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Privacy and the Public Interest:
The Frederick, MD, *News----Post* and the Bruce Ivins Story[1]
Part A

In the fall of 2001, with the nation still stunned from the September 11 attacks on New York and Washington, DC, the United States found itself in the grip of a new panic. In October, letters containing anthrax, a deadly bacterium, had appeared in media and government offices in New York and Washington. People began to sicken and die seemingly at random. Before the scare was over, it had disrupted operations in the US Postal Service and all three branches of the federal government. Five people had died; 17 more had become ill.

The government at first regarded Al Qaeda or Iraq as its prime suspects in the attacks. But by December 2001, the Federal Bureau of Investigation (FBI) felt the attack had probably originated from a domestic source. Genetic tests had identified the mailed anthrax as a strain commonly used in US military research. By June 2002, the FBI had narrowed its investigation to a few dozen scientists. One in particular, Stephen Hatfill, became the victim of high intensity media coverage. When it finally became clear years later that the FBI was wrong, Hatfill had already paid for the agency's mistake—his career and his personal life lay in tatters.

The FBI did not repeat the mistake of leaking details of its investigation to the press. By July 2008, the Bureau had zeroed in on another suspect, Bruce E. Ivins, like Hatfill a researcher at the United States Army Research Institute of Infectious Diseases (USAMRIID) at Fort Detrick in Frederick, MD. But the media didn't learn of the Ivins investigation until after the scientist's death by apparent suicide on July 29, as the FBI was preparing to arrest him. The *Los Angeles Times* had the story first, at midnight on August 1.

[1] This case was written from secondary sources. All thoughts attributed to those quoted come from their own writings or can be imputed from those writings. The case is an educational tool, intended as a vehicle for classroom discussion.

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Ivins' hometown daily newspaper, the Frederick, MD, News----Post, had been scooped in its own backyard. But it quickly caught up. Like other newspapers, the News----Post was wary of accepting the FBI view that Ivins was guilty. In the days after his death, the paper recalled for readers the botched Hatfill investigation, and published stories critical of the FBI's case. Stories also cited the skepticism of Ivins' colleagues, many of whom could not imagine that Ivins had been involved in the attacks. The Bureau had disclosed only circumstantial evidence against Ivins, nor had he confessed to the crime—and with his suicide, he would not be able to defend himself at a trial.

Meanwhile, family and friends had scheduled two private memorial services honoring Ivins. One would be held at Fort Detrick on August 6, and would be a chance for Ivins' colleagues to grieve. Another was a family service, to be held in Ivins' Catholic parish of St. John the Evangelist in Frederick on August 9.

The Frederick *News----Post* faced a troubling choice: whether to send reporters to the services. Ivins' family had requested that the media not attend either memorial. *News----Post* City Editor Rob Walters and Assistant City Editor David Simon were inclined to respect the family's privacy. It was far from clear whether Ivins was the real anthrax killer. Hatfill's example made Simon reluctant to visit excessive press coverage on the family of a second FBI suspect.

Yet there was a legitimate—even overwhelming—public interest in the man suspected of the anthrax attacks. Frederick was a small community in which Fort Detrick, and the deadly diseases housed and researched there, were often a major story. It was possible that other media would cover Ivins' memorials, most likely the *Washington Post*, the *News----Post*'s closest competitor. Simon was sensitive to the fact that the *News----Post* had already been scooped on the Ivins investigation. If Walters and Simon were to get a reporter to the August 6 service, they would have to decide quickly.

The Attacks

The 2001 anthrax attacks had catapulted into the headlines, and caused near panic among the public. Starting in early October, letters containing anthrax were delivered to the offices of public figures, including NBC anchor Tom Brokaw, Senate Majority Leader Tom Daschle (D----SD), and Senator Patrick Leahy (D----VT). Discovery of the germ disrupted all three branches of the federal government as legislative, executive, and judicial buildings shut down for testing and decontamination.

While all the targeted public figures survived, others were dying of anthrax. Between October 5 and November 21, two DC postal workers succumbed. So did a photo editor in Florida, an elderly woman in Connecticut, and a hospital worker in New York City. To a frightened public, it seemed that any letter could carry a death sentence.

