PRESS COVERAGE OF THE JONBÉNÉT RAMSEY MURDER AND ITS LEGAL IMPLICATIONS: A DIALOGUE WITH JOHN AND PATSY RAMSEY AND THEIR ATTORNEY, L. LIN WOOD

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I. INTRODUCTION

The scenes of the six-year-old blonde girl, decked out in country-western attire, dancing across the stage in a talent pageant, are as recognizable today as her name—JonBenét Ramsey. The world was introduced to the little girl posthumously—the day after Christmas in 1996 when her lifeless body was discovered in a remote part of the basement in the Ramsey family home in Boulder, Colorado.¹ Gouged into the girl’s neck was a garrote—presumably the murder weapon—constructed from cord entwined with a broken wooden handle.² The discovery came after a seven-hour search that began as part of a kidnapping investigation³ and ended in what would become the most widely reported child-murder case⁴ since the 1932 kidnapping and killing of aviator Charles Lindbergh’s infant son.⁵ It is that reportage and the host of legal issues it raises that are the focus of this article.

The media coverage is worthy of legal analysis because the public watched for months in stunned fascination as news reports and commentaries unveiled the myriad tales of ransom notes,⁶ police missteps⁷ and allegations of family involvement in the slaying.⁸ Sprinkled amidst the usual conventions of a criminal investigation were the well-publicized verbal tugs-of-war between the Boulder Police Department and the girl’s parents, John and Patsy Ramsey.⁹ As this article makes

³ Id. at 13 (describing Patsy Ramsey’s 911 call at 5:52 a.m. on Dec. 26, 1996, in which she reported that a kidnapping had occurred). The girl’s body was discovered by her father, John Ramsey, and Detective Linda Arndt of the Boulder Police Department shortly after 1:00 a.m. that day. Id. at 29.
⁴ See Richard L. Fox & Robert W. Van Sickle, TABLOID JUSTICE: CRIMINAL JUSTICE IN AN AGE OF MEDIA FRENZY 133 (2001) [hereinafter FOX & VAN SICKLE] (observing that the “[l]evels of public familiarity with the Ramsey case may be unprecedented”).
⁵ See A. Scott Berg, LINDBERGH 237–75 (1998). Curiously, the Ramsey murder has some striking similarities to the Lindbergh baby kidnapping and murder case. Like JonBenét, the Lindbergh baby was snatched from his bedroom while his family remained in another part of the residence. Upon discovery, the family searched frantically throughout the house. A ransom note with frayed language was discovered at the residence. Further, an ill-equipped and inexperienced New Jersey State Police Department was thrust into the national spotlight in a case that would garner widespread publicity and public interest.
⁶ Charlie Brennan, Police Puzzle Over Girl’s Slaying, ROCKY MNT. NEWS, Dec. 28, 1996, at 5A (quoting a police detective as saying that the parents immediately began preparing to comply with the ransom note instructions).
⁷ See, e.g., Thomas, supra note 2, at 29–32 (describing how the police failed to secure the crime scene once JonBenét Ramsey’s body was found, thereby risking evidence contamination and the loss of potentially valuable clues).
⁸ Tom Kenworthy, Simpson ‘Dream Team’ Alumni to Aid Ramsey Murder Probe, Wash. Post, Feb. 14, 1997, at A2 (suggesting that police are “paying renewed attention” to the Ramsey family, including a request for more handwriting samples).
⁹ Marilyn Robinson & Mary George, War of Words Escalates Ramsey Standoff, DENV. POST, Apr. 25, 1997, at A1 [hereinafter Robinson & George] (describing the barrage of press releases from both the authorities and the Ramseys about the parties’ inability to agree upon conditions for the parents’
clear in Part IV, the Ramseys and their attorney, L. Lin Wood, propose a number of different legal reforms to rectify the resultant wrongs they perceive were caused by both the media and law enforcement officials.\textsuperscript{10}

The events surrounding this tragic killing were saturated with media coverage,\textsuperscript{11} replete with photographs of the little girl in various poses—what John and Patsy Ramsey would later term "cuisine against what they perceived as a mountain of misperceptions." Nevertheless, from tabloid reporters sifting into the massive media coverage,\textsuperscript{12} the Ramseys accused the Boulder authorities of orchestrating the "leaks and smears" that contributed to the insatiable public appetite for news—as well as gossip and rumors—concerning the case.\textsuperscript{13} Some members of the Boulder Police Department accused the Ramseys of the murder.\textsuperscript{14} Arguably, the focus on John and Patsy Ramsey was even more intense because they were portrayed and perceived as a wealthy family garnering special treatment from law enforcement.\textsuperscript{15} All of this attention catapulted this self-made businessman and his beauty queen wife into instant notoriety both as household names and as saleable commodities on newsstands everywhere. Moreover, from tabloid reporters sifting through garbage cans\textsuperscript{16} to a televised mock trial of these parents,\textsuperscript{17} the "soap opera" nature of this case firmly embedded the visage of this little girl into American popular culture. Worth noting, however, is the simple fact that neither John and Patsy Ramsey, nor anyone else, ever has been charged with the murder of JonBenét.

In 1999, the Ramseys began to strike back against what they perceived as a mountain of misinformation about their family. The self-styled "media lynching"\textsuperscript{18} prompted them to hire L. Lin Wood, the Atlanta-based attorney who rocketed to public prominence with his representation of Richard Jewell,\textsuperscript{19} the 1996 Centennial Olympic Park bombing suspect\textsuperscript{20} who was later cleared of any wrongdoing.\textsuperscript{21} Wood made a name for himself by filing lawsuits against the media organizations that wrongly fingered his client for the terrorist act that killed two people and injured dozens of others.\textsuperscript{22}

Moreover, Wood also earned a reputation as a masterful legal and public relations advocate whose disdain for the media evolved from his passionate belief that news organizations have breached the public's trust, leading to cynicism and the widening gap between the way the news media are perceived by the public and the way in which they would like to be perceived.\textsuperscript{23} Though critical of the media, Wood has figured out a formula for warning the media to leave his clients alone while simultaneously using the press to bolster the image of his clients as media victims. In May 2000, while discussing the Ramsey case, he told the newspaper industry trade publication \textit{Editor & Publisher} that "[t]he media] need[s] to understand, if you accuse my client of murder, you will get in trouble. And anybody saying anything about [the Ramsey’s son] Burke would be beyond irresponsible. It would be suicide at this point."\textsuperscript{24} Wood’s remarks were no idle threat, coming on the heels of four lawsuits he had filed against media organizations on behalf of now 14-year-old statements made by Tom Brokaw during a July 30, 1996 broadcast.

\textsuperscript{10} See infra notes 64–81 and accompanying text.

\textsuperscript{11} See generally Katherine Rosman, \textit{JonBenét, Inc.}, Brill’s Content, Feb. 2000, at 96 [hereinafter Rosman] (discussing the massive media coverage of the case).

\textsuperscript{12} See \textit{Ramsey, The Death of Innocence} 105 (2000) [hereinafter \textit{Ramsey}].


\textsuperscript{14} See \textit{THOMAS, supra} note 2, at 399–407.

\textsuperscript{15} See \textit{Fox & Van Sickel, supra} note 4, at 159.

\textsuperscript{16} See \textit{infra} note 54 and accompanying text.

\textsuperscript{17} Id. at 30.


\textsuperscript{19} See \textit{Eric Harrison, supra} note 18, at A1 (describing Jewell as "suspected of planting a pipe bomb that killed two and injured more than 100 spectators" in Centennial Olympic Park).


\textsuperscript{21} See generally Jim Moscou, \textit{Truth, Justice, and the American Tort}, Editor & Publisher, Nov. 27, 2000, at 16 [hereinafter Moscou] (profiling "the most dangerous media-plaintiff lawyers in the United States").


\textsuperscript{23} See Jim Moscou, \textit{New Wave of Suits Breaks}, Editor & Publisher, May 15, 2000, at 15.
Burke Ramsey, with the promise of more to come.25

Burke, who was nine at the time of his sister's death, has been named the plaintiff—not coincidentally—in the litigation against the media.26 As this article later describes, the Ramseys and their attorney maintain that Burke does not fit within the definition of a public-figure plaintiff and thus only will need to demonstrate in the libel actions that the media organizations were negligent27—not the elevated standard of actual malice28—in connecting him to his sister's murder.29

The Ramsey's crusade against the media received an overdue boost in 2001 when retired Colorado Springs Detective Lou Smit agreed to go public with information he had about the investigation. Smit had been hired three months into the murder investigation by Boulder District Attorney Alex Hunter.30 Eighteen months later, Smit parted ways with the Boulder authorities after they reportedly refused to consider his theory that an intruder—not the Ramseys—had killed JonBenét.31 In April 2001, Smit revealed his intruder theory publicly as part of a week-long series airing on NBC's Today Show.32

Whether the media blitz of the intruder theory resonates with the public remains to be seen. Regardless, it clearly aided the latest strike in the Ramsey family's counterattack against the media in the form of a $70 million lawsuit filed in June 2001 against Court TV.33 Once again, the case was filed on behalf of JonBenét's brother, Burke, claiming he was labeled a suspect on a program that aired on the cable network in November 1999—though Burke had been cleared as a suspect before the show was aired and re-aired.34

This article examines the JonBenét Ramsey murder case from a media law and constitutional law perspective. It explores whether the information and misinformation that flooded the nation's airwaves and the pages of newspapers and books polluted or bolstered the public's understanding of the case. The article features an exclusive interview—the first time such an interview was granted for law journal publication—of John and Patsy Ramsey and their attorney, L. Lin Wood. For approximately three hours, the authors questioned these interviewees about their motivation for suing the media,35 their hopes for a more responsible press,36 their suggestions for scaling back some of the current legal protections the media enjoy in defamation law,37 and the Ramseys' desire to gain back some of the reputation they believe was lost as a result of the relentless media attention to the case.38

II. THE INTERVIEW

The authors interviewed John and Patsy Ramsey on Friday, April 27, 2001, at the office of their attorney, L. Lin Wood, in Atlanta, Georgia. His law offices overlook the panorama of downtown Atlanta and its surrounding environment. The usual indicia of a law library—case reporters, treatises and practice guides—fill a wall of bookcases on one side of the room.

Wood participated in the interview and his comments are reflected in this Article. The three-hour interview was recorded on audiotape and transcribed verbatim by a professional secre-

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25 On May 8, 2000 and May 9, 2000, lawsuits were filed against the New York Post, Time Warner's website Time.com, the Windsor House Publishing Group and the tabloid Globe. Id.


