current economic troubles certainly exacerbate the problems, but most observers believe that more pain is yet to come as the long-term secular shift continues to undermine the ability of newspapers to support investment in journalism. While we may have once hoped that we could merely shift our operations online and continue operating as usual, the comparably much smaller revenue generated from Internet advertising has shown that we must continue to look for another answer. We can't wait to see if advertising revenue comes back after the recession is over, as much of it won't, given the difficulty of monetizing Internet readers. We need the freedom now to experiment with new business models.

IV. GREATER ANTI-TRUST FLEXIBILITY WILL BE ESSENTIAL AS NEWSPAPERS EXPLORE NEW BUSINESS MODELS.

Because of the incomparable role that daily newspapers play in informing citizens, we at Philadelphia Newspapers strongly believe that our industry has the potential to evolve into a form that sustains quality, public service journalism like at no other time in the past. In order to do so, however, newspaper publishers will need the flexibility to explore new approaches and innovative business models without the delay, burdens, and uncertainty created by the competition laws in this context.

When it comes to daily newspapers, the enforcement of the antitrust laws has not yet caught up to current market realities. Past enforcement actions have been premised on the now outdated view that daily newspapers compete exclusively with one another and that they dominate local advertising markets. Where newspapers previously captured 30-plus percent of U.S. advertising spending 50 years ago, we now capture less than half of that.[5]

As has become painfully apparent, daily newspapers are competing intensely for local audiences and advertisers with an ever-expanding array of competitors, particularly those that continue to emerge on the Internet. On behalf of Philadelphia Newspapers, I wholeheartedly agree with the statement of Speaker Pelosi in her recent letter to Attorney General Eric Holder that, in assessing the competition newspapers face, the Department of Justice must take into appropriate account "not only the number of daily and weekly newspapers . . ., but also the other sources of news and advertising outlets available in the

[5] Robert J. Coen advertising figures, available at http://purplemotes.net/2008/09/14/us-advertising-expenditure-data/

electronic and digital age, so that the conclusions reached reflect current market realities."[6]

While the Newspaper Preservation Act provides some relief from the antitrust laws by permitting daily newspapers to combine certain facilities-based operations, it applies only to precisely defined "failing" newspapers and is very narrow in scope. Indeed, this limited statute already has proven inadequate to prevent the demise of dailies in Seattle, Denver, and other communities. In today's precarious environment, antitrust enforcers must be vigilant to ensure that they are not frustrating the prospects for a reinvigorated newspaper industry by unnecessarily precluding publishers and other journalists from experimenting with innovative content distribution and cost savings arrangements. Since, for many newspapers, time is of the essence, Congress should act quickly on legislation that would: (1) provide for expedited Department of Justice review of newspaper transactions that can reduce costs and achieve other efficiencies and (2) provide limited antitrust relief for newspapers and journalists to discuss and experiment with new and more sustainable business models and strategies that will enable them to maintain the high quality journalism that is so important to our democracy.

From my own experience as a former ad agency executive and owner, I've never seen an industry where people are so afraid to share ideas. Antitrust concerns inhibit even the most rudimentary discussions, which could potentially lead to the next big idea that would help save the journalism that is so critical to all of our communities.

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[6] Letter from Nancy Pelosi, Speaker of the House, to The Honorable Eric J. Holder, Attorney General of the United States (dated March 16, 2009).

V. CONCLUSION

Thank you for the opportunity to appear at this hearing today. The newspaper publishing industry remains our nation's foremost provider of in-depth and locally oriented news and information. It is my hope that the discussions we have here today will lead to meaningful action to keep this all-important industry vibrant and successful. As Thomas Jefferson said, "...were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter."

Mr. JOHNSON. Thank you, Mr. Tierney.
We will now hear from Mr. John Nichols.

TESTIMONY OF JOHN NICHOLS, AMERICAN JOURNALIST, MADISON, WI

Mr. NICHOLS. Thank you, Chairman Johnson, Chairman Conyers, and Ranking Member.

My name is John Nichols. I grew up in Union Grove, Wisconsin; population 970. When I was 11-years-old, I rode my bike down Main Street and walked into the office of our weekly newspaper, The Union Grove Sun. I explained that I had read the Bill of Rights, Tom Paine, and I.F. Stone. I knew a free press was the essential underpinning of the American experiment and the journalists were front-line soldiers in the struggle for democracy. I snapped to attention and announced that I was reporting to duty.

It would give you a sense of the Sun circumstance that the editor responded, I will give you $5 a story and $1 for every picture that turns out. I was a journalist. I have practiced the craft of journalism ever since as a reporter, columnist, and editor of metropolitan dailies, part owner of a weekly newspaper, editorial page editor of a State capital daily, The Madison Capital Times, and political writer for The Nation magazine. Along the way, I have written and co-written seven books on the state of American politics and media.

So what is the state of the print press? Our country's first great journalist, Tom Paine, would surely describe it as "the crisis." A daily newspaper industry that still employs roughly 50,000 journalists, the vast majority of the remaining practitioners of this craft teeters on the brink. Media corporations, after running journalism into the ground, have determined that news gathering and reporting are no longer profit-making propositions. So they are jumping ship.

The Denver Rocky Mountain News recently closed, ending daily newspaper competition in that city. The San Francisco Chronicle may soon close, along with the Boston Globe. The Chicago Tribune, LA Times, Minneapolis Star Tribune, and Philadelphia Inquirer are in bankruptcy. The Christian Science Monitor has folded its daily print edition, as has the Seattle Post-Intelligencer. Whole newspaper chains struggle as the value of stock shares fall below the price of a daily newspaper.

Those are the headlines. Arguably uglier is the death by small cuts of newspapers that are still functioning. Layoffs of reporters and closings of bureaus mean that, even if newspapers survive, they have few resources for journalism. Job cuts during the first months of the year, 300 at the Los Angeles Times, 205 at the Miami Herald, 156 at the Atlanta Journal-Constitution, and on and on, suggest that this year will see more positions eliminated than in 2008, when almost 16,000 newspaper jobs were lost. Even Doonesbury's Rick Redfern has been laid off by the Washington Post.

Whole sectors of our civic life are going dark. Newspapers that long ago closed foreign bureaus and eliminated investigative operations are now shuttering Washington bureaus. The Cox chain, publisher of the Journal-Constitution, padlocked its D.C. bureau April 1, a move that follows the closures of the bureaus of Advance Publications, Copley Newspapers, and great dailies in Des Moines, Houston, Pittsburgh, Salt Lake City and Toledo.

Newspapers as we know them are dying, and there is little evidence that broadcast or digital media is prepared to fill the void. The digital day may come, but it is not here. Thus, those of us who believe in the essential role of an informed citizenry fear that we are facing not a journalism crisis, not a media crisis, but a democracy crisis.

So it is appropriate to consider the steps the Federal Government, which has historically aided publishers with favorable postage rates and broadcasters with free access to the airwaves, might now take to protect the public's right to know. The congressional response to the crisis must, however, recognize the importance of maintaining and expanding the practice of journalism as a tool of informing and engaging citizens. The emphasis should be on fostering competition, diversity and localism, not on protecting the bottom lines of media companies and speculators who balance their books by dismissing reporters and shuttering news rooms.

A crisis for journalism and democracy must not become an excuse for eliminating existing rules that promote competition and diversity, especially antitrust and cross-ownership restrictions that prevent consolidation of print broadcast and digital newsrooms into one-size-fits-all content-provider services.

Congress should recognize that the existing ownership model has proven in this crisis to be anti-journalistic. Government policies and spending should be tailored to support the development of new ownership models, not-for-profits, cooperatives, employee-owned publications, and on allowing citizens, unions, foundations and enlightened local owners to purchase financially troubled daily newspapers.

We should encourage the consumption of journalism perhaps by providing tax breaks for newspaper and magazine subscriptions. Postal rates should be structured to help journalists of inquiry and dissent stay afloat.

I am a journalist. I love my craft and hope to continue practicing it for a long time. But I love our democratic discourse and the diverse society it fosters more. I would ask my Congress to recognize, as did the Founders, that journalism and democracy are closely linked. James Madison was right when he said "a popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy or perhaps both." We are deep in the prologue moment. It is essential now to act wisely and responsibly to avert tragedy and farce.

Thank you.

[The prepared statement of Mr. Nichols follows:]

PREPARED STATEMENT OF JOHN NICHOLS

TESTIMONY OF JOHN NICHOLS

U.S. House of Representatives

Committee on the Judiciary

Subcommittee on Courts and Competition Policy

Hearing on "A New Age for Newspapers: Diversity of Voices, Competition and the Internet"

April 21, 2009

My name is John Nichols. I grew up in Union Grove, Wisconsin, population 970. Our village was not big enough to support a daily newspaper. We had a weekly, the Union Grove Sun. When I was 11 years old, I road my bicycle down Union Grove's Main Street and walked into the Sun's office, where I was greeted by Carl Krueger, the publisher, editor, reporter, photographer, printer, deliveryman and janitor. I explained that I had read the Bill of Right, Tom Paine and I.F. Stone. I knew a free press was the essential underpinning of the American experiment and that journalists were the frontline soldiers in the struggle for democracy. I snapped to attention and announced I was "reporting for duty."

It will give you a sense of the Sun's circumstance that our community's media magnate took one look at a rather small for his size adolescent and said, "I'll give you $5 a story and a $1 for every picture that turns out." I was a journalist. A year later, Hubert Humphrey, the former vice president of the United States, arrived in Union Grove on a campaign swing. His staff made it known that Humphrey would answer questions from local media. After the vice president's speech, I was ushered onto his bus, where Humphrey graciously answered my 20 questions and posed for a picture. It was the high point of young career, although I suspect it was a low point of his.

I have practiced the craft of journalism ever since, as a reporter, columnist and editor of major metropolitan daily newspapers, the part owner of an alternative weekly newspaper, the editorial page editor of a state capital daily, the host of television and radio programs and a political writer for national magazines. Along the way, I have written or co-written seven books dealing with the state of American politics and media – especially that of the print press.

So what is the state of that print press? One of our country's first journalists, Thomas Paine, would surely describe our current circumstance as: "The Crisis." A daily newspaper industry that still employs roughly 50,000 journalists--the vast majority of the remaining practitioners of the craft--teeters on the brink.

Media corporations, after running journalism into the ground, have determined that news gathering and reporting are no longer profit-making propositions. So they're jumping ship. Great regional dailies -- the *Chicago Tribune*, the *Los Angeles Times*, the *Minneapolis Star Tribune*,

the *Philadelphia Inquirer* -- are in bankruptcy. Denver's *Rocky Mountain News* recently closed down, ending daily newspaper competition in that city. The *San Francisco Chronicle* may soon close, along with The Boston Globe. Big dailies in Chicago (the *Sun-Times*), Newark (the *Star-Ledger*), Philadelphia (*Daily News)* and other cities are reportedly near the point of folding, and smaller dailies like the *Baltimore Examiner* have already closed. The 101-year-old *Christian Science Monitor*, in recent years an essential source of international news and analysis, has folded its daily print edition. The *Seattle Post-Intelligencer* has scuttled its print edition and downsized from a news staff of 165 to about twenty for its online-only incarnation. Whole newspaper chains--such as Lee Enterprises, the owner of large and medium-size publications that for decades have defined debates in Montana, Iowa and Wisconsin--are struggling as the value of stock shares falls below the price of a single daily paper.

Those are the headlines. Arguably uglier is the death-by-small-cuts of newspapers that are still functioning. Layoffs of reporters and closings of bureaus mean that even if newspapers survive, they have precious few resources for actually doing journalism. Job cuts during the first months of this year--300 at the *Los Angeles Times*, 205 at the *Miami Herald*, 156 at the *Atlanta Journal-Constitution*, 150 at the *Kansas City Star*, 128 at the *Sacramento Bee*, 100 at the *Providence Journal*, 100 at the *Hartford Courant*, ninety at the *San Diego Union-Tribune*, thirty at the *Wall Street Journal* and on and on--suggest that this year will see far more positions eliminated than in 2008, when almost 16,000 were lost. Even *Doonesbury*'s Rick Redfern has been laid off from his job at the *Washington Post*.

The toll is daunting. As former *Washington Post* editors Leonard Downie Jr. and Robert Kaiser have observed, "A great news organization is difficult to build and tragically easy to disassemble." That disassembling is now in full swing. As journalists are laid off and newspapers cut back or shut down, whole sectors of our civic life go dark. Newspapers that long ago closed their foreign bureaus and eliminated their crack investigative operations are shuttering at warp speed what remains of city hall, statehouse and Washington bureaus. The Cox chain, publisher of the *Atlanta Journal-Constitution*, the *Austin American-Statesman* and fifteen other papers, padlocked its DC bureau on April 1--a move that follows the closures of the respected Washington bureaus of Advance Publications (the Newark *Star-Ledger*, the Cleveland *Plain Dealer* and others); Copley Newspapers and its flagship *San Diego Union-Tribune*; as well as those of the once great regional dailies of Des Moines, Hartford, Houston, Pittsburgh, Salt Lake City, San Francisco and Toledo.

Newspapers as we have known them are dying, and there is little evidence to suggest that broadcast or digital media is prepared to fill the void that is being created. (I say this as a blogger whose posts frequently top the Google and Yahoo news and opinion reviews, and as an editor of a newspaper that has ceased daily publication in favor internet publication.) The digital day may come, but it is not here. Thus, those of us who believe in the essential role of an informed citizenry fear that we are facing not a journalism crisis, not a media crisis, but a democracy crisis.

In this circumstance, it is entirely appropriate to consider the steps government might take to protect the public's need to know. From the founding of the republic, federal, state and local governments have been actively engaged in shaping media systems. Newspapers and large

magazines have historically enjoyed favorable postage rates and other benefits. Broadcasters are given free use of airwaves owned by the American people.

So today's discussion is not merely timely but appropriate. If Congress is to address the crisis, however, that response must recognize the importance of maintaining and expanding the practice of journalism as a tool for informing and engaging citizens. The emphasis should be on fostering competition, diversity and localism – not on protecting the bottom lines of large media companies and speculators who have already shown a penchant for balancing their books by dismissing reporters and shuttering newsrooms.

A crisis for journalism and democracy must not become an excuse for eliminating existing rules that promote competition and diversity – especially cross-ownership restrictions that prevent consolidation of print, broadcast and digital newsrooms into one-size-fits-all "content provider" services. Congress should recognize that the existing ownership model has proven in this crisis to be anti-journalistic. As such, government policies and spending should be tailored to support the development of new ownership models for newspapers and newsrooms – not-for-profit operations, cooperatives, employee-owned publications – and on allowing citizens, unions, foundations and enlightened local owners to purchase financially-troubled daily papers. It should encourage the consumption of journalism, perhaps by providing tax breaks for newspaper and magazine subscriptions. And postal rates should be structured to help journals of inquiry and dissent to stay afloat. Additionally, Congress can defend journalism by expanding support for public broadcasting, supporting community and low-power radio, providing money for school newspapers and radio stations and defending net neutrality.

I am a journalist. I love my craft and I hope to continue practicing it for a long time. But I love our democratic discourse, and the society it fosters, more. I would ask my Congress to recognize, as did the founders, that journalism and democracy are closely linked. James Madison was right when he said, "A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy or perhaps both." We are deep in the prologue moment. It is essential now to act wisely and responsibly to avert tragedy and farce.

Mr. JOHNSON. Thank you, Mr. Nichols.

And if someone would call the Physician's Office and have them to come forward because we have several people who have developed a sudden case of color blindness.

So our next witness will be Mr. Lunzer.

Mr. Lunzer, please proceed.

TESTIMONY OF BERNARD J. LUNZER, PRESIDENT, THE NEWSPAPER GUILD, WASHINGTON, DC

Mr. LUNZER. Chairman Johnson, I want to thank you, the Ranking Member and other Members of the Committee for this chance to testify.

I am Bernie Lunzer, president of the Newspaper Guild of the Communications Workers of America representing media workers throughout the U.S.

I have worked in the industry for 30 years, 10 of those at the St. Paul Pioneer Press, in the newsroom, in advertising and circulation. I welcome this opportunity to talk about the current crisis within American journalism. This crisis affects all Members of this Committee, all your colleagues, and all Americans.

American journalism is and will continue to change radically in the next 5 years. The policies you promote will decide whether we have a strong and fair press or a limited-opinion press, regardless of the medium.

The underlying premise of this hearing is that Hearst Corporation and MediaNews wants Congress to relax antitrust law. The Newspaper Guild is not convinced that such a remedy will be good for journalism in California or in the United States. History has demonstrated that relaxing antitrust law may actually do more harm than good.

MediaNews purchased over 20 publications in northern California, some unionized, some not, to create a new entity called the BANG-East Bay. Once completed, the company withdrew recognition of the Newspaper Guild-CWA. We lost a legal challenge but later won representation of the full group through a hard-fought organizing campaign.

Despite this, almost 2 years later, our members still don't have a contract. If this exemption is granted in northern California, others will demand the same ability to create monopoly markets resulting in other workers throughout the country becoming targets for similar actions.

There is now one combined copy desk for all of the publications within BANG-East Bay. MediaNews has laid off roughly one-third of the original journalists. The result is a homogenized mix of publications with readers complaining that their local newspapers have little local content and are increasingly irrelevant to their communities.

Unhindered by antitrust law, a newspaper monopoly across northern California will lead to job loss and to diminished products. This is contrary to the notion advanced by Hearst, which argues that its proposal would save something vital to the community. The Hearst-owned Chronicle now has fewer than half of its original workers, and coverage in large sections of the community has already been diminished.

History shows us that such a monopoly will not benefit the local market and will further marginalize underserved minority communities within the market. Currently, publishers have recourse to an antitrust exemption through the Newspaper Preservation Act, which maintains separate newsroom but combines business operations. The sole purpose of the exemption was to help preserve the diversity of journalistic voices.

But these Joint Operating Agreements, or JOAs, often resulted in inflated advertising prices. So they have not proved to be a panacea for newspapers' problems. Furthermore, out of over two dozen JOAs, only 10 exist today.

President Obama campaigned in favor of more antitrust enforcement, stating in Gresham, Oregon, May 18, 2008, "there are going to be areas, in the media for example, where we are seeing more and more consolidation, that I think it is legitimate to ask, is the consumer being served."

The fundamental question of what is gained through such consolidation remains very relevant. The largest concern we have about such a monopoly in northern California is that, is it an answer to the very real problems that exist in our industry? We think they will remain unanswered and that real innovation will be stifled. The two large corporations behind this initiative will only have forestalled the inevitable reckoning. The result will be underserved communities.

If there is to be serious consideration of the problems facing newspapers, Congress needs to look at alternative ownership ideas, like employee stock ownership, nonprofit approaches and the new L3C concept. The L3C approach would allow publications to serve a stated social purpose in exchange for the ability to accept nonprofit money. Smaller, more committed news operations will be more successful in providing real coverage to communities.

Bigger is not better. The current financial crisis is evidence of this. An antitrust exemption for such large corporations could create real barriers to entry for others. Without oversight, congressional and local oversight, this exemption may not work. While these companies become a single voice for over half of our most populace State, similar consolidations elsewhere would create incredible power for a select few.

A commitment must be made to local coverage and local job creation. These same entities that are promoting this current proposal have been the loudest in supporting the outsourcing of jobs, causing one to truly question any commitment to local communities. Agreements amongst competitors to shut down or reduce capacity or output are normally illegal per se under the Sherman act. Any effort to assist the newspapers in this regard will have far-reaching consequences.

Newspaper workers have made great sacrifices to invest in the future of their publications. We have given up a lot, pay increases, vacations, and other benefits, to preserve quality local media coverage and a diversity of voices. We have accepted these concessions with an understanding that we are investing in a long-term recovery plan. There must be a focus on new ways to generate revenue and on creating new business models that recognize the deep changes we are experiencing.

We look forward to working with your Committee to address the long-term problems of the newspaper industry in an equitable and progressive manner. Thank you.

[The prepared statement of Mr. Lunzer follows:]

PREPARED STATEMENT OF BERNARD J. LUNZER

April 17, 2009

President:
Bernie Lunzer

Secretary-Treasurer:
Carol D. Rothman

Director, CWA/SCA Canada:
Arnold Amber

Sector Chairperson:
Connie Knox

Regional Vice Presidents:

Donna Marks, *Greater Boston*

Sheila Lindsay, *Washington-Baltimore*

Lillian Covarrubias, *Toledo*

Michael Cabanatuan, *N. California*

Deborah Zabarenko, *New York*

Karolynn DeLucca, *Minnesota*

Scott Edmonds, *Canadian Media Guild*

Barbara Saxberg, *Canadian Media Guild*

Affiliated with American Federation of Labor and Congress of Industrial Organizations, Canadian Labor Congress, International Federation of Journalists

Congress of the United States
House of Representatives
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515-6216

Members of the Committee:

I want to thank the chairman, the ranking members of the committee and other members of the committee for this chance to testify. I'm Bernie Lunzer, President of The Newspaper Guild of the Communications Workers of America, representing media workers throughout the U.S., primarily journalists, and primarily at newspapers.

I welcome this opportunity to talk about the current crisis within American journalism. I understand that you are considering a relaxation of anti-trust laws so that Hearst Corporation and MediaNews can operate as a combined business in San Francisco and Northern California. It's important to note that the crisis affects all of you as members of this committee, and all members of congress. American journalism is, and will continue to change radically in the next five years. The policies you choose to promote can guarantee whether we will continue to have a strong and fair press, or a limited, opinion press – regardless of whether it's digital, broadcast or print news.

The underlying premise is that these corporations need changes in the law to survive. The Newspaper Guild of the Communications Workers of America is not convinced that such a remedy will be good for journalism in California or the United States. In and of itself, such a relaxation may actually do more harm than good.

Case in point: MediaNews was able to purchase 23 daily newspapers and some weeklies in Northern California, some unionized, some not, to create a new entity called the Bay Area

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News Group-East Bay (BANG-East Bay). One of its first actions was to withdraw recognition of The Newspaper Guild-CWA, which represented a substantial portion of its employees, by selectively laying off workers in order to diminish the union. We lost a legal challenge to this cynical tactic, but later won representation of the full group through a difficult and hard-fought organizing campaign. Despite this success, two years later our members still don't have a contract. If this exemption is granted in Northern California, it is inevitable that others will demand the same ability to create monopoly markets, resulting in other workers throughout the country becoming targets for similar actions.

There is now one combined copy desk for all publications within BANG-East Bay, a consolidation that has allowed MediaNews to lay-off roughly one-third of the journalists. The result is a homogenized mix of publications, with readers complaining that their "local" newspapers have little local content and are increasingly irrelevant to their communities.

Unhindered by antitrust law, a newspaper monopoly across Northern California will lead to far fewer journalists and other media workers and to diminished products. This is completely contrary to the notion advanced by Hearst, which has argued that its proposal would save something vital to the community. The Hearst-owned Chronicle has been whittled down to less than half its original workers, and coverage in large sections of the community has already been diminished. There is every reason to believe that a combined monopoly will result in even less coverage. The Newspaper Guild-CWA believes that the current request for relaxation of anti-trust will not benefit the local market, and is deeply concerned it instead will further marginalize underserved, minority communities within this market. Making corporations bigger does not automatically result in better news organizations.

Currently, publishers have recourse to an anti-trust exemption through the Newspaper Preservation Act, which maintains separate newsrooms but combines business operations. The sole purpose of the exemption was to help preserve the diversity of editorial and reportorial voices. But these joint operating agreements, or JOAs as they became known, often resulted in inflated advertising prices, so they have not proved to be a panacea for newspapers' problems.

