



When Tragedy Strikes: A Leader's Role, Revisited

August 2014

Question: *Recently something terrible happened in our community. The public is demanding answers and information, expressing a strong desire that those responsible be held accountable. Our local agency staff is investigating what happened and whether any wrongdoing has occurred.*

The media is pressuring elected officials to speak out and take a stand. Staff is cautioning us as elected officials to be circumspect about what we say before the investigation is finished. Is that ever the right approach?

Answer: Although transparency and communication are key elements of promoting public trust and confidence, sometimes discretion — as it relates to divulging incomplete or misleading information — is the right approach. A values-based approach provides a useful framework for analyzing the situation.

Leaders can look to a number of universal ethical values in analyzing what the right thing to do is in any given situation. These values include compassion, loyalty, responsibility, trustworthiness, fairness and respect. As in many ethical dilemmas, positive values may compete, complicating the analysis.

As discussed in the Institute's April 2010 article, "A Leader's Role When Tragedy Strikes," (available at www.ca-ilg.org/tragedy) it is helpful and extremely important to promptly acknowledge and express compassion and empathy for families who have suffered a tragedy. Acknowledging the community's loss and people's sense of fear or anger is also consistent with this value.

Responsibility and Fairness

Compassion and empathy are not the only values at stake in a situation. Often circumstances call for an investigation when something bad happens. The goals of an investigation are typically to evaluate whether any wrongdoing has occurred, hold wrongdoers accountable and analyze how to prevent a recurrence of the situation.

To honor the values of fairness and responsibility one must allow those conducting the investigation time and space to do their work. An investigation can have twists and turns, with facts being revealed at one stage that point to one conclusion, while facts revealed subsequently may suggest a different conclusion. Divulging information before an investigation is complete can be inadvertently misleading or present an incomplete picture. It can also change the course of

an investigation and hinder the investigators' ability to determine the truth. This undermines the values of fairness and responsibility.

Accountability

“What about transparency?” some may ask. Transparency is connected to truth-telling and accountability, which in turn relate to the core values of trustworthiness and responsibility. Releasing information that may be incomplete or misleading can be inconsistent with those values. As curious as the media and the public may be about what the agency is learning, waiting until all the information is in and the investigation is complete is the values-based approach.

Due Process

Individuals in the community or the media may believe that they know which conclusions should flow from the facts that they have. While they may ultimately be correct, the purpose of an investigation is to look at all the available facts — without prejudging — to determine what happened and how to prevent it recurring. A fair process does not begin with a conclusion and work backward from there.

If a person's job or key rights are on the line due to an investigation's findings, they may challenge the integrity of the investigation if it appears that those performing it were influenced by people who may have reached a conclusion without the benefit of all the facts. If such a due process claim is successful and the investigation's conclusions are thrown into question, the agency and its leaders will not have achieved the community's goals of getting to the truth of the matter.

Applying the “front page” test to such a situation, local agency officials might foresee the headline “Agency Bungles Investigation,” suggesting the agency did not live up to its responsibilities. In fact, the New York Times analysis of the FBI's handling of the investigation of the Atlanta Olympics bombing (see “Investigative Twists and Turns: From Hero to Suspect, But Not Quite Back Again” below) used the word “bungled” years after that case was resolved.¹

As a practical matter, an incomplete or biased investigation may work against the community's need for trustworthy answers that stand the test of time. Even if one ultimately gets to the right answers, people will remember the wrong ones as well.

Investigative Twists and Turns: From Hero to Suspect, But Not Quite Back Again

The Richard Jewell story illustrates the hazards of rushing to judgment and the injustice and damage it can cause. Jewell was the security guard who found the bomb that detonated during the Olympics in Atlanta, Georgia, on July 27, 1996.

In the first few days after the bombing, Jewell was hailed as a hero. He had recognized the pack containing the bomb as suspicious, quickly alerted the police and helped evacuate the area around the bomb.