Conflicting evidence. Government and law enforcement officials hardly knew where to start looking for the source of the letters, or even whether the mailings were connected to the

recent attacks of September 11. One possible suspect was Al Qaeda—there was some documentary evidence that the terrorist network intended to acquire biological weapons.[2] Tom Ridge, director of the newly----created White House Office of Homeland Security, speculated publicly that Al Qaeda was connected to the attacks.[3] Several countries were also known or suspected to have biological weapons programs, including Iraq, North Korea, Libya, and Sudan—all enemies of the United States.[4]

Or perhaps the anthrax came from a domestic source. Although the US had discontinued its biological weapons program in 1969, scientists in laboratories across the country continued to study anthrax's properties and research vaccines. *Newsweek* summarized the difficulty of pinpointing the source of the germ: "With so many [biological weapons] programs around the world, thousands of scientists have learned how to turn anthrax into a weapon."[5]

Initial DNA analysis of the mailed anthrax powder showed that all the samples were derived from the same strain of the bacteria—called the Ames strain—and likely came from the same source.[6] Further study showed it had sophisticated properties, perhaps indicating that the attacker had a high level of expertise. For example, the powder was pure, finely ground, and floated easily in the air. This made it easy to inhale, and pulmonary anthrax was the most deadly form of the disease, killing its victims within days if left untreated.[7] But it was difficult to manufacture spores that could float. At the very least, it required specialized equipment and knowledge. Experts were divided on the significance of the clue. One claimed that only the United States, Iraq, and the former Soviet Union could manufacture such refined powder. Others felt that such skills might be much more widespread.[8]

Suspects and the Press

By late 2001, however, the FBI was convinced that the attack had not come from abroad. The Bureau's first major suspects were two Pakistani brothers, Doctors Irshad and Masood Shaikh, both public health officials in Chester, PA. In November, agents in biohazard suits searched their house, and they did not come alone. Sources had tipped off the national media in advance of the raid, and the Shaikh search was broadcast nationwide for days. The publicity disrupted the men's careers and their paths to citizenship. Both soon had to leave the country, as did their elderly mother. A Pakistani colleague in Chester's finance

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[2] "Linking Anthrax and Al Qaeda?" *Economist*, March 30, 2002.
[3] John Lancaster and Dan Eggen, "Anthrax on senate letter called potent," *Washington Post*, October 17, 2001.
[4] Peter J. Boyer, "The Ames Strain," *New Yorker*, November 12, 2001.
[5] Sharon Begley, "Tracking Anthrax," *Newsweek*, October 29, 2001. Available: http://www.newsweek.com/id/75698/
[6] Dan Eggen and Eric Pianin, "Anthax cases in three cities share strain," *Washington Post*, October 20, 2001. Also Sharon Begley, "Tracking Anthrax," *Newsweek*, October 29, 2001. Available: http://www.newsweek.com/id/75698/
[7] By contrast, cutaneous anthrax, contracted through touching the bacterium, was easier to survive and curable with antibiotics.
[8] Peter J. Boyer, "The Ames Strain," *New Yorker*, November 12, 2001.

department, Asif Kazi, also came under scrutiny. None of the three had ever worked with or handled anthrax.

In 2002, the FBI turned its attention to Perry Mikesell, an anthrax specialist in Columbus, Ohio. Apparently anguished over the suspicion, Mikesell began drinking heavily. By October he was dead at the age of 54. A family member blamed the investigation, saying Mikesell "drank himself to death."[9] Another suspect was thrust into the media spotlight in August 2004, when television news again broadcast scenes of an FBI raid, this time on the Western New York home of emergency room physician Kenneth Berry. Berry's lawyer later said that the publicity destroyed Berry's marriage and, for a time, his career.[10] Neither Berry nor Mikesell was charged.