27 Negligence is the "failure to act as a reasonable person would in similar circumstances. In libel law, the issue is whether a writer exercised reasonable care in determining whether a story was true or false." Kent R. Middleton et al., The Law of Public Communication 122 (2001 Update ed.) [hereinafter Middleton].

28 Actual malice is defined as the publication of a statement made "with knowledge that it was false or with reckless disregard of whether it was false or not." New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964).

29 See text infra Part V.


31 Id.


33 See JonBenét's Parents Sue Court TV, ATLANTA J. AND CONST., June 16, 2001; at 6H (describing the lawsuit based on a Court TV program called "Who Killed JonBenét Ramsey, Prime Suspects" and quoting Lin Wood for the proposition that "I believe it's a very strong case for Burke").

34 Id.

35 See text infra Part V.

36 See text infra Part III.C.

37 See text infra Part IV.C.

38 See text infra Part V.
tary. The authors made minor editorial changes to the transcript, mostly to correct syntax. Some of the questions and responses were reordered to reflect the themes and sections in this Article. Copies of the revised transcript were then forwarded to John and Patsy Ramsey and L. Lin Wood for their review in early June 2001. All three interviewees returned to the authors a signed statement verifying that the transcript accurately reflected their remarks. The interviewees, however, exercised no editorial control over the conduct of the interview or the content of this article. Furthermore, they did not review the Article before it was submitted for publication with this Journal.

The remainder of this Article is divided into three parts—Parts III, IV and V—followed by a brief analysis and conclusion. Part III describes the Ramseys’ feelings towards and beliefs about the news media and the coverage of their daughter’s murder. In particular, the Ramseys and Lin Wood discuss the blurring boundary between news and entertainment, the relationship between the profit motive of the press and the First Amendment protection accorded journalists, the role of the news media in shaping public opinion about the Ramseys’ alleged involvement—or lack thereof—in their daughter’s death, the news-gathering tactics employed by some members of the media during the murder investigation, and, perhaps most importantly, the meaning and purpose of the First Amendment’s protection of the press and whether the press is indeed fulfilling its proper role today as an entity cloaked with Constitutional protection.

Part IV then articulates and addresses a number of legal reforms proposed by the Ramseys and Lin Wood. In particular, Part IV describes their call for a new law that would severely limit the ability of law enforcement personnel to talk with journalists during an ongoing murder investigation, Patsy Ramsey’s proposal for official certification of journalists akin to that for attorneys and medical doctors, Lin Wood’s call for reforming the public-figure doctrine in libel law, the Ramseys’ beliefs about whether there should be a First Amendment right to speculate about the guilt or innocence of murder suspects, Lin Wood’s suggestion for a new legal distinction affecting First Amendment protection between news content and entertainment fare, and John Ramsey’s desire for the federalization of child murder laws.

Next, Part V focuses exclusively on the defamation lawsuits filed by Lin Wood on behalf of Burke Ramsey. As will become clear, the Ramseys have multiple motivations for filing these lawsuits. Finally, in Part VI, the authors critique and analyze some of the suggestions for reforms that the Ramseys and their attorney propose and ultimately conclude that some may run afoul of established constitutional doctrine.

III. THE MEDIA AND THE MURDER: REFLECTIONS ON PRESS COVERAGE, PROFIT MOTIVE AND THE FIRST AMENDMENT

Before examining the legal reforms proposed by the Ramseys and their attorney in Part IV of this article, it is important to understand the beliefs and feelings of the Ramseys that underlie their call for those changes. This Part of the article does that, allowing the Ramseys and Lin Wood to explain in their own words the problems that they perceive with the news media in the United States today. Part III thus might be considered a form of legislative history—a very personal history—for the Ramseys’ legal reform proposals.

A. The Trouble with Media Coverage

In this section, the Ramseys and Lin Wood candidly describe the reasons why they believe JonBenét Ramsey’s murder received wall-to-wall media coverage. The contributing factors suggested by the Ramseys and Wood are: 1) the timing of the murder during what Mr. Ramsey calls a “journalistic dead space;” 2) the transformation of law . . . abridging the freedom of speech, or of the press.” U.S. CONST. amend. I. The Free Speech and Free Press Clauses have been incorporated through the Fourteenth Amendment Due Process Clause to apply to state and local government entities and officials. See Gitlow v. New York, 268 U.S. 652, 666 (1925).

43 See infra notes 64–83 and accompanying text.

44 See infra notes 84–86 and accompanying text.
news content into entertainment fare;\textsuperscript{45} 3) the image-driven nature of the television medium that was saturated in this case by the videotape of JonBenét’s pageant competitions; 4) the horrific nature of the murder itself; and 5) the fact that the Ramseys were perceived as wealthy individuals.

The Ramseys also discuss their feelings about the news media, generally, as well as several individual journalists, specifically. In the process, John Ramsey critiques the practices of the news media today and provides his own definition of news, while Patsy Ramsey criticizes the news media for often doing little more than repeating information they were fed by law enforcement officials without seeking independent corroboration or questioning the sources’ motives.

INTERVIEWER: Either one of you can field this question. Why do you believe your daughter’s murder has attracted such massive and extensive media coverage?

JOHN RAMSEY: We’ve been told it’s for several reasons. One is that the period between the 25th of December and the 1st of January is kind of a journalistic dead space.\textsuperscript{46} We had just come off the O. J. Simpson fiasco, so all of these news organizations already had talking heads lined up. They had programs. They had people on the payroll to talk about the O. J. Simpson case. It went away and up popped our case, and they had nothing else to do.

Second, it was a horrible, horrific thing—a six-year-old child murdered on Christmas night in her home. That’s tragic. Now, I mean, there are a lot of tragic things that happen in the world, but had I been a reader of that story rather than a participant, it would have shocked me to my core. So I think those are some of the reasons.

I also think we were quickly made into people who sell newspapers. We were made to be people whom people like to hate. We were cast as mega-rich, flaunting the law and refusing to cooperate—all those things that get people’s blood boiling. None were true, but we were cast as a real life J. R. Ewing family, and people watched Dallas because they hated J. R. Ewing.\textsuperscript{47}

INTERVIEWER: Mr. Ramsey, you were quoted in the magazine Brill’s Content back in February 2000 as stating, “We were manufactured to be hated. We were the media’s product.”\textsuperscript{48} Could you explain why you believe the media “manufactured” you and your wife in this way?

JOHN RAMSEY: I think because, for the most part, the news media are in the entertainment business now.\textsuperscript{49} They’re not into factual, objective, accurate news reporting; they’re in the entertainment business.\textsuperscript{50} And we became a real-life, ready-for-prime-time soap opera that they didn’t have to pay anybody to write. In fact, you couldn’t have made this stuff up. There’s no writer who would’ve concocted such a bizarre chain of events that transpired in our case, from the corrupt cops to the careless media to Christmas night to you name it. I mean, if somebody would have brought a script like this to a soap opera, they’d say, “No,

\textsuperscript{45} For television news the “pressure to win ratings has resulted in the distinctions between news and entertainment becoming worryingly blurred.” John Langer, Tabloid Television: Popular Journalism and the ‘Other News’ 3 (1998).

\textsuperscript{46} Indeed, an in-depth analysis of the media coverage of the Ramsey murder published in Brill’s Content, a journal of media criticism, points out that the murder occurred “during the slowest news week of the year—the day between Christmas and the New Year, when most businesses and the federal government are in low gear.” Rosman, supra note 11, at 97.

\textsuperscript{47} John Ramsey’s theory on this point somewhat mirrors journalist Stacy Jones’ theory proposed in a 1997 article in Editor & Publisher in which she asked with regard to the massive coverage of JonBenét Ramsey’s murder, “[W]ere newspapers playing to society’s Dallas-syndrome: the elevation and capitvation of individuals with money, power and good looks?” Stacy Jones, Covering the Death of a Beauty Queen, Editor & Publisher, Feb. 1, 1997, at 8-9.

\textsuperscript{48} Rosman, supra note 11, at 98.

\textsuperscript{49} John Ramsey’s statement reflects the same sentiment—that “news was becoming entertainment and entertainment becoming news”—that was expressed at the inaugural meeting of the Committee of Concerned Journalists in June 1997. Bill Kovach & Tom Rosenstiel, The Elements of Journalism 10-11 (2001).

\textsuperscript{50} The blurring of news and entertainment sometimes is referred to as “infotainment”. Doris Graber, professor of political science at the University of Illinois at Chicago, summarizes the confluence of factors that produce infotainment: The media’s dilemma lies in the structure of the media system in the United States. It is predominantly a private business that receives its financial support largely from advertisers or audience fees. To stay lucrative, the general audience media must maximize the number of viewers. This often results in news formats geared to publics that are not well versed in political issues and not particularly interested in them. Generally, media organizations have responded to this challenge with more brevity, simplicity, and, if possible, entertaining angles to news stories. When they operate in this spirit of these guidelines, they often produce shallow infotainment. Doris A. Graber, Whither Televized Election News? Lessons from the 1996 Campaign, HARV. INT’L J. PRESS/POL., 112, 117 (1998).
nobody will believe this. This is too bizarre. Tone it down. Let's make it a little more real."

Patsy Ramsey: Coincidentally, our eighth-grade son has a year-long social issue that he's studying at school. His topic is privacy and the media. He has been collecting all kinds of information. His most recent report quoted a man named Max Frankel. He says that the mass media are caught up in all the technology with the Internet. They have to hurry up and get something out first without checking. He said they are creating these mini-melodramas all the time. The people in front of the camera live in fear of the person at home with the remote in their hand who might change the channel. So they're trying all the time to keep it scintillating and exciting so you won't change the channel on them. And he said we've lost—the media have become entertainers instead of protectors of the democracy that this country was founded upon. When a television show can captivate a country's attention watching, for six hours, O.J. Simpson ride around in a white Bronco, that is not enlightening journalism. That is voyeuristic, melodramatic entertainment.

Lin Wood: From the lawyer's perspective, that to me is the single most important key to why this story has legs. It's the visual image. If the media had not obtained the videotapes and photographs of JonBenét in her talent contests, I don't think this case would have had the legs that it's had. It's that visual image, edited to make it appear to be something dirty and abusive. That gave this case, despite all of its other obviously compelling characteristics, the interest from the television side and the tabloid side that kind of merged together with the leaks coming out of the Boulder Police Department to make this the biggest story. It's been going on now for almost five years. It's a bigger story than O.J. Simpson. Now, if you pull those videotapes out and get rid of the digitally enhanced and edited versions, then you are showing pictures of what this little girl's life really was like. Then it would have fallen a little more into the category of sad. Little children are often killed, but we don't spend five years talking about it.