President Obama campaigned in favor of more anti-trust enforcement, stating in Gresham, Oregon, May 18, 2008, "There are going to be areas, in the media for example, where we're seeing more and more consolidation, that I think (it) is legitimate to ask...is the consumer being served?" While this may have predated the current economic meltdown, the fundamental question of what is gained through a combination is still a good question to ask.

The largest concern we have about a combined news monopoly in Northern California is that there will be less concern for solving the very real problems that exist in our industry and that real innovation will be stifled. The two large corporations behind this initiative will only have forestalled their inevitable reckoning with economic gravity. The community they supposedly serve, meanwhile, will get less of everything.

If there is to be serious consideration of the problems facing newspapers, Congress needs to look at alternative ownership ideas, like employee stock ownership, non-profit approaches and the new L3C concept that is being advanced. The L3C approach would allow publications to serve a stated social purpose in exchange for the ability to accept non-profit foundation money as an investment. Smaller, more committed news operations would likely be more successful in providing real coverage to communities. Bigger is not better, and the current crisis in finance is all the evidence one needs to understand that.

An anti-trust exemption for such large corporations would create real barriers to entry for others, who may choose to compete in this same market. Without oversight akin to an FCC license, these corporations will have no responsibility to report back to the community, and would become a single voice dictating opinions and ideas to over half of our most populous state. Similar agreements elsewhere would create incredible power for a select few.

The commitment that needs to be made is to local coverage, and local jobs. These same entities that are promoting this current proposal have been the loudest in supporting the outsourcing of jobs – causing one to truly question any commitment they claim to have to their communities.
In general, we believe that antitrust exemptions should remain rare, if they should even exist at all. Agreements among competitors to shut down or reduce capacity or output are normally illegal per se under the Sherman Act; any effort to assist the newspapers in this regard will have far-reaching consequences in other industries that are also feeling the effects of the current recession.

Newspaper workers have shown a great willingness to make personal sacrifices to invest in the future of their publications, given the state of the current fiscal crisis. Nationally, and within this market, we have given up pay increases, vacations and other benefits in an effort to keep our news organizations viable.

But we have accepted these concessions only with an understanding that we are investing in a long-term recovery plan that reaches beyond never-ending payroll cuts and consolidation. There needs to be a focus on new ways to generate revenue, and on creating new business models that recognize the deep changes were experiencing, but offer the community and marketplace viable news organizations and quality news coverage.

Sincerely,

Bernard J. Lunzer

Bernard J. Lunzer, President
The Newspaper Guild-CWA

Mr. JOHNSON. Thank you, Mr. Lunzer.
And now we will hear from Mr. Ben Scott.

TESTIMONY OF BEN SCOTT, POLICY DIRECTOR, FREE PRESS, WASHINGTON, DC

Mr. SCOTT. Thank you, Mr. Chairman, Chairman Conyers, Members of the Committee, thank you for the opportunity to testify today.

I am the policy director for Free Press, which is the largest public-interest organization in the country working on media policy issues. As the name of the organization implies, Free Press has a strong interest in the future of journalism and the vibrancy of the news marketplace.

I would like to begin by addressing the nature of the problem we face, since the crisis in the newspaper business is often seen as monolithic, but in reality, there are several major problems hitting different parts of the news industry in different ways.

The most immediate problem, of course, is the debt load carried by major news companies that are pushing them into bankruptcy. But a more general problem is the decline in print circulation and advertising revenue as readers shift to the Internet. And online papers are up against more national and international news competition.

Some newspaper companies have made things worse and accelerated their demise by pursuing flawed business models of consolidation. The short-term benefit emerges, of course, as an increase in revenue and market share, but the long-term consequences are mounting debt, a debt that now threatens to sink the ship. The revenue declines, and shareholder demands then force budget cuts. Budget cuts force layoffs. Layoffs mean fewer journalists. Fewer journalists, fewer stories and a lower quality product for the American public.

But that doesn't necessarily mean that the core business of news production isn't profitable anywhere, at least for now. Many papers actually have profitable newsrooms, complete with double-digit margins and executive bonuses. The demand for text-based news is at an all-time high, but the readership no longer translates into big dollars because of the Internet. And that is the fundamental problem.

The historical alignment of technology, market demand and public good that made monopoly newspapers a revenue engine for decades is coming to an end. But the outlook is not all dark. There are new journalism experiments cropping up all over the Internet. However, none has the clear financial base to scale up to replace the quantity and scope of news production that is disappearing around them.

So we are left with a conundrum. As the news shifts online and advertising dollars dry up, will the remaining revenue base be sufficient to pay for the journalism that a democratic society needs? If it won't, then that is the policy problem that you have to solve.

A decline of print newspapers doesn't necessarily mean the decline of journalism. Journalism just needs journalists, and lots of them. And the risk that we face today is that market failure will result in the departure of tens of thousands of experienced reporters.

So what is to be done? Combining the best elements of traditional and new media, we need to create and sustain journalism models where it is possible to earn a living writing the news. And we need the resources to cover expensive international and long-term reporting alongside the local daily news.

We also have to recognize that the Internet can't solve all of journalism's problems. More than one-third of the country is not yet

connected to high-speed Internet. So solutions that rely on technology will have to deal with the digital divide.

Quite rightly, people are alarmed when they hear that their daily newspaper is about to stop publishing. But we should avoid the temptation to turn to policies that resemble bailouts. Relaxing the antitrust standards to permit further consolidation won't solve the problem. Uniting failing business models will not produce success any more than tying two rocks together will make them float.

While expanding scale may pay short-term dividends, in the long rum, it will deepen debt, shed jobs and reduce the amount of local coverage. That is the exact opposite of what we should be doing. We should be expanding the diversity of ownership and with a special focus on minority ownership.

There are no easy answers here. And that is why we need a comprehensive policy approach. Just as we have created national strategies to address crisis in health care, energy independence and education, it is time to craft a national journalism strategy to get out ahead of this problem and take advantages of the opportunities it creates.

It will begin by understanding how this happened and recognizing that journalism and journalists are essential for democracy. It will begin by showing why the Internet is a powerful force for positive change but not a substitute for everything of value that has come before. And it will begin when we recognize that the future of journalism is a policy issue. Policy makers should seek to join the robust discussion happening already about the future of the news room. The answer is certainly not to relax antitrust standards and double-down on the bad decisions of the past. The most likely answer, based on the evidence available today, is that there will be many, many answers. And that is good news.

I thank you for your time. And I look forward to your questions.

[The prepared statement of Mr. Scott follows:]

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Testimony of

Ben Scott
Policy Director
Free Press

before the

U.S. House of Representatives
Subcommittee on Courts and Competition Policy of the
Committee on the Judiciary

Regarding

A Hearing on "A New Age for Newspapers:
Diversity of Voices, Competition and the Internet"

April 21, 2009

Introduction

This testimony is given on behalf of the citizens and consumers that are members of Free Press. Free Press is a national, nonpartisan organization working to reform the media. Through education, organizing and advocacy, we promote diverse and independent media ownership, strong public media, and universal access to communications. The organization was launched in 2002, and today Free Press is the largest media reform organization in the United States, with nearly half-a-million activists and members and a full-time staff of more than thirty.

As the name of the organization implies, we have a strong interest in the future of journalism and the vibrancy of the news marketplace. We have witnessed the declining newspaper business with great concern – and we are currently engaged in a broad effort to solicit ideas from the public, scholars, and advocates about what the response to this crisis should be, and more particularly, what government's response should be. Informed by these ongoing discussions, the purpose of this testimony will be to offer four sets of ideas:

1) A short analysis of the crisis in journalism today;
2) Arguments about why we need journalism and a resolution to the crisis;
3) Arguments about what are the *wrong* solutions to the crisis;
4) Arguments about where to start looking for the *right* solutions.

The Press and its Problems.

The crisis in the newspaper business is often portrayed as if it were monolithic – a common disease that is affecting all newspapers alike. This is not the case. The crisis in the newspaper business is actually made up of various problems that affect different news outlets differently, on different time-tables, and with different outcomes. It is a mistake to diagnose a common disease for all newsrooms; and it is a mistake to assume that one solution will be right for everyone.

There are three major phenomena occurring in the newspaper industry: One is the collapse of some fairly large daily newspapers. The second is the shift of audiences to the Internet, which brings a decline in circulation and advertising revenue. The third is the increased ease of access to competing sources of news and information that are freely available and often higher quality. Notably, the demand for text-based news is at an all-time high – the readers simply cannot be monetized at the same rate as in the past. As we might expect, papers with high value-added content that is not available from multiple sources over the Internet, such as small market local dailies and weeklies, are not in a crisis. These papers also retain a resilient local advertising market for goods and services. The largest and most famous brand-name papers are also experiencing the crisis differently. They are witnessing a massive increase in overall readership through the Internet; and we have seen some use interesting experiments with online news presentation. As Dr. Mark Cooper of the Consumer Federation of America has pointed out – the most immediate problem is in the mid-sized markets.[1]

We should begin with this most visible problem – the collapse of large metro daily newspapers, exemplified by papers that have closed down completely, like the *Rocky Mountain News*, and large newspaper chains with substantial papers that are teetering on the brink of insolvency, like the Hearst Corporation. These newspapers—and others like them—suffer from all of the common ailments brought by the Internet, but they are also the victims of self-inflicted wounds. Throughout the last fifteen years, major newspaper companies have pursued business models of consolidation. The short term benefit of

[1] See: Cooper, "The Future of Journalism is Not in the Past," http://www.fordham.edu/images/undergraduate/communications/the%20future%20of%20journalism-huff.pdf

mergers is an increase in revenue and market share. The long term consequence is a mounting debt load. In the current crisis of capital liquidity, servicing this debt has become an unbearable burden. But even without the economic downturn, these debts may have sunk the ship.

But that does not necessarily mean that the core business of news production is not profitable. In many instances, papers that are nearing bankruptcy actually have profitable newsrooms—often with double-digit margins. McClatchy's newspapers saw a 21% profit margin in 2008. Yet, the company still cut its work force by nearly a third in the past year as it struggled to finance the $2 billion it owes from acquiring Knight Ridder in 2006.[2] Gannett's newspaper holdings enjoyed an 18% profit margin last year, with some papers earning as much as 42.5%.[3] Nevertheless, Gannett slashed 3,000 jobs and forced employees to take a week-long furlough while Gannett's top executives still received six-figure bonuses.[4] The relentless pressure from Wall Street for ever-higher quarterly returns has been entirely unrealistic for these businesses. Consequently, it is likely that a major city will soon be without a daily newspaper.[5]

Stepping back, we can see the newspaper business is heading towards a waterfall. But different papers are in different places on the river, for a variety of different reasons. And some are even successfully paddling back upstream. Over time, however, most will likely go over. There is little evidence to suggest that enough American consumers will be reading print newspapers two decades from now to sustain the majority of the current business models. Technological change is breaking apart the traditional print marketplace and it will likely break the broadcast news market as well. There is no obvious business model for monetizing online readers at the same rate of return as print or broadcast audiences. For many decades, advertising-supported, mass produced newspapers have had a virtual license to print money. That is coming to an end.

The declines in circulation and advertising revenue brought on by the Internet are slowly drawing these papers into a downward spiral. Revenue declines and shareholder demands force budget cuts. Budget cuts force layoffs. Layoffs mean fewer journalists and fewer stories. This translates directly into a lower quality product, fewer readers, less advertising…and so on. Many companies have tried to get out ahead of this trend by making massive cuts to staffing in the newsrooms. They have merely robbed Peter to pay Paul – ending up in the same place.

The outlook is not all dark. There are marvelous new experiments in news production cropping up all over the marketplace.[6] Generally speaking, the elements of the newspaper are disaggregating into specialty operations – small groups of journalists who cover local governments, sports, or provide investigative reports. The blogosphere is simply exploding with journalistic production of all kinds. Though it is predominantly political commentary based on discussions of news produced elsewhere, there

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[2] Nat Ives, "It's Not Newspapers in Peril; It's Their Owners," *Ad Age*, Feb. 23, 2009. See also, Craig Aaron and Joseph Torres, "Consolidation won't save the media," March 26, 2009. http://www.guardian.co.uk/commentisfree/cifamerica/2009/mar/26/pelosi-media-consolidation

[3] "Documents reveal double-digit profit margins at scores of papers now on verge of massive layoffs," Gannett Blog, Nov. 28, 2008 http://gannettblog.blogspot.com/2008/11/documents-reveal-double-digit-profit.html

[4] Richard Perez-Pena, "Gannett to Cut 10% of Workers as Its Profit Slips," *New York Times* Oct. 28, 2008; Richard Perez-Pena, "Gannett to Furlough Workers for Week," *New York Times*, Jan. 15, 2009. Randy Turner, Gannett Executives Receive Nearly $2 Million In Bonuses, Golden Parachute, Amid Layoffs And Foldings, March 18, 2009 http://www.huffingtonpost.com/randy-turner/gannett-executives-receiv_b_176435.html

[5] Mark Fitzgerald, "Several Cities Could Have No Daily Paper as Soon as 2010, Credit Rater Says," *Editor & Publisher*, Dec. 3, 2008.

[6] See, for example: Global Post http://www.globalpost.com/; ProPublica http://www.propublica.org/; MinnPost http://www.minnpost.com/; and Voice of San Diego http://www.voiceofsandiego.org/

is also a new surge in original reporting.[7] Aggregated citizen journalism is also a new and relevant phenomenon that we should consider in this equation.[8]

In large part, these online outlets survive with a combination of volunteer labor and revenue coming from ads, charitable foundations, and reader contributions. None has the financial base to scale up to replace the quantity and scope of news production that is disappearing around them – even in combination. And it is not clear that they ever will.

Imagine a scenario in which a big city daily collapses. We can assume that some percentage of the advertising revenue that once went to that newspaper will flow to the alternative news outlets. But it is unlikely to be 100%. And the size of the pie was already diminishing – which is a big part of why the newspaper collapsed. The question then is whether the alternative outlets can survive on the Internet-based advertising support that remains in the market. But more important still is whether we should simply be looking to replace the status quo quantity and quality of reportage. There is widespread public dissatisfaction with the quality of journalism in the mainstream media today. This is largely due to the cycle of budget cuts, staff layoffs, and profit-driven topic selection that has contributed to the current crisis. So, we must not ask whether the advertising money that will shift to alternative outlets is enough to keep the news flowing as it does today – we must ask what must be done to use this crisis as an opportunity to change the status quo and create something better.

Why We Need Journalists

The decline of print newspapers doesn't mean the decline of journalism. Or at least, it doesn't have to – and it absolutely shouldn't if we care about the health of our democracy. Internet icon and NYU professor Clay Shirky summed it very cogently in a recent, much discussed article: "Society doesn't need newspapers. What we need is journalism."[9]

I will add to that a corollary. What we need to have journalism is journalists – and lots of them. The biggest problem we face today is not the collapsing business model of print newspapers, it is the possibility that this market failure will result in the dissipation of tens of thousands of highly trained and experienced reporters into other sectors of the economy. Or that it will dissuade tens of thousands of talented students from going to journalism school.

I am not arguing that all journalists must be professionally trained to earn the moniker. Nor am I arguing that professionally trained journalists are necessarily better than those who are not. But I am arguing that for the future of journalism to work, we need to create and sustain a model of news production in which it is possible to earn a living writing the news. And to return to my earlier vision that this crisis is an opportunity – we should strive for a model that makes it possible for *more* journalists than are working today to earn a living writing the news.

The disintermediation of newspapers into thousands of online forums suggests that the technology will facilitate this expansion of scope in topic, style, perspective, and focus. The natural bubbling up of the blogosphere into a major force of information distribution is an extraordinarily positive sign. But we have not yet seen good evidence that the current market transition will leave a financial foundation broad

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[7] See, for example, Firedoglake.com; HuffingtonPost, http://www.huffingtonpost.com/; TPM http://www.talkingpointsmemo.com/

[8] Amanda Michel, "Get Off the Bus: The future of pro-am journalism," *Columbia Journalism Review*, March / April 2009. http://www.cjr.org/feature/get_off_the_bus.php

[9] Clay Shirky, "Newspapers and Thinking the Unthinkable," March 2009, http://www.shirky.com/weblog/2009/03/newspapers-and-thinking-the-unthinkable/

enough to replace and surpass the functions of the traditional news media market that meet public needs. I hope it will. But I doubt it.

There are too many things that institutions of journalism do (even if they do them badly) that the online marketplace of volunteerism seems ill-suited to replicate. For the most part, these are the expensive beats and the "democracy beats". The expensive beats include international coverage, investigative reporting, and process stories. "Democracy beats" include coverage of local government, state capitols, and the expenditure of public money as well as oversight of major centers of private economic power. The blogosphere has done admirable work in breaking stories in all of these places. But the requirements of long term relationship building with sources, months of investigation before publication, travel, and the drudgery of coverage in slow news times all seem to defy the current market for news absent institutional support. Sampling from the *Washington Post*, think about stories like the exposure of neglect at Walter Reed Hospital complex, the dispatches from Anthony Shadid in the Middle East, or the coverage of school boards and county executives across the greater Washington region.

Beyond these practical questions, there is the critical importance of trust between reader and reporter. Historically, newspapers have built into their brands a high degree of credibility over time. Even when they fail to carry the public burden of that trust – the expectation is there. It is there because even in a world of unlimited online sources, most readers will still receive their information from only a few sources. Here is Dr. Cooper again on this issue: "To build trust the new journalism will have to produce a steady stream of output that readers find authoritative, correct and useful. To ensure the quality of output, they will need to routinize the roles of reporter and editor and find ways to ensure that the reporters and editors have resources to do their jobs."[10] We need to begin to think about ways to help facilitate the transition and blending of the most valuable elements of institutional journalism into the exciting maelstrom of collaborative production on the Internet. But before we put all of our eggs in the online basket, we must reckon with the fact that nearly a third of the country is not connected to high-speed Internet today.

The consequences of failure here are rather severe. A loss of journalists and the corresponding loss of journalism open up a host of problems for a democratic society. Historian Paul Starr notes the correlation between government corruption and a dearth of news coverage.[11] That is a particularly notable concern at a time when the federal government is pumping a trillion dollars of public money into thousands of projects across the country. The fact or even the possibility of oversight by the Fourth Estate is a powerful disciplining force. But even more central to democracy are the tenets of Jeffersonian theory that the gathering and distribution of news to a society is the essential lifeblood of self-government. Today we are already witnessing historic inequalities in information and knowledge gaps when it comes to the key issues of public government. In no small part this is due to the decline of journalism over the last decade. The current crisis in the industry should signal an opportunity for revitalization of that which is most important to democratic society.

Wrong Answers: Bailouts and Consolidation

Quite rightly, people get alarmed when they hear that the daily newspaper in their city is about to stop publishing. And the first reaction is typically akin to how to patch the hole in the levee. But we must resist that impulse as the only answer to this crisis. We need a new and better levee.

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[10] Cooper, "The Future of Journalism is Not in the Past."
[11] Paul Starr, "Goodbye to the Age of Newspapers (Hello to a New Era of Corruption)," *The New Republic*, March 4, 2009, http://www.tnr.com/story_print.html?id=a4c2aafc-cc92-4c79-90d1-db3946a6d119

It is especially important to resist the temptation of bailouts because the first papers to fail will be those who least deserve a bailout. Those are the papers whose own business decisions placed them under a crushing debt-load in pursuit of consolidated ownership and short-term gains. Few could welcome handing Sam Zell a fat check from the Treasury after his ill-fated adventure with the Tribune Company. That's not to say we should let the journalism or the journalists fade away. But there are other ways to preserve those critical elements that do not involve bailouts.

We should also avoid addressing the problems wrought by consolidated ownership by permitting further consolidation. Uniting two failing business models will not produce a success any more than tying together two rocks will suddenly make them float. Unfortunately, in hard economic times, the default position of several media companies has been to try to achieve savings through consolidation and syndication. While expanding scale might pay short-term dividends, in the long run it will deepen debt, shed jobs, and reduce the amount of original reporting in our communities.

We should treat with alarm the recent statements by Speaker of the House Nancy Pelosi, whose hometown *San Francisco Chronicle* is in trouble. She asked attorney general Eric Holder to consider loosening antitrust laws to help out struggling newspapers by allowing more media mergers.[12] Holder responded that he is open to revisiting the rules.[13] This is exactly the opposite of what we should be doing. Not only does it reward bad business decisions—namely, leveraging news organizations with crippling debts to finance the last round of consolidation—but it also brings no new jobs, no new voices, and effectively props up a failed model. In other words, we should not subject journalism's fate to the corporate consolidators who got us into this mess. It is not unlike rewarding the banks who drove our economy into the ground. Instead, we should seize this rare opportunity to liberate journalists and journalism from the downward spiral they've been stuck in for years.

Right Answers: Toward a National Journalism Plan.

Although this crisis calls for immediate action, there are at least three hurdles that we must clear in our push to address the crisis in journalism. There are no easy answers to any of these problems. The right approach is measured and inclusive deliberation on as rapid a timeline as practical. Just as we have created national plans to address crises in healthcare, energy independence, and education—it is time to craft a national journalism plan to get out ahead of this problem and take advantage of the opportunities it creates. This is not a call for another layer of government bureaucracy or a blue ribbon panel. A national plan is a comprehensive effort across government, industry, and public stakeholders to work together to meet common goals. In our efforts to address the complicated issues outlined above, we will likely find the complex amalgam of solutions that will shape a better future for the news.

First, many people hold professional journalism today in such low-regard that they welcome its demise. This "let it burn" approach both neglects the fact that journalism is indispensable for any society to be even mildly democratic, and it mistakenly takes mainstream commercial media's present form as the inevitable product of professional journalism. Different institutional structures could presumably produce a more ideal form of journalism. Now is our opportunity to experiment with new models.

Second, many observers and experts put their faith in the Internet marketplace as a panacea that will fill the vacuum when newspapers disappear. There is some truth to this proposition. But it does not fully reckon with the financial and institutional support system that is necessary for robust journalistic production and remains absent from the economics of Internet news – at least for the foreseeable future.

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[12] John Eggerton, Pelosi Asks Justice To Take Broader View Of Competitive Landscape, *Broadcasting & Cable*, March 17, 2009.
[13] Randall Mikkelsen, U.S. law chief open to antitrust aid for newspapers, *Reuters*, March 18, 2009.

Perhaps more troubling, the prognosticators that predict the Internet as the ultimate answer rarely ever contend with the fact that nearly a quarter of American households have no Internet access whatsoever and more than a third do not have high-speed connections. Any solution to the crisis that depends solely on Internet access immediately disenfranchises a significant swathe of the American public. Either we must consciously link the future of journalism with a policy of universal access to the Internet – or we need to embrace a more balanced approach.

Finally, a major hurdle exists in the minds of policymakers and advocates alike who simply do not think of the crisis as a policy issue. Now is the time to use some imagination. Addressing the crisis will most likely entail not one easy fix but several at the federal, state, and local levels. It is also important to remember that the federal government has been deeply involved with polices, like postal subsidies, that have enabled freedom of the press since the dawn of the Republic.[14]

Policy solutions have been largely left out of the discussion in no small part due to understandable concerns about government regulating speech. Clearly, we should not tolerate government policies that restrict speech or favor particular speakers over others. However, there is nothing wrong with government policies that *promote* speech of all kinds. In fact, inherent to the First Amendment's guarantee of the freedom of the press is the responsibility of the government to promote the widest possible dissemination of diverse viewpoints.