Hatfill. But no anthrax suspect attracted more media attention than Steven Hatfill. By mid---2002, genetic sequencing of the mailed anthrax had narrowed the FBI's focus to a handful of domestic research labs, including the US Army Medical Research Institute of Infectious Diseases (USAMRIID) at Fort Detrick, in Frederick, MD. The FBI began investigating 20 to 30 scientists they suspected might have the expertise and access to have mailed the anthrax letters.[11] Hatfill was a respected germ warfare expert who had worked at Fort Detrick between 1997 and 1999.

Hatfill cooperated with the FBI's investigation, agreeing to a home search in June 2002. But by the time the FBI showed up, camera crews and reporters were arrayed on the sidewalk, ready to telegraph images of the raid nationwide. The same thing happened when the FBI returned to search again the following month. Five days after the second search, Attorney General John Ashcroft publicly named Hatfill a "person of interest" in the case. Hatfill convened a press conference on August 11 in which he tearfully maintained his innocence. [12]

By then, however, damning details about Hatfill—often attributed to anonymous sources close to the anthrax investigation—had already surfaced in the media. Among other things, he had inaccurately claimed on his resume that he had a PhD and had worked with the Army's Special Forces. He had also failed three successive polygraph exams. Bloodhounds exposed to the decontaminated letters had become agitated in his apartment. The second search of his apartment had turned up an unpublished novel that envisioned a biological attack on Washington, DC.[13] Although he was never charged with the anthrax killings, his career was over.

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[9] William J. Broad and Scott Shane, "Anthrax case had costs for suspects," *New York Times*, August 9, 2008. Available: http://www.nytimes.com/2008/08/10/washington/10anthrax.html

[10] Ibid.

[11] Associated Press, "Key Dates in the Investigation of the Anthrax Attacks," August 1, 2008, in the *Frederick News-Post.* Available: http://www.fredericknewspost.com/sections/news/display.htm?StoryID=78276

[12] Marilyn W. Thompson, "The Pursuit of Steven Hatfill," *Washington Post Magazine*, September 14, 2003. Available: http://www.washingtonpost.com/ac2/wp-dyn/A49717-2003Sep9?language=printer

[13] Ibid.

Role of press. If the FBI was wrong about Hatfill, so was the press. In November 2002, *American Journalism Review* cautioned the media about its Hatfill coverage. The case had parallels to previous investigations in which suspects had endured intense public scrutiny, at great cost to their personal lives, only to be exonerated later. One example was Richard Jewell, a security guard suspected for a time of planting a pipe bomb at the 1996 Atlanta Olympics.

Another was Wen Ho Lee, a nuclear scientist suspected of selling secrets to the Chinese. In September 2000, when the government abandoned its case against Lee—but not until after the scientist had been held in solitary confinement for nine months—the *New York Times* issued a "public accounting" of its coverage of the case. Among other things, the paper acknowledged that it "could have pushed harder to uncover weaknesses in the FBI case against Dr. Lee."[14] That newspaper among others later had to contribute to the government's expensive legal settlement with Lee.

Hatfill, too, sued the government in August 2003 for violation of privacy. He later also sued the *New York Times*, *Vanity Fair*, and *Reader's Digest*. A judge dismissed the suit against the *New York Times*, but in 2007, *Vanity Fair* and *Reader's Digest* reached an undisclosed settlement with the scientist, and each issued partial retractions of articles implying Hatfill's guilt. The Justice Department settled with Hatfill on June 27, 2008 for $4.6 million.[15] The department formally exonerated him on August 8, 2008, "based on laboratory access records, witness accounts, and other information."[16]

Bruce Ivins

By then, the FBI had moved on. The Bureau had now focused its investigation on Bruce Ivins, another Fort Detrick microbiologist. Ivins was an international expert in the exact strain of anthrax used in the attacks, and had worked at Fort Detrick for decades developing anthrax vaccines for the military.[17] By the summer of 2008, the FBI had been building a case against him for a year and a half.

