



HOUSE OF LORDS

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Inquiry on

THE FUTURE OF INVESTIGATIVE JOURNALISM

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Questions 755 - 795

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Witness: Mr Richard Tofel

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Members present

Lord Inglewood (Chairman)
Lord Bragg
Lord Clement-Jones
Baroness Deech
Baroness Fookes
Lord Gordon of Strathblane
Lord Macdonald of Tradeston
Bishop of Norwich
Lord Razzall
Earl of Selborne

Examination of Witness

Mr Richard Tofel, General Manager, *ProPublica*, via video link

Q755 The Chairman: Hello, is that America? Yes. Is that Mr Tofel?

Mr Tofel: Yes.

The Chairman: We are very grateful to you for coming and giving evidence to our Committee.

Mr Tofel: It is an honour to be here.

The Chairman: We are very grateful to you. I think you know the background of what we are doing and why.

Mr Tofel: I do.

The Chairman: Then I do not want to elaborate on that. Is there anything you would like to say to us? We have had a couple of slides giving a close synopsis of what you do at *ProPublica* and a little bit about you as an individual. Is there anything you would like to say to us, above and beyond what we have had, just to introduce the hearing?

Mr Tofel: I do not think so. I think it probably makes sense just to proceed to your questions so that I can make the best use of your time.

The Chairman: That is very kind of you. Feel free to range widely if you think it is relevant, because we are interested to hear what you have to tell us.

Mr Tofel: The sound is cutting in and out a little bit here, but I think I can hear most of it.

The Chairman: We can hear you, although there is a slight delay.

Mr Tofel: Okay, very good.

The Chairman: Thank you. My name is Richard Inglewood; I am the Chairman of the Committee. Various Members of the Committee will ask you questions. We have divided them up between ourselves in order to try to cover the whole waterfront of what we are interested in, but, as I said, feel free to say anything you like. Perhaps I might begin by saying, given your background and where you are in the ecology of the media, what do you think makes a good piece of investigative reporting? In particular, can you give us one or two of what you might describe as your best examples of stories that *ProPublica* has uncovered?

Mr Tofel: Sure, I would be happy to. The best definition that I have found of investigative reporting is reporting about something that someone with some sort of power would like to keep a secret. That at first sounds as though it describes most reporting, but I think on reflection most reporting is not described that way. Of course most reporting is about something that people are actually seeking publicity for by way of announcements, public events, or even privately by seeking to place stories in one way or another. Investigative reporting is the other way around and is about the kinds of things that at least some people—very likely, people with power of one sort or another—would prefer not to have reported.

We judge our own work at *ProPublica* by the impact that the stories have. That is our mission and our goal, so that is how I would determine the stories of which we are most proud. I will give you a couple of quick examples.

In 2008 we began reporting on police violence in the city of New Orleans in the wake of Hurricane Katrina. By the time that reporting had played out in 2010, we had established that the police had shot—and killed in some cases—a number of innocent people and that there had been a range of police violence. The police force was ultimately put into receivership at the request of the new mayor. There is now in effect federal supervision of the New Orleans police and, I think, a profound change for the residents of that city.

In 2009, we reported on the difficulties of nursing oversight in California. Nurses had in some cases beaten their patients, stolen drugs from them, were serial recidivists—they would get fired from one job and simply move on to another—and the State of California was taking up to six years to discipline dangerous nurses. That story was published in the *Los Angeles Times* on a Sunday, the then Governor of California, Arnold Schwarzenegger, read it and on Monday morning dismissed almost the entire California Nursing Board and set in motion a chain of reform there.

Last year we published a couple of stories on the Wall Street problems that led up to the crash, particularly some dealings with collateralised debt obligations that delayed the crash but ultimately made it worse when it occurred. The Securities and Exchange Commission in this country has now proposed rules making illegal some of the particular kinds of transactions that we wrote about, and has secured agreements for fines from two of the largest banks in the world totalling \$400 million. That grew directly out of those investigations. That is the kind of work of which we are most proud.

Q756 The Chairman: Indeed. Do you think that had you not existed these stories would have seen the light of day?

Mr Tofel: It is always hard to prove a negative like that, but I think there is substantial reason to suppose that they might not have.

Q757 The Chairman: That is interesting. The other question that I would like to ask you at the outset is whether you know the framework of investigative journalism, and so on, in this country and, if you reckon you know it sufficiently well, whether you think there are any differences and distinctions between yourselves in America and us here that you would like to touch on.