If we are indeed witnessing the death of market-supported journalism, then it is time to consider what should be done to ensure the continued production of journalism as a public good. It has always been true that reporting the news was a business that offered social benefits far beyond the commercial returns that accrue to a publisher. If we want to support journalism and journalists as a public good, we need to consider subsidy models through grants, tax incentives, or public investments in education and infrastructure. And given the transition in technology and the opportunities presented by a mix of new alternatives to transform and exceed what has come before, we should be looking at how to promote a multiplicity of possible news outlets.

As we proceed in formulating a plan to save the future of journalism, Free Press has outlined a series of guiding principles. These should serve as a baseline for the broad consideration of policies and approaches that will help restore the heath of this great democratic institution:

- **Protect the First Amendment.** Freedom of speech and freedom of the press are essential to a free society and a functioning democracy. Everyone should have the right to access and impart information through the media of their choice.
- **Produce Quality Coverage.** To self-govern in a democratic society, the public needs in-depth reporting on local issues as well as national and international affairs that is accurate, credible, and verifiable.
- **Provide Adversarial Perspectives.** Reporting must hold the powerful accountable by scrutinizing the actions of government and corporations. Journalism should foster genuine debate and discourse.
- **Promote Public Accountability.** Newsrooms must serve the public interest, not private or government aims, and should be treated primarily as a public service, not a commodity. Journalism must be responsive to the needs of diverse and changing communities.
- **Prioritize Innovation.** Journalists must utilize new tools and technologies to report and deliver the news. The public needs journalism that crosses traditional boundaries and is accessible to the broadest range of people across platforms.

[14] See Richard Johns, *Spreading the News: The American Postal System from Franklin to Morse* (Cambridge, Mass.: Harvard University Press), 1995.

With these values in mind, and with an eye toward concrete solutions and viable political options, we should being to survey the policy alternatives for journalism. Government may need to step in to stanch short term losses in news production and keep the reporting workforce on the job. But more importantly, we need to provide the space, guidance and resources to think about investments in long-term solutions. Just as government invests in medical research to heal the ails of the body, we need government to invest in experimentation with news models to heal the democratic ails of the body politic.

The bottom line of my testimony today is that we should open a sweeping inquiry for a national journalism plan. That begins with investigation and discussion – of which this hearing is a good step. But policymakers should also quickly ascend the learning curve of the discussion already happening in the academy, among foundations, and in the media—both traditional and online—about the future of the news. This conversation is sophisticated and rich.[15] The ultimate answer might be to do nothing; but I doubt it. The answer is certainly not to relax antitrust standards and double-down on the bad decisions that media companies have made in the past that have accelerated this decline. The most likely answer—based on the evidence available today—is that there will be many, many answers. And that's the good news.

[15] A good sampling is available here: Jay Rosen, "Rosen's Flying Seminar in the Future of News," http://journalism.nyu.edu/pubzone/weblogs/pressthink/2009/03/26/flying_seminar.html

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Mr. JOHNSON. Thank you, Mr. Scott.

Now we will now hear from Mr.—actually Professor Edwin Baker.

Please commence your testimony, sir.

TESTIMONY OF C. EDWIN BAKER, NICHOLAS F. GALLICCHIO PROFESSOR, UNIVERSITY OF PENNSYLVANIA, PHILADELPHIA, PA

Mr. BAKER. Thank you.

I wish to make six points. First, the market cannot be expected to adequately support professional-quality journalism. Much of the value produced by newspaper journalism goes to people other than the media companies' customers. We all, including nonreaders, benefit from the work of journalists in exposing corruption. We all benefit when corruption and negligence do not occur due to news media's reputation for watchfulness. We all benefit from the wiser voting of those informed by journalism. Newspaper companies cannot turn benefits to nonreaders into revenue. The gap between benefits provided and revenue obtainable results in inadequate incentives to put resources into producing news.

Second, this inadequacy has been understood since the country's founding. Recognizing both the vital role of newspapers in holding the fledgling country together and inadequate support provided by the market, Congress, beginning in the first years of the Republic, provided huge subsidies on which newspapers were highly dependent. By the early 20th century, the annual postal subsidy to newspapers was $80 million, which on a per-person basis equals roughly $6 billion in today's dollars.

Third, the highly publicized decline in newspaper circulation does not indicate any decline in public interest in newspaper journalism. Rather, it mostly arises from two factors. Primarily, it represents a shift to online readership of newspaper stories with little or no real decline in actual readership, only a change in people's method of access. In addition, huge layoffs of journalists degrades a newspaper's product. Circulation predictably declines from a level more reporters and editors could achieve.

Fourth, bankruptcies, newspapers closures and huge layoffs, over 30 percent, up to 50 or more percent at some papers, together represent the daunting nature of the crisis. But the key concern should be the last, layoffs. Bankruptcies primarily reflect papers' inability to generate sufficient operating profits to make huge interest payments, usually from debt taken on to finance recent unwise purchases. Unduly lax laws exacerbate this problem by failing to restrict these sales of newspapers. Still, these papers will continue after reorganization. Losses to unwise purchasers merit no public concern.

Next, closures of the second paper in two-newspaper towns, illustrated by the Rocky Mountain News or the Seattle P-I, merely continue a 100-year trend of towns being unable to support more than one English-language daily paper.

In contrast, huge layoffs of journalists and threatened closure of the town's only daily paper are major threats to democracy. As ad revenue declines, so does the value to the paper of journalism and attracting readers to sale of advertisers. The paper consequently lays off journalists, despite knowing that these layoffs cause a decline in circulation and paper quality. Temporary declines in ad revenue always occur during recessions. More worrisome now is a major long-term shift of advertisers' budgets to online sites, especially to support search engines and the migration of previously

highly profitable classified ads to online specialty sites. Unless public policy can create replacements for these lost revenue streams, we may lose much of the professional journalism on which our country's Founders knew any robust democracy depends.

Fifth, corporate consolidation is a problem for a democratic press, not a solution. Relaxing antitrust laws can increase the problem. A primary rationale for mergers is to save money, often through laying off journalists, thereby endangering the democratic contribution to the media. In contrast, the widest possible dispersal of media ownership serves to democratize voice within the public sphere, serves to increase the number of watchdogs, provides a safeguard against demagogic abuse of media power, and places ownership in the hands of people most likely to be committed to quality journalism.

Sixth, the crisis justifies a public policy response. The central problem, the decimation of employed journalists, follows from the inability of media companies to obtain revenue that even approaches the real value that journalists' efforts produce for the community. The government would serve the public interest by giving media a tax credit for half the journalists' salary. This tax credit would reverse newspapers' incentive to lay off journalists. More journalists would in turn increase the quality of newspaper and cause circulation to rebound.

For the roughly 48,000 journalists now employed by the Nation's newspapers, this tax credit would cost about 1 and a quarter billion dollars, a fraction of the amount in today's dollars, per person, that the country provided newspapers in postal subsidies 100 years ago. This targeted subsidy would duplicate the financial commitment that the country's Founders made to the news media of their time.

Thank you.

[The prepared statement of Mr. Baker follows:]

PREPARED STATEMENT OF C. EDWIN BAKER

Testimony of C. Edwin Baker,
Nicholas F. Gallicchio Professor, University of Pennsylvania Law School

Before the Subcommittee on Courts and Competition Policy,
Committee on the Judiciary
House of Representatives
Congress of the United States

Hearing on: A New Age in For Newspapers, Diversity of Voices,
Competition and the Internet

2 p.m., rm. 2141, Rayburn Office Building
April 21, 2009.

Thank you for inviting me here today. I wish to make six brief points:

1) The market cannot be expected to adequately support professional quality journalism.

Much of the value produced by newspaper journalists goes to people other than media companies' customers. We all, including non-readers, benefit from the work of journalists in exposing corruption and the consequential remedial responses. We all benefit when governmental or corporate corruption and negligence do not occur due to news media's reputation for watchfulness. We all benefit from the wiser voting of those informed by journalism. To the extent that benefits go to non-readers, newspaper companies cannot adequately turn these benefits into revenue. This gap between benefits provided and revenue obtained results in inadequate incentives to put resources into producing news.

2) This inadequacy of the market was recognized at the country's founding and through most of the country's first 200 years.

Recognizing the vital role of newspapers in holding the fledgling country together and recognizing that the market provided inadequate support, Congress beginning in the first years of the Republic provided huge subsidies on which the news industry's success was highly dependent. In the early twentieth century, the annual postal subsidy to newspapers was $80 million – which in today's dollars, on a per-person basis, would amount to roughly $6 billion. Similarly, during much of the twentieth century, journalism broadly defined was subsidized by making commercial use of the airwaves legally dependent on stations devoting a portion of their revenue to public affairs programming.

3) The current crisis in the news industry is not caused by lack of public interest in news.

The highly publicized decline in newspaper circulation does not indicate any decline in public interest in newspaper journalism but rather arises mostly from two factors. First, the decline mostly represents a shift to online readership of newspaper stories. Evidence actually indicates little or no real decline in readership – only a change in people's method of access. But this change hurts newspaper companies because online readers do not produce near the advertising revenue that print readers produce. Second, the huge lay-offs of journalists have resulted in a degraded newspaper product. Circulation predictably should decline from the level it would be for the better paper that more reporters and editors would create.

4) The current crisis in the news industry takes three forms that have different significance and different causes.

Bankruptcies, newspaper closures, and huge layoffs – over 50% of the journalists at many papers – together represent the daunting nature of the crisis but actually the key concern should be the last: lay-offs. Bankruptcies mostly reflect papers' inability to generate sufficient operating profits to pay the interest on debt, usually debt that was taken on to finance unwise purchases. Unduly lax laws that failed to restrict the sale of newspapers to these new corporate owners exacerbated this phenomenon. Still, these

bankrupt papers will continue after reorganization. Losses to the unwise purchasers merit no public concern.

Next, closures of a second paper in two newspaper towns – illustrated by the *Rocky Mountain News* or the *Seattle P-I* – merely continue a hundred-year trend of towns not being unable to support more than one English-language daily paper.

Finally, huge actual lay-offs of journalists as well as threatened closures of towns' only daily and are a major threat to democracy. This occurrence results from the deterioration of the advertising revenue long relied upon to support journalism. As advertising revenue declines, so does the value to the paper of journalism in attracting readers to sell to advertisers. The paper consequentially lays off journalists despite knowing that these lay-offs cause a decline in circulation and in quality journalism.

Some decline in ad revenue is a temporary result of the current recession. More worrying long term are advertisers spending more of their ad budget on online sites, especially on search engines that do not produce journalism. Also damaging is the migration of some advertising categories, especially the previously highly profitable classified ads, to online specialty sites. Unless public policy can create a replacement for these lost revenue streams, we may lose much of the professional journalism on which, as the country's founders recognized, any robust democracy depends.

5) ***Corporate consolidation is a problem, not a solution, for a democratic press.***

Reduced enforcement of anti-trust laws or of the requirements of the Newspaper Preservation Act not only does not respond to these problems but could make them worse. A primary rationale for corporate combinations is to save money, often through new opportunities to lay-off journalists, thereby endangering the democratic contributions of the media. In contrast, the widest possible dispersal of media ownership serves to democratize voice within the public sphere, serves to increase the number of watchdogs, provides a safeguard against demagogic abuse of media power, and places ownership in the hands of people most likely to be committed to the democratic role of quality journalism rather than merely to maximizing profits and paying off debts created by recent sales of the media entity. (See appendix to this testimony.)

6) A public policy response is needed and justified.

A number of public policy responses to the current, real crisis make sense, but one is most obvious. The real problem, the decimation of employed journalists, represents the inability of media companies to obtain revenue that even approaches the real value that journalists' efforts produce for the community. If the government gave these media entities a tax credit for half of the journalists' salary (up to a maximum credit of $45,000) the public interest would be served. These tax credits would reverse the incentive for newspapers to lay off journalists, and in turn would increase the quality of newspaper journalism and cause circulation to rebound. For the roughly 48,000 journalists now employed by the nation's newspapers, who are paid on average slightly less than $50,000 a year, this tax credit would cost about 1¼ billion dollars, a fraction of the amount in today's dollars per person that the country provided in the form of a postal subsidy a hundred years ago. This targeted subsidy would duplicate the financial commitment of the country's founders to the news media of their time.

Appendix to Baker Testimony

Excerpt from: 'Viewpoint Diversity and Media Ownership' by C. Edwin Baker

Forthcoming in: Federal Communications Law Journal, vol. 60

II. RATIONALES FOR OWNERSHIP DISPERSAL

The three major reasons to oppose media concentration in general and mergers in particular can be labeled: (i) the democratic distribution value; (ii) the democratic safeguard value; and (iii) the media quality value, cashed out as an objection to a bottom-line focus. The first two reasons, I suspect, represented the primary but usually unarticulated concerns of the public when nearly two million people wrote to oppose the FCC's recent relaxation of concentration restraints,[1] while the third often finds expression, with various levels of articulation, among editors, journalists, artists and others in the media professions. I describe the logic of each in turn.

A. Democratic Distribution or Dispersal

A central premise of most normative theories of democracy is that democracy should constitute a wide, roughly egalitarian, sharing of political power. With a dire reference to the "unanimity of the graveyard," the Court asserts that here "[a]uthority . . . is to be controlled by public opinion, not public opinion by authority."[2] This basic democratic premise leads to the formal equality embodied in the Court's one-person/one-vote requirement.[3] Judicial resistance to a constitutional claim that political equality should be substantive, not merely formal, does not reject the normative claim. Rather, the Court correctly recognizes that, because the proper form of substantive equality is democratically contestable, because substantive equality can never be fully realized, because moves in that direction necessarily involve institutionally complex tradeoffs, and because some ways of advancing this value themselves create constitutional problems,[4] the claim should not have *constitutional* status.[5]

The egalitarian premise that justifies the formal one-person/one-vote requirement also applies to voice within the public sphere. Voice more than vote creates public opinion and provides the possibility of deliberation. It is likewise clear that the media is the central *institution* of a democratic public sphere. These observations lead inexorably to the recommendation of a maximum dispersal of media power,[6] power represented ultimately by ownership.[7]

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1. Prometheus Radio Project v. FCC, 373 F.3d 372, 386 (3d Cir. 2004).
2. West Virginia Bd. of Educ. v. Barnette, 319 U.S. 624, 641 (1943).
3. Reynolds v. Sims, 377 U.S. 533 (1964).
4. Buckley v. Valeo, 424 U.S. 1 (1976). Contrast the permissibility of restricting corporate power in *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652 (1990); McConnell v. FEC, 540 U.S. 93 (2003). This is not the place for me to take up the vexed issue of campaign finance, but see C. Edwin Baker, *Campaign Expenditures and Free Speech*, 33 HARV. C.R.-C.L. L.REV. 1 (1998).
5. *See, e.g.*, Vieth v. Jubelirer, 541 U.S. 267 (2004); Davis v. Bandemer, 478 U.S. 109 (1986). C. Edwin Baker, *Neutrality, Process, and Rationality: Flawed Interpretations of Equal Protection*, 58 Tex L.Rev. 1029, 1072-84 (1980).
6. The reply that appropriate dispersion of power exists because the market responds to consumer demands might be advanced. The reasons to reject this suggestion take this comment far afield. *But see* C. EDWIN BAKER, MEDIA, MARKETS, AND DEMOCRACY (2002) (describing primary ways that the market, even if generally effective at responding

Various caveats to this "equal voice" goal exist—and I note three crucial ones. First, not everyone has the same ability or, possibly more important, the same desire to engage in significant, regular public communication. Moreover, media would not be "mass" without specialization in "voice." We would simply have babble—everyone talking ineffectively. Thus, the democratic distribution value of maximum dispersal must not overwhelm the value of allowing effective speakers to amass large audiences. Still, the significance of allowing effective media speech does not, in any way, require that a single owner should own multiple media entities. Rather, it recommends only against legal limits on any individual entity's appealing to and obtaining an audience of great size. The practical goal should be to assure a dispersal of ownership that leaves everyone able to experience some media as her own—as speaking for her or to her concerns—and thus able to view herself and her views as fairly included in public discourse.

Second, increasing ownership dispersal always works *in the direction* of equalizing the distribution of media power among groups. Nevertheless, reasonably advancing this aim often requires other policy measures. The market *might* result in all or, more likely, many of the inherently limited number of people who control media entities being people with similar values, experiences and perspectives. Therefore, with demographic commonalities often serving as rough markers, government policy should aim to disperse ownership among those coming from different groups that are salient in public life.[8]

Third, on "republican" or deliberative democracy premises, some media may usefully aim to embody society-wide discourses.[9] Thus, legal efforts to assure that different voices are represented within each of these broadly-aimed media entities may be appropriate.[10] Still, despite the caveats, a central reason to favor media ownership dispersal is to broaden the distribution of voice within the democratic public sphere.

B. Democratic Safeguards

Possibly most obvious among the benefits of ownership dispersal are various safeguards it creates for democracy. Four are noted here.

First, dispersal helps avoid the danger of demagogic power—the "Berlusconi effect." Although the primarily economic interests behind most media conglomerates often work against concentrated media power being leveraged into demagogic political power, the existence of this concentrated power within the public sphere creates a real danger of abuse. *No democracy should accept that risk.* Even if in the past the risk had never led to bad results (which would make the danger hard to measure by normal statistical techniques), good institutional design—like good

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to consumer preferences, systematically fails to give audiences the media content they want). Still, most people intuitively recognize not only that the market criterion of "one-dollar/one-vote" differs from the democratic ideal of "one-person/one-vote." They also recognize that, even though any effective speaker, including media speakers, cannot totally ignore their addressees, the media are still left with huge discretion as to what to say.

7. I put aside good policy arguments for an alternative or additional response: a partial legal separation of ownership and editorial control that is required by some European democracies. *See* BAKER, MEDIA CONCENTRATION AND DEMOCRACY, *supra* note 13, at 180-81.

8. *Cf.* Metro Brdcst. v. FCC, 497 U.S. 547 (1990).

9. From a British perspective, James Curran recommends this role for public broadcasting. James Curran, *Rethinking Media and Democracy*, in MASS MEDIA AND SOCIETY 120-54 (James Curran & Michael Gurevitch, eds., 3d ed., 2000).

10. BAKER, MEDIA, MARKETS, AND DEMOCRACY, *supra* note 13, at 143-53 (describing the need of "complex" democracy for both media that perform a "republican" societal-wide discourse role and media that provide for a "liberal" pluralist role with different media relating to different societal groups). Jerome Barron proposed improving the fairness of societal-wide discourse when recommending an access right. Jerome Barron, *Access to the Press – A First Amendment Right*, 80 HARV. L. REV. 1641 (1967). A plausible policy is to impose access obligations solely on media entities that reach a certain level of dominance within a locale or as a condition for allowing mergers. *See* BAKER, MEDIA CONCENTRATION AND DEMOCRACY, *supra* note 13, at 180-81, 186-87.

structural design of nuclear power plants—should not unnecessarily risk calamitous results. In fact, at least since the first major German media conglomerate supported the rise of Hitler,[11] various countries and, often, communities in countries that have both important local media and politically significant local or state governments, have experienced demographic abuse of the concentrated power implicit in conglomerate media ownership.

Second, dispersal simply results in more people with power to set directions and determine the energy that a media entity puts into being a watchdog, exposing both the incompetence and malfeasance of the powerful.[12] More people with this authority can translate into greater watchfulness from a broader range of perspectives and with different insights into potential problems. As the FCC explained in 1970:

> A proper objective is the *maximum diversity of ownership* . . . . We are of the view that 60 different licensees are more desirable than 50, and even that 51 are more desirable than 50. . . . If a city has 60 frequencies available but they are licensed to only 50 different licensees, the number of *sources for ideas* is not maximized. It might be the 51st licensee that would become the communication channel for a solution to a severe local social crisis.[13]

Third, simply by increasing the number of people over whom a potential corrupter of the media must exercise power or influence, greater dispersal of ownership predictably reduces the risk of effective external corruption.

Fourth, media concentration exacerbates the ubiquitous problem of conflicts of interest that can undermine journalistic integrity. Basically, responsible media entities try to maintain church and state separations—where business interests do not compromise journalistic integrity. A concentrated ownership structure can greatly and, since dispersal of ownership is a possibility, unnecessarily increase incentives to breach this wall. Mergers add to these conflicts in two scenarios: where media entities combine (a) with other media companies, and (b) with multi-industry conglomerates. And they create two problems: (i) incentives to distort journalism and independent content due directly to the owner's promotion of its other interests, and (ii) vulnerability to outside pressure (or internal incentives to leverage media power to influence outsiders' decisions). A two-by-two matrix could diagram these possibilities. Here, I merely note a few examples.

James Hamilton reports that during November 1999, ABC's affiliates mentioned ABC's popular quiz show, *Who Wants To Be a Millionaire*, in 80.2% of their local news programs, while no NBC affiliate found the ABC program newsworthy[14] (scenario illustrating a-i from the above matrix). In contrast, often media maintain the wall—but sometimes at a high cost. The *NYT* began an exposé series on the pharmaceutical industry at a time when few prescription drugs were advertised directly in the *NYT*. Unfortunately, the *NYT* also owned medical magazines.[15] Apparently, pharmaceutical companies threatened to withdraw ads in these medical magazines if the series continued. Though in this case the *NYT* resisted the intimidation, their prudent decision to sell the medical magazines arguably illustrates the intensity of the conflict (scenario illustrating a-ii). How often individual media entities temper criticism of politicians not merely in order to gain access or privileges but also to gain advantage for their other media properties—or how often politicians exploit this vulnerability—is unknown. The *Miami Herald*, then owned by

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11. Daniel C. Hallin & Paolo Mancini, Comparing Media Systems: Three Models of Media and Politics 155 (2004) (describing support for Nazis from Alfred Hugenberg's conglomerate).

19. Matthew Gentzkow and Jesse M. Shapiro, *Competition and Truth in the Market for News*, 22 J.Eco.Persp. 133 (2008) (discussing empirical and conceptual reasons to expect benefits from increased numbers of watchdogs).

13. Amendment of Sections 73.35, 73.240 and 73.636 of the Commission Rules Relating to Multiple Ownership of Standard FM and TV Broadcast Stations, *First Report and Order*, 22 F.C.C.2d 306, para. 21, 18 Rad. Reg. 2d (P & F) 1735 (1979) (emphasis added) [hereinafter *Multiple Ownership Report and Order*]. This standard of maximum dispersal is a far cry from the FCC's recent discussions of whether or not eight independent voices are necessary.

14. JAMES T. HAMILTON, ALL THE NEWS THAT'S FIT TO SELL 145, 148 (2004).

15. BEN BAGDIKIAN, THE MEDIA MONOPOLY 164-65 (1983).

Knight-Ridder, would have been unlikely to mute criticism of Attorney General Ed Meese if not for wanting his approval of a Joint Operating Agreement between Knight-Ridder's Detroit paper and another Detroit paper.[16] From the other side, conglomerate ownership allowed Nixon to try to retaliate against the *Washington Post* by making trouble for its renewal of broadcast licenses[17]—behavior which could induce future caution by vulnerable media conglomerates.

Likewise, incentives surely exist for a news broadcaster, say NBC, if owned by an industrial conglomerate, say General Electric, to report favorably on that owner's other economic interests—say, nuclear power or weaponry. Or Atlantic Richfield, an oil company that explicitly aims at "generat[ing] profits" but that recognizes that it "cannot expect to operate freely or advantageously without public approval,"[18] might find it useful to own the British *Observer* during the period when it was seeking North Sea oil leases (scenarios illustrating b-i). As a final example illustrating b-ii, Greece sought—though was stopped (I believe unwisely) by the European Community on the basis of its free trade laws—to statutorily prohibit firms that contracted with the government, for example, for government construction projects, from owning media entities.[19] An obvious rationale of such a law is that the combination gives the conglomerate leverage to get contracts that the public interest requires go elsewhere or makes the watchdog vulnerable to being muzzled by a fear of loss of government contracts.