But the media did not learn about the investigation while it was ongoing. Though the Bureau had questioned Ivins' colleagues and friends, each was required to sign

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[14] "Into the Spotlight," *American Journalism Review*, November 2002. Available: http://www.ajr.org/article.asp?id=2690

[15] Associated Press, "Hatfill Timeline," *Washington Post*, August 9, 2008. http://www.washingtonpost.com/wp-dyn/content/article/2008/08/08/AR2008080803823.html

[16] Eric Lichtblau, "Scientist officially exonerated in anthrax attacks," New York Times, August 8, 2008. Available: http://www.nytimes.com/2008/08/09/washington/09anthrax.html

[17] Rachel Swarns and Eric Lipton, "From a helper to a suspect in the anthrax case," *New York Times*, August 8, 2008. Available: http://www.nytimes.com/2008/08/08/washington/08scientist.html?scp=1&sq=from%20offering%20help%20in%2 0the%20anthrax%20case&st=cse

a confidentiality agreement. So far, there had been no leaks.[18] Ivins, however, knew that he was a suspect; he also knew that he might soon be charged with five capital murders. On July 29, 2008, he died of an apparent suicide.

The Frederick *News----Post*, unaware that Ivins was a suspect in the anthrax attacks, ran his obituary on August 1 at the bottom of page A----7. "Dr. Ivins was a scientist for 36 years, at USAMRIID at Fort Detrick," it said in part, continuing:

> He was a member of the American Red Cross, Frederick County Chapter. He also was a parishioner at St. John''s the Evangelist Roman Catholic Church in Frederick, where he was as a musician for many years for church services. Dr. Ivins was a wonderful father to his kids.[19]

But at midnight on August 1, the *Los Angeles Times* had a scoop on its website: The FBI believed it had solved the anthrax case, and its suspect, Bruce E. Ivins—who they believed had acted alone—had apparently committed suicide.

News----Post. Administrative Assistant Karen James saw the story on CNN at around 6 a.m. that morning, and immediately called City Editor Rob Walters. Shortly after 8 a.m., the *News----Post* had a reporter on Ivins' doorstep and had filed a Freedom of Information Act (FOIA) request with the FBI for Ivins' file. Other reporters scoured *News----Pos*t archives for mentions and photos. Police Reporter Gina Galucci----White hurried to the Frederick County District Court, where she found an exclusive local angle on the story: Jean C. Duley, who had treated Ivins in group therapy sessions, had filed a restraining order against him days earlier. Duley had alleged that Ivins had stalked and threatened her. According to court documents, his psychiatrist, Dr. David Irwin, had called him "homicidal, sociopathic with clear intentions."[20]

But *News----Post* interviews with Ivins' colleagues and friends painted a different picture. Publicly at least, Ivins was a loving family man, popular among neighbors and colleagues. Many of them reacted with disbelief to the news that Ivins was even a suspect in the anthrax case, let alone that he could have been the assailant.[21]

A Skeptical Press

After the Hatfill fiasco, most news organizations were reluctant to accept at face value the FBI's assertion that Ivins was the anthrax killer. It was unclear why the FBI had targeted

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[18] David Willman, "Apparent suicide in anthrax case," Los Angeles Times, August 1, 2008. Available: http://www.latimes.com/news/nationworld/nation/la-na-anthrax1-2008aug01,0,2864223.story?page=1

[19] Obituary, Dr. Bruce Ivins, Frederick News-Post, August 1, 2008. http://www.fredericknewspost.com/sections/local/obituaries_purchase_run.htm?obitid=24501

[20] http://www.fredericknewspost.com/sections/news/display.htm?StoryID=78327

[21] Gina Galucci-White and Justin M. Palk, "Anthrax Case Turns," News-Post, August 2, 2008. http://www.fredericknewspost.com/sections/news/display.htm?StoryID=78327

Ivins. The Bureau contended that it could not release its evidence against him because the incriminating material was under court seal as part of a grand jury investigation. But the *Los Angeles Times* had discovered that Ivins had attracted the FBI's suspicion in 2002 after failing to report an anthrax contamination in his lab, and that the scientist had briefly been hospitalized for depression days before his apparent suicide. The *New York Times*, meanwhile, could turn up no details more damning than that Ivins had been "behaving bizarrely" in the days leading up to his death. But a colleague expressed doubt that Ivins, a vaccine specialist, could have turned the liquid anthrax he typically worked with into the dry, inhalable powder used in the attacks. "I don't think a vaccine specialist could do it," said Dr. Alan P. Zelicoff, who assisted the FBI investigation. "This is aerosol physics, not biology. There are very few people who have their feet in both camps."[22]