Mr Tofel: Yes. I think there are quite a lot of differences and I know something about the way things work in the UK. I would not hold myself out as an expert. I am an attorney and I have worked on a number of UK legal matters over the years, particularly when I was at the *Wall Street Journal*, but again I would not hold myself out as an expert. I do, however, think the difference in legal regimes makes something of a difference, particularly in two respects: one, you have the contempt rules that significantly limit some of the kinds of reporting that American investigative reporters are used to doing; and, secondly, and probably more importantly, you have the prior restraint rules, which are fundamentally different in the UK. I watched the video of my friends Steve Adler and Sir Harold Evans testifying before your Committee. Steve and I actually went to law school together. We are both lawyers, and Harry probably knows much more about British law than either one of us ever will. I thought they went into that quite effectively, but I agreed with many of the points they were making.

Q758 The Chairman: On the basis of what you know, do you think that people who might be traduced by the press get a raw deal in the United States compared with here, because a lot of these rules are intended to make sure that confidentiality is maintained but also that the press do not damage people gratuitously and wrongly? Do you think that that balance is better here or in your country?

Mr Tofel: The answer to that question bears at least as much on culture as on law. You and the public in Britain might choose to set the balance differently. By American lights, I think that America has done a better job of reaching that balance but, having said that, I would readily concede that by British lights the answer to the question might well be different.

The Chairman: That is very interesting.

Q759 Baroness Fookes: Mr Tofel, could you tell us how editorial decisions are made at *ProPublica*? Who decides what stories to investigate, for example?

Mr Tofel: As with most newsrooms with which I am familiar, this decision is largely a bottom-up process. That is to say that in our experience most of the most effective story ideas begin with individual reporters, sometimes with editors but more often with reporters, and sometimes in the way we work, because we often work with partners. We have worked with almost 90 publishing partners in the three and a half years we have been publishing. Sometimes, and increasingly, those ideas can begin with a publishing partner, but I would say the archetype is that a reporter has an idea, explores the idea with some encouragement from editors, who may actually discourage a particular story, and at a certain point concludes there is sufficient reason to proceed. We may then bring greater resources to bear.

Q760 Baroness Fookes: Is that what happened with the New Orleans police inquiry?

Mr Tofel: Yes, that is precisely what happened. In that case, the reporter was engaged in that work before he came to work for us, with some support from the *Nation* investigative fund and others. He completed the initial work with us. That led to a cover story in the *Nation* magazine at the end of 2008 and we then did quite extensive further work with

Frontline, which is a television broadcast in this country, and with the New Orleans *Times-Picayune*.

Q761 Baroness Fookes: Are there any stories that you would not wish to cover, or is everything open?

Mr Tofel: Paul Steiger, who is our editor-in-chief and the person who first conceived *ProPublica*, said that as our mission he wants to do stories with what he calls moral force: stories that are about a betrayal of or a failure to live up to the public trust. Some stories, about entertainment or sports, for instance, would provide a perfectly good definition of investigative reporting and might be of wide interest to people but probably do not meet that test of moral force. They are perfectly fine stories but they would not be stories for us, frankly.

Q762 Baroness Fookes: Thank you. How long does each story take to research? From what you have already said I get the impression it could be several years.

Mr Tofel: Yes, that is correct. We had two stories that we think are quite important, which ran this past Sunday and Monday in the *Washington Post*, on the presidential pardons process in this country that laid out a persuasive case that there is—actually ironically, given who our President is these days—extensive racial discrimination in the presidential pardons process and a good bit of unfortunate legislative attempts at interference in that process. The reporter in question was working on those stories for two and a half years.

Q763 Baroness Fookes: You would never be put off by the length of time it is likely to take?

Mr Tofel: The question, I think, is the importance of the story. We are very fortunate to have the resources to be able to do this. If we feel that there is potential for significant impact and that the story does meet the moral force test, we would always prefer to finish it in a few days or a few weeks, but if stories are going to take a few years and repay the time invested, we are perfectly prepared to do that.

Q764 Lord Bragg: Do you have any idea of the comparison between your country and ours on the amount of money available for this sort of journalism?

Mr Tofel: My impression is that it is quite a bit more in this country, and I could be wrong about that. I certainly think that this is true on a non-profit basis, and let me get to that in a minute. On a for-profit basis, in this country almost all investigative journalism—well, not almost all but a great deal of it—was done by newspapers. Clearly, the events of the last six or seven years—the business crises of newspapers in this country—have resulted in cutbacks in almost every single outlet, in many cases to zero in the resources allocated for it. In response to that in the last four years—we have been an important part of this, but by no means all of it—there has been a move to redress that a bit with non-profit journalism.

My sense, certainly historically, is that the newspapers have also been in the lead on this work with some significant input from television in the UK and that the newspapers are also under pressure. I saw the creation yesterday of this Foundation for Journalism in your country, and I know of the Bureau of Investigative Journalism, founded by one of your great investigative journalists, Sir Harold's old colleague, Elaine Potter, but I think the total committed on the non-profit side in the UK is not yet what it is in the US.