Many more illustrations could be found. Nonetheless, empirical measurement of the effect of interest conflicts is predictably uninformative. Any informed sense of the degree of danger will likely reflect a structural examination of the possibilities of and incentive for this "corruption" combined with qualitative or ethnographic investigations and, possibly, quantitative surveys of editors' and journalists' self-reports, though with recognition that ingrained, unconscious practices will often be the repositories of the corrupting incentives. Admittedly, courageous professional resistance—maintenance of strong church and state lines by people committed to the integrity of their journalism—often occurs. Positivist study of the effectiveness of this courage will be unable to measure the costs and stability of this journalistic culture under historically changing conditions. As well as being an unreliable solution, requiring editors and journalists potentially to sacrifice jobs or advancement is unfair when better structures could avoid (or reduce) the problem at the source. Partial solutions, including Greece's structural proposal, are possible. Reducing conflicts, however, clearly provides a reason to favor ownership dispersal.

C. Media Quality or the Undesirable Bottom-Line Focus

The two-part claim is simple. First, the public benefits when media entities forgo maximizing profits in favor of spending money on (that is, subsidizing) quality journalism, quality cultural products, or greater circulation. Second, many small media entities have been willing to do this, but for predictable reasons, most conglomerates focus almost exclusively on the bottom line, cutting both journalists and journalistic quality. Though simple in form, the logic of this claim requires consideration of economic, normative, sociological and psychological theory only briefly noted here.

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16. JAMES D. SQUIRES, READ ALL ABOUT IT!: THE CORPORATE TAKEOVER OF AMERICA'S NEWSPAPERS 123 (1993).

17. *See* LUCAS A. POWE, JR., AMERICAN BROADCASTING AND THE FIRST AMENDMENT 130-33 (1987); Matthew L. Spitzer, *The Constitutionality of Licensing Broadcasting*, 64 N.Y.U. L. REV. 990, 1050-51 (1989).

18. JAMES CURRAN & JEAN SEATON, POWER WITHOUT RESPONSIBILITY: THE PRESS AND BROADCASTING IN BRITAIN 84 (5th ed., 1997) (quoting the Chairman of Atlantic Richfield). Curran describes numerous examples of large media owners intervening into their paper's editorial stance in order to advance their other corporate (and political) interests. *Id.* at 71-108.

19. Interview with Stylianos Papathanassopoulos, Author (June 2005). Papathanassopoulos is the author of a Greek-language book, TELEVISION IN THE 21ST CENTURY (Kastaniotis Editions, 2005).

Even if markets—as their fans hope—generally lead to efficient or otherwise socially desirable results, this is predictably not true in the media context.[20] The mass media generally, and their creative and journalistic inputs in particular, regularly produce huge positive or negative externalities that can be catalogued. A market orientation systematically generates inadequate incentives to produce socially desirable amounts of media products producing positive externalities—with the converse point applying to the overproduction of content (or use of practices having) negative externalities. Particularly of note here are potential positive externalities related to the democratic process. Mary, who does not read the newspaper or watch the news, benefits when Joe does and becomes a more informed or adequately motivated voter since Mary also benefits from good government and loses due to bad government. (This proposition about the benefits of accurate, relevant knowledge can be accepted even by those who disagree about when government is good or not.) Mary also benefits when the media uncovers and reports malfeasance or non-performance that leads to corrective governmental (or corporate) action.[21] And she benefits when the media's reputation for quality journalism and effective investigative reporting deters malfeasance or non-performance even though this reputation and deterrence dyad results in the media entity not even having a story to sell in the market.

Any good editor will correctly assert that with more journalistic resources she can offer better journalism—more significant, more accurate and more complete reporting and exposés. Though costly, the public often benefits (the positive externalities noted above) more from the editor having these resources than the media entity loses from its bottom line.

Before moving to a policy conclusion, one other important fact about the media must be noted. The media—in particular, broadcasting and newspapers—have historically been and largely continue to be very profitable, at least on an operating basis. (Recently, newspaper profits have plummeted not only as they always do due to withdrawal of advertising during a recession, but also more problematically long term as advertisers flee to online sites. Most daily newspapers, however, can still be very profitable on an *operating* basis, with the industry's gravest problem in relation to the entities' *net* profits being that the most recent purchaser must use operating profits to pay huge debts generated by its high purchase bid.[22]) Reasons for this high profitability are

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20. The economic claims in this and the next paragraph are developed in BAKER, MEDIA, MARKETS, AND DEMOCRACY, *supra* note 13.

21. DAVID L. PROTESS ET AL., THE JOURNALISM OF OUTRAGE: INVESTIGATIVE REPORTING AND AGENDA BURNING IN AMERICA (1991) (ethnographic study of how investigative journalism generates corrective responses).

22. Though older data clearly support the claim of great profitability, this claim might seem naïve today. Some newspapers, no longer able to make debt payments, are declaring bankruptcy. A few major dailies have closed or are ending their print editions (e.g., Rocky Mountain News and Seattle Post-Intelligencer). Lay-offs are rampant and accelerating, with many newspapers over the last few years reducing their newsroom count from 30% to 50%. C. Edwin Baker, *Shoptalk: Where Credit is Due*, EDITOR & PUBLISHER, Mar. 1, 2009.Given the reduction in the quality of the news product due to less journalistic inputs, a decline in readership might be expected—and is often claimed (and blamed on young people) as paper circulation has declined. *See also* PROJECT FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA (2008), http://www.stateofthenewsmedia.com/2008/.

Actually, however, readership is apparently up, reaching 77% of adults, including 65% of those between 18 and 24 in a given week but with a much greater portion of these online where they provide newspapers about 5% of advertising revenue per reader as do print edition readers. Richard Perez-Pena, *Paper Cuts An Industry Imperiled by Falling Profits and Shrinking Ads*, N.Y. TIMES, Feb. 7, 2008, at C-1; *see also* NEWSPAPERS ASS'N OF AM., WHY NEWSPAPERS? THEY ADD VALUE FOR ADVERTISERS (2008), *available at* http://www.naa.org/docs/TrendsandNumbers/Why%20Newspapers%202008%20FINAL.pdf; NEWSPAPERS ASS'N OF AM., NEWSPAPER FOOTPRINT (2007), http://www.naa.org/docs/TrendsandNumbers/NAANewspaperFootprint.pdf. Papers apparently even now know how to maintain print circulation, *see* Philip Meyer, *The Influence Model and Newspaper Business*, 25 NEWSPAPER RESEARCH J. 66 (2004), but mostly find the expenditures in quality do not produce enough revenue to be profitable.

Even in crisis, however, most papers continue to generate the profits that owners who did not recently incur huge debt to buy the paper could use to spend on quality journalism. PROJECT FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA: NEWSPAPERS (2009), http://www.stateofthenewsmedia.org/2009/narrative_newspapers_intro.php?media=4 ("operating margins are dropping

multiple, but mostly reflect the nature of monopolistic competition in industries that sell a product that has very high first copy costs and very low or zero costs for subsequent copies. Once the profit capacity is granted and combined with the externality point, the policy conclusion should be obvious. The goal should be to keep or get ownership into the hands of those who do not aim to maximize profits but rather are committed to spending at least some potential profits on quality journalism.

The owners most likely to favor journalism over profits include several predictable types: (a) smaller, usually local, owners who take identity from their firms' contributions to their community or from the journalistic product they create; (b) workers who take professional pride in the quality of their product; (c) non-profit entities whose goals include service to their community. Each category justifies policy moves to increase its ranks.

More relevant here is a category of people especially unlikely to sacrifice profit maximization: executives of conglomerate, especially publicly traded companies without dominant family or in-group ownership.[23] Both socio-psychological and structural reasons support this prediction. These executives are particularly likely to be rewarded (or fired) on the basis of their ability or inability to increase the bottom line. They also often take aspects of their

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and now [in 2008] average in the mid to low teens"). Admittedly, profits are down in newspapers everywhere and in individual cases may not even be generating operating profits. Still, as for now, and as for the last one hundred years, an obituary primarily applies only for papers in dwindling number of cities that had maintained competing dailies or other special cases—non-dominate national papers like the *Christian Science Monitor* without a local base. That is, most actual closures are in two newspaper cities where papers have been closing and competition has been unsustainable for the last one hundred years. *See* C. EDWIN BAKER, ADVERTISING AND A DEMOCRATIC PRESS (1994). Most bankruptcies reflect not lack of operating profits but excess debt created by overly-optimistic recent purchasers. Thus, in a world economy where few businesses have double-digit operating profit rates, evidence suggests newspapers in general remain profitable—just not as profitable as before or profitable enough to pay the debt created by recent purchases made under more optimistic predictions and not with the increasing earnings that would support stock prices with high earning multiples.

For example, when the *NYT* headlined *Gannett to Cut 10% of Workers as Its Profits Slip*, N.Y. TIMES, Oct. 29, 2008, at B11, Gannett's third quarter report had just reported major declines in profitability—but continuing great operating profitability. In publishing its newspaper division, revenues had gone down to $1.36 billion with operating expenses of $1.18 billion, leaving operating profits of $180 million or 13 percent margin (with operating cash flow, which management asserts provides a better showing of operations, at 17 percent of revenues), down from a 21 percent operating margin the year before. *Gannett Co., Inc. Reports Third Quarter Results*, BUS. WIRE, Oct. 24, 2008, *available at* http://findarticles.com/p/articles/mi_m0EIN/is_2008_Oct_24/ai_n30932911/.

Another large chain, McClatchy's third quarter operating profit rate was down to 9 percent, though most of this was then eaten up in interest, largely reflecting its recent acquisition of Knight-Ridder. Press Release, The McClatchy Company, McClatchy Reports Third Quarter Results (Oct. 21, 2008) (available at http://www.prnewswire.com/cgi-bin/stories.pl?ACCT=104&STORY=/www/story/10-21-2008/0004908224&EDA%20TE=).

The Tribune Company, although reporting huge billion dollar losses (reflecting write downs from recent purchases), and though its 2008 second quarter revenues from continuing operations declined 11 percent to $701 million and its operating cash flow declined 4 percent to $114 million, still maintained an operating profit margin of over 16 percent. Press Release, Tribune Company, Tribune Reports 2008 Second Quarter Results(Aug. 13, 2008) (availabe at http://www.prnewswire.com/cgi-bin/stories.pl?ACCT=109&STORY=/www/story/08-13-2008/0004867052&EDAT%20E=).

Conclusion? Crisis, yes! But highly profitable, also mostly yes Nevertheless, the pain is real as exhibited by continued lay-offs, reduced wages, and the situation is fluid as I write. And this crisis, represented by huge losses of advertising revenue, partly due to the current recession (as it is optimistically called), which always causes sharp declines in advertising revenues, and more seriously long term, the movement of advertising to non-newspaper online sites, and the modern end to the major newspaper subsidies from the federal government that sustained them during the first 150 years of the country's history, will not go away. As noted above, this leaves a bleak future that requires a thoughtful response. *See* Posting of C. Edwin Baker to Balkanization, http://balkin.blogspot.com/2009/01/future-of-news-part-one-problem.html (Jan. 21, 2009, 6:35 EST) (The Future of News, Part 1 -- The Problem); Posting of C. Edwin Baker to Balkanization, http://balkin.blogspot.com/2009/01/future-of-news-part-two-solutions.html (Jan. 22, 2009, 6:35 EST) (The Future of News, Part 2 -- The Solution).

23. Gilbert Cranberg, Randall Bezanson & John Soloski, Taking Stock: Journalism and the Publically Traded Newspaper Company (2001).

identity from the same profit-making achievements. These bottom-line concerns are likely encouraged by day-to-day interactions not with people of a community they serve but with other executives who also value higher profits.

Two structural reasons make these owners not only less inclined but also less free to make the socially right choice of sacrificing profits for journalism. First, an executive of a publicly-traded company faces fiduciary obligations and sometimes intense shareholder pressure to serve the bottom line. Second, and especially important for merger policy, if its corporate parent recently purchased the media entity, this parent was presumably the high bidder. Its bid based on its calculation of the property's *potential* future profits now locks it into producing those profits to pay the debt created by (or otherwise to justify) the purchase. That is, the purchase, the merger, itself *forces* the socially undesirable focus on the bottom line.

Mr. JOHNSON. Thank you, Professor.

And it has always been my dream to be able to gavel into submission one of my, or any, law school professors. And I was really at the 3-minute mark thinking that I would. It is just so tempting. But I was able to restrain myself.

Next, we shall hear from Mr. Dan Gainor.

Mr. Gainor, please.

TESTIMONY OF DAN GAINOR, VICE PRESIDENT, BUSINESS AND MEDIA INSTITUTE, MEDIA RESEARCH CENTER, ALEXANDRIA, VA

Mr. GAINOR. Thank you, Mr. Chairman, Members of the Committee, ladies and gentlemen, I am Dan Gainor, vice president of business and culture for the Media Research Center.

It is an honor and a privilege to come here and speak about one of my favorite topics, newspapers. From the first time I ever read on my own, newspapers have been a part of my life. I have worked at three different dailies and several weeklies and online news operations following that calling.

You don't have to tell me that the newspaper business is changing. Three of those organizations I have worked for are now out of business. Until recently, I wrote a column for the Baltimore Examiner, but it closed, putting dozens of friends and fellow journalists out of work.

The news media are going through a time of epic changes, and that is never easy. In a few short years, evening dailies have all but died out. The rise of the Internet has changed even more. Newspapers first lost employment advertising to firms like Monster.com and since have lost classified ad revenue to Craigslist. Other sources of revenue, from personal ads to real estate, have met with smarter, more nimble competition.

While it is fair to blame much of this decline on newspapers to technology, it is not the only factor. The newspaper industry has changed too for the worst. Standards have slipped or all but disappeared. The concept of a journalist as a neutral party has become a punch line for a joke, not a guideline for an industry.

We all saw how poorly the mainstream press covered the last election. According to the Pew Research Center for People and the Press, voters believed that the media wanted Barack Obama to win the presidential election. Here is a quote from them, "By a margin of 70 percent to 9 percent, Americans say most journalists want to see Obama, not John McCain, win," Pew reported.

Other surveys confirmed it. According to Rasmussen, "over half of U.S. voters, 51 percent, think reporters are trying to hurt Sarah Palin."

It wasn't just the surveys; it was journalists themselves. According to Washington Post ombudsman Deborah Howell in a column headlined "An Obama Tilt in Campaign Coverage," the paper's election coverage consistently supported Obama in everything from positive stories to flattering photos. That same slant reappeared last week during the Tax Day Tea Party protests. The Post didn't write a story about more than 750 events nationwide until the day they happened; far different than how they handled other protests. Their own media critic, Howard Kurtz, even knocked such minimal

coverage. While the New York Times did preview the events six times, five of those were negative.

Such one-side reporting has destroyed the credibility of the print press. Among newspapers, the most trusted name in news is the Wall Street Journal, and just 25 percent of readers believe all or most of what that organization says, according to Pew. For the New York Times, the number is 18 percent; and USA Today, 16 percent. The only publications lower are People Magazine and the National Inquirer.

In fact, for the New York Times, the number who believe almost nothing in the newspaper is nearly identical to those who do believe.

And while newspaper credibility has taken a hit among both Democrats and Republicans, it is lowest among Republicans, with the Times having just 10 percent credibility rating with that group; 1 person in 10. You could write graffiti on a wall and have more people believe you.

But the Times still has widespread influence, and a story on the front page can be picked up and appear in some form in countless media outlets. The Times's former public editor, Daniel Okrent, answered the question, is the Times a liberal newspaper, by saying, "of course it is... These are the social issues: gay rights, gun control, abortion and environmental regulation, among others, and if you think the Times plays it down the middle on any of them, you have been reading the paper with your eyes closed."

For decades, many in the media have been working with their eyes closed, convinced of their own neutrality when all around them feel otherwise. In study after study, journalists consistently admit they support liberal causes and vote for Democratic candidates. In 2004, Pew found journalists identified themselves liberal over conservatives by a five to one ratio. Were journalists the only ones voting for President, they would have elected a Democrat every time since 1972.

The Society of Professional Journalists, to which I proudly belong, has a detailed Code of Ethics. At its heart, it says journalists should provide "a fair and comprehensive account of events and issues." They do neither.

It is fitting, then, in a hearing to discuss "diversity of voices," that every one here grasp a key point, the diversity of voices in print isn't about news. It is fiction.

Thank you.

[The prepared statement of Mr. Gainor follows:]

PREPARED STATEMENT OF DAN GAINOR

Testimony of
Dan Gainor
Vice President Business and Culture
Media Research Center

Before the
U.S. House of Representatives
Subcommittee on Courts and Competition Policy of the
Committee on the Judiciary

Regarding
A Hearing on "A New Age for Newspapers:
Diversity of Voices, Competition and the Internet"
April 21, 2009

Chairman Conyers, Ranking Member Smith, Members of the Committee, Ladies and Gentlemen.

I'm Dan Gainor, Vice President of Business and Culture for the Media Research Center. It's an honor and privilege to come here and speak about one of my favorite topics in the world – newspapers. From the first time I ever read on my own, newspapers have been a part of my life. I've worked at three different dailies and several weeklies and online news operations following that calling.

You don't have to tell me that the newspaper business in changing. Three of those organizations I have worked for are now out of business. Until recently, I wrote a column for the Baltimore Examiner, but it closed putting dozens of friends and fellow journalists out of work.

The news media are going through a time of epic changes and that is never easy. In a few short years, evening dailies have all but died out. The rise of the Internet changed even more. Newspapers first lost most of the employment advertising to firms like Monster.com and since have lost classified ad revenue to Craigslist. Other sources of revenue – from personal ads to real estate – have met with smarter, more nimble competition.

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In fact, for The New York Times, the number who believe "almost nothing" in the newspaper is nearly identical to those who do believe. And while newspaper credibility has taken a hit among both Democrats and Republicans, it is lowest among Republicans with the Times having just a 10 percent credibility rating in that group. One person in 10? You could write graffiti on a wall and have more people believe you. But the Times still has widespread influence and a story on the front page can be picked up appear in some form in countless media outlets.

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Thank you.

Dan Gainor
Vice President for Business and Culture
Media Research Center

http://www.mrc.org/biasbasics/pdf/BiasBasics.pdf

http://www.washingtonpost.com/wp-dyn/content/article/2008/11/07/AR2008110702895_pf.html

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Mr. JOHNSON. Thank you, Mr. Gainor.

And before we commence with my questionings, I would like to recognize a large group of students who are here today to observe democracy in progress. I appreciate you all's attendance.

And do we know whether or not there are any spies amongst you? If anyone is—yes, I see one hand.

Thank you, sir, for being honest.

More shall been revealed later with you all. Don't forget that torture was once ruled legal.

And so, but now I would like to at this point recognize the fact that I have heard through the grapevine a couple of times that there is a secret relationship that exists between some Members of Congress, who predominantly are of Republican. I understand that there is, and this is from folks I talk to, some believe strongly that there is an unhealthy connection between FOXNews and the Republicans.

Mr. Gainor, I would like to hear your take on that, and also Mr. Lunzer.

Mr. GAINOR. We are spinning a little out of newspaper territory, but I think what FOXNews does what a lot of publications do in journalism. They have a target market. They identified a market that is clearly underserved by the mainstream media because the mainstream media, by all reports, don't pay attention to the concerns of conservatives, which represent a fairly sizeable portion of the American public. So Fox decided—and clearly records show, they are right—that they found a target market that was very viable. So since we had Rupert Murdock's comments read into the record, I am not about to dispute Rupert Murdock's business acumen.

Mr. JOHNSON. Thank you very much, but I have been told that the tea party held last week was a result of an organized effort by politicians in conjunction or in conspiracy with the Fox TV Network that was an unholy alliance, if you will, between those two, as opposed to just a spontaneous outburst from uninformed people.

Can someone comment on that?

Mr. Nichols, please.

Mr. NICHOLS. I attended one of the tea parties. And the people I saw at the tea party were grassroots Americans who are deeply concerned about the bailout of the banks and about the PATRIOT Act and a host of other matters, many of which this Committee has dealt with. I think we should be cautious about being too worried about media outlets, be they Fox or the New York Times, having a connection with their readers that might inspire them to go and do something, to go and turn out and act.

You see, this is really the core of what we are talking about here. The core of what we are talking about is that we need a diverse media with many different voices. We need a media that will speak to those folks who would go to a tea party. We need a media that will speak to the folks who wouldn't go to a tea party. What we desperately, desperately, need and what is dying, and I want to emphasize it is dying in this country today is that competition of strong media outlets coming from many, many different perspectives.

And what troubles me the most is the notion that we have a liberal media or a conservative media. The fact is, by and large, we have a lousy media in this country. And I want to tell you how lousy it is. The fact of the matter is George Bush shouldn't have been surprised that there weren't weapons of mass destruction in Iraq. We should have had a media that was on top of that story and did a good job. It didn't. And all these people, many people blame George Bush or criticize him; I will be very blunt with you,

I blame the media. Our media didn't do its job. It didn't do investigative, challenging, aggressive journalism. And the way you get investigative, challenging, aggressive journalism is to have a lot of media outlets that employ a lot of journalists and send them out from different perspectives to go do their job.

Mr. JOHNSON. Thank you.

And Mr. Ben Scott, would you like to respond to that vicious rumor that is going around?

Mr. SCOTT. Well, I can't comment on the veracity of that rumor, although it wouldn't surprise me. I think what the key issue here that I am hearing is a widespread agreement at this table that what we need is a diversity of viewpoints in the media. It strikes me that, at a moment of crisis in the newspaper industry, the print newspaper industry, largely the daily newspapers, is also a moment of opportunity for us to take advantage of new technologies, to create new business models, to see the market and the government work together to figure out how we can support more journalists, not to replicate the status quo on the Internet that we once had on the newspaper pages, but to create a better media system, to create a media system that creates more journalists, to create a media system that can aspire both to the goals of objectivity and to the goals of partisanship, so that, for the first time since the 19th century, when every major city had a dozennewspapers, we can see a robust marketplace of ideas in this country.

Mr. JOHNSON. Thank you, and unfortunately, I wish I could hear from the other Members on this point.

But I will at this point in time note that my time has expired, and it took a while for me to see that red light.

Mr. CONYERS. Mr. Chairman, I would ask unanimous consent that the Chairman be given 1 additional minute.

Mr. JOHNSON. Does anyone have the courage to disagree with the Chairman?

Mr. GOODLATTE. Not me.

Mr. CONYERS. Without objection, we shall do so. Thank you.

Mr. Gainor, if you would respond to that.

Mr. GAINOR. If I just might remind people a little bit about the history of the tea parties is, tea parties were spawned by comments made by Rick Santelli on CNBC, which is part of NBC and ultimately GE. Santelli had what is called the "rant heard round the world" complaining about spending in government. Soon after that, there was an event in February that, yes, did not get much media coverage, but it included 50 different tea parties on February 27.

Mr. JOHNSON. Did it get covered on Fox like this one did?

Mr. GAINOR. Actually, it didn't get very much coverage. It did coverage on Fox some. Fox saw, again, I think an opportunity that people were not covering it much. But, again, the cause of this, and the tea party people themselves, proclaim on their Website that this was spawned by comments, inspired by comments made by Rick Santelli. So to say it is a Fox conspiracy, not one that I held any credence for.

Mr. JOHNSON. All right.

Thank you, sir. I will next turn to Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. Gainor, to follow up on that, according to a Gallup poll, only 9 percent of the Americans say they have a great deal of trust and confidence in the mass media to report the news fully, accurately and fairly. That is even lower than Congress's approval rating.