Interviewer: So it is the image-driven part of it?

Lin Wood: I think the image-driven part is the main ingredient, combined with, to a lesser but nonetheless significant extent, that it was perceived to be the mega-wealth, Boulder mystique. Christmas night obviously came into play, but I don't think we'd be here talking without those visual images.

Interviewer: This question is for you, Mrs. Ramsey. If you could pick one word that best describes your feelings about the news media, in light of the coverage of your daughter's death, what would it be?

Patsy Ramsey: I guess the first word that comes to mind is disgraceful.

Interviewer: Why is that? Could you elaborate for me?

Patsy Ramsey: Because the media have made it into something without trying to find out the truth. They have just perverted what happened, with total disregard for trying to find out who murdered this child, and without doing investigative journalism. They were being fed information from the police. They just took it and ran with it without first questioning the credentials of their source. Who is this police officer? What's his agenda? Does he have an agenda?

John Ramsey: Is it Barney Fife or is it Sherlock Holmes?

Patsy Ramsey: Right—just taking it hook, line and sinker. But if the parents or somebody who might have some credible information speaks out, they won't use it because it's not scintillating enough or doesn't fit this melodrama that they're spinning.

Interviewer: So do you believe there's a preconceived story line into which all those facts were made to fit for the news media?

Patsy Ramsey: I don't think so. I don't think that the reporters said, "Okay, let's make this up." It's just that truth is better than fiction. My gosh,
they were even looking for pornography. "Bonus. Let's work on that one." It was better than they could make up.

INTERVIEWER: Are there any members of the news media—individual reporters, newspapers or networks—whose coverage of your daughter's death you actually admired or respected? If so, could you explain the reasons for that?

JOHN RAMSEY: Well, we've met some good journalists—people who I look at and say, "This is how they should be." Dan Glick and Sherry Keen Osborne, both of Newsweek, in Boulder. They looked at this skeptically and said, "Wait a minute. We are listening to Barney Fife here. Let's dig into this." And they dug into it. In fact, they probably did more investigative work on the case itself than the police did. And they came up with some incredible leads. They'd write a story and go to their editors, and it would get changed—just a few adjectives or a few words—and all of a sudden the whole impact of what they were trying to say gets changed. So Glick and Osborne were good and there were others like them.

But what they were writing wasn't selling to the masses. What was selling to the masses is the story that the police wove. We think it was intentional. We think it was under the guidance of the FBI. In fact, we've been told by insiders who said the strategy was orchestrated by the FBI. We think we even know who said, "Look, you've got to get a confession because it was obviously the parents. It's always the parents. Put such intense pressure on them that one of them will break. Assassinate their character in public. Leak anything you can to bring massive pressure on them." I mean, there's nothing like getting up in the morning and looking out to see eight satellite trucks parked in your driveway. It kind of ruins your day.

INTERVIEWER: How did you know that the stories were changed? Did the reporters tell you what they had originally given to the editors?

JOHN RAMSEY: Yes, we heard that a lot. Well, not a lot, but from the people who were really committed. This didn’t happen immediately because, early on, even the Sherry Keen Osbornes and Dan Glicks were buying the story line. Their character in public. Leak anything you can to bring massive pressure on them.” I mean, there’s nothing like getting up in the morning and looking out to see eight satellite trucks parked in your driveway. It kind of ruins your day.

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We’re not unique—I'm convinced of that.

INTERVIEWER: You've been talking about news, Mr. Ramsey. One of the most difficult questions that we ask our journalism students at Penn State University is to define the concept of news. How do you define news?

JOHN RAMSEY: Well that's a good question. I'm a layman, but most of the news we see on television is gossip. There's very little investigative journalism on television. I think we're better off in newspapers as compared to broadcast—for the most part. There are exceptions. But what matters to me is whether it's accurate, it's researched, it's as correct as it can possibly be at that point and it's unbiased. There's no spin. That's news.

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Now, whether I think it’s important or not is up to me as an observer. What we have seen in this case, almost without exception, is that it’s reckless, it’s gossip, it’s hearsay and it’s absolutely biased. The selection of a few adjectives can make all the difference in the world. There was a story a couple of days ago in the [Boulder] Daily Camera about Lou Smit and how he was releasing these photos. It said he had taken this information when he resigned, and the police had tried to get it back. Well, that sounds very altruistic. The fact

53 The question of defining news is hard because there is "no neat, satisfactory answer." Kathleen Hall Jamieson & Karlyn Kohrs Campbell, The Interplay of Influence: News, Advertising, Politics and the Mass Media 40 (5th ed. 2001). According to some scholars, "[t]he best answer seems to be that news is what reporters, editors and producers decide is news." Id.
of the matter is that he asked to take it. The police tried to get him to destroy it and were unsuccessful. Big difference.

INTERVIEWER: Sure, absolutely.

JOHN RAMSEY: The latter is the truth. The former was written because the kid writing it was the police beat reporter. He didn't want to offend the police or he wouldn't get his stories.

INTERVIEWER: He'd burn his sources?

JOHN RAMSEY: He'd burn his sources, so he had to tone it down.

INTERVIEWER: Mrs. Ramsey, was the death of your daughter news?

PATSY RAMSEY: I would say yes because you're alerting the public that there is a child murderer at large. Now, the parent could be a bad guy—that could be because you don't know who that is.

JOHN RAMSEY: I used to get so frustrated early on because the Boulder authorities were saying, "Well, there's no killer on the loose." I said, "Wait a minute. If you think we did it, we're on the loose. Come on guys, either way."

INTERVIEWER: How does the relationship with the audience come in? Isn't the audience somewhat complicit in all of this?

JOHN RAMSEY: We pay for the sport and the entertainment, you bet. We want to know. At some level, everybody's got a little bit of voyeur in them and they want to know the scoop, the gossip.

INTERVIEWER: Right.

JOHN RAMSEY: There are people who will shut it out and say, "That's just gossip." But the more the media feed on the process, the more they distort what is really news and what's just gossip. For example, the tabloids publish that a two-headed monster baby was born in Kansas. You know there can't be two-headed baby, but then, maybe so. I don't know.

INTERVIEWER: Geraldo Rivera went so far as to have a mock trial of your case. They said it was a civil trial, but it clearly focused on the alleged criminal activity of both of you. Did you see any of this contrived trial? Did you hear about it? How did it make you feel when you heard about it?

PATSY RAMSEY: I happened to bump into it. I hadn't watched TV in a long time, but that day I plopped down on the couch and flipped on the TV just as Cyril Wecht, this big expert from Allegheny County, was saying that the Boulder officials need to do what's right. And all of a sudden, I realized what's happening. They're talking about us. And I just lost it. I was crying. I went to bed for two or three days. I was just so upset about it.

JOHN RAMSEY: You can't have things like that and call yourself a civilized society.

LIN WOOD: Or at least call yourself a just society, on the question of deciding guilt or innocence of individuals.

INTERVIEWER: You used the term "voyeurism" earlier. Do you see us to be a nation of voyeurs?

PATSY RAMSEY: It's hard to make a blanket statement on that.

LIN WOOD: The National Enquirer counts itself as the nation's largest newspaper in terms of its paid circulation—about 1.5 to 1.8 million. If we're not a nation of voyeurs, we are at least a nation where there is a significant amount of voyeurism. That has to be true because it's not just this mass of people who are eager to see what tabloids have to say and the pictures that are contained therein. There's obviously another closely related group that may be intermingled that likes to sit around and watch the talking heads at night dissect the trial and reach a verdict on the first day of the trial.

So, clearly there's fuel there, and unfortunately, the media are going to keep it on the air as long as it sells and as long as the people watch. Now, when we get tired of it, as one might say we're about to get tired of Rivera, he's gone. If you're not going to watch him, then what he does is apparently not significant enough from a substantive standpoint that we're going to keep him around. If people stop buying tabloids, tabloids are gone.

INTERVIEWER: Now, portions of this interview will be published in a law journal article that we hope will be read by attorneys who defend the media in libel and invasion of privacy cases. If you could give those attorneys one piece of unsolic-

54 The Geraldo Rivera Show: The Ramseys on Trial, Part 1 (MSNBC television broadcast, Nov. 24, 1997) (transcript on file with the authors); The Geraldo Rivera Show: The Ramseys on Trial, Part 2 (MSNBC television broadcast, Nov. 25, 1997) (transcript on file with the authors).

55 See generally CLAY CALVERT, VOYEUR NATION: MEDIA, PRIVACY AND PEERING IN MODERN CULTURE (2000) (discussing the concept of mediated voyeurism and analyzing the cultural fascination with watching other people's lives).
ited advice regarding how to keep their clients out of legal trouble, what would it be?

PATSY RAMSEY: Don’t race to the deadline. It’s all about who gets there first and accuracy be damned. And I’m sure the attorneys would say great, because they want things vetted to death to try to avoid this kind of litigation. But if it’s one minute to press time or CNN is going to go with it or ABC at noon, then accuracy be damned.

JOHN RAMSEY: Well, I think the vetting has less to do with it. It has more to do with, “Are we covered so we can’t be sued?” Tabloids are famous for this. “Son kills sister.” Then, in small—very, very small—print, they add, “according to inside sources.” That’s the problem with tabloids—even though thinking, intelligent people don’t buy that stuff, hundreds of millions of people see it.

PATSY RAMSEY: And read the headlines at the checkout line. Classic headline. “Ramsey’s turn over Hi Tek boots.” It was on the AP somewhere, you know. There’s this Hi Tek boot print at the crime scene that is unidentified. Our investigators procured a pair of Hi Tek boots from a very interesting lead and then turned them over to the police department. Well, it sounds from the headline that they were our personal Hi Tek boots. The headline wasn’t, “Ramsey investigators find somebody else’s boots and give them to the police.”

INTERVIEWER: Do law enforcement officials and the media fall into the trap of using pop psychological profiles—that it had to be the parents or, in Richard Jewell’s case, a hero-turned-villain scenario?