Further complicating the question of Ivins' culpability, there was widespread skepticism about the FBI's competence to find the right suspect. Rush D. Holt, a congressman (D----NJ) and physicist, from whose district the anthrax letters were mailed, told the *New York Times*: "What we learn will not change the fact that this has been a poorly handled investigation that has lasted six years and already has resulted in a trail of embarrassment and personal tragedy."[23]

Members of the press clamored for the FBI to make public its evidence against Ivins, since the agency would no longer have to prove its case in court, and Ivins himself would not have the benefit of a hearing. Ivins' lawyer, meanwhile, maintained his client's innocence and urged reporters to be sensitive to the grief of Ivins' family. He said:

> The relentless pressure of accusation and innuendo takes its toll in different ways on different people, as has already been seen in this investigation. In Dr. Ivins' case, it led to his untimely death. We ask that the media respect the privacy of his family, and allow them to grieve.[24]

Services. In particular, the family—Ivins' widow and his 24----year----old twins—had requested that the media stay away from two private memorial services for Ivins—one at Fort Detrick on August 6, another at the Ivins family's Catholic parish, St. John the Evangelist, on August 9. The News----Post was cautious. Having covered the story for days, the paper wondered in an August 5 editorial: "The FBI now appears to believe that Ivins was their man. But could they be as wrong about him as they were about Hatfill?"

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[22] Scott Shane and Eric Lichtblau, "Scientist's suicide linked to anthrax inquiry," *New York Times*, August 2, 2008. Available: http://www.nytimes.com/2008/08/02/washington/02anthrax.html

[23] Ibid.

[24] Carrie Johnson, Carol D. Leonnig and Del Quentin Wilber, "Scientist Set to Discuss Plea Bargain In Deadly Attacks Commits Suicide; Lethal Powder Was Traced to Office Where He Worked," *Washington Post*, August 2, 2008.

Covering Trauma

News----Post City Editor Walters and Assistant City Editor Simon debated whether to send a reporter to the first memorial service on August 6. Though there was a legitimate public interest in the alleged anthrax assailant, was the same true of his family's grief? The question was complicated for a local paper with strong ties to a small community. The paper risked losing readers' confidence in its reporting if it declined to cover the services. Then again, appearing to harass a grieving local family might be seen as a betrayal of the community's trust. What if Ivins wasn't the perpetrator, but had cracked under the pressure of the FBI's investigation? Did that change the calculus?

Simon personally had long struggled with the question of how to cover personal trauma sensitively. He had been a student at the Columbia University Graduate School of Journalism in New York City when terrorists felled the World Trade Center on September 11, 2001. Recalling a professor's injunction to "follow the news" no matter what, he had raced to the scene with his notebook and pen.[25] He later recounted:

> I'll never forget the image of one man, in his early 20s, standing on a dust--covered car, screaming at the top of his lungs. 'This is hell!' he shouted. 'This is hell!' He was looking for his sister. I don''t know if he ever found her.

Simon had stood at a distance and taken notes, all the while feeling guilty about not offering to help. Looking back, he wished he had done it differently. "I wasn''t helping him look for his sister, or offering a shoulder to lean on, or maybe just some water to wash the soot off his face," he recalled.[26]

Simon remained concerned about how reporters could cover tragedy while maintaining their humanity. Ivins' family must be suffering. Yet it was possible that Ivins himself had killed five people. Simon knew he had to make a decision soon. Should he send a reporter to cover the August 6 memorial service?

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[25] David Simon in-class teleconference with Professor Ruth Padawer and students, on November 17, 2008, in New York City.

[26] David Simon, "Ask the Editor: Respecting Boundaries," *News-Post*, August 9, 2008. http://www.fredericknewspost.com/sections/news/display.htm?StoryID=78595