The same poll found that more than twice as many Americans say the news—we are not talking about just FOXNews here, by the way. We are talking about all sources of information through the media. That same poll showed that more than twice as many Americans say the news media are too liberal rather than too conservative. How has Americans' lack of trust in the media exacerbated the news industry crisis? What can be done to restore that?

Mr. GAINOR. What can be done to restore it, first of all, is to do a better job. That is something everybody on the Committee, the panel, can at least agree on. Before we get too lost in the woods talking about Fox in a newspaper discussion, I want to remind everybody the scale of the media in this country. If you talk about Fox and the tea party day, when they had 3.9 million people watching their one program, their highest rated program that night, they did very well. They are one-sixth of what ABC, NBC and CBS get on a typical evening news show. They roughly equalled that night what MSNBC, CNN, and CNN Headline News, so you are talking about a drop in the bucket by comparison, so it is not an apples-and-oranges comparison.

What can the media do? They need to do a better job. They need to recognize, we talked about diversity of voices; they need to recognize that there aren't a diversity of voices in the newsroom. In a typical newsroom, you will see a diversity plan that talks about gender, talks about race, some of the more advanced diversity plans will talk about religion. They won't talk about opinion. So you will find a newsroom where they were forced in one case, where they did a story on religion where they had to go to a graphic artist who actually was more actively religious because they didn't have enough people in the newsroom who went to church. You need to have a newsroom, if we are going to have a newsroom reflect America, it certainly hasn't been doing so for a long time.

Mr. GOODLATTE. Let me turn to Professor Baker.

In your testimony, you stated that huge layoffs of journalists have resulted in degraded newspaper product.

Can you tell us more about what that degraded product is? Has it led to more one-sided or biased news coverage, or is it possible this degraded product has caused news consumers to switch to alternative news sources?

Mr. BAKER. Actually, when they switch, they usually switch to the online newspaper product for the most part. When——

Mr. GOODLATTE. Is the online newspaper product a degraded product, too?

Mr. BAKER. But both of them are. Any editor will tell you that with more newspaper resources, they can do a better job covering the various things that newspapers ought to do. Now they may do it from a particular slant. Fox might do it from one slant. Another media entity might do it from a different slant. Under the first amendment, that is not really our concern.

But for a democracy, our concern is that they do it in a quality way with resources. So when newspapers have invested in hiring

more journalists, they have actually increased their circulation. The trouble is that circulation isn't as valuable to the paper as it costs the paper in salaries. So they lay off the journalists.

Those journalists are providing a public service by providing a better paper. So when the paper fires their journalists, the data tends to show that they lose some of their readers. That is what I mean by degraded product. When you use more money to produce something and sell it for the old price, it is going to be a better deal——

Mr. GOODLATTE. Let me follow up on that point because I think it is a good point, but by the same token, newspapers have got to be able to raise the money necessary to be able to afford that quality reporting force. So why has the newspaper industry been unable to monetize its content in recent times? Is it strictly the fact that they are competing with free, on the Internet, oftentimes on the Internet—they may be competing with—anybody can be a publisher. Anybody can be a reporter on the Internet. The quality of that is often subject to considerable question. But nonetheless, they are having to compete with that.

Is there a model that the newspaper industry could follow that they have haven't? Itunes, for example, has changed pretty dramatically how you buy music by selling it one song at a time. Are we headed toward that where you are going to pay for your story, story by story?

Mr. BAKER. Most everybody in the industry is looking for those models. And some of those people are pretty good business people, and they will probably find what is available. What they won't find is enough to support the type of journalism that the country historically supported basically with government subsidies. As long as the benefits are going to people beyond the readers, there is no way to monetize those benefits.

If you are talking about readers, there is at least the possibility of monetizing it. And newspapers are trying to find how to do that as a way of capturing more money from their online readers. They are not going to be entirely successful. They are going to do somewhat better than they are doing now. It is going to help a little. It is not going to deal with the real crisis problem.

Mr. GOODLATTE. Well, I take it the subsidy—Mr. Chairman, if I might, I see my red light is on as well, if I might have leave to ask a follow-up question to Mr. Baker.

Mr. JOHNSON. Mr. Goodlatte, if there is no objection, I will give you 30 seconds extra.

No, to be fair, though, we will do 1 minute. Is that fine?

Mr. GOODLATTE. That should do it.

Professor Baker, to follow up on that point, you referenced government subsidies, is that in terms of the postal costs of sending newspapers? What subsidy are you talking about?

Mr. BAKER. At this time, today, the newspaper industry is not being subsidized. One hundred years ago or 200 years ago, it was being hugely subsidized. One hundred years ago, the $80 million would be in today's dollars per person $6 billion that they were getting from the government 100 years ago. Today, it is not there.

Mr. GOODLATTE. You are saying the newspaper industry was subsidized 100 years ago? It is not today?

Mr. BAKER. One hundred years ago, the postal subsidy to the newspaper was worth—according to a Supreme Court case—was worth $80 million.

Mr. GOODLATTE. But the reality is that now, the problem is that subsidy, at almost any price, would be very difficult to compete with getting information online. So are you proposing a subsidy for online journalism? Because that is where this is all headed.

Mr. BAKER. What democracy requires is journalists. I think it also requires newspapers. But I am not as much concerned about newspapers as I am about journalists. If you gave a tax credit to newspaper companies for half the salary of their journalists, they would suddenly find it valuable, desirable to hire more journalists.

Mr. GOODLATTE. Who would be eligible for that? In an online world, wouldn't anybody be able to say, I have an online newspaper, I want to have a one-half subsidy of my journalists?

Mr. BAKER. Most of the journalists today, most of the news being produced today is by the print newspaper sometimes also operating online sites. If you went forward with my proposal, one of the questions would be whether or not it should be made available to various types of online publications which had paid staff, paid journalists working for them. There is nothing in principle that would say that you shouldn't, but we would be dealing with the problem even if we didn't extend the subsidy that far.

Mr. GOODLATTE. The Chairman has been very generous with my time, so I will yield it back. But I would be interested in any other, if any of you want to submit in writing any thoughts about how such a subsidy could be sustained in a world where anybody can define themselves as a journalist.

Mr. JOHNSON. Thank you, Mr. Goodlatte.

And now we will have questions from Chairman John Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

This is an important issue. And what we will begin to look at, as this examination of what to do with newspapers in crisis continues, is the exact nature of the crisis. I have had, I think pretty, good examples, but we need to know precisely what it is we are going to fix.

But I was moved by the Scott recommendation that we come up with a national strategy for dealing with papers. And would like to have you and Nichols and others expand on that, if you would.

Mr. SCOTT. Certainly. I think the first thing to do is to look at the different dimensions of the problem. That problem that is happening for a major daily newspaper is not the same problem that is happening for a rural weekly. It is not the same problem that is happening for a new experiment in online journalism. It is not the same problem that is happening for a hybrid that does specialization, like investigative journalism or government reporting.

So I think we need to understand the different kinds of problems, and I think we need to begin to design solutions. And I think the main problem that we are trying to get at here is, if the historical accident of advertising-supported newspapers no longer works, and there is no longer a revenue model in the marketplace that produces the news that we need for our democracy, how do you fill that hole?

First, there is reduction of costs with the distribution model provided by the Internet. But there is always going to be a core expense for production of news. And I think we need to get at that through——

Mr. CONYERS. But how do we go about putting together a national strategy? Would this Committee be a place to begin? Or would we call in all the newspaper leaders in the country or invite them to start a conference themselves to come up with a strategy?

Mr. SCOTT. I think you can begin by taking the leadership of those who have begun, such as the Knight Commission has a panel on this subject. A number of university professors have written extensively on the subject. I think that we need to begin to look at solutions that range the gamut from tax policy, bankruptcy policy, direct investments in education and public media. Those are all areas in which I think potential solutions lie. And it will be a combination of those things which produces a desired result.

Mr. CONYERS. Which would include the subsidies that they are already enjoying. You know, when you raised the cost of a postage stamp, do you know what we are paying for?

Mr. SCOTT. We are paying for the news media and the periodicals class.

Mr. CONYERS. Exactly.

John Nichols.

Mr. NICHOLS. If I can just come off that and actually, Congressman Goodlatte's very, very good questioning in this area, the notion of a subsidy from the government to a newspaper is, I think, abhorrent to most journalists. What you really want to do is——

Mr. CONYERS. That is capitalism at its worst.

Mr. NICHOLS. Well, we did it with banks, and I am a little troubled by that.

Mr. CONYERS. That was the same—and yeah, it applies to whomever.

Mr. NICHOLS. What we are talking about here is democracy. We want the people to be able to get information. We have all said that in some way or another.

And so the way that you might look at congressional action, one piece of congressional action, is to do what some European countries have done, which is to allow people to take the cost of their subscriptions off their taxes. You can deduct your subscriptions from your taxes.

As a journalist today, professionally, I can deduct my subscriptions from my taxes. But a citizen cannot. I would just suggest to you that this is a way where we democratize a support of journalism. We come in, and Dr. Baker has offered some very wise proposals, but imagine this, where we democratize journalism by saying to people, yeah, if you want to subscribe to a conservative Internet site that charges or a liberal newspaper that charges, that is great. And you can, you pay your money in and then attach that, staple it to your taxes, like a lot of us did on April 15, and it is a way to support media that you approve of without sending the money—and this is my personal bugaboo here—without sending it down the rat hole of the existing companies, because the existing companies have done a horrible, horrible job of running newspapers.

Newspapers, I mean, imagine, we are all talking about how much we love newspapers. And yet somehow they have managed them into extreme crisis. And this crisis did not begin when somebody flipped the switch on the Internet. If you monitor the declining advertising revenues of newspapers, it started before the Internet hit its stride.

And frankly, the bottom line is also on circulation. We have had basically stagnant circulation since the 1950's. And so the reality is newspapering has had a long-term problem. It has come to a head in the current economic crisis. But what we need to do is realize that a lot of these companies that have been running these newspapers haven't been doing a particularly good job, and I will close with one of the explanations for why they are in so much trouble right now that we have not talked enough about right now. They, big companies went to buying sprees. They spent too much money to buy daily newspapers in communities, took on huge debt, and now they are laying off working journalists so that they can pay their debt. And at the end of the day, what they will end up with is perhaps a paid-off debt but no newspaper that is worthy of reading.

Mr. CONYERS. Mr. Chairman, I ask unanimous consent for one additional minute.

Mr. JOHNSON. In the absence of any objections, please, sir.

Mr. CONYERS. I just wanted to ask Mr. Gainor if he is familiar with an organization called Freedom Works.

Mr. GAINOR. Yes, sir.

Mr. CONYERS. I wanted to ask you further, are you familiar with an organization called Americans for Prosperity?

Mr. GAINOR. Yes, sir.

Mr. CONYERS. And are you familiar with an organization called the Heartland Institute?

Mr. GAINOR. Yes, I am.

Mr. CONYERS. I am glad to know that. I am not, but I think I am going to get more familiar with them.

Mr. GAINOR. They are conservative. You should check them out.

Mr. CONYERS. Thank you. Maybe that is why I never heard of them before. But I understand they are pretty effective, that they influence the business of getting news out to the people and, in their own way, quite effectively.

Mr. GAINOR. I think they are public policy organizations that, like probably about a thousand of public policy organizations in Washington, try to do their best to get their word out. They are probably just fairly good at it.

Mr. CONYERS. And you recommend them to my attention?

Mr. GAINOR. Absolutely.

Mr. CONYERS. And to everybody else in the country as well?

Mr. GAINOR. Certainly.

Mr. CONYERS. Thank you very much.

Mr. JOHNSON. Thank you, Mr. Chairman. There being no others from the other side of the aisle who are present at this time, I will now turn to Representative Gonzalez.

Mr. GONZALEZ. Thank you very much, Mr. Chairman. I am not sure that I would even have agreement among all the witnesses if I said, do we all agree that the newspapers provide us something

that is very unique, different from any other media source? And we can complain about the bias, the prejudice, the incompetence, and so on in the newspaper. The real question is, as opposed to what? TV? Radio? The Internet? Suddenly, newspapers truly become essential and vital in the professional product that they provide more often than not and that you will find in the newspaper setting that you will not find as often in any other delivery system. That is my premise. If we don't agree with that, then we can all pack it up and go home and say let nature take its course, survival of the fittest, and the wonders of the free market, and it is over.

The question is, are the laws antiquated? Do we need to do something about it? Maybe, maybe not. Or is it just a matter of the application of the laws in a manner that will take into account all relevant factors? Your competition not necessarily within the same similarly situated industry, but rather who are your competitors?

Now, I am going to say, I saw everybody kind of shaking their head that we all agree that the newspapers provide something that is very unique and valuable that cannot be replicated elsewhere or presently is not being replicated. So, how did we get to where we are today? And now I am going to quote from newspaper articles.

June 5, 2008. Whenever I find something interesting, this is the wonders of technology. Isn't it? We used to just highlight it, cut it out, put it in the your file. Now it is in your BlackBerry or iPhone.

June 5, 2008. Peter Moresky from the Post, quoting Steve Balmer, CEO of Microsoft. Quote. Here are premises I have. Number one, there will be no media consumption left in 10 years that is not delivered over an Internet protocol network. There will be no newspapers, no magazines that are delivered in paper form. Everything gets delivered in electronic form.

And if that is what we need to prepare ourselves for, that is fine. But what happened is that businesses adopted certain business models and revenue streams. And maybe it is irreversible and it is an irrevocable future out there. I mean, we have set something in motion.

June 6, 2008, New York Times, Paul Krugman column. Quote: In 1994, one of those gurus, Esther Dyson, made a striking prediction that the ease with which digital content can be copied and disseminated would eventually force businesses to sell the results of creative activity cheaply or even give it away. Whatever the product, software, books, music, movies, the cost of creation would have to be recouped indirectly. Businesses would have to distribute intellectual property free in order to sell services and relationships, and we will have to find business and economic models that take this reality into account.

That is where we find ourselves. The question is, is there a role for us? I think, Mr. Scott, you said the future of journalism is really dependent on policy. And I assume you mean policymakers, Washington and elsewhere, which I think is what Steve Kay said about the Internet: The future of the Internet is not dependent on technology but on regulation. So I think there is a role for us.

So what is it that newspapers bring that is so valuable that we all have to work together to salvage the survival of the printed media in America? And I will start to my left. And that is the only question I have.

Mr. TIERNEY. Thank you very much. Congressman, I think it is an advantage, sometimes it seems like a disadvantage, actually running a newspaper. And I am not a theorist and I am not somebody who testifies here. It seems that the good ones can hit that 5-minute mark right to the second.

I actually have 10,000 men and women, full-time, part-time, and independent contractors that are depending upon me in this organization. We are probably as close to the ideal kind of an ownership group as you can want. Four Republicans, four Democrats, and four Independents, all self-made folks who really cared about it, who put up 30 percent so it wasn't highly leveraged at the time, who are willing to put more money into it.

The idea that somehow it is because the news media is too liberal or conservative; Rupert Murdoch is a really smart guy. Right? The New York Post is struggling. I hear it loses money. The New York Times is struggling, and the Boston Globe. So Republican, Democrat, liberal, conservative, the business model is not working. And part of that is as simple as classified advertising.

I have only been in the industry 3 years, and I have found since coming in here that there were some mid-level business people in the industry that weren't up to snuff. I know when I was at Penn there were people who wanted to go in to be reporters at the Philadelphia Inquirer, but nobody said at the Wharton School, "I want to go in to circulation at Knight-Ridder." I understand that is the case. But at the top of these companies there are really smart people who are really successful in—Rupert Murdoch in television, and he is struggling in newspapers. Don Grant, a very, very bright guy, the Washington Post, 50 percent of their revenue comes from the Stanley Kaplan Learning Center. So they are not all dummies, and there is a real systemic problem here. And part of the problem that I have noticed repeatedly, most recently with a group of publishers in San Diego at a meeting, is everybody is afraid to talk to each other. We had an antitrust lawyer in the room. I have been in advertising for 20 years, I have advised large corporations, and I have never seen an industry that everybody is so afraid to even begin to have a discussion. Now, perhaps they are more conservative by nature, but it was shocking, about issues about, well, could we kind of cooperate on some kind of a free classified space? Couldn't we cooperate?

Listen, nobody is trying to decide whether they should buy the Philadelphia Inquirer or the Dallas Morning News tomorrow morning. They don't. And there are opportunities but—to find a new business model. Because, you know what? Nobody does what we do. The bloggers comment on what we do, or they rip it off and copy it and put a sentence in front of it.

Eric Schmidt said the average blog in America is read by one person, I am all for other things. And if there could be subsidies for subscriptions, et cetera, we have to look at the impact of some of those things. But fundamentally, you know, if I thought the answer was to hire more journalists to fix the problem, we would do that. The question is—I mean, and forget our debt. We have a lot of debt; it is going to be restructured. Even if I have zero debt—and we are the number three in advertising sales among top newspapers so far this year, number three among the top 25 papers, one

of the most efficient newspapers in the country according to an industry report as well. So, number three in advertising, one of the most efficient. At the same time, our profitability has gone from 70 to 49 to 36 last year to 11 this year. And that is with making a lot of savings. So to somehow think that even if we had no debt, even if we had no debt—our investors are so committed to this that they haven't received a dividend—the model doesn't work. Conservative paper, liberal paper, however you want to do it. And I think most people just try to—over the course of the whole baseball season, it is pretty fair, most papers. But the fact of the matter is—and we have to look at that because there won't be anybody here—like I had a great situation, whether it be Toys for Tots was struggling in Philadelphia, we wrote about it, they got 50,000 toys. Or somebody who wrote to me and said: I never thought of taking my children to the Philadelphia Orchestra. I am a construction worker. I happened to see something, and how neat it was for the first time at 52 years of age to walk in to hear the Philadelphia Orchestra. Or vice versa.

I mean, nobody does what we do. And over a million people every day read our paper in Philadelphia, and another half a million people go online. We have to figure out how to charge them. All of us are afraid to talk to each other about how to create a one-pass system for that. I mean, we really need some help. We don't need a subsidy, we just need a little bit of room for things that will come before the Justice Department again to be approved before they are done. We just want to be in Philadelphia. We are not trying to create a media empire. None of us would be interested in buying a paper in Chicago or Los Angeles. We are Philadelphians; this is the only reason that we are here. But we do need—I am telling you as a relative newcomer to the industry, this industry is in extreme situation. Once it goes, democracy will suffer.

Mr. CONYERS. So why don't you create a new model?

Mr. TIERNEY. Well, we are struggling to some extent to do that, Mr. Chairman, in terms of what we have done. We have come up, and now we are willing—we are in negotiations with the banks and putting in more equity, et cetera. But even if we have—when we are competing to some extent with a Google, I mean, think about that. They have 70 percent of the search. And they—I mean, and they are in many ways a competitor to us. We don't control the advertising. All the newspapers in the Philadelphia market together aren't that powerful as an advertising vehicle compared to a Google. That is—I won't get into that. But, anyway, that is probably for another hearing. Anyway, but so there are—and I guess what I am suggesting is that I have never seen a more fearful industry about talking about cooperation. Honestly. And I have advised people in the electric utility business, you name the business, and it is an industry that—and there is so little concentration. I think the largest chain of newspapers has less than 10 percent, and then it drops off after that. We are probably the most deconsolidated industry compared to cable or any other business.

I am sorry, I know I have gone over the 5-minute mark, but I appreciate the opportunity. Thank you, sir.

Mr. JOHNSON. Thank you, Mr. Tierney.

Mr. CONYERS. Mr. Chairman, I ask unanimous consent so that Mr. Gonzalez's question can be gone down the row here.

Mr. JOHNSON. Without objection, so ordered. Proceed.

Mr. NICHOLS. I am very honored to be on a panel with Brian Tierney, because he stepped in at a time when we had a major chain breaking up and put together one of the few situations where local people actually bought their paper. And this is something we should be about. We should be about local ownership of newspapers.

I can't tell you how much damage has been done. I know it is a relatively unconsolidated industry, but let me tell you, chain ownership by and large has been a nightmarish situation for the daily newspaper business. And when you have distant owners who are taking profits out but not putting much back in, you see the dumbing down and the destruction of the daily newspaper.

So at the end of the day when we start to deal in these consolidation, antitrust, cross ownership issues, all central to this discussion, we have to be very, very careful. If we simply make it easy for distant owners to consolidate more and do less, we will end up in the newspaper business with something much like what happened in radio. In 1996——

Mr. CONYERS. But isn't that the nature of capitalism?

Mr. NICHOLS. The nature of capitalism, frankly, if I understand it, has something to do with free markets. And when you have a monopoly owner——

Mr. CONYERS. Free markets. That means global.

Mr. NICHOLS. When you have a monopoly owner in one place, I am not sure if that is a free market operating there. So what I would hope is that Congress would be in the business of trying to promote a real free market of ideas, where you set up a situation where it is possible for competing newspapers, competing media outlets in the same town to employ journalists and do something of quality.

But just to close off that thought, I think it is the great danger, the great danger in saying, well, let's just throw off the antitrust rules, let's just throw off the cross-ownership rules, let's just throw off the consolidation rules, is that we then begin to end up in a situation where people who have already shown a penchant—not Mr. Tierney by and large, but the people who have shown a penchant for taking freedom, more freedom as an opportunity to dumb down, downsize newspapers and newsrooms and to take more profits out.

We saw this happen in radio when Congress passed the Telecommunications Act of 1996, allowing one company to own as many as eight radio stations in a market. These companies, Clear Channel is the first example, came in, bought eight stations, shut down seven or eight competing newsrooms, and put one kid running from microphone to microphone. And we ended up, as Senator Dorgan has revealed in his hearings, with situations in some communities, substantial communities, where there was not a single broadcast journalist on the job.

Now, that is the danger of throwing off some of these controls, throwing out some of these rules in an irresponsible manner. You could well end up not helping newspapers but actually hastening the decline of newspapers and, more importantly—because this

isn't really about newspapers—more importantly, the decline of journalism. And a democracy cannot function without journalism.

Mr. LUNZER. If I may. In Chairman Conyers' town just this last week two very enterprising journalists as part of a team won a Pulitzer Prize for the work they did in investigating an ethically challenged mayor. They didn't ask what party he came from. They had heard the rumors, they did the work. It was something that ultimately was very tragic but also very important to that community.

When people say what do newspapers represent? What will be lost? That kind of work isn't being done by MSNBC or Fox News. This is the kind of work that good journalists do every day in organizations that are big enough to support this kind of information. They are hardworking. They really don't pick sides. I reject all this talk of bias. I think that is more about the polarization of politics.

But what I would say is this in terms of policy. You want to encourage journalism, you don't want to try to pick winners. And that is the direction we need to go in. Thank you.

Mr. SCOTT. Mr. Conyers, you asked me earlier how Congress could go about constructing a national journalism strategy, and I did a poor job of answering that question. But it occurs to me that the answer to your question is the same answer to Mr. Gonzalez's question, and I think he is absolutely right, which is, what we need to do is we need to bring people together in the spirit of cooperation, which Mr. Tierney rightly points out has been absent in this space, and bring together the industry and the unions and the readers and the new Internet journalists and the academics who have all been thinking about these questions, and we need to identify what is the essential thing about print journalism that we need to preserve in this transitional technological environment. And, how do we support those things in a business model where advertising revenues have been decoupled from the value of news? And, third, what are the policies that we can put in place to facilitate that transition so that those essential elements are preserved?

That is the challenge I think that sits before this body and the one that would be the first objective of a national journalism strategy.