LIN WOOD: The media are doing this for profit. You have to ask at what point in time have they crossed the line where they’ve got to be reined in. The First Amendment ought to cut both ways. It ought to give you greater protection when you’re exercising its legitimate purposes and give you less protection when you’re not. I know you will say there is a legitimate purpose in freedom of speech. But freedom of speech has never meant freedom from fault and freedom for defamatory speech.

PATSY RAMSEY: I’m fond of saying, “Which came first, the First Amendment or the Ten Commandments?” “Thou shall not bear false witness” or “thou shall not lie” came before the First Amendment. Just because you say “I have the freedom of speech” doesn’t give you the freedom to freely lie or freely bear false witness or testify against somebody.

JOHN RAMSEY: I’ve always been in business. What if I were in charge of NBC News? You want an audience. You want higher advertising rates. And who is the audience I’m selling to and what are they buying? I think that’s a given. It’s a sad commentary on our country when Jerry Springer is a popular television host and the National Enquirer is the most widely read newspaper.

If the media do violate, as in our case, laws of libel and slander, then we’ve got to have the ability to hold them financially accountable because
they’re a financial business. We can’t just slap their hand. They’re in the business of making money so the penalty has got to be money.

LIN WOOD: From my perspective, there’s no accountability for media wrongdoing. None. Zero. Let’s assume you’ve got a legitimate defamation case. File it and you’re met with the almost insurmountable barrier of the law in favor of the First Amendment and the media defendant. You’re met with an incredibly wealthy and powerful defendant who has hired the most skilled and powerful defense firm in town. How is that plaintiff ever going to have a chance at success? Even in the most clear cases, the media can beat you into submission. If you don’t have a high-profile case, you probably don’t have a case that should ever be filed. A number of people call my office regularly, and I have to tell them, “It’s too bad, but get on with your life. You can’t take on this battle.”

So where is the accountability? It’s not from self-regulation. It’s not from professional regulation. And it’s not found in the legal system.

I think it’s going to change, however, because it’s gotten so commercial and competitive. Now it’s not ABC News, but it’s Walt Disney. It’s not NBC News, but it’s General Electric. It’s not Fox, but it’s Rupert Murdoch’s entertainment empire. They are so far over the line in getting into people’s private lives, which is pure entertainment and voyeurism and almost perversion, that I think the courts are going to rein it back in. I really do.

C. News and Public Opinion

In this section, the Ramseys discuss the power of the media in influencing public opinion about whether the Ramseys were involved in the murder of their daughter. They question whether anything, including the filing of lawsuits against members of the media or the writing of their own book—_The Death of Innocence_—explaining their side of the story, can ever change the negative opinions that some people now hold of them. They also adamantly deny trying to manipulate the media through public relations tactics designed to affect public opinion.

INTERVIEWER: Let’s talk for a couple of minutes about your views of the media. Lin mentioned the documentary and I think he might have been referring to the University of Colorado journalism professor, Michael Tracey. He concluded that there was a “public lynching” of both of you by the media and it led to the feelings of so many people that you were guilty of this horrible act. Now that some time has passed and you’ve had the opportunity to get your side of the story heard, do you think that the public’s perception has changed?

JOHN RAMSEY: It’s hard to know. If you’re talking about the public in terms of the six billion people we have on this planet, probably not. But if you’re talking about the public of thinking people who have the ability to look at a piece of information and decide whether, based on the sources and all they know about it, it probably has. When you shout something from a roof top to a society that only listens to sound bites anyway, and then months later come back with intellectual information, it doesn’t carry the same weight. And so once that roof-top declaration is made, it’s very difficult to go back and hope to change the mass’s perception. It’s almost impossible.

PATSY RAMSEY: A one-hour documentary cannot change hundreds of thousands of aired minutes and words for three years.

INTERVIEWER: Have you resigned yourself to the fact that a number of people out there are always going to believe that you killed your daughter?

JOHN RAMSEY: Oh, absolutely.

PATSY RAMSEY: Yes.

JOHN RAMSEY: And it’s a significant number. Without question.

INTERVIEWER: There’s nothing that a lawsuit or anything else could ever do?

JOHN RAMSEY: No. What we’re trying to do is survive. I lost my job because of this, I’m convinced. I have not been able to reestablish myself in a career. I’m tainted. I’m trouble potentially, from a public relations standpoint, for any large company. So we’re just trying to survive. I don’t

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know how to change that, short of finding the killer. There are still people arguing about Charles Lindbergh—that he killed his child—so that group you don’t worry about. They’re always going to be there, but we know that probably finding the killer is the only thing that will restore some semblance of our good name.

INTERVIEWER: In a February 1997 article in The Nation, an associate professor at the Annenberg School for Communication at the University of Pennsylvania described what she called “the Ramsey family’s strategic use of publicity.” She is not the only person to make such an observation or to suggest that you have tried to manipulate the media either by releasing only that information that is beneficial to your side of the story or by hiring public relations specialists. How do you respond to such allegations?

JOHN RAMSEY: That’s uninformed and ignorant. We didn’t hire a public relations specialist. Our attorneys hired a guy to respond to the 300 calls a day they were getting in their office. They were overwhelmed. They brought this person in to respond. They said it was the single biggest mistake they ever made because it was so widely misinterpreted.

We lost a child. We lost everything. We weren’t interested at that point in anything other than getting our child back. To suggest that we had a media strategy is nonsense—absolute utter nonsense. I couldn’t have cared less. At that point, I didn’t even care that the police were trying to put us in the gas chamber. That didn’t matter.

PATSY RAMSEY: What was quoted there?
INTERVIEWER: Her quote was “the Ramsey family’s strategic use of publicity.”

JOHN RAMSEY: It scares me that someone like that is teaching our children.

INTERVIEWER: Let’s turn to your book. Why did you write The Death of Innocence? What was the point of it?

JOHN RAMSEY: To tell our story as only we could tell it. There had been so much misinformation, so many things written that were wrong. We wanted one place where it was all down on paper so, 25 or 50 years from now, somebody could read it and get our story. They weren’t going to get that on an interview with Barbara Walters or in an article in the Denver Post. We thought hard about it and the only way to do it is in book form. Sadly, in our country, people don’t read books anymore.

PATSY RAMSEY: You know, this country relies on the Katie Courics and the Wolf Blitzers and the little sound bites that they catch in between the kitchen and the TV room.

JOHN RAMSEY: They don’t have time mentally to read a book.

INTERVIEWER: Hasn’t a defamation lawsuit resulted? You’ve been sued.

JOHN RAMSEY: We’ve been sued twice so far because of the book, but they’re frivolous suits. We don’t lose a minute’s sleep over it.

INTERVIEWER: Do you find that kind of ironic that, in an attempt to defend yourself, you’ve been sued?

JOHN RAMSEY: We’re being sued for publicity purposes. These are publicity-seeking lawyers that are involved.

PATSY RAMSEY: I don’t think it was the plaintiffs’ idea to bring the suits. I think the media-hound attorneys called them up and said, “Hey, you want to do this?”

JOHN RAMSEY: It’s their 15 minutes of fame on the national scene.

D. Newsgathering Techniques: Trashy Tactics

In this section, the Ramseys discuss some of the more outrageous newsgathering tactics that they experienced during the investigation of their daughter’s murder.

INTERVIEWER: Some reporters went to considerable lengths to gather information in this case. Is there anything that reporters did that was particularly egregious in your view?

JOHN RAMSEY: Oh yeah.

PATSY RAMSEY: Oh, they would pose as people that they weren’t to try to get into places where

News, Mar. 29, 2000, at 27 (describing a $25 million libel suit filed by Darnay Hoffman, a New York attorney, who claims he was defamed in The Death of Innocence).
they would not have been otherwise permitted. When the tabloid reporter comes to my mother’s doorstep with a bouquet of flowers in her hand posing as an emissary of the late Princess Diana and wants to give her royal highness’s condolences to the grandmother of this murdered child, that is unethical.

LIN WOOD: We know that they threw a lot of money around. There’s no question they paid for photographs and alleged source information. We know that the Globe and individuals attempted to, literally, extort information to try to take $30,000 for a copy of the ransom note. We know that they went through the Ramsey’s garbage.

JOHN RAMSEY: They collected our trash regularly. We could’ve done away with the trash service.

LIN WOOD: They also bought, illegally, autopsy photos. We know that they obtained illegally the negatives of one of our investigators’ crime scene photos. Give me the list of what you would consider to be “sins” of a journalist or a member of the media and I think we’ll just go down and check every one of them off. I don’t know of anything that they didn’t do short of physically harming someone to get information or misinformation or create fictional information about the Ramsey’s.

PATSY RAMSEY: You know, it takes two to tango. If they were offering $30,000 for a ransom note, that’s pretty darn tempting.

JOHN RAMSEY: That gets back to how you clean this up from a civilization standpoint. You don’t do it by telling the media you can’t do it. They’re going to be as aggressive as they can. And there are going to be unethical and dishonest people in any profession. But our public officials can’t play that game and, if they do, they need to be held severely accountable if we’re going to be a civilized society.

E. The Meaning of a Free Press: Are Journalists Fulfilling Their Role?

In this section, Lin Wood gives his views about the meaning and purpose of a free press in the United States, and he suggests that the press and the government often form what he considers to be an “unholy alliance” when investigating individuals such as John Ramsey in connection with criminal activity. Wood also criticizes the practice employed by some journalists of relying on anonymous sources for information.

In addition, John and Patsy Ramsey discuss their views of the First Amendment, with Patsy Ramsey stating that her own right of free speech is jeopardized today by the public-figure doctrine, a topic discussed in more detail in Part IV of this article.

INTERVIEWER: Let me ask you, Lin, a question of constitutional importance. In particular, what does the First Amendment’s protection of a free press mean to you?

LIN WOOD: It means primarily the right of the press to monitor in a watchdog capacity the actions of government. When you say freedom of the press, the first thing that strikes me is the ability of our media to oversee government and public officials. I don’t jump out with the idea that freedom of the press means journalists have the right to say anything they want to about any private citizen in this country. And I think that’s what the founding fathers intended—they wanted to have a vigorous, aggressive press to monitor and keep the government in check.

INTERVIEWER: It sounded like, from the earlier parts of our interview, that too much of what has happened to the watchdog function and the checking function that you’re talking about has been eviscerated and the government is actually using the media when it selectively leaks information.

LIN WOOD: I refer to that, and I think we all do, as the unholy alliance—an unholy alliance of law enforcement combining with the media to, in effect, go after a private citizen, such as John Ramsey. You’re talking about the two wealthiest and most powerful entities in our society—the press and the government—joined together to go after these people. What chance do they have?