Q765 Lord Bragg: Almost as a digression, but I think it is cognate, do you think that newspapers have been much better at investigative journalism, and do you think that the fact that they are in some sort of peril imperils investigative journalism itself?

Mr Tofel: I would say that the answer to the second question is clearly yes. The answer to the first question about whether newspapers are better is that I think they have been in general. In part, because television necessarily reduces things in complexity and many of the most important investigative stories, currently and over the years, have been quite complex. I think television has a limited ability to tell those kinds of stories. We have actually found that radio is a terrific medium for investigative journalism, particularly the kind of pace of radio that you have with public radio in the United States, which I think is probably true of public radio in Britain as well. That is a terrific medium for relating the kinds of stories that we do.

Q766 Lord Bragg: At any time have you come across a group of people, or a person or an organisation, who has been too rich to touch?

Mr Tofel: No. In fact, if you think about our mission—stories about the abuse of power—the more power the greater the concern about abuse. As I said, the stories in the *Washington Post* this Sunday and Monday are squarely aimed at the last two Presidents of the United States and concern the one power under the American constitution that is most similar to an 18th century royal prerogative in Britain—the pardon power—and the abuse of that power.

Q767 Lord Bragg: I was thinking more of the great and massively well funded corporations, with their armies of lawyers, and whether there was just too much jungle to get through to get to the story.

Mr Tofel: It can be harder to do that work. It can sometimes be more frustrating. They can be more obstreperous perhaps, particularly in this country where the Government do not have the legal tools that the Government in your country have. Therefore, I think the Government's ability to resist investigative reporting is much less in the US than it is in the UK, but that does not hold us back. For instance, we did a great deal of reporting in the wake of the BP oil spill about the safety culture at BP, including a full episode of *Frontline* on public television. This coming spring our reporter is coming out with a book on this subject that is as devastating a portrait of a big company at its heart as I have read in a long time.

Q768 Baroness Deech: Mr Tofel, my question is about *ProPublica's* unique philanthropic funding model. I can see the benefits. I just wondered, following on from what Lord Bragg said, whether there is a downside. For example, if your donor, on whom you depend, comes from a particular business background and sits on your governing body, might that be an inhibition? Could there be a conflict of interest? Could you probe something if your particular philanthropic donor did not want you to?

Mr Tofel: We have faced questions about this from the first day *ProPublica* was announced and we have taken what we regard as important and careful steps to make sure that it is not. Members of our board do not know what stories we are working on. They never see our stories in advance. We think we have a good track record now of running stories that some of them are probably unhappy about when they finally read them. But more to the point, I think that the proper analogy, and the one that has played out in our experience, is that donors—and this is true not just of donors on the board but of all donors—need to be treated very much as the traditional print press has treated advertisers, in the same kind of arm's length manner, with the same kind of defence against intrusion into the editorial process—the same kind of independence from that sort of influence. The better print press

has developed over the years a series of safeguards for making sure that advertisers do not have the kind of influence that they could have in theory.

I wrote a book about the gentleman who really created the modern *Wall Street Journal*, a fellow named Barney Kilgore. In 1954 the *Wall Street Journal* had an enormous confrontation with General Motors, which was its largest advertiser by far. General Motors withdrew all its advertising from the *Wall Street Journal* and at the end of that confrontation, which was a seminal moment, I think, in the development of the American press, General Motors slunk back into the *Wall Street Journal* and the *Wall Street Journal* rolled along with no apology for the stories they had run and no corrections. Moments like that have established the culture, and it is important to treat donors like that.

Let me follow up one point and just add one bit of factual background, because we were started with a commitment from one donor for up to our entire budget for up to three years. However, as we have gone along—that donor was the Sandler Foundation in San Francisco—in 2009 we got contributions of \$1 million from other donors, or about 12% of the total. In 2010 contributions from people other than the Sandlers went up to about \$3.8 million, about 39% of the total. This year, although December is a very important month for fundraising, particularly in this country, we will be over \$4 million and somewhere in the 40 per cent of contributions from other donors. It is also true that diversifying the funding is an important part of the answer to that concern.

Q769 Baroness Deech: Yes, I can see that diversifying is very important, because I think in this country it might very well be said that there is a conflict of interest. We get it when a charitable foundation funds medical research, for example. There is always a suspicion that somehow they are protecting themselves, so that would be a risk here. On the other hand,

presumably you have the benefit with philanthropic funding of being able to cover stories that you would not otherwise be able to afford to do so.

Mr Tofel: I think it is very clear that *ProPublica* would not exist without philanthropic funding, not just from the outset but indefinitely. I think the chances of being able to conduct an operation such as ours on a for-profit basis are exceedingly remote.

Q770 Lord Clement-Jones: Mr Tofel, I think in fact you are a not-for-profit corporation, are you not, and you are exempt from taxes, is that right?