Public sentiment toward Jewell shifted dramatically when a law enforcement source reportedly leaked information to a local newspaper that Jewell was a suspect in the FBI's investigation. Jewell was subjected to intense, unflattering and hurtful media attention, including speculation that he was an attention-seeker who planted the bomb to become a hero.² Although the FBI was investigating Jewell, it had no actual evidence that he was indeed the bomber.³

After three months of media attention and investigation by the FBI, the federal government announced that Jewell was no longer a suspect in the bombing.⁴ It was two more years before the FBI identified the actual culprit in the bombing, who was later convicted and sentenced.

One print journalist, reflecting on the damage a mistaken accusation can do, observed:

I interviewed Mr. Jewell about his treatment by the news media, which he said had jumped on him "like piranha on a bleeding cow." He said then, as he did in subsequent interviews, that he knew he could never get his name back.⁵

What happened in Jewell's situation has now entered the communication lexicon as "the Jewell syndrome."⁶

The Jewell syndrome holds potential lessons for well-intentioned public officials. The source who leaked the information likely believed that the disclosure responded to the media's and the public's need to have information about the possible culprit of such a heinous act. But the unfairness of what happened to Richard Jewell as a result of attempting to meet that need underscores the potential cost of releasing incomplete or inaccurate information.

Communicating in a Crisis

Having discussed what one cannot or should not say, what should one say? Crisis communications expert Joan Gladstone advises local officials and staff to think in terms of responding with both one's head and one's heart.

She notes, "What people crave is hearing that public officials care. Otherwise the community will perceive officials as being out of touch." Expressing empathy (for example, saying "Our hearts go out to those affected" or "We are so sorry to learn of this tragedy") can address this human need.

To address the “head” part of the response, most agencies appoint a spokesperson to offer prompt information to proactively address the community’s concerns. In Gladstone’s experience, supplementing the spokesperson’s comments with a written statement can provide a source of information for both the media and all local officials to guide their response and reduce the chance of off-the-cuff remarks. Agency counsel and others should review the statement to ensure that it does not include information that could undermine the investigative process.

As part of this consultation with counsel and others, Gladstone advises determining whether it is possible to explain, in broad terms, the process the agency is following on the investigation. This can include a projected date when the results of the investigation will be available (or an updated estimate about when the investigation results may be available). According to Gladstone, explaining the reasons why more information cannot be available at this time can also be helpful.

Finally, preparation and training are also important strategies for communicating effectively in difficult situations. These steps enable local officials to learn, in a less stressful and non-emotionally charged setting, about the processes that the agency follows in responding to a crisis situation (whether that crisis impacts people, property, the environment or some combination of these). Such an approach also enables everyone on the team to understand the logic underlying what information can be responsibly made available and what information needs more time to develop.

Values Reflected in Law

California’s open records and open meetings laws also reflect a balancing of the value of transparency with those of fairness and privacy.

The California Public Records Act promotes transparency by giving the public and the media the right to inspect public records. However, the act contains a number of exemptions.⁷ For example, certain law enforcement investigation records are not subject to disclosure under open records laws.⁸ This includes information that would interfere with the successful completion of an investigation if disclosed.⁹ Peace officer personnel records are also subject to certain confidentiality provisions.¹⁰

The Brown Act promotes trust and transparency by generally requiring that discussions among members of local agency decision-making bodies occur at noticed and open meetings.¹¹ Exceptions exist for such matters as discussions related to evaluation of performance, discipline or dismissal of a public employee; hearing complaints or charges brought against the employee by another person¹² and conferences with legal counsel related to anticipated or existing litigation.¹³

About the Institute for Local Government

ILG is the nonprofit 501(c)(3) research and education affiliate of the League of California Cities and the California State Association of Counties. For more information and to access the Institute's resources on ethics visit <http://www.ca-ilg.org/ethics-transparency>. The direct link to this resource is www.ca-ilg.org/tragedy-revisited.