Mr. BAKER. Mr. Gonzalez's question about what is unique about newspapers, I think it has to be the journalistic unit. And if that survives, whether the paper edition survives or not, is a somewhat marginal question. But to have those employed journalists—and most of the journalism done in this country today is done by newspaper journalists, not all of it. And we should be supporting it wherever it exists. But newspapers do most of it. And if we do something that sacrifices that, democracy suffers.

Evidence is, from around the world and also within this country from State to State, that the biggest correlator with less government corruption is newspaper readership. When people are reading newspapers, corruption goes down. That happens place after place. My suspicion—these studies were mostly pre-movement of all the readers to online. I suspect it is not just the readership of the newspaper that has been crucial for this reduction of corruption, but it is the fact that there are journalists out there making reports on what people in government are doing.

It has been suggested by somebody that in the recent stimulus bill we would get much better use of that money if a small fraction of it was used to support investigative journalism; then the other money that is spent would be used much more wisely.

As for how we keep these journalistic units together, the history has been that when you allow the exemptions from the antitrust law, the general result is, as has been mentioned in the radio example, is that the merged entities lay off the journalists, that that is the part that is hit first and hardest. The Newspaper Preservation Act, which I think was a wonderful idea in terms of keeping competing newspapers alive, keeping the competing journalistic units alive, has as a practical matter not turned out well: Once you have allowed them to join forces as a monopoly business enterprise, then they discover that it is really not all that valuable to still have to produce two products when they could have a monopoly with one product. So the JOAs have largely been hospice care. They keep one paper alive for a while and then eventually put that one out of its misery, and then the monopolists can split up the profits of a single newspaper in a town.

The exemptions from antitrust laws have never been a good method of making sure that these journalistic units stay alive. Other policies of a variety of sorts, I offered a subsidy scheme, the notion of new ownership forms has been mentioned by other panelists. There is a variety of other things that could be usefully done. But it is these journalistic units that is the crucial thing that newspapers have offered us, and it has been something vital for democratic societies.

Mr. GAINOR. First, I want to thank Congressman Conyers for giving us a chance to answer this question. It is very important.

Yes, what newspapers or what news organizations do is unique but it is not always going to be in print. You can ask any of the people who work on your staff or any of your family, they are getting their news from other venues. They are getting their news on their BlackBerry or online in some form or another. Times are changing and changing very rapidly.

But I get very concerned, people are thinking that there is no strategy. There are strategies that are working. People are paying for content. You can find financial news, people will pay, readers pay for financial news online. They will pay for health news online. They even pay for sports news online. There are models that work for the news industry where these are working. So I reject the contention that there are no business models.

I think the problem is, and I think we would all agree that the industry has not been very well run, they haven't found them yet. But nothing scares me more in the middle of a congressional hearing than three words that say: National journalism strategy. For Congress to be mandating a national journalism strategy results in what you to some extent have even here in this hearing right now, journalists lobbying government, and then in turn being beholden to the decisions and whatever moves you make to then aid them in protecting their career and their employees. It is natural. It is human. We all have friends in the industry. We all want the industry to survive. If Congress bails them out, how hard are they going

to be then treating those Congressmen who voted for that the next day?

So I want to close just with—an editor and publisher actually addressed the issue of bailouts in September. This is an industry publication, and it came out against them. And it ended its editorial by saying: There is no reason to believe bureaucrats would do any better picking winners and losers among newspapers, and plenty of reason to fear turning the financial future of newspapers over to a Federal Government all too enamored of secrecy and surveillance.

I second that opinion. Thank you.

Mr. JOHNSON. Thank you, Mr. Gainor. I will now ask this very simple question. Mr. Chairman, Chairman Conyers is about the only one who actually ran with the dinosaurs, and he regrets that he can't run with them today. But—because of course they went extinct, and we were not able to as a government save them. And now we are talking about the polar bears getting ready to leave, the famous seals whom our Navy is so fond of are threatened with imminent demise due to this alleged global warming phenomenon.

And you know, so that being the case, things change, dinosaurs come and go. Newspaper industries come and go. Why is it so necessary for government to get into the pockets of the people and save this dinosaur? Why should we move toward socialism?

Mr. TIERNEY. Let me just say from the perspective of somebody again who actually is running a newspaper, I can say our industry is not looking for a bailout. We are not looking for a dime, we are not looking for a dollar. We are just looking for the ability to have discussions which may or may not bear fruit. But the industry is still—when I hear about the monopoly. If it is such a great monopoly, there wouldn't be dozens of newspapers for sale right now with no buyers. If this was the biggest monopoly in the world, you would think that somebody would want to buy a newspaper in town after town.

The value of stocks like Gannett is down about 85, 90 percent in 2 years. The McClatchy Company, the second largest newspaper chain, has dropped 99 percent from $60 to 60 cents in 2½ years. The New York Times Company. And, again, we are not looking for a subsidy at all, unlike other industries that have come before you. We are just looking for the ability to, I believe, have a chance to—because you would be surprised, Congressman, if you were there as an attorney, the fear of these publishers to have any discussions at all even with a lawyer present I think stymies the ability to begin to kind of say, gee, how can we find some ways to save some money, or can we find some ways to compete with one of the big Internet sites, et cetera.

Mr. CONYERS. Mr. Tierney, you are confusing cause with effect. The reason these big monopolistic newspapers may be going into the toilet isn't because of the system. It is because of the way they have run it and the poor quality and the fact that there are competing technologies that weren't there when the Founding Fathers started off bragging about newspapers. So to tell me what their stock is worth now may be a direct result of their causation, not anybody else's or the government's.

Mr. TIERNEY. Respectfully, Congressman, they are not all rotten operators, and they are all down. And they are not—and that is kind of what is going on. And what is going on now——

Mr. CONYERS. Wait a minute. You say they are not all rotten operators. How do I know that?

Mr. TIERNEY. Well, it would be a—like, again, I will look at Rupert Murdoch. We think he is a good businessman.

Mr. CONYERS. Well, I suppose there are people that think he is a good businessman.

Mr. TIERNEY. Maybe I should find another example. No. You know, it is interesting, too, because people say I can get that information online. If you get that information online and it is about Philadelphia news, nine out of 10 times it is going to be coming from the Philadelphia Inquirer or the Philadelphia Daily News. It is just what we are now—and that is a whole issue of copyright and rights, because people can basically get it, paste it in, and what is fair use is what is—I mean, when people say information wants to be free, they are not in the business of paying people to create information. You know? I mean, I think that I have heard people related to Google saying that it all should be free. Well, the ads aren't free. It is kind of like somebody who has the right to—you will excuse this analogy—but the right to sell, the exclusive right to sell beer at a dance club, let's just say. So you think that dancers shouldn't be paid, but the beers are 10 bucks each? Well, the dancers have to be paid, too, in this situation, not just the guys selling the beer. And we have too many situations where people are selling the ads around our content, the content that we create. And that is—you just can't create something for free. We can't have great journalists that we have, such as we have in our two papers from the Guild, and not pay them.

Mr. CONYERS. Was your example in reference to a gentleman's club?

Mr. TIERNEY. I think that is the kind of club I meant, sir. Is that a first for Congress, I don't know, for me to reference that? I am sorry, sir.

Mr. JOHNSON. Ladies and gentlemen, we have been—I think I would be remiss not to recognize the imposter who has just entered the room. And though she is very low profile, you know, folks like me, nerds and that kind of thing, definitely know what she looks like. And—but the individual on stage on the panel with us, I guess we have checked her ID and everything. And I personally have—I want to say the real Sheila Jackson Lee. I missed her over the last couple of weeks when Congress has been on district work periods.

And so I want to recognize that we have been joined by my good friend Congresswoman Sheila Jackson Lee from Texas. Welcome. Thank you. And we will ask you to proceed with your questions on this issue as soon as we can—I think instead of answering my questions, I will just yield—instead of you all doing that, I am going to yield again to Mr. Goodlatte.

Mr. GOODLATTE. Well, thank you, Mr. Chairman. But I am going to go back to my first statement: I don't have any other additional questions. If Ms. Jackson Lee has any questions, you should go right to her.

Mr. JOHNSON. I am sure—Ms. Sheila Jackson Lee, how do you feel about that? And if it is okay with you, please proceed.

Ms. JACKSON LEE. Thank you. I know that the hearing is winding down. I want to thank the Chairman of the full Committee, Mr. Conyers, and I want to thank you for your leadership. This is a vital continuation of this Committee's assessment in this economic arena of the various entities and bastions of business. But in this instance, we are talking about a very vital aspect of the first amendment, something that we treasure here in the United States.

And so my questions, in light of the fact that I apologize for just arriving back into town, and I wanted to have an opportunity to at least comment very briefly on this question that I think has to be a studied question and we have to come up with some answers. Because on one hand we are losing the Nation's very vital source of information. One reason of course is the fact that everyone believes that they are tied to the Internet. I think there is something good about the morning paper and the afternoon paper and being able to have that. I also think that communities suffer, frankly, when—though I respect small papers—when papers close and there is only one source of information, explanation, if you will, in the arena that is necessary.

So I guess, let me just try to go straight to Mr. Nichols, who is the man on the ground. And he has got his hands in the mix because he is a journalist. Let me tell you the respect that we have for you in this Committee. I know that you know that we have passed legislation to protect the rights of journalists as regards to sources, and the Chairman of this full Committee has been a leader on those issues and I have been glad to join him along with the leadership of Chairman Johnson.

What are we looking at here from your perspective in essence to be considered not only a journalist but an employee if you were working for a major newspaper, what is the major economic impact that we are talking about? And I would appreciate if you would mix the economic impact question with the whole issue of the first amendment. Antitrust, obviously we are dealing with the economic impact, the business of newspapers, which I think is very important as well, deals with advertising. But economic impact, what it does to the first amendment if we begin to see either mergers or closings. We are looking at whether we should intervene governmentally. What is your assessment? And forgive me for asking a redundant question that you may have already answered.

Mr. NICHOLS. It is not so redundant. And also, I would be remiss if I did not thank the Committee for—and Republicans and Democrats, conservatives and liberals, for their commitment to protecting reporters and the pursuit of information in this society. We have just had so many examples in the last week.

Mr. JACKSON LEE. Absolutely.

Mr. NICHOLS. Stories that have come out that relate to this Committee and—on surveillance and torture and other issues that were driven by journalists who felt free to do their job, and so it is very important what you do.

I would just suggest to you that—I keep looking over at Chairman Rodino and remembering that Chairman Conyers was on this Committee when a newspaper revealed the wrongdoing of a Presi-

dent and empowered, much more than any congressional investigator or any judge or any lawyer, the Congress of the United States to make the Constitution real. And the Constitution is real when we use it. When you held those impeachment hearings in 1974, the Constitution became real.

Similarly, free speech and freedom of the press is only real when it can be practiced in a meaningful way. And so if we lose newspapers and if we lose journalism, we begin to lose freedom of the press as something meaningful. And we have had this question bounced around somewhat before you came, Congresswoman, about the role of government, how government might step in. And I just want to remind you, I am a historian of these issues. I write books about it. And the fact is, government has always been involved in trying to assure that freedom of the press is real. This country was founded by journalists. Tom Payne was a journalist. Ben Franklin was a journalist. Jefferson and Madison were contributors to newspapers.

So what we need to do at this point is figure out how the government can engage with these issues without becoming a Big Brother, a heavy hand, the institution that is giving you your resources so you have to be kind to them. We don't want to recreate the king supporting his favorite newspaper. We want a free press.

And I do think government has a role there. I think that role, though, is mainly in empowering the subscribers and the users of media, of journalism. And one of the ways that you can do this is to consider this notion that has been put forward of allowing subscribers to deduct or get a rebate for their subscriptions in their taxes. They get to choose what they read, what publications, what Internet sites they support. Not the government. And hopefully this provides some resources coming in, and maybe even an increase in readership and things of that nature.

And I would suggest it has worked rather well with churches. We do allow people to take a bit of a deduction when they give money to their chosen house of worship. And I don't say that I worship at the altar of journalism, but I come pretty close. And I would appreciate very much if Congress looked at all the creative ways in which it could involve itself in making sure that freedom of the press is real and that the Constitution is real.

This democracy will not survive without newspapers and journalism. It won't. And so you are at a very critical moment here. If you fail to take this task seriously, look at all the options, look at all the possible actions, make sure that you do it in the right way, you will be a part of watching those dinosaurs pass away. And I don't want—I am young enough that I would like the dinosaur to last for a little longer.

Ms. JACKSON LEE. Thank you for your eloquence. Let me ask Mr. Tierney and as well as—in fact, let me, other than Mr. Nichols, answer this question on the antitrust exemption. One would think that the legislation, the Newspaper Preservation Act, which allowed I think the merger of newspapers would have helped preserve some of these entities. And, however, it certainly merged newspapers and I think lost a lot in the political thought and independence of political thought.

Since we are at the end of the hearing, why don't I ask each of you just to give me your perception of the kind of intervention now that we should have with respect to, say, newspapers? Why don't we begin with you, Mr. Tierney?

Mr. TIERNEY. It is interesting, this is my own perspective, the Newspaper Preservation Act of 1970—if your roof lasted for 40 years, you would think that was pretty good. So I don't think it is a failure in that it did help in the 1970's, 1980's, and 1990's, and they don't seem to be working as well now. The issue now isn't so much preserving two newspapers in most towns, but it is preserving the one.

And so I think that is—what we need is a period of time—we don't need any subsidies or anything like that, although that is wonderful to have them but I think it is problematic in this, and then you will have a lot of people saying, "Me, too. Me, too." But we provide something unique to our community, where the source of alt-journalism, television journalism, everything else springs from what we do in our communities, and what we are asking for is the ability—and we all agree that journalism should be saved and we play a unique role. So what we are just asking for is a period of time, perhaps it is 18 months—and I am not an expert on this, so I am probably speaking out of line in terms of the industry—but where there could be discussions which would then be reviewed with the Justice Department on some basis. So it is not as if anything can be done unless it is approved, so that we could begin discussions among newspaper publishers.

And, again, I said earlier, ma'am, before you were in the room that here in Philadelphia we are a locally owned diverse group. We are not looking to build the next empire of newspapers. But I think if we could work with the folks in Dallas or Los Angeles and Chicago, we could come up with new products that would be national in scope which we don't have now, but online classified advertising, all the rest of it, to compete against some other players. And we are afraid to even begin to have those discussions. And I said before you got here, it is amazing; I have been in advertising for 20 years before this, the last 3 years, I have never seen an industry where people are paralyzed even with lawyers in the room to begin to scratch at the surface.

Ms. JACKSON LEE. Is that because of the regulatory structure that the newspapers are operating under?

Mr. TIERNEY. Exactly. Yes, Congresswoman. And I don't have a history of it, but I feel like some people must have really been spanked sometime in the past, because it is amazing how afraid people are to talk.

So if we could have a period of time where we could have some of these discussions, and again subject to the DOJ review and a final approval, I just think that would be one step without a subsidy or anything like this where the industry could begin to come—because we need to come up with our version of a Craigslist. And when it is Philadelphia for Free Rentals and then it is Dallas for Free Rentals, it is not a national brand. And I just offer that as one example. And that is how we can compete in our own way. But people are afraid to do that right now.

Ms. JACKSON LEE. Mr. Lunzer.

Mr. LUNZER. It is very difficult to answer, because before this hearing took place there really has not been much specificity about what people believe the current barriers are. I frankly don't see them. I do know that in the San Francisco Bay Area, where there was talk of a need for relaxation of antitrust, the only reason why they could have been requesting it is because they wanted to share journalists. And the fundamental fear that we have is the union that represents the vast majority of journalists—newspaper journalists in the this country is that if the solution is to further diminish these products by having fewer and fewer journalists and now use them across more publications and perhaps with broadcasts, we are going to have a dozen journalists working in one town chasing stories and you are not going to get the story. You are going to lose voice, you are going to lose diversity, you are going to lose a lot of things that matter.

So you need to encourage journalism. The crisis is real. And we want these people to be successful, but you have to be cautious about the way you go about encouraging it. We need the discussion, and I applaud you for having this discussion.

Ms. JACKSON LEE. Mr. Chairman, I know we are concluding. Could I get a quick answer from these remaining witnesses on just that question?

Mr. JOHNSON. If there is no objection.

Ms. JACKSON LEE. If they remember the question, which is the NPA and the structure that we have now. And thank you. That is important, Mr. Lunzer, for—with respect to the concept of what you do with the talent of journalists.

Yes, Mr. Scott.

Mr. SCOTT. I think that we have to evaluate a recommendation of relaxing antitrust standards in the context of policies to address the crisis in journalism. But before you came in, I suggested that we ought to convene a national journalism strategy. Mr. Gainor objected because he fears that as sort of a Big Brother intervention from the government in the business of the news. And I hear that concern and I share it. However, I think it is a historical—because the government has always been involved in the news business to some extent. And though the Constitution says do not abridge the freedom of the press, it does not say do not promote the freedom of the press. And in fact, many laws have been made in the history of this great country to promote the freedom of the press, including the Newspaper Preservation Act.

Ms. JACKSON LEE. So we are looking for answers, and you think we should be meeting to get that?

Mr. SCOTT. So I think, just to conclude that thought, convening a national journalism strategy and bringing together experts from all camps allows you to evaluate different proposals. One proposal is to relax the antitrust standards. Now, we have to evaluate against—that proposal against others and against the facts of what caused this crisis and what we are trying to achieve with a solution. So if what we are trying to achieve is more journalists and healthier business models and the diversity of business models to produce more and better news in the marketplace of ideas, we need to see whether that proposal meets that standard. In my view, on my analysis it does not meet that standard and should not be one

of the solutions on the table. But I think having a form in which to evaluate multiple policy options is a good idea.

Ms. JACKSON LEE. Thank you. Mr. Baker.

Mr. BAKER. I went into law teaching primarily because of my commitment to the first amendment and wanting to write about it, and I have been one of the strongest advocates of first amendment protections in the academy.

The first amendment in the area of the—let me refer to both your question about the first amendment and about antitrust and the Newspaper Preservation Act.

The first amendment in the press area mandates some things, allows a lot of things, and has been used perniciously to make a lot of irrelevant claims. It mandates that the government not engage in any type of censorship. When we earlier discussed whether or not Fox News was too connected to the Republican Party, I thought that, whatever your view on that subject is, that should be irrelevant under the first amendment. What we want out of the government is policies about how we can promote a media industry, not make judgments about the goodness or badness of particular publications.

It has been irrelevant but been used perniciously to claim lots of things. Newspaper publishers claim that the first amendment was the reason why they didn't have to pay their workers minimum wage. The Supreme Court slapped them down unanimously when they made that type of claim. It has also been used to claim that antitrust laws couldn't be applied to newspapers. The Supreme Court rejected that claim in a stirring opinion by Justice Black that said that the first amendment doesn't disable the government from protecting freedom of press from private combinations that would suppress it.

The history of the country has been involved with the government being involved with the media. What the first amendment should do is make sure that the forms of those involvements not be of an objectionable sort. And so what we want to see is the objectionable forms of involvement, in particular censorship, not be allowed, but that the role of the government from the country's founding has been intently involved——

Ms. JACKSON LEE. So we can't intervene on the antitrust if we are trying to save newspapers, we have a legitimate standing in that instance?

Mr. BAKER. You clearly have legitimate standing to try to save newspapers. Then the question becomes, would relaxation of the antitrust laws be an effective way to do that? If it is—you certainly would have the power to relax them for that purpose; however, the evidence seems to me—and this is what Mr. Lunzer suggested—is that the main result of relaxing antitrust laws historically has been and most likely now would be to reduce the key value of newspapers; namely, to fire or get by with less journalists.

When I hear Mr. Tierney, who as an analyst of the industry seems dead right, everything he says about the industry situation is right. But when he says this is an industry that is more scared to talk than people in any other industry, well, why would they be scared to talk? They live, for instance, under the same antitrust laws under which everybody else lives. In the first panel, Carl Sha-

piro suggested that if they think that the antitrust laws are interfering with them talking, they could just go to the Justice Department and ask for permission to talk. But there hasn't been any suggestion that he has made of anything that they would talk about that would in fact do anything that would save journalists. What they might do with some alleviation of antitrust laws is to make money for the companies as they engage in their firing of journalists.

So I see antitrust law reduction in this area as not accomplishing anything for the key value in the news industry, which is provision of news. It may do something to help some owners of businesses make more money, but not in a way that serves the public interest.

Ms. JACKSON LEE. Thank you.

Mr. GAINOR. Professor Baker makes the point that—raising the issue that you can intervene. The real question is, the better one: Should you? Should Congress get involved in trying to save newspapers?

It is like we are trying to catch lightning. The situation is it is moving so fast. Almost every major newspaper in the country has already switched from just print to now providing video on their Web sites. The escalation of technology is so rapid.

We are all sitting here. We love newspapers. With the exception of the Congresswoman, I would say we all love newspapers because we are old.

Ms. JACKSON LEE. Thank you.

Mr. GAINOR. I grew up with newspapers. Generally, the first thing I ever read was a newspaper.

Mr. JOHNSON. Mr. Gainor, speak for yourself, sir.

Mr. GAINOR. I gladly speak for myself, Congressman, on that point.

But we like the technology. But news is not a delivery mechanism. News is the people providing it, how they provide it. And we now have more news sources and more opportunities for people to read than ever before. Newspapers are now competing, instead of—their national coverage is actually competing with global national coverage.

So the situation is still being sorted out. To try to overreact and get involved in something that is just a rapid technological change I think would be a big mistake.

So when you ask, what should Congress do? I would say nothing.

Thank you.

Ms. JACKSON LEE. Mr. Chairman, thank you for your indulgence. I think that we have just seen sort of a mountain being built, and I think we have got to find a way to overcome it and answer a lot of questions. Thank you for this hearing. I yield back.

Mr. JOHNSON. Thank you, Congresswoman Jackson Lee. And I will say that there is no way that we can stop this "too big to fail" phenomena as it relates to the media and our precious first amendment right. There is just simply no way that I know of.

But at any rate, I want to thank the witnesses for your testimony today. And, without objection, Members will have 5 legislative days to submit any additional written questions which we will forward to the witnesses and ask that you answer as promptly as

you can, and then those responses will also be made a part of the record.

And, without objection, the record will remain open for 5 legislative days for the submission of any other additional materials.

Again, I want to thank everyone for their time and patience, and this hearing of the Subcommittee on Courts and Competition Policy, though long and complicated, has now come to an end.

[Whereupon, at 4:55 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

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Congress of the United States
House of Representatives
Washington, DC 20515

COMMITTEES:
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SUBCOMMITTEES:
COURTS, THE INTERNET, AND INTELLECTUAL PROPERTY
IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW
CRIME, TERRORISM AND HOMELAND SECURITY

HOMELAND SECURITY
SUBCOMMITTEES:
CHAIR
TRANSPORTATION SECURITY AND INFRASTRUCTURE PROTECTION
BORDER, MARITIME, AND GLOBAL COUNTERTERRORISM

FOREIGN AFFAIRS
SUBCOMMITTEES:
AFRICA AND GLOBAL HEALTH
MIDDLE EAST AND SOUTH ASIA

SENIOR WHIP
DEMOCRATIC CAUCUS

VICE-CHAIR
CONGRESSIONAL BLACK CAUCUS

CHAIR
CONGRESSIONAL CHILDREN'S CAUCUS

CONGRESSWOMAN SHEILA JACKSON LEE, OF TEXAS

STATEMENT BEFORE THE

SUBCOMMITTEE ON COURTS AND COMPETITION POLICY:

HEARING ON

"A NEW AGE FOR NEWSPAPERS: DIVERSITY OF VOICE, COMPETITION, AND THE INTERNET."