What you should have, instead, is the media raising the question of why are we getting these leaks from law enforcement. Why are we getting these public relations statements from law enforcement officials in a case where they haven’t brought any charges against these people? That’s what the media should’ve been writing about. What the media should be writing about now is an

investigation into the investigation to find out what was flawed, to find out why we still have no charges or resolution today. But we don’t have that.

JOHN RAMSEY: The press can’t afford to bite the hand that feeds it. We had a fairly well known journalist nationally tell us that she can’t say anything about the police because they’ll cut her off from information.

LIN WOOD: That’s exactly what it is.

INTERVIEWER: Who was that?

JOHN RAMSEY: Carol McKinley of Fox News.

LIN WOOD: But the come back from the media is always Watergate. The media will say, “We’ve got to have the ability to use confidential sources in law enforcement or government because look at what we did—we exposed Watergate.” I would like to find any article in the Washington Post that had an unidentified source as the basis for a charge of criminal conduct. That’s not how the sources were used during Watergate. The role of off-the-record, confidential, anonymous sources is as a legitimate investigative tool, but always be suspect when someone whispers something to you about somebody and they’re not willing to go on the record with it or be associated with it. Be suspect but use it if you believe it’s reliable from prior experience or the knowledge of this one person. Use it as an investigative tool.

Imagine that some police officer in Boulder goes to you and says, on a condition of anonymity, “I want to talk to you, off the record. We think John or Patsy Ramsey is involved in the case.” You’ve got two ways to go—take that information and really dig to see if there’s a story there or, alternatively, just put the headline out tomorrow that “High Official in Boulder Says Ramseys Probably Did It.” It’s the latter that happens and that’s not the proper use of a confidential source. That’s what the problem is and why what John says is right. It’s easy. Let’s just take what the sources say, claim they’re reliable and make that the story in the headlines instead of taking those sources and doing what the tabloids actually do a pretty good job of—good old-fashioned investigative work to follow up to see if you can generate a factual, on-the-record supportable story.

INTERVIEWER: Lin, are you saying that the tabloids are pretty good at investigative reporting? Are you saying that the mainstream media is either spectacularly bad at doing investigation or they’re just not doing it?

LIN WOOD: They’re just not doing it, but the ones that do are spectacularly good at it.

JOHN RAMSEY: That’s correct. I agree with that.

LIN WOOD: I really believe that.

INTERVIEWER: Are there individual journalists whom you particularly admire?

LIN WOOD: I’ve dealt with Felicity Barringer of The New York Times. I was impressed with her. I was impressed with Katherine Rosman, who wrote the article in Brill’s Content regarding JonBenét.61 The story substantively was well sourced and was a fair and accurate portrayal. I like Brill’s in general. Kevin Johnson of USA Today did some really good work. I will also tell you there are some very good journalists at the Atlanta Journal and Constitution. Unfortunately, it’s a small handful.

JOHN RAMSEY: Right.

LIN WOOD: It’s not that the profession lacks good people. I just think that somewhere along the higher echelons the message is being sent—either subtly or not so subtly—that we’re more interested in getting a headline or beating somebody else out than we are in spending a lot of our money paying you to go out and dig for months on end to try to get a story. Give us something quicker. Give us something you know that gets us out front. And so I think there are a lot of financial restrictions on the people who would like to do some real investigative pieces.

JOHN RAMSEY: We had an anchorwoman tell us, “I am scared to death every night on stuff like this. If I don’t report it and our competitor station does, my news director will be on my butt asking me why I didn’t report this even though it’s highly suspect.”

INTERVIEWER: In November 2000, Editor and Publisher magazine identified you, Lin, and a handful of other attorneys as among “the most powerful legal foes facing the press today.”62 Is this a role that you relish, as a kind of Darth Vader to a free press and First Amendment advocates?

LIN WOOD: I’m not really enamored with the title of someone who is going after the press. I am more comfortable being portrayed as someone who really is trying to represent victims. I admit there is somewhat of a David-versus-Goliath analogy in some of my cases. My career before libel law was, in large part, spent representing patients

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61 See Rosman, supra note 11.

62 Moscou, Truth, Justice, supra note 22, at 18.
in medical malpractice cases. Believe me, you’re up against some of the great minds, from the physicians’ standpoint to the defense attorneys’ standpoint, in an area where the law is stacked in favor of the doctor. The challenge is moving from that to dealing with reporters represented by even better lawyers and where the law is even more stacked in favor of the defendant. I like the challenge, but I like it because there’s a satisfaction for me professionally to be able to look over at people who are the underdogs and say that, despite all the odds, we’re getting something done. So that’s what I like. I don’t think I like being the Darth Vader—the guy who wants to get the media. But if it means getting the media to help these people, then I’m all for getting them.

INTERVIEWER: Do you now consider yourself to be against a free press or the First Amendment as it’s currently articulated by the courts?

LIN WOOD: I feel there are areas of First Amendment law that desperately cry out for change because of the different media environment in which we live today. It’s an era of instant communication, literally worldwide, where you can go to the Internet and see what is said about this family, the Ramseys. It’s unbelievable. There’s almost total anonymity on the Internet and really zero accountability under present law.63 I am not against a vibrant First Amendment. I do, however, think there are areas of the law within the First Amendment that must be changed. I believe that a First Amendment with legitimate accountability is a better First Amendment than a First Amendment with little or no accountability.

INTERVIEWER: And that’s what we have today, little or no accountability?

LIN WOOD: Absolutely.

PATSY RAMSEY: Carte blanche.

INTERVIEWER: Mr. and Mrs. Ramsey, has your thinking changed about the First Amendment and freedom of the press since the events of this case?

PATSY RAMSEY: The trouble is that the First Amendment we’re operating under today is a First Amendment for the few and not for everyone. We have no individual First Amendment rights for all the reasons we previously discussed. What happened to my First Amendment right as Patsy Ramsey mother, Patsy Ramsey citizen? I have a real problem with this public figure status. Just because Elizabeth Taylor becomes a public figure, does she lose her rights as Elizabeth Taylor, U.S. citizen?

INTERVIEWER: The system of justice has not produced the killer of your daughter yet and the system of justice now is making it difficult for you to exercise your First Amendment rights. What do you think about the system of justice in the United States?

JOHN RAMSEY: It stinks. It’s horribly, horribly flawed. Our bias is based on one police department in one little town. But I’m pretty convinced it’s not just in Boulder, Colorado that this problem exists. When the media get involved, they put intense pressure on the justice system to produce a result. That’s how they’re measured. And the police are incapable of telling the public, “We’re working on it.” The justice system in America today largely presumes guilt first and then it’s up to the individual to prove innocence. We actually had the Boulder police chief tell us, “You prove to me you’re innocent.”

LIN WOOD: I would disagree slightly with my client. I think that the system of criminal justice, as it pertains to John and Patsy Ramsey, worked as it’s written. They put this case to a grand jury and the system worked. The grand jury said no.

But here’s where the system fails—when it moves outside the legal system and into the court of public opinion. The media, aided by law enforcement, created a court of public opinion that had already decided, without knowing the evidence, that the Ramseys were guilty. So when the justice system worked, the media would not accept it. They tried to maintain the idea that, somehow, the rich and powerful got away with murder. They refused to accept the results of the evidence and the legal system, so they maintain to this very day that somehow, some way, the Ramseys had to be involved.

JOHN RAMSEY: When I say the system didn’t work, I think there are two elements. One is that the system did work in that it refused to charge us. On the other hand, the system failed in that we

63 See generally Anne Wells Branscomb, Anonymity, Autonomy, and Accountability: Challenges to the First Amendment in Cyberspace, 104 YALE L.J. 1639 (1995) (providing an excellent

analysis of issues of anonymity and accountability on the Internet).
were convicted in the court of public opinion—in society.

INTERVIEWER: In fact, Lin told the Rocky Mountain News in late 1999 that John and Patsy Ramsey are probably the most convicted individuals in recent history who have never been charged with any crime.

LIN WOOD: There’s no question about that.

IV. RECTIFYING THE WRONGS: PROPOSALS FOR LEGAL REFORM

The Ramseys and their attorney have articulated a need for legal reforms in several areas. Part IV of the article examines their feelings about the relationship between the news media and law enforcement. It also looks at their suggestion that journalism should be a licensed profession, similar to law and medicine. In another suggested change, Lin Wood proposes that libel law’s public-figure doctrine be scaled back to protect otherwise private citizens who must publicly rebut charges against them. John and Patsy Ramsey also draw a legal distinction between the right to speculate about a person’s guilt in private settings and through the mass media. Additionally, Lin Wood argues for a clearer distinction between news and entertainment and the scope of legal protections afforded to each area. Finally, John Ramsey proposes that the murder of a child be considered a federal offense, invoking the investigative arm of federal law enforcement.

A. Investigative Silence: A Police Non-Disclosure Proposal

John and Patsy Ramsey view the relationship between law enforcement and the media as one in need of serious reform. In this section, the Ramseys talk about their perceptions of how the police and the media work too closely—trading information that could jeopardize an investigation. This relationship, they argue, threatens to propel the criminal justice system into an entertainment mockery.

It is worth noting that throughout the JonBenét investigation and its aftermath, the Ramseys have been critical of how the police handled the case. They sparred early on with law enforcement officials investigating the murder of their daughter, refusing to meet with officers at police headquarters. Four months after JonBenét’s death, the parents still had not resolved their differences with police with respect to questioning and took to the media to express their frustration.

The Ramseys now argue for a new federal law requiring the police to refrain from speaking to members of the media at any time during an ongoing investigation. The new law—a law tantamount to a prior restraint on speech—would carry criminal penalties for failure to comply.

INTERVIEWER: The Boulder Police Department has been criticized on a number of fronts for its investigation of your daughter’s killing. Do the media have an obligation to report what they’ve learned about the police investigation and let the audience draw the conclusions that it will, or do they have other obligations, to investigate, for example?

PATSY RAMSEY: Personally, I don’t think the media should be as entwined with our justice department. I think it should be their responsibility to report what has occurred—a child has been found murdered in her home on Christmas day. Period. There needs to be a law in this country that our people in the justice system—the police departments and that whole branch of government—absolutely are forbidden to discuss publicly with the press an ongoing case. Period.

JOHN RAMSEY: That’s a no-brainer.

PATSY RAMSEY: That would eliminate all of this.

INTERVIEWER: Except for leaks.