The Institute welcomes feedback on this resource:

- *Email:* ethicsmailbox@ca-ilg.org Subject: *When Tragedy Strikes: A Leader's Role Revisited.*
- *Mail:* 1400 K Street, Suite 205 ▪ Sacramento, CA ▪ 95814

G:\INSTITUTE\Ethics\Ethics Column\2014\4 Tragedy II\When Tragedy Strikes Revisited - 2014.docx

References and Resources

Note: Sections in the California Code are accessible at <http://leginfo.legislature.ca.gov/>. Fair Political Practices Commission regulations are accessible at www.fppc.ca.gov/index.php?id=52. A source for case law information is www.findlaw.com/cacases/ (requires registration).

- ¹ Kevin Sack, "Richard Jewell, 44, Hero of Atlanta Attack, Dies," *NY Times*, August 30, 2007 ("The investigation by local, state and federal law enforcement officers lasted until late October 1996 and included a number of bungled tactics,")
- ² See Marie Brenner, "American Nightmare: The Ballad of Richard Jewell," *Vanity Fair*, February 1997, available at <http://www.vanityfair.com/magazine/archive/1997/02/brenner199702>.
- ³ Kevin Sack, "A Man's Life Turned Inside Out by Government and the Media," *New York Times*, October 28, 1996, available at <http://www.nytimes.com/1996/10/28/us/a-man-s-life-turned-inside-out-by-government-and-the-media.html>.
- ⁴ Kevin Sack, "A Man's Life Turned Inside Out by Government and the Media," *New York Times*, October 28, 1996, available at <http://www.nytimes.com/1996/10/28/us/a-man-s-life-turned-inside-out-by-government-and-the-media.html>.
- ⁵ Kevin Sack, "Retro Report: A Bombing Suspect, and the Rush to Judgment," *New York Times* (October 7, 2013), available with video at http://www.nytimes.com/2013/10/07/booming/a-bombing-suspect-and-the-rush-to-judgment.html?_r=0
- ⁶ See Marion K. Pinsdorf, *Communicating When Your Company is Under Siege: Surviving a Public Crisis*. New York: Fordham University Press, 1999, at 37.
- ⁷ See Cal. Gov't Code § 6253.
- ⁸ See Cal Gov't Code § 6254(f), which provides:

6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the Office of the Attorney General and the Department of Justice, the Office of Emergency Services and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. However, state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential

informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflects the analysis or conclusions of the investigating officer.

Customer lists provided to a state or local police agency by an alarm or security company at the request of the agency shall be construed to be records subject to this subdivision.

Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined in any of the sections of the Penal Code set forth in this subdivision may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code. However, the address of the victim of any crime defined by Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph may not be used directly or indirectly, or furnished to another, to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury. Nothing in this paragraph shall be

construed to prohibit or limit a scholarly, journalistic, political, or government use of address information obtained pursuant to this paragraph.

⁹ Cal. Gov't Code § 6254(f).

¹⁰ Cal. Gov't Code § 6254(k) (exempting records from disclosure which may not be disclosure pursuant to state or federal laws); Cal. Penal Code § 832.7, which provides:

(a) Peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office.

(b) Notwithstanding subdivision (a), a department or agency shall release to the complaining party a copy of his or her own statements at the time the complaint is filed.

(c) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved.

(d) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement he or she knows to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace or custodial officer's employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer's personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or his or her agent or representative.

(e) (1) The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition.

(2) The notification described in this subdivision shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court, or judge of this state or the United States.

(f) Nothing in this section shall affect the discovery or disclosure of information contained in a peace or custodial officer's personnel file pursuant to Section 1043 of the Evidence Code.

¹¹ Cal. Gov't Code § 54953(a).

¹² Cal. Gov't Code § 54957.

¹³ Cal. Gov't Code § 54956.9.