APRIL 20, 2009

Thank you, Mr. Chairman, for convening today's hearing. May I also take this opportunity to thank the Ranking Member, and to welcome our distinguished witnesses: Carl Shapiro, Deputy Attorney General for Economics, Antitrust Division, U.S. Department of Justice; Brian Tierney, Chief Executive Officer, Philadelphia Media Holdings; John Nichols, American Journalist;

Bernie Lunzer, President, The Newspaper Guild; Ben Scott, Policy Director, Free Press; C. Edwin Baker, Nicholas F. Gallicchio Professor, University of Pennsylvania; Dan Gainor, Vice President, Business and Media Institute, Media Research Center. I look forward to your informative testimony.

Since the beginning of our great nation, newspapers have been the voice of America. They have been an essential part of daily life in America, so fundamental to politics and culture and business, and so powerful and profitable in their own right, that it is easy to overlook what a significant historical contribution they have played in our nation. For the last two centuries, news in paper form has produced news in abundance at a cheap price to readers and without need of direct financial support. More than any other medium, newspapers have been our eyes on the state, our check on private abuses, our civic alarm systems. But whether they can continue to perform any functions at all.

Beginning at the start of the 21st century, the newspaper industry faced a severe threat to its existence from the expansion of

the internet, falling circulation and advertising profits, and a decline in readership, which can be attributed to the generational divide. The current economic crisis has deepened these difficulties, causing the state of newspapers to plummet into a noise-dive from which some may not recover. The damage is already substantial.

In this hearing, I am interested to explore the effect of the economy and new technology on journalism and the newspaper industry with a particular focus on remedies including relaxation of current antitrust laws and whether congressional action is necessary.

Newsroom employment at newspapers has plunged 11.3% in 2008, with the industry losing some 5,900 jobs, according to the American Socicty of News Editors (ASNE). It's the biggest drop the organization has recorded since it first started conducting its newsroom employment survey in 1978. The number of jobs losses more than doubled in 2008 compared

with 2007 when the industry shed 2,400 jobs. The number of newsroom jobs is now at a level last seen during the early 1980s.

Across the United States, as newspaper revenues declined, by the end of 2008, ad sales were down about 25 percent from three years earlier. According to a December forecast by Barclays Capital, advertising revenue will drop another 17 percent this year and 7.5 percent more the year after.

At the *Los Angeles Times*, the snowballing effect of cutbacks has been to reduce its newsroom by one-half--and that was before its parent company, Tribune, declared bankruptcy. Another company facing financial hardship, the McClatchy chain, which includes *The Sacramento Bee*, *The Miami Herald*, and twenty-eight other daily newspapers, has laid off one-quarter of its workforce in the past year. At the largest daily newspaper in New Jersey, *The Star-Ledger*, 45 percent of the editorial staff took buyouts in October when the owner, Advance Publications, threatened to sell the paper if its objectives were not accomplished.

While I represent the 18th Congressional District in Texas, which covers a large portion of Houston, the fourth largest city in the United States, it gives me great pause. What type of affect is this newspaper industry having on Houston and its two and a half million residents? On Texas and the Gulf region? And ultimately to our nation? Are we being responsible in our efforts to assist the newspaper industry? Are we doing enough as Members of Congress to ensure that proper laws and regulations are in place to ensure sustainability?

While Houston has seen a consistent sustainability between large newspapers such as the *Houston Chronicle*, we must also fight to protect the smaller newspapers such as the *Houston Defender, Houston Voice, African American News, Forward Times, The Leader, La Subasta*, and other entities, to ensure the unbiased and in-depth news coverage that our consumers deserve.

I look forward to hearing from each of our witnesses today, how we can stop guessing at what is happening to the newspaper industry and the economic stability, and start implementing

policies that allow business to move forward without damaging our economy further.

Nancy Pelosi
Speaker of the House

March 16, 2009

The Honorable Eric H. Holder, Jr.
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

I am writing about the conditions news organizations across the country are experiencing in their efforts to survive. This is prompted not only by the serious economic challenges facing my constituents in San Francisco, including *The San Francisco Chronicle* and other news organizations in the Bay Area, but also by major news organizations across the country.

I am sure you agree that a strong, free, and independent press is vital for our democracy and for informing our citizens, especially news organizations that devote resources to gathering news. Our newspapers and news media must be able to engage in investigative journalism and to analyze significant issues, so citizens are informed of public policy issues and public officials are held accountable. As a recent New York Times story on the threats facing the industry noted: "For more than two centuries, newspapers have been the indispensable source of public information and a check on the abuses of government and other powerful interests." (*See* Richard Pérez-Peña, *As Cities Go from Two Papers to One, Talk of Zero*, N.Y. Times, March 12, 2009).

Given the significance of this issue to our democracy, the House Judiciary Subcommittee on Courts and Competition Policy will soon hold a hearing and discuss its implications for antitrust policy.

Over the years, antitrust laws have been an essential protector of competitive choice in the newspaper business, both for keeping members of the public informed and for enabling advertisers to reach them. The antitrust laws are every bit as vital in this industry as elsewhere in our economy, and perhaps more so given the First Amendment issues that are also at stake. I am confident that the Antitrust Division, in assessing any concerns that any proposed mergers or other arrangements in the San Francisco area might reduce competition, will take into appropriate account, as relevant, not only the number of daily and weekly newspapers in the Bay Area, but also the other sources of news and advertising outlets available in the electronic and digital age, so that the conclusions reached reflect current market realities. This is consistent with antitrust enforcement in recent years under both Republican and Democratic

Administrations. And the result will be to allow free market forces to preserve as many news sources, as many viewpoints, and as many jobs as possible.

We must ensure that our policies enable our news organizations to survive and to engage in the news gathering and analysis that the American people expect. Thank you for your consideration.

with best regards,

Nancy Pelosi

NANCY PELOSI

Statement of Rupert Murdoch
Chairman and Chief Executive Officer, News Corporation

before the

U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Courts and Competition Policy

Hearing on "A New Age for Newspapers: Diversity of Voices, Competition and the Internet"

April 21, 2009

Statement of Rupert Murdoch
"A New Age for Newspapers: Diversity of Voices, Competition and the Internet"
Hearing Before the
Subcommittee on the Courts and Competition Policy and the Internet

Since the founding of our country, newspapers have been a cornerstone of our democracy. I submit this Statement today in the hope that Congress will take all appropriate steps to help ensure that newspapers continue to be a vibrant and important part of our free society for the foreseeable future.

There is no doubt that the newspaper industry is in dramatic decline. Because of the rapid growth of competitive sources for advertising, including Internet-based services, the newspaper share of the overall advertising market has been cut dramatically.

The industry has not had a positive year-over-year quarter for advertising revenues since the first quarter of 2006. Most disturbing has been the velocity of the decline, in the second half of 2008 and projected first quarter of 2009. In the fourth quarter of 2008 alone, classified advertising was off 35% -- including declines in the "Help Wanted" (-51.8%), Real Estate (-41.3%) and Automotive (-39.2%) categories. For the full year, classified advertising was off over $4 billion. While the first quarter 2009 figures are not yet available, an additional loss of 25-30 percent in advertising revenues is projected. The projected human toll is equally unsettling: likely over 8000 jobs lost in the newspaper industry since the beginning of the year. The other troubling trend, which began in 2008, is the sudden decline in the online advertising revenues, which were long thought to be the panacea for lost print revenues. For 2008, online revenues were down year over year, and represented less than 10 percent of total revenues.

While I applaud the rapid development of the Internet – and indeed my company has contributed to its growth – the notion that Internet blogs are the functional equivalent of

newspapers, and a suitable replacement for them, is laughable. Without the rigorous investigative journalism that is central to the newspaper business, our democracy would be seriously weakened. For instance, where would we be without the journalism of the *Wall Street Journal's* relentless investigation of Enron that led to the exposure of a massive fraud on the company's shareholders. Regular investigations, big and small, by local newspapers uncover fraud and waste in cities and towns across America. Without reporters who are dedicated to rooting out the facts about such stories, and whose zeal and sources are checked by the editors in charge of a newspaper's accuracy and integrity, the public will lose their most reliable sources of information about their elected officials and their communities – international, national and local. Internet blogs are simply no substitute.

The current business model for newspapers -- both through print and online -- is unsustainable. So what can we do to save the industry? I have two suggestions.

First, the antitrust laws clearly need to be modified, along the lines first proposed by Speaker Pelosi in her March 16, 2009 letter to the Attorney General. No longer can we afford to take the naïve and outdated view that newspapers exist in a "separate market" from the media they in fact compete with, including TV, radio, cable and the Internet. Every community and individual currently enjoys the choice of almost countless competitive voices. More specifically, the antitrust laws must be relaxed to allow for newspaper mergers in markets where many other sources of news exist, and must also be modified to provide newspaper transactions that allow newspapers to survive. In addition, competition policy should foster innovative ventures between newspapers by providing antitrust exemption for newspapers to discuss and consider new, joint business models that will help save newspapers. Newspapers should have the flexibility in the same or nearby markets to combine certain operational functions, so long as journalistic and editorial functions are kept

separate and competitive. For most newspapers, this type of cooperation will enhance their viability. Relaxation of current antitrust restrictions on newspaper combinations and cooperative ventures is the best hope for saving newspaper voices that will otherwise go silent.

Second, Congress should enable newspapers to obtain fair compensation when their content is used online for someone else's commercial gain. Internet companies are putting newspapers' expensively collected and edited content on the Internet without any compensation as they vie for readers' attention. This needs to change. Congress can help us create a sustainable economic model by modifying existing copyright laws to ensure we have the legal ability to fully monetize our content.

This is similar to the era when cable systems took television stations' signals without permission or compensation and resold them to their subscribers. In the 1992 Cable Act, Congress stepped in to protect the future viability of the broadcast business by giving stations the right to demand compensation for the retransmission of their signals – hence the birth of retransmission consent.

The viability of another media segment – newspapers – is now being threatened, and I urge Congress to take the steps necessary to prevent the decline of this critical pillar of the Fourth Estate. Only by relaxing the antitrust laws and ensuring that newspapers are fairly compensated for the commercial use of their content can this industry develop an economic model that will allow journalistic enterprises to continue to play their time-honored role in our free society.

Karen Guest
Vice President, Chief Legal Officer
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April 24, 2009

Honorable Henry C. Johnson
Chairman
Subcommittee on Courts and Competition Policy
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

It has come to my attention that page six of the written testimony of Brian P. Tierney, Chief Executive Officer of Philadelphia Newspapers, LLC, before the Subcommittee on Courts and Competition Policy at its April 21, 2009, hearing included the statement that "Lee Enterprises . . . filed for bankruptcy in recent months."

Mr. Tierney's statement is incorrect. In fact, Lee Enterprises has not filed for bankruptcy. I respectfully ask for this letter to be made part of the record of the April 21 hearing.

Thank you.

Very truly yours,

Karen Guest
Vice President and Chief Legal Officer

Princeton University

Do Newspapers Matter?
Evidence from the Closure of *The Cincinnati Post*

by
Sam Schulhofer-Wohl
Princeton University and NBER

and Miguel Garrido
Princeton University

Discussion Paper #236

March 2009

Discussion Papers in Economics

Woodrow Wilson School
of Public and International Affairs

Do Newspapers Matter? Evidence from the Closure of *The Cincinnati Post*[*]

Sam Schulhofer-Wohl[†] and Miguel Garrido[‡]

March 13, 2009

Abstract

The Cincinnati Post published its last edition on New Year's Eve 2007, leaving the *Cincinnati Enquirer* as the only daily newspaper in the market. The next year, fewer candidates ran for municipal office in the suburbs most reliant on the *Post*, incumbents became more likely to win re-election, and voter turnout fell. We exploit a difference-in-differences strategy – comparing changes in outcomes before and after the *Post*'s closure in suburbs where the newspaper offered more or less intensive coverage – and the fact that the *Post*'s closing date was fixed 30 years in advance to rule out some non-causal explanations for these results. Although our findings are statistically imprecise, they demonstrate that newspapers – even underdogs such as the *Post*, which had a circulation of just 27,000 when it closed – can have a substantial and measurable impact on public life.

[*]We are grateful to employees of *The Cincinnati Post* and the E.W. Scripps Co., several of whom requested anonymity, for helpful conversations. They are not responsible in any way for the content of this paper. We also thank Alícia Adserà, Anne Case, Taryn Dinkelman, Bo Honoré and Jesse Shapiro for valuable suggestions. Miryam Hegazy and Tony Hu provided excellent research assistance.

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"Give light and the people will find their own way."

– motto of the E.W. Scripps Co., owner of *The Cincinnati Post*

1 Introduction

A century ago, 689 cities in the United States had competing daily newspapers; at the start of this year, only about 15 did, but one of those has already lost its second newspaper, and two more will likely become one-paper towns within days.[1] Many monopoly newspapers are also struggling financially. The decline in competition and in the newspaper industry as a whole has prompted concern that the nation is losing a crucial source of information about public affairs. In the words of one observer, "More of American life will occur in shadows. We won't know what we won't know."[2]

This paper offers a case study of the consequences of closing a newspaper. *The Cincinnati Post* published its last edition Dec. 31, 2007, leaving the *Cincinnati Enquirer* as the only daily newspaper covering Cincinnati and its suburbs in southern Ohio and northern Kentucky. The closing was particularly important in the northern Kentucky suburbs, where the *Post* historically dominated circulation and, as we document, provided more than 80 percent of the combined local news coverage in the two papers. We use a difference-in-differences strategy to show that the closing of the *Post* reduced the number of people voting in elections and the number of candidates for city council, city commission and school board in the Kentucky suburbs, and raised incumbent council and commission members' chances of keeping their jobs. Our analysis does not include any communities in Ohio, which has not held regular

[1] The 1909-1910 figure is from Busterna and Picard (1993). Today's precise count depends on the definition of competing newspapers. Cities with major competing, separately owned dailies include Boston; Charleston, W.Va.; Chicago; Detroit; Fort Wayne, Ind.; Honolulu; Los Angeles; New York; Salt Lake City; Seattle, where Hearst Corp. plans to sell or close the *Post-Intelligencer* this month; Trenton, N.J.; Tucson, Ariz., where Gannett Co. plans to sell or close the *Citizen* by March 21; York, Pa.; and Washington. Denver fell off the list Feb. 27 when the *Rocky Mountain News* closed.

[2] Tom Rosenstiel, director of the Pew Research Center's Project for Excellence in Journalism, quoted in Starr (2009).

municipal elections since the *Post* closed. We emphasize that because the Kentucky sample is small, our results are subject to substantial statistical uncertainty. In addition, because the *Post* closed less than two years ago, we can calculate only short-run effects. We are circulating the results now because of intense public interest in the state of the newspaper industry. We plan to separately analyze outcomes in Ohio after that state's November 2009 municipal elections.

Our results shed light on two important public policy concerns. First, our findings suggest that even a small newspaper – the *Post* sold about 27,000 copies daily in 2007, compared with 200,000 for the *Enquirer* – can make local politics more vibrant. Although competing publications or other media such as TV, radio and blogs may take up some slack when a newspaper closes, none of these appears so far to have fully filled the *Post*'s role in municipal politics in northern Kentucky. Our findings confirm the fears of community leaders such as Boone County Judge-Executive Gary Moore, who said on learning of the *Post*'s impending closure: "I'm very concerned about Northern Kentucky news getting to our constituents. The *Post* has done a wonderful job through the years of being the daily informant of what's going on in the community to our residents" (Duke, 2007). To the extent that our findings apply beyond Cincinnati, they also suggest that local politics will become less competitive after closures of the much larger second newspapers in cities such as Denver (where the *Rocky Mountain News* shut down Feb. 27) and Seattle (where the *Post-Intelligencer* is expected to close within weeks) or of monopoly newspapers in places such as San Francisco (where Hearst Corp. has threatened to close the *Chronicle* if it cannot cut costs).

Second, the *Post*, an afternoon newspaper whose weekday circulation fell nearly 90 percent in its last 30 years,[3] survived as long as it did thanks to an implicit government subsidy for newspaper competition. Under the Newspaper Preservation Act (1970), competing news-

[3]According to the *Editor and Publisher International Yearbook*, the *Post*'s Ohio and Kentucky editions had total Monday-to-Friday circulation of 246,323 in 1977. The decline was linear with time. The *Enquirer*'s weekday circulation in 1977 was 190,407.

papers that are in "economic distress" can obtain an exemption from antitrust laws and form a joint operating agreement (JOA) that charges monopoly prices for subscriptions and advertising, as long as the papers retain independent newsrooms. The *Post* and the *Enquirer* formed a JOA in 1977. In passing the act, Congress determined that the value for democracy of preserving independent editorial voices outweighed the potential deadweight losses from monopoly pricing.[4] As then-Rep. Spark Matsunaga, Democrat of Hawaii and a sponsor of the act, put it in House debate: "Let us make no mistake about it, we are here being forced into making a choice between preserving a free press as opposed to keeping the sanctity of the antitrust laws. In a democratic society such as ours the choice is obvious – the free press must be preserved" (Matsunaga, 1970). Despite the explicit congressional rationale for the Newspaper Preservation Act, and even though 27 JOAs have existed over the years, ours is the first analysis we know of to measure the political impact of preserving competition through a JOA.[5]

The JOA between the *Post* and the *Enquirer* is central to our empirical strategy. Figure 1 lays out the timeline of events. Like most JOAs, the Cincinnati agreement specified a terminal date, in this case Dec. 31, 2007. Unusually, though, the *Post* survived exactly until this date chosen 30 years in advance, and no longer. (Of the 19 other JOAs that have ended so far, 15 ended early when the owners decided that publishing two newspapers was unprofitable and closed one paper. The other four lapsed or were dissolved with both newspapers continuing to publish.) The *Enquirer*'s owner, Gannett Co., announced in January 2004 that it would not renew the agreement at the terminal date, suggesting that Gannett thought publishing two newspapers no longer maximized joint surplus. (If Gannett had merely thought that profits from going it alone would exceed its share of JOA profits,

[4]Newspapers in a JOA also combine their printing and delivery operations to exploit economies of scale, but publishers can obtain these savings without an antitrust exemption so long as they continue to compete in advertising and subscription sales.

[5]An existing literature investigates the effect of JOAs on newspaper content and profits (see, e.g., Busterna and Picard, 1993).

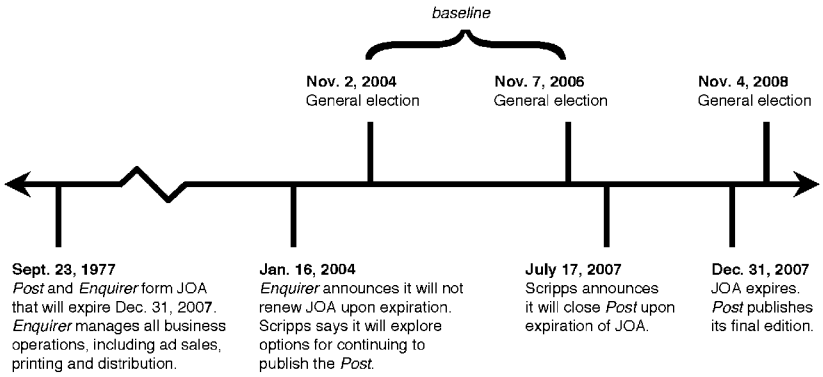

Figure 1: Key events for the empirical strategy.

it could have tried to renegotiate the agreement.) But the E.W. Scripps Co., owner of the *Post*, apparently preferred to keep publishing: Instead of agreeing with its partner to close the *Post* before the end of the JOA, as has been typical in other cities,[6] Scripps said it would explore "whatever options it may have to continue publishing newspapers in the Cincinnati market in some form" (E.W. Scripps, 2004). These options proved unattractive because, with the *Enquirer* managing the JOA's business operations, Scripps would have had to buy printing presses and hire advertising and circulation salespeople to keep the *Post* open. Still, Scripps took more than three years to announce that it would close the paper (E.W. Scripps, 2007).

The *Post*'s central role in Scripps' history may have motivated the company's reluctance. Company namesake Edward Willis Scripps made his reputation in the 1880s when he bought the *Post* and built it into what was, at the time, Ohio's largest daily (Baldasty, 1999; Stevens,

[6]Full disclosure: The first author worked from 1998 to 1999 at the *Birmingham (Ala.) Post-Herald*, a Scripps newspaper that participated in a JOA and later closed.

1969). The family-controlled media chain's headquarters remain in Cincinnati, and many corporate executives once worked in the *Post* newsroom. But even if Scripps' decision has an explanation other than historical sentiment, it seems unlikely that Scripps chose the *Post*'s exact closing date near the actual time of the closing.[7] Rather, the JOA partners picked a date 30 years in advance, and the *Post* closed on that date because it was the default outcome if the partners never changed the agreement.

Because the *Post*'s closing date was fixed so far in advance, changes in local politics after early 2004 – when Gannett announced it would not renew the JOA – cannot have caused the paper to close exactly when it did. Third factors such as short-run municipality-level economic fluctuations that might affect both local politics and the paper's viability are also less likely to be responsible for the timing of the closing, though Scripps perhaps would have kept the paper open if the towns it covered had experienced a sudden economic boom. Therefore, we can more plausibly attribute changes in political outcomes after the *Post* closed to the paper's closing instead of some other source. To help rule out the possibility that the political changes occurred for other reasons and only randomly coincided with the *Post*'s closure, we employ a difference-in-differences strategy, comparing changes in political outcomes before and after the closure in suburbs that received relatively more or less coverage from the paper. Suburbs that received less coverage serve as controls representing the likely change between 2004 and 2008 if the *Post* had never existed. We also account for the possibility that political outcomes and *Post* coverage both responded to the 2004 announcement on the paper's future by instrumenting for post-2004 coverage with 2003 coverage.

Previous researchers have also studied newspapers' political impact. Adserà et al. (2003) use cross-country and cross-state regressions to show that places with higher newspaper circulation per capita have less corruption. Trounstine (2009) collects data on 7,000 U.S. cities and finds that incumbent advantage is lower in cities that have their own daily or weekly

[7]The company has not publicly explained the timing of its decision to close the *Post*.

newspaper. Erikson (1976), Kahn and Kenney (2002), Knight and Chiang (2008) and many others show that newspaper endorsements influence voters' preferences and choices. In all these studies, there is no exogenous variation in newspapers' availability or content, either across communities or over time. The studies therefore run the risk that the correlations do not reflect a causal impact of newspapers: Unobserved third factors may influence both newspapers and electoral outcomes, or the causality may run from political preferences to newspaper content and readership rather than the other way around. Our difference-in-differences strategy helps reduce such concerns, though at the cost of limiting the analysis to a small number of municipalities in just one state.

The paper proceeds as follows. Section 2 summarizes our data, section 3 lays out our empirical strategy and results, and section 4 concludes.

2 Data

Our analysis covers all 48 incorporated municipalities in seven Kentucky counties: Boone, Campbell and Kenton, which formed the core of the *Post*'s Kentucky circulation area, as well as Bracken, Gallatin, Grant and Pendleton, which border the core counties.[8] We have data on the number of stories about each municipality in both the *Post* and the *Enquirer* in each year from 2003 to 2007; the results of every school board, city council and city commission election from 2004 to 2008;[9] and demographics from the 2000 census.

2.1 Newspaper coverage

We obtain the story counts by searching NewsLibrary (`www.newslibrary.com`), a widely used newspaper database. In the searches, we include the county name in addition to

[8] Our sample excludes the former city of Latonia Lakes, Kenton County, which was dissolved in 2006.