JOHN RAMSEY: Well, if there’s a leak and you’re caught, you go to jail. It’s very simple. If we can achieve one good thing out of this, it’s that there’s a new federal law—a heavy-handed law—that tells each member of these 18,000 independent police departments in the country, “If you talk about the evidence in an ongoing case, then you go to jail.”

We can’t allow our public officials to discuss an ongoing case. This is one of my main subjects. We put that law in place, as a wise society, and it’s going to impact the media and what they can sell. That’s okay. We can expect our system to adhere

65 See Robinson & George, supra note 9, at A1.
66 Prior restraints are not looked on favorably by courts. See Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70 (1963) (holding that “[a]ny system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity”).
to principles of justice and that may affect the information flow.

INTERVIEWER: This is an interesting idea. When would that period end?

JOHN RAMSEY: When the trial's over.

INTERVIEWER: What if there is no trial?

PATSY RAMSEY: Well, then, when the case is closed.

JOHN RAMSEY: Our media system has gotten so intertwined with our justice system that we've used the justice process for entertainment in this country. It's no different than the Romans throwing Christians to the lions. It's sport. It's fun. We've got Court TV. We have the O.J. Simpson trial broadcast nationally. In our case, the police realized they had no case, so they went ahead and tried us in the court of public opinion. We had no right to defend ourselves. Certainly, if we ever were brought to trial, which we were quite honest to do, the system would be so biased against us at that point that it would take a stellar performance by the best lawyer money could buy to present evidence and convince people that they've been misled for four years. That's tragic in a system of justice.

INTERVIEWER: Do you think that the government uses the media?

JOHN RAMSEY: Oh, they play the media like a fiddle.

B. Who is a Journalist?: A Proposal for Journalistic Certification

In this section, the Ramseys describe what they believe to be a flaw in our media system because anyone may be called a journalist, regardless of that individual's preparation or competence. While professions like law and medicine require a requisite level of education and board certification, journalism follows no such mandate. The Ramseys argue that if journalists were certified in their craft, a more reasonable method could be devised for providing legal protections to this group.

PATSY RAMSEY: The trouble is we have this big basket that we throw everybody into and call them journalists. We don't throw people into a basket just because they have an opinion on the law and call them lawyers.

JOHN RAMSEY: Or doctors.

PATSY RAMSEY: There are professional codes of ethics for doctors and lawyers. They also have to be well educated. They must show some proficiency and be certified. But if you've ever taken tenth-grade English, you can dub yourself a journalist, by golly. Suddenly, you've got the likes of Don Gentile and Tony Frost at the Globe being called journalists just like Dan Rather.

JOHN RAMSEY: The problem is that tabloid reporters are afforded very strong protection under the law—the same protection that we've given legitimate journalists. I think the protection needs to be there. I've thought about this a lot. To put it all in the government's hands is a bad idea. We protect journalists because their fundamental role, in my mind, is to keep the government honest and to preserve democracy.

INTERVIEWER: Mrs. Ramsey, you talked about not being able to ascertain who is a journalist and who isn't. Do you think we should have some type of certification process for journalists?

PATSY RAMSEY: Absolutely. If you have a journalism degree, you are a journalist. Otherwise, you're a creative writer or something. It's just that simple.

JOHN RAMSEY: I have a little different opinion. I think that's going to be more difficult to do. I think the only answer is to hold errant journalism accountable under the law financially.

PATSY RAMSEY: It's the same thing. If Lin Wood,
as a lawyer, does something that flies against the legal profession, he’s disbarred. But if you have a journalist who slanders, libels or runs amok, the First Amendment protects him. And he’ll probably actually get promoted. He’ll probably get a bonus.

C. Revisiting the Public-Figure Doctrine: Proposed Changes for Libel Law

In this section, Lin Wood argues it is time to reform libel law, particularly with respect to the public-figure doctrine— the requirement that public plaintiffs must prove actual malice to recover damages in a libel lawsuit. Wood contends that allowing more people to sue the media under a negligence theory will effect greater media accountability. Wood also rebuffs the limited-purpose public figure status articulated in Gertz v. Robert Welch, Inc. He concedes, however, that under existing law John and Patsy Ramsey likely would be considered some form of public figure, but he, along with the Ramseys, argue that their attempt to rebut the charges against them—in short, defend their reputations—should not be enough to raise them to the category of a public plaintiff.

INTERVIEWER: How should libel law be changed to protect people like the Ramseys?

LIN WOOD: One area that is the easiest to rein in is the public-figure doctrine in libel law. The U.S. Supreme Court hasn’t addressed that issue since Gertz v. Welch 27 years ago. Things have changed dramatically since that decision in terms of how we communicate information. We have changed in terms of the media and who we consider to be journalists. I think the Court is going to rein it in. I think they’re going to make it less difficult for plaintiffs to recover damages, and the easiest way to do that is to enlarge the number of people who can sue under a negligence theory instead of the higher burden of actual malice. That means the courts will need to limit the number of people who become limited-purpose public figures. Guess what that does? That scares the media because there’s a big difference in looking at the case to determine whether you were negligent versus whether you acted with actual malice.

So how are we going to bring about greater accountability? We’re going to expand the number of people who can sue for negligent publication of false and defamatory statements. That means leaving the public officials where they are in having to prove actual malice. That’s where the journalist’s job really is—to oversee government.75 They have a right to be wrong when reporting on public officials because the need for close scrutiny is greater, but when it comes to public figures and limited-purpose public figures, including involuntary public figures,76 forget it. Forget that category. It’s a mistake.

I think taking a private citizen and converting that person into a limited-purpose public figure is nonsense. The idea that any private citizen can command the attention of the media and respond to charges as efficiently as could the President of the United States or a senator from the State of Georgia falsely accused or even a Hollywood celebrity is nonsense. It’s fiction. It says that Richard Jewell could have called up somebody and said, “Hey, I’m Richard Jewell and I want to speak for the United States or a senator from the State of Georgia falsely accused or even a Hollywood celebrity is nonsense. It’s fiction. It says that Richard Jewell could have called up somebody and said, “Hey, I’m Richard Jewell and I want to speak for the United States or a senator from the State of Georgia falsely accused or even a Hollywood celebrity is nonsense.

The limited-purpose public figure doctrine is bad law that stemmed out of good law. New York Times v. Sullivan77 is good law, but not for the reasons that have developed since. It was good law for the civil rights movement. It clearly was a necessary tool to rein in public officials with respect to the civil rights movement so that they couldn’t chill speech and criticism by suing the newspapers in Alabama or Georgia or Mississippi. New York Times v. Sullivan was really a civil rights case, but

71 The Supreme Court extended the actual malice rule to apply to public figures in Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967). The definition of a public figure, however, has remained somewhat elusive. See Robert D. Sack, 1 Sack on Defamation §§5.3 (3d ed. 2000) [hereinafter Sack].

72 See Sullivan, 376 U.S. at 279-80.

73 See Middleton, supra note 27.

74 418 U.S. 323, 345 (1974) (describing limited-purpose public figures as people who “have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved”).

75 See Gleason, supra note 60 (describing the watchdog role of the press).

76 The question of whether the category of “involuntary public figure” exists in the law or is a contradiction in terms has never fully been resolved. See Sack, supra note 71, at §§5.3.11.3.

77 See Sullivan, 376 U.S. at 279-80 (requiring public officials in a libel suit to prove that the defamatory statement was made with actual malice—“that is, with knowledge that it was false or with reckless disregard of whether it was false or not”).
the Court went too far after *Sullivan*. The Supreme Court in *Gertz v. Welch* carved out this niche of a limited-purpose public figure.

I have filed x number of libel lawsuits on behalf of the Ramsey’s son, Burke. He is 14 now, but was nine at the time of his sister’s murder. He is clearly a private plaintiff under anybody’s definition. But guess what? Every media defendant comes back and says, “Nope, he’s a limited-purpose public figure or he’s an involuntary public figure.” The media have never met a private citizen.

Sadly, if you stop to think about it, it is usually not going to be someone who is truly private that the media talk about. There’s always going to be an element of publicity around somebody because that’s what makes them or the event they’re connected to newsworthy. So it’s almost as if the law doesn’t, as a practical matter, recognize private plaintiffs. That’s got to change.

**INTERVIEWER:** In your view, are John and Patsy Ramsey public figures now? I know what the law would say, but in your view, are they?

**LIN WOOD:** If we took the law as it exists and as it has been interpreted, one would have to say that the odds are far and away that a court would rule them to be either limited-purpose public figures if not all-purpose public figures. But I would submit that you would have to closely scrutinize the issue of how they got to be, practically speaking, so public. I think it starts with their attempt to rebut charges brought against them publicly by the media, with the aid of law enforcement. They felt they needed to address the charges, but with the exception of one interview, didn’t address them again until the mountain had built up even higher against them. They gave another interview in April 1997. Then, for over a year, they didn’t do anything until they gave an interview about their case for a documentary that was attempting to address what had been said about them. Then, they didn’t do anything until they published a book after the grand jury’s decision.78 That book that was published after God knows how many books and articles were written about them.

Don’t they have a right to respond publicly to public accusations without being forced to lose valuable protections against defamation as private figures? I think it’s legitimate to address whether they are public figures, even though most authorities would look at me and say, “Wood, you’ve lost your mind. These are classic public figures.”

**INTERVIEWER:** What you’re saying is that you should have a right to rebut charges made against you without being turned into a public figure?

**LIN WOOD:** I do, and I think there is existing case law that recognizes what is called a right of reasonable response.

**JOHN RAMSEY:** That’s the issue. If I were in a group of 25 people and somebody stood up and said terrible things about me, then don’t I have the right to stand up and say, “No, that’s wrong.” I shouldn’t have to forfeit all my legal rights by doing so. But that’s what happened here. Someone got up in front of the camera—instead of a group of 25 people, it’s now a group of 250 million—said terrible things about me. If I don’t have the right and the ability to stand up and say “No, that’s wrong” to that same group without forfeiting all of my legal rights, then it’s bizarre. It’s nuts.

**PATSY RAMSEY:** We have the right to free speech too, you know.

**LIN WOOD:** There’s also a real misperception because everybody seems to perceive that First Amendment belongs to the media. John Ramsey and Patsy Ramsey have a First Amendment right of free speech. And if you say to them we’re not going to let you speak out and respond to the charges made against you without potentially suggesting you lose valuable protections against defamation, what have you done to their speech? You’ve chilled their right of First Amendment speech.