[9] We exclude mayoral elections because only three municipalities in our sample have held mayoral elections since the *Post* closed.

the municipality name to avoid counting irrelevant stories that would otherwise appear for municipalities with generic names such as Union. To see whether certain kinds of stories disproportionately include the county name, we picked two municipalities at random and performed searches with and without their respective county names. We found no salient differences in the content of stories with and without county names.

The *Post* published both an Ohio edition and a Kentucky edition, with some stories appearing in both editions. In general, the Kentucky edition provides a more accurate measure of coverage in Kentucky. However, every Kentucky-edition story appears in our searches for the city of Covington because the *Post*'s Kentucky reporters were based there. Therefore, for all municipalities except Covington, we count stories in the Kentucky edition. For Covington, we count stories in the Ohio edition and multiply by that year's average ratio in other municipalities of Kentucky-edition stories to Ohio-edition stories. (This ratio ranges from 6 to 10.)

We use the story counts to construct an index of the *Post*'s importance in covering each municipality: the fraction of stories about that municipality that appeared in the *Post*. This index is a useful measure of the *Post*'s role because, all else equal, communities where the *Post*'s share of coverage was higher lost more coverage when the *Post* closed. (We cannot base our analysis on circulation data because independent dealers delivered the *Post* and the paper had no centralized list of subscribers' addresses. Also, because broadcasters and bloggers often quote newspaper stories, the number of stories a paper publishes may matter more than the number of subscribers: One subscriber with a well-read blog or popular broadcast can multiply a story's impact many times.) The *Post*'s share of coverage is highly serially correlated: R-squareds in regressions of 2004 through 2007 indexes on the 2003 index range from 0.71 to 0.83. Thus the index measures relatively permanent differences in the *Post*'s importance across municipalities.

2.2 Political outcomes

News coverage potentially influences election outcomes in many ways. By revealing incumbents' misdeeds or making it easier for challengers to get their message out, a newspaper may reduce incumbent advantage. Newspaper stories could also raise interest in politics, inspiring more people to vote or run for office.

To measure these aspects of political engagement and competition, we obtained election records from county election supervisors for every municipality in the counties of interest. The records include the date of the election; the election type (general or primary); the name of the municipal body (for instance, City of Bromley or Covington Independent School District); the title of the elected office (for instance, city council member); the candidates' names and party affiliations (we find that virtually all candidates for local races are nonpartisan); the number of votes each candidate received; the identities of the winners; and the number of votes each voter could cast (some elections allow voters to cast multiple votes, corresponding to multiple seats).

Election records do not identify incumbents, so we determine whether a candidate is an incumbent by checking whether that candidate won the previous election for the same office. We verified a random sample of the results by contacting officeholders and found that our method was accurate. Because we do not have election data before 2004, we can identify incumbents only in 2006 and 2008. We therefore examine only city council and city commission elections, which are for two-year terms.

We use the election dataset to construct several measures of political engagement and competition. Our first measure is the estimated number of people who voted in each municipality's local races in the 2004 and 2008 general elections. The 2004 and 2008 elections should be more comparable than the 2006 and 2008 elections when examining voter turnout because 2004 and 2008 were presidential election years, while 2006 was not. In addition, school board elections are for four-year terms, so comparing elections four years apart guar-

antees that we are comparing races for the same office. Because election records do not show the actual number of voters, we construct our estimate in two steps. For each race on the ballot, we estimate the number of voters casting ballots in that race as the larger of the most votes received by any candidate or the ratio of total votes cast to the number of votes allowed per voter in that race. We then estimate the number of voters in the election by the maximum across races of the number of voters in each race. There is no municipal-level data on voting-age population after 2000 for the small suburbs in our sample, so we use the number of voters as a proxy for turnout.

Our second measure is the ratio of candidates for office to seats up for election. For each municipality and year, we count the people whose names appeared on a primary or general election ballot. We divide this number by the number of seats up for election. As with the number of voters, we construct this variable for 2004 and 2008.

Our third measure is the fraction of seats in a municipality that incumbents win in a given year. We measure incumbent advantage by the fraction of seats won by incumbents rather than by the difference in probabilities of winning for non-incumbents and incumbents conditional on running because unpopular incumbents might not seek re-election; in that case, incumbents who appeared on the ballot would have a high probability of winning even if voters were, in effect, throwing out many other incumbents.

2.3 Describing the data

Table 1 gives summary statistics. The municipalities range in size from the city of California, voting-age population 55 in 2000, to Covington, voting-age population 32,151. The *Post* dominated coverage of the Kentucky suburbs, publishing 84 to 87 percent of total stories in each year. But there was substantial variation in the *Post*'s importance across municipalities, with the two papers splitting coverage of some places roughly equally and the *Post* publishing 100 percent of stories about other places. The data on incumbent

Table 1: Summary statistics ($N = 48$ municipalities).

Variable	mean	s.d.	min	max
Enquirer articles				
2003	37.1	38.7	1	154
2004	36.2	40.9	0	163
2006	24.4	28.2	0	128
Post articles				
2003	173.3	208.0	7	1,310
2004	200.2	220.3	14	1,361
2006	160.6	198.1	8	1,270
Post share				
2003	0.82	0.11	0.33	0.97
2004	0.86	0.09	0.55	1.00
2006	0.87	0.11	0.47	1.00
Fraction of seats won by incumbent				
2006	0.63	0.21	0.00	1.00
2008	0.73	0.18	0.33	1.00
change	0.10	0.25	-0.33	1.00
Voters				
2004	1,610	1,995	20	9,273
2008	1,700	2,106	29	9,203
log change	0.09	0.34	-0.32	1.98
Ratio of candidates to seats				
2004	1.41	0.39	1	2.83
2008	1.36	0.38	1	2.71
change	-0.05	0.38	-0.83	1
Voting-age population, 2000	3,959	5,728	55	32,151
Voting-age percent black, 2000	1.2	1.7	0.0	8.8
Voting-age percent ages 18-34, 2000	31.9	5.7	21.1	50.0

advantage and the ratio of candidates to seats begin to tell our story about the *Post*'s impact: On average, incumbents were more likely to win and the ratio of candidates to seats was lower after the *Post* closed than before. Our task in the next section is to demonstrate that other factors that may have changed around the time of the *Post*'s closure did not cause the differences in incumbent advantage and ratio of candidates to seats. The data on voters

go the other way: More people voted after the *Post* closed than before. However, the 2008 presidential election had unusually high turnout. We show below that, controlling for the overall change in turnout, the number of voters fell in municipalities where the *Post* had dominated coverage.

3 Empirical strategy and results

Our basic model for the effect of *Post* coverage on an outcome y_{it} in municipality i in year t is:

$$y_{it} = \alpha_i + (\theta_0 + \mathbf{x}_i'\boldsymbol{\theta}_2)t + \theta_1 postshare_{it} + \epsilon_{it}, \tag{1}$$

where *postshare* is the *Post*'s share of all stories about the municipality, $\mathbf{x}_i$ represents demographic characteristics of the municipality and ϵ_{it} is all factors other than *postshare* that affect the outcome. The coefficient θ_1 represents the effect of an increase in the *Post*'s coverage share on the outcome. If we interpret *postshare* as a proxy for the importance of the *Post* to a particular community, a positive value of θ_1 implies that outcome y was higher in communities where the *Post* played a larger role. Closing the *Post* sends *postshare* to zero, so θ_1 is also the effect of closing the *Post* in a community that got all its coverage from the *Post*. We use the *Post*'s share instead of the total number of stories in the *Post* because larger municipalities may tend to have more stories in both newspapers. Taking the ratio of stories in the two papers controls for the overall level of coverage while limiting the number of regressors, which is desirable because we have only 48 observations.

Our model allows municipalities to differ both in the initial level of their outcomes (α_i) and in trends in these outcomes over time ($\mathbf{x}_i'\boldsymbol{\theta}_2 t$). For example, some municipalities might generally have higher turnout or might have demographic characteristics that led to larger changes in turnout between 2004 and 2008. Because $postshare_{i,2008}$ is zero for every munici-

pality, we can take first differences of our model to obtain

$$y_{i,2008} - y_{i,2004} = \theta_0 + \theta_1 postshare_{i,2004} + \mathbf{x}_i'\boldsymbol{\theta}_2 + (\epsilon_{i,2008} - \epsilon_{i,2004}). \tag{2}$$

Equation (2) represents a difference-in-differences strategy: It compares changes in outcomes across years in municipalities with different levels of *Post* coverage.

The error term in (2) is $(\epsilon_{i,2008} - \epsilon_{i,2004})$. Hence ordinary least squares estimates of θ_1 based on (2) will be biased if changes in other factors $(\epsilon_{i,2008} - \epsilon_{i,2004})$ are correlated with the initial level of *Post* coverage. The fact that the *Post*'s closing date was set 30 years in advance helps rule out many sources of correlation. For example, if Scripps had chosen the closing date based on economic trends around 2007 in the communities where the *Post* was strong, and if local economic trends were correlated with local political trends, then the error term would be correlated with the *Post*'s share in 2004. Because Scripps appears not to have set the closing date based on contemporaneous economic trends, we think this type of correlation is unlikely to be a problem.

Other sources of correlation may remain, however. Although first-differencing removes any differences between 2004 and 2008 that affected all municipalities equally, it cannot remove differences between the two years that affected some municipalities more than others. Our leading concern is that Barack Obama's historic presidential candidacy in 2008 may have increased turnout among young or black voters. Kentucky and national exit polls showed that blacks made up a larger fraction of voters in 2008 than in 2004. National polls also showed a slight increase in turnout among the young, though Kentucky polls showed no such difference. (See National Election Pool, 2004 and 2008. The polls show no other significant differences between the 2004 and 2008 electorates in Kentucky.) Exit polls do not break down data by municipality, but if the statewide and national differences carried through to the places we study, and if *Post* coverage varied with the age structure or racial

composition of a community,[10] then *postshare* could be correlated with the error term in (2) even if *Post* coverage had no causal effect on turnout. We account for this possible correlation by including as regressors $\mathbf{x}_i$ in (2) the fraction of voting-age people who are black and the fraction who are ages 18 to 34 in the 2000 census.[11] While Obama's candidacy is an important difference between 2004 and 2008, other differences between the years may remain and may have interacted with demographics we do not observe. The possibility of such interactions is an important caveat to all difference-in-difference studies, including ours.

Another concern is that any unobserved factor ϵ_{2004} that affected politics in 2004 could also have prompted the newspapers to change their coverage, again producing a correlation between the error term and the *Post*'s coverage share in 2004. If political behavior and *Post* or *Enquirer* content both changed after 2004 in anticipation of the JOA's end, we could also find a spurious correlation. To guard against these possibilities, in some specifications we instrument for the *Post*'s 2004 share with its 2003 share, which will be uncorrelated with ϵ_{2004} if the errors are serially uncorrelated. Instrumenting for the *Post*'s share also can reduce attenuation bias in the estimate of θ_1 if the *Post*'s share in any given year is a noisy measurement of the paper's true long-run importance in a community. The measurement error in $postshare_{it}$ appears to be classical: $\text{corr}(postshare_{it}, postshare_{is})$ does not depend on $t - s$ for $t \neq s$, consistent with a model where $postshare_{it} = trueshare_i + u_{it}$ with i.i.d. u_{it}.

Finally, ordinary least squares and instrumental variables models may be misspecified because each of our dependent variables has only a limited range. For example, no matter how low the local level of interest in politics, someone always runs for office, so the ratio of candidates to seats is left-censored at one; we account for the censoring in some specifications by estimating (2) with the identically censored least squares (ICLS) panel data

[10] We find marginally statistically significant evidence that the *Post*'s share was higher in communities where a larger share of the voting-age population is black or ages 18 to 34.

[11] We measure the fraction who are ages 18 to 34 as of 2000, rather than the fraction who will reach ages 18 to 34 by 2008, because the number of teenagers in 2000 will be a poor predictor of the number of young adults in 2008 if different communities are particularly attractive to people of different ages.

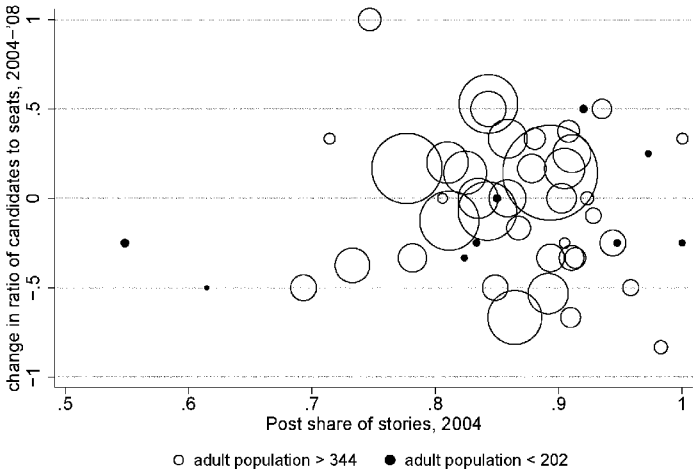

Figure 2: *Post* story share and changes in the number of candidates. Each observation is a municipality. The area of the circle is proportional to the municipality's voting-age population in 2000.

estimator of Honoré (1992). Related, no matter how big or small incumbents' advantage is, the probability of an incumbent victory cannot fall below zero or exceed one, so we employ the two-sided identically censored least squares (ICLS2) estimator of Alan et al. (2008) in some specifications. Last, the number of voters must be a positive integer; because the zero bound on number of voters never binds, OLS is unbiased, but a count model would be more efficient, and we estimate a Poisson conditional fixed effects model in some specifications. Unfortunately, these models do not let us use an instrument for *Post* coverage.

Figure 2 illustrates the regression in (2), for the outcome of ratio of candidates to seats. The general pattern is that municipalities with a higher share of *Post* stories experienced a larger drop in the competitiveness of elections, suggesting that the *Post*'s closure reduced competitiveness. However, a few municipalities with voting-age populations of about 200 or

fewer are outliers, and if one counts all municipalities equally, these outliers could suggest the opposite pattern – no change or a small increase in competitiveness after the *Post* closed. Similar patterns appear when we graph the other outcomes. We conjecture that voters in the smallest communities can easily learn about candidates, who are also their neighbors, without the aid of newspaper reporters; thus newspapers likely matter more outside the smallest communities. We also think it is reasonable to weight municipalities by voting-age population because we may be more concerned about a newspaper's impact in places where more people live. Because some readers may disagree, though, we also calculate unweighted estimates as well as estimates that exclude the smallest municipalities.

Table 2 presents the results.[12] On all three measures of political engagement and competition, we find indications that the *Post*'s closure made elections less competitive:

Incumbent advantage: In the weighted estimates using all methods, municipalities where the *Post* was more important experienced a greater increase in incumbent advantage after the *Post* closed. However, if we do not weight by voting-age population, the relationship has a smaller magnitude and the opposite sign. The estimated effect is highly statistically significant in the weighted IV specifications. The point estimate in these specifications is implausibly large – changing the *Post*'s share from one to zero would raise incumbent advantage by more than 100 percentage points. (Recall that the sign of θ_1 is the opposite of the sign of the regression coefficient in (2).) Notice, though, that the range of *postshare* is substantially less than zero to one; our estimates will not reflect nonlinearities in the effect of *postshare* outside the observed range. According to the weighted IV estimates, a one-standard-deviation increase in the *Post*'s share reduces incumbent advantage by 16 to 19 percentage points, still large but not impossible.

[12] To be conservative, the table reports the larger of the heteroskedasticity-robust standard error or the non-robust standard error for each coefficient. Given the small sample size, we do not attempt to account for spatial correlation.

Table 2: Effect of the *Post* on political engagement and competition.

	UNWEIGHTED						WEIGHTED					
	A. Change in probability that winner is incumbent											
Post share	-0.52	-0.53	-0.30	-0.30	-0.68	-0.71	0.82	0.64	1.90	1.65	0.91	0.75
of stories	(0.37)	(0.38)	(0.37)	(0.38)	(0.58)	(0.57)	(0.62)	(0.63)	(0.77)	(0.76)	(0.69)	(0.77)
R-squared	0.05	0.07	0.04	0.06	-	-	0.05	0.09	-	0.02	-	-
method	OLS	OLS	IV	IV	ICLS2	ICLS2	OLS	OLS	IV	IV	ICLS2	ICLS2
	B. Change in ln(voters in general election)											
Post share	-0.31	-0.28	-0.14	-0.07	-0.45	-0.34	-0.36	-0.20	-0.51	-0.31	-0.78	-0.31
of stories	(0.55)	(0.56)	(0.65)	(0.64)	(0.44)	(0.43)	(0.35)	(0.36)	(0.43)	(0.42)	(0.22)	(0.23)
R-squared	0.01	0.02	0.00	0.02	-	-	0.02	0.07	0.02	0.07	-	-
method	OLS	OLS	IV	IV	Poiss.	Poiss.	OLS	OLS	IV	IV	Poiss.	Poiss.
	C. Change in ratio of candidates to seats											
Post share	0.07	0.07	0.29	0.22	0.08	0.06	-0.24	-0.69	-1.02	-1.23	-0.32	-1.39
of stories	(0.65)	(0.67)	(0.72)	(0.72)	(0.75)	(0.73)	(0.96)	(1.08)	(1.36)	(1.12)	(1.31)	(1.46)
R-squared	0.00	0.00	-	0.00	-	-	0.00	0.11	-	0.10	-	-
method	OLS	OLS	IV	IV	ICLS	ICLS	OLS	OLS	IV	IV	ICLS	ICLS
N	48	48	48	48	48	48	48	48	48	48	48	48
controls	no	yes	no	yes	no	yes	no	yes	no	yes	no	yes

Standard errors (larger of heteroskedasticity-robust or non-robust) in parentheses. Panel A compares 2008 with 2006; panels B and C compare 2008 with 2004. *Post* share of stories is measured in the base year of the comparison, with the 2003 share used as an instrument for IV estimates. Weights are population age 18 and older in 2000 census. Controls are percentage of the population age 18 and older who are black and who are ages 18 to 34.

Number of voters: In all specifications, our point estimates show that relatively fewer people went to the polls after the *Post* closed in places where the *Post* was more important. A one-standard-deviation increase in the *Post*'s share is predicted to draw 1 to 8 percent more voters to the polls. The results are highly statistically significant in one of the weighted Poisson specifications but not statistically significant otherwise. Because our dependent variable is the natural logarithm of the number of voters, we can interpret our results as describing the effect on turnout: Changes in voting-age population, which is unobserved but is the denominator of turnout, will enter the error term of (2), and our estimates will be unbiased if the population growth rate is uncorrelated with the *Post*'s coverage share.[13]

Number of candidates: The weighted estimates show that relatively fewer people ran for office after the *Post* closed in places where the *Post* was more important. According to the IV estimates, a one-standard-deviation increase in the *Post*'s share raised the ratio of candidates to seats by about 0.1. A few of the coefficients are marginally statistically significant against a one-sided alternative. As with incumbent advantage, the relationship has the opposite sign and smaller magnitude in the unweighted estimates.

Controlling for race and age structure proves not to affect the results. In regressions not reported here, we controlled only for race and obtained similar results. The small sample size makes the dangers of specification searching particularly high, so we deliberately did not experiment with other controls.

Table 3 investigates the effect of weights on our results by recalculating all of the estimates after excluding the nine municipalities with voting-age populations of 201 or fewer. (The next-smallest municipality has 345 voting-age residents.) The weighted and unweighted

[13] We cannot check this assumption about population growth because the Census Bureau has no population counts after 2000 for communities as small as those we study.

Table 3: Results excluding nine smallest municipalities.

	UNWEIGHTED						WEIGHTED					
	A. Change in probability that winner is incumbent											
Post share	-0.44	-0.42	0.32	0.35	-0.48	-0.46	0.94	0.77	2.20	1.98	1.01	0.86
of stories	(0.85)	(0.85)	(0.65)	(0.73)	(0.84)	(0.86)	(0.67)	(0.69)	(0.83)	(0.86)	(0.71)	(0.85)
R-squared	0.02	0.04	-	-	-	-	0.06	0.10	-	0.01	-	-
method	OLS	OLS	IV	IV	ICLS2	ICLS2	OLS	OLS	IV	IV	ICLS2	ICLS2
	B. Change in ln(voters in general election)											
Post share	-0.85	-0.86	-1.03	-0.95	-0.49	-0.38	-0.40	-0.24	-0.58	-0.39	-0.78	-0.31
of stories	(0.82)	(0.86)	(0.94)	(0.94)	(0.46)	(0.46)	(0.38)	(0.40)	(0.47)	(0.47)	(0.22)	(0.24)
R-squared	0.03	0.05	0.03	0.05	-	-	0.03	0.08	0.02	0.07	-	-
method	OLS	OLS	IV	IV	Poiss.	Poiss.	OLS	OLS	IV	IV	Poiss.	Poiss.
	C. Change in ratio of candidates to seats											
Post share	-0.98	-1.02	-1.54	-1.53	-1.37	-1.61	-0.30	-0.79	-1.23	-1.50	-0.39	-1.48
of stories	(1.17)	(1.24)	(1.54)	(1.52)	(1.50)	(1.68)	(1.04)	(1.16)	(1.51)	(1.26)	(1.44)	(1.59)
R-squared	0.03	0.03	0.02	0.03	-	-	0.00	0.11	-	0.10	-	-
method	OLS	OLS	IV	IV	ICLS	ICLS	OLS	OLS	IV	IV	ICLS	ICLS
N	39	39	39	39	39	39	39	39	39	39	39	39
controls	no	yes	no	yes	no	yes	no	yes	no	yes	no	yes

Standard errors (larger of heteroskedasticity-robust or non-robust) in parentheses. Panel A compares 2008 with 2006; panels B and C compare 2008 with 2004. *Post* share of stories is measured in the base year of the comparison, with the 2003 share used as an instrument for IV estimates. Weights are population age 18 and older in 2000 census. Controls are percentage of the population age 18 and older who are black and who are ages 18 to 34.

versions of each specification almost always have the same sign within the restricted sample, confirming that the main effect of weighting the data is to reduce the influence of a few small suburbs. This finding supports our conjecture that newspapers simply have a different impact in very small communities: Where the candidates and voters are neighbors, voters can get the news without a newspaper.

4 Conclusion

The logo of the E.W. Scripps Co., printed on the front page of all its newspapers, is a lighthouse. This paper describes what happened when one of Scripps' lights went out. *The Cincinnati Post* was a relatively small newspaper, with circulation of only 27,000 when it closed. Nonetheless, its absence appears to have made local elections less competitive along several dimensions: incumbent advantage, voter turnout and the number of candidates for office. We caution that although our preferred point estimates tell a compelling story, the results are statistically imprecise and sometimes sensitive to the treatment of very small municipalities. Further, our results cover only the Kentucky suburbs, because Ohio has not held regular municipal elections since the *Post* closed, and represent only the short-run consequences of the paper's closing. Future research could investigate whether political engagement and competition return to their pre-closure level in the long run.

Several other well-known newspapers have closed since the *Post* – the largest being Scripps' *Rocky Mountain News*, circulation 210,000, just last month – and more are in danger. Observers are energetically debating whether these closings matter: Do newspapers play a valuable, irreplaceable role in American democracy, or can new media fill the gap left when a paper closes? Starr (2009) argues that the newspaper industry's decline "raises practical questions for anyone concerned about the future of American democracy." On the other hand, after the *Rocky* closed, U.S. Rep. Jared Polis, Democrat of Colorado, said the

paper's demise was "mostly for the better" (Crummy, 2009). Whether our results support Starr's view or Polis' depends on how one values competitive elections. But if voter turnout, a broad choice of candidates and accountability for incumbents are important to democracy, we side with those who lament newspapers' decline.

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