So I think that that’s part of the equation—we must recognize that there is not only the individual’s right of free speech that we’re chilling with the actual malice standard but we’re also, in effect, chilling journalists’ ability to disseminate information. If you don’t let these individuals speak out on events that they’ve either witnessed or they were participants in, then you are going to have an inability on the media’s part to get the factual information that needs to be conveyed to the public. Ultimately, when you talk to the media at their request, look out because your whole life is fair game.

**PATSY RAMSEY:** You lost it.

**LIN WOOD:** It may take time, but eventually the

78 See *Ramsey*, *supra* note 12.
media are not going to be getting as many interviews because people are going to get smart. They’re not going to agree to be interviewed because if they do, they will be turned into public figures.\(^7\)

JOHN RAMSEY: If we had known how the system worked, we wouldn’t have talked to the media.

PATSY RAMSEY: Ever.

JOHN RAMSEY: Ever.

D. Who Done It?: Murder and the Right to Speculate

The JonBenét Ramsey case clearly has captured the attention of the American public and led to conversations in the lunch room and over the dinner table regarding just what happened to this little girl. In this section, the Ramseys focus on the distinction between the rights of individuals to speculate about who killed their daughter in those private settings as compared with damaging public speculation in the national media.

INTERVIEWER: Should members of the general public have a First Amendment right to speculate about who killed your daughter?

PATSY RAMSEY: I don’t think that’s a right. I think that’s part and parcel of a person’s makeup. You can speculate about anything you want to—nobody can control your thought process.

INTERVIEWER: Is there a difference between what you can think and what you can say? People obviously are infatuated by this situation and people talk to each other about it. Over the water cooler at work, somebody says, “Oh, I believe X did it or I believe Y did it.” Should people have the right to do that?

PATSY RAMSEY: They should have the right to do that.

JOHN RAMSEY: That’s a good question because you can expand it into, “Should a talking head be able to speculate on national television in front of 20 million people?”

INTERVIEWER: Right.

JOHN RAMSEY: And it gets back to the damage that’s done to the individual. To speculate or to state that I killed my child in front of 20 million people on national television does great harm to me economically, if nothing else.

INTERVIEWER: Right.

JOHN RAMSEY: To speculate around a water cooler does no harm to me.

INTERVIEWER: So you would draw a distinction between individual speculation and speculation in the media?

JOHN RAMSEY: You have to. We afford the media protection under the law. When we give them that protection, we expect a certain level of responsibility. We don’t get that level of responsibility and damage is done. We’ve got to have a vehicle to hold them accountable. They’re in business to make money. The only way you can hold them accountable is financially.

E. News v. Entertainment: A New Legal Doctrine?

The debate continues over whether the presentation of news and entertainment content is so interconnected as to make the distinction more and more meaningless.\(^8\) The blurring of the lines between these two functions, fueled by the media’s quest for increased ratings,\(^9\) contributes to the public’s growing inability to discern factual information from titillating gossip. In this section, Lin Wood and John Ramsey discuss their concerns about how tabloid journalism may have overtaken the mainstream function of the press—the dissemination of truthful and accurate information to the public.

LIN WOOD: I talked about the public-figure question.\(^4\) Maybe we’ve also got to see if there’s not a workable form for drawing a legal distinction between news and entertainment. We’ve blurred it, so how do we undo it?\(^6\)

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\(^7\) The Supreme Court grappled with a variation of this theme in its opinion in Rosenbloom v. Metromedia, Inc., 403 U.S. 29 (1971). A plurality of justices extended the Sullivan privilege to statements concerning public issues, without regard to the private status of the plaintiff. That notion, however, was superseded three years later with the creation of the limited-purpose public figure doctrine in Gertz.

\(^8\) See, e.g., James Fallows, Breaking the News: How the Media Undermine American Democracy 16 (describing how even the Sunday morning political talk shows—once a “sleepy,” public affairs venue—now must pump up the entertainment value to compete with other livelier chat shows—in Fallows’ words, they have had to “put on rouge and push-up bras”).

\(^9\) See Karl Idswoog, TV Sitting on Stories to Improve Ratings, Nieman Reports, Spring 1994, at 38 (explaining how news organizations sometimes will hold an important story until a ratings period begins, depriving the public of needed information).

\(^4\) See text supra Part IV.C.

\(^6\) See Michael J. O’Neill, Who Cares About the Truth: Merger of News and Entertainment and Replacement of Facts with Fiction
I don’t think anybody would sit here with a straight face and say that the National Enquirer or Globe or Star is news. It’s entertainment. And I don’t think anyone would really say that Rivera Live is news—it’s entertainment.

I think, however, we could probably agree that The New York Times, at least in part, is designed to be news. I think we could agree that Tom Brokaw is presented to be news and we could draw a distinction.

I think that when you go after a family or an individual and, in effect, convey clearly that they have committed a crime or that they’re guilty of molesting their children, you have to say, “Wait a minute. Why do we need under our First Amendment to give that kind of garbage and trash entertainment the same protections we would give a front-page news story about the case in The New York Times?”

I don’t think we need to do this and I don’t think it’s going to lessen the First Amendment in the slightest. I think, in fact, it’s going to strengthen the First Amendment. So maybe that’s another area we could look at—how we can distinguish between news and entertainment and change the standards in terms of finding accountability to make it less difficult to recover damages when it’s entertainment.

INTERVIEWER: We can draw that distinction as you mentioned, but is the general public drawing that distinction?

JOHN RAMSEY: No, I think it’s very difficult for them to draw that distinction.

LIN WOOD: I think it is too, especially when it’s massive. In other words, we might be able to watch the Rivera show and say well that’s just Geraldo Rivera putting on a show. But when you are inundated day after day, night after night, every time you walk past the check-out lines and see these headlines, it is a very subtle yet effective way to brainwash people. The mass of information—the mass of accusatory information—pretty soon convinces you that something is wrong with these people.

JOHN RAMSEY: This is where the legitimate system has failed. I remember picking up a major newspaper and reading on the front page where it was reported in the Globe that John Ramsey molested his daughter. I forget what the topic was. I thought, “Oh, my God.”

INTERVIEWER: It was sourcing another newspaper?

JOHN RAMSEY: It was sourcing a tabloid.

LIN WOOD: The Star tabloid writes a cover story about secret plea bargain negotiations with the D.A. as evidence shows Burke kills his sister JonBenét. That story was based on an unidentified source accusing a child of murdering his sister. It was republished entirely, including the picture on the cover with banner headlines, in The New York Post.

Then, all of a sudden, that story is republished in part with, literally, language endorsing the fact that it might very well be accurate, on the website of Time.com. It starts at The Star and then moves to The New York Post then to Time.com, and all of a sudden we’ve got three shows on Rivera Live—considered to be a fairly legal-oriented program—talking about whether Burke Ramsey killed his sister. It started at the bottom of the food chain and worked its way up to what most would still consider to be mainstream media, CNBC. And it all started out in an absolutely fictional story in The Star magazine which it had to retract. We sued and they had to settle it. And we’re also suing The New York Post and Time.com. They say they’re going to try to prove substantial truth when I have a sworn affidavit from the district attorney saying it is pure fiction. It never happened.

F. Federalizing Child-Murder Laws

John Ramsey speaks in this section about his strongly-held belief that the murder of a child should be considered a federal criminal offense. He argues that when a child is murdered in small-town America, the local police and sheriff departments are all too often poorly equipped to handle the investigation. If child-murder cases were treated as federal crimes—such as in the case of bank robberies—federal law enforcement personnel could be summoned to conduct the investigation and gather important clues in those crucial early moments of the case.
INTERVIEWER: What changes to the criminal justice system would you like to see?

JOHN RAMSEY: I'll give you another change that I'd like to see. I've talked to people about it, and it would be difficult. But we, as a nation, ought to have the murder of a child become a federal offense. A child is murdered in Mayberry, and it's left up to Barney and Andy to figure it out. There's no great response from the most powerful nation in the world to find this most horrible of persons who has done this. And if you're stuck in Mayberry, as we were stuck in Boulder...

INTERVIEWER: Are you're drawing a connection there?

JOHN RAMSEY: Absolutely.

INTERVIEWER: Okay, I just wanted to make sure.

LIN WOOD: That might be of a little bit of an insult to Andy and Barney.

JOHN RAMSEY: They are nice people and they didn't carry the bullets. I've always said what Boulder lacked was an Andy. They had plenty of Barneys and Goobers. They didn't have an Andy. You know, Barney was always saying, "Give me a bullet, chief, and I'll go get him." And Andy would calm him down. They didn't have that.

When a bank is robbed, the feds come in and that's serious business. But when a child is murdered, it's not such a big deal.

PATSY RAMSEY: It's not right.

JOHN RAMSEY: And with that simple change we'd have the ability to import wisdom around a case like this. The murder of a child should be a federal offense and we should be positioned to come down with resources.

Police officials—people in the justice system—should be prohibited by federal law from talking about an ongoing case and the evidence in it with anyone outside of the investigation. I'm also big on this whole public-private person issue. The media must be held financially accountable for careless and reckless use of the rights that they've been given under the Constitution.

V. BURKE'S LAW: THE LAWSUITS ON BEHALF OF JONBENÉT'S BROTHER

The remedies available in the law are a product of a civilized society seeking ways to redress wrongs short of violence and anarchy.84 Ironically, the Ramseys point to the lack of a civilized society as forcing them to invoke the legal system to protect the name of their son, Burke.

Burke Ramsey was just nine years old when his sister was brutally murdered. Eventually, Burke, himself, became a target of the news coverage that followed the slaying, particularly in the tabloid press. In this section, the Ramseys and their attorney describe how Burke was vilified by the media through innuendo and blatant falsehoods. They discuss their crusade to use defamation law to restore Burke's good name. They recognize that while it may prove futile to attempt an image cleansing for themselves—in light of the mountain of harmful news stories against them—they must fight for Burke—if only for posterity.

INTERVIEWER: Mr. Ramsey, you have filed several defamation actions on behalf of your son, Burke, related to the killing of your daughter.85 What do you hope to accomplish with such lawsuits? To punish the press, to vindicate Burke's reputation or to deter future journalists from engaging in similar conduct or some combination of those?

JOHN RAMSEY: It's really all of the above. I mean, I look at the suits we filed on behalf of Burke as addressing the worst of the worst. We allow these tabloids to go after our movie stars, but we shouldn't, as a society, allow them to go after our children. Burke was a nine-year-old child. He has a whole future in front of him, and for him to be assassinated the way he was, it's just...

PATSY RAMSEY: Unconscionable.

JOHN RAMSEY: It makes you sick that a society in the twenty-first century could allow this to happen. We can't let that bridge be crossed. This isn't going to change Burke's reputation. I think that


85 One lawsuit filed in federal court in Atlanta in 1999 stemmed from an article in the tabloid Star that featured the headline, "JonBenét was killed by brother Burke." Charlie Brennan, Ramsays Sue Star over Stories About Son, Rocky MtN. News, Dec. 1, 1999, at 4A. The Ramseys also sued the Globe tabloid in May, 2000, which falsely accused Burke Ramsey of molesting and killing JonBenêt Ramsey. Lisa Levitt Ryckman, Libel Suits Filed for Brother of JonBenét, Rocky MtN. News, May 11, 2000, at 5A. Most recently, the Ramseys sued Court TV. JonBenet's Parents Sue Court TV, ATLANTA J. AND CONST., June 16, 2001, at 6H.
most people know he was a nine-year-old child and it's nonsense, but if we don't stand up and try to demand and force change in something we think is horribly wrong in our society, then what good are we?

INTERVIEWER: By filing defamation actions on behalf of your son Burke against certain members of the so-called tabloid press, is there a danger that you are actually legitimizing their coverage by suggesting that it is worth the time and expense of litigation?

PATSY RAMSEY: That's what they would like us to think.

INTERVIEWER: There's some of that?

JOHN RAMSEY: Absolutely. There's one hate-radio show host in Denver who would love for us to sue him for that exact reason. It puts him up on the radar screen. We certainly think Burke has been harmed. It's about money as well. These people have made millions of dollars by disgracing my son. Let's at least get some money for him out of their pockets so that he has more to work with in the future.

INTERVIEWER: In your mind, then, is there any legal remedy or any cause of action or theory of relief that can rectify this situation?

LIN WOOD: No. There is no way that I could look John and Patsy Ramsey in the face and tell them that I can ever give them back what the system has wrongfully taken away from them—their reputation. What people don't understand is that when you lose your reputation, you have lost something just as valuable as when you lose the physical use of part of your body. We don't give now the respect that reputation clearly had in the beginnings of our American judicial system. There's no question that the founding fathers had ultimate respect for the reputation of an individual. When you're gone, nobody's going to really remember what you looked like and they're not necessarily going to remember what your car looked like or where you lived. They're going to remember who you were. That's who your children will remember and your children's children will remember. And who you are is your reputation.

I can't quote the exact line from Shakespeare, but I think it says that when you take your reputation, you take from me my good name and I can't get that back.86 That means something to me. Money doesn't mean anything. It's ultimately my good name that counts. I can never give back to the Ramseys what's been taken from them and it's even more glaring in terms of my inability to do it because we don't have, in the legal system, the same respect for reputation that we have for physical injury.

We can go out and win some cases. We can right some of the wrongs. But we can never undo the damage that this family has suffered. That damage will go on for generations.

Burke will live with this forever. Burke's friends will live with this forever. Burke's family will live with this forever, and Burke's children's children will live with this loss of reputation forever. It will forever be a part of the Ramsey family's history. And the impact of that, when you stop to think about it, is so much greater than the passing attention we pay to this case on a given day. You don't have the right to look at another human being and say you killed someone, unless you are prepared to prove it. And the media don't have the right to convey that these people killed their daughter unless they're willing to prove it. Unfortunately, when I turn around and sue the media for them, it's the Ramseys' burden of proof, and that is wrong.

INTERVIEWER: The lawsuits that are being filed now are going to bring this awful ordeal up to the surface again. Are you prepared mentally to relive this again?

PATSY RAMSEY: What do you mean again? Or relive?

INTERVIEWER: It's never gone away?

PATSY RAMSEY: It's never gone away.

JOHN RAMSEY: No, we live it every day.

PATSY RAMSEY: Every day like this. Every day. Every day.

JOHN RAMSEY: We've thought a lot about what we should do. Do we buy an island in Canada and just live out our lives? Or, do we stay and try to make a difference? We look back at history and see that changes have been made because people have gone out on a limb to make a difference. We've decided to do that, not for recognition, but because it's probably the only way we will get our reputation back for our son. Otherwise, Burke is

86 Lin Wood was referring to the following line: "Reputation, reputation, reputation! O, I have lost my reputation! I have lost the immortal part of myself, and what remains is get that back."

"Reputation, reputation, reputation! O, I have lost my reputation! I have lost the immortal part of myself, and what remains is get that back." William Shakespeare, The Tragedy of Othello, the Moor of Venice, act 2, sc. 3 (Russ McDonald ed., Penguin Books 2001) (1622).
going to be known fifty years from now as the son of John and Patsy Ramsey, murderers. That’s all people will remember.

LIN WOOD: Maybe that will at least change—people will remember that Burke’s parents fought like hell against their accusers to try to get back their reputation. The chances of winning are pretty slim in terms of the law of libel. But if you got it ever on a factual issue—if we ever got to the courtroom on a factual issue of whether this family was involved in JonBenét’s death—it wouldn’t even be close.

JOHN RAMSEY: And if we could make a difference in one of these three areas of the law that I mentioned earlier, then we could feel like we left the world a better place and that some good came out of this, which is something you want to see when your child is taken. They could’ve made a difference in this world, I believe. I’ve lost two children, both young. I’ve got to make a difference on their behalf.

INTERVIEWER: Lin, do you think you’re going to be able to help restore their reputation?

LIN WOOD: Can I give them back what has been taken from them? No. Can I ever really totally undo it? No. But can we restore some parts of their good name? Yes, and I think that we probably have come a considerable distance in the last couple of years. That’s not just because of the legal actions but because of some of the decisions that we made to try to get their story out there so that people could really see, touch and feel who these mysterious people are. They’re real people. When you’re sitting here, you look at them. They’re just real people. And so we’ve done some of that.

But I’m not going to fool myself or fool John and Patsy. The mountain of false portrayals that exists against them went on for three-plus years, unrebuted, because of the very real problems from a criminal justice system standpoint. Their criminal lawyers did what most criminal lawyers would do—that is, to tell them they can’t say anything about it right now or do anything about it right now. First impressions still count and the first impression of John and Patsy Ramsey was developed over a three-and-a-half-year time period involving incredible, unparalleled negative coverage. You can’t undo that. You can do some good. You can get some of it back with fair-minded people, but not all of it. It’s not going to happen.

VI. ANALYSIS AND CONCLUSION

The events that occurred in Boulder, Colorado on December 26, 1996, forever changed the lives of John and Patsy Ramsey. That night the Ramseys lost a daughter in a brutal slaying and began what has become an arduous and continuing fight to clear their own names and that of their son, Burke, in connection with the heinous murder of a six-year-old girl. They may never reach that principled objective—a fact they have come to accept for themselves. Nevertheless, they intend to pursue that cause on behalf of their son in the hope that, at some point, his life can reflect a pattern of normalcy—a position they believe is impossible for themselves to reach.

Along the way, the Ramseys learned first-hand how the American systems of justice and media operate and the extent to which they are interconnected. That participant observation has shattered some longstanding ideals and replaced them with a firm belief about the need for serious reform.

Without question, the Ramseys are in a unique position, and that vantage point makes them a worthy subject of study. Their observations are thoughtful and provocative. They provide an opportunity to reflect upon the law in ways that, in some respects, are repetitious of what others have championed, but in other areas are matters of first impression. To help carve out this path, they hired Lin Wood, the Atlanta attorney who clearly has made his mark in wrestling the media giants. Together they are forging ahead with lawsuits against the media that surely will resurrect the grisly details of this horrible crime and, once again, shine the light of doubt on the Ramseys—forcing them to protest their innocence.

The Ramseys, however, hope the lawsuits will do more. They hope that Burke’s good name will be restored. They hope that by challenging some time-honored legal doctrines—the definition of a public figure, for instance—they can demonstrate that changes are needed. They hope that the attention these lawsuits will generate will lead to more scholarly debate regarding the media and its profound role in society. They hope that the lessons of the JonBenét Ramsey investigation will force law enforcement officials and the media to rethink their own practices. To that end, they hope that the attention will provide a public fo-
rum for their suggestions about how the system should change.

Nonetheless, some of the suggestions raised by the Ramseys and their attorney have clear First Amendment implications—constitutional hurdles that undoubtedly will stymie their chances of ever coming to fruition.

Certification of journalists, for example, is tantamount to a prior restraint on the press. Any form of certification necessarily would require intervention by a governmental entity, empowering it to decide who gets to publish as “journalist.” In essence, certification amounts to a licensing scheme, and such a system for the press was abolished in the seventeenth century. Early in the twentieth century, Justice Oliver Wendell Holmes wrote that the First Amendment is a guarantee of the right to publish without having to request permission from the government—in fact, “the main purpose of such constitutional provisions is ‘to prevent all such previous restraints upon publication as had been practiced by other governments . . . ’” Investing in government the power of deciding who gets to speak or publish would run afoul of long-established First Amendment principles.

The proposal to mute law enforcement officials during an ongoing investigation likely would give rise to some unintended consequences. Needing a quick way to get important information to the public, the police often use the media for investigative purposes. Thus, barring comment to the media would be counterproductive, and delineating when the police can speak and when they cannot undoubtedly would prove a difficult—if not an impossible—task. Moreover, if information is leaked to the media or gleaned from another source, that information can be published without penalty.

Lin Wood’s desire to scale back the public figure doctrine would require unraveling legal protections that are firmly grounded in constitutional precedent. Inevitably, such a move would give rise to an increased number of libel lawsuits—and most likely a greater payoff for plaintiffs. While this proliferation of lawsuits might well serve to punish the press, suggestions for libel reform typically focus on reducing—not bolstering and protracting—litigation through alternative dispute mechanisms. The main purpose of such reforms is to enable harmed plaintiffs to vindicate their reputations in an expeditious fashion. Courts may not have an appetite for moving in a direction that would lead to increased litigation.

The authors believe that interviews with primary sources, such as John and Patsy Ramsey and their attorney Lin Wood, lead to a more thorough understanding of the legal issues involved in their cases. Their reflections provide a context for the litigation—providing the reader with some contemporaneous insight into what guided these litigants to make the decisions they did. Finally, it serves as an oral history of one of the most notorious crimes of the twentieth century.