Mr Tofel: That is correct.

Q771 Lord Clement-Jones: That is analogous to our charitable status in the UK. Under UK law we have some constraints on the sorts of activities that you can carry out in this field if you are a charity. Do you have constraints on the kind of stories that you can do and the kind of activities that you engage in because you are a not-for-profit corporation?

Mr Tofel: We have two principal legal constraints: first, we are not allowed to engage in partisan activity in terms of advocating candidates for election. For instance, although we do not have opinion pages and we do not write editorials; if we did we would not be able to endorse candidates for election. The second constraint is that we are forbidden to engage in lobbying, about which there are actually quite complicated technical rules. To reduce them to their essence, we are not permitted to advocate specific legislation. We are able to advocate a point of view, to point out a problem, to get fairly insistent that someone ought to resolve the problem, but we are not allowed to say that we are in favour of House Resolution 546 about some subject or other.

Speaking now just for ourselves—and I know that other non-profits in the States would feel differently about this—we would not cross either of those lines if we were permitted to do

so legally. We have no interest in being partisan. In fact, we have a very strong interest from our founding in maintaining a non-partisan approach to our news gathering and our publication, and we would like to be as little engaged in horse trading with the legislature in this country as we can. This may get ahead to another question, but I will just say that we would not want to accept public funding for what we do. We do not believe that it is possible to do accountability reporting, a lot of which ultimately needs to be about the legislature, if you are taking money from the legislature.

Q772 Lord Clement-Jones: You can campaign for action, though, as you did with Governor Schwarzenegger in LA, and that is perfectly permissible?

Mr Tofel: Absolutely. The rules here are relatively technical. We are, for instance, forbidden to advocate legislation, but to say, for instance, that the President should end the rules that are resulting in race discrimination in the awarding of presidential pardons is not to ask for legislation because that is purely an executive prerogative and does not involve the legislative branch in any way.

Q773 Earl Selborne: If I could summarise the discussion on funding so far, your model depends particularly on philanthropy from large gifts and small gifts. We understand from the written evidence that you have submitted that, since 2011, you have been open to advertising and have been taking income from advertising. Is that correct?

Mr Tofel: That is correct.

Q774 Earl Selborne: Do you see any other alternative funding models, although clearly not public funding, which you have ruled out? What other sources of funding, if any, might you be contemplating?

Mr Tofel: Let me take that in train. First of all, before we get to alternatives, you are correct; we have been accepting advertising since the beginning of this year. I want to be candid and say to you that the amount of money involved is not great. Our website runs a little more than a million page views a month, and at that level, which is modest in web terms—although, honestly, if we all propel ourselves back 15 years before we had ever heard of this, people reading a million pages of content in a month is a relatively significant commitment—it produces very, very modest amounts of money.

Let me just give you a quick picture of large and small donors. We had 100 donors two years ago. We had 1,300 donors last year. This year we have 2,100 donors to date and I hope we will have considerably more than that before the year is out, because, again, December is critical for fundraising in this country because of the tax laws.

To get to your question about alternative funding streams, the principal one, I think, is charging for content. We have had some experience with selling e-books this year through Amazon's Kindle Singles programme, and we have had some early success with that. The money there already exceeds that from advertising. If we could generate more titles—and they all seem to have what they call these days a long tail—I think there is considerable potential there.

Ultimately, if consumer behaviour online changes and people come to expect to pay for online content, conceivably that could make an enormous difference. We are not counting on that, but that would be the greatest game changer. For instance, in this country, as you may know, basically until about 20 or 30 years ago no one paid anything for television programming. Now, the average American—people of middle incomes and even less—think nothing of paying \$100 a month for television programming. If a similar transformation were to occur with online content, it would have very dramatic implications for our business. I

think we probably ought to leave to another day whether that is likely or not, but it is not impossible.

Q775 Earl Selborne: Are there any examples already of non-profit journalism in the United States that depend in part from online content and the sale of that?

Mr Tofel: Yes, there are a few. A number of other non-profit journalism organisations sell their content to their partners. As I say, we have had 88 partners. So far we have sold content to a few of them, but by and large not. To be candid with you, the principal reason for that is that the state of their businesses simply has not permitted it. *ProPublica* has come into existence in substantial part because of the business crisis of the press, and the business crisis of the press does not leave a lot of free resources left to pay people like us for content. You could get modest sums, but the chances of recovering anything like the cost of creating the content seem very unlikely, and there is no one doing that at the moment.

Q776 Earl Selborne: You are very different from most other such non-profit journalism outlets in that you have the underpinning of a large regular donation. Does that mean that your model is unlikely to be rolled out extensively elsewhere in the States?

Mr Tofel: I am not at all sure. As I said, 39% of our funding is broader than that last year, up to 40% this year, so I think we are moving toward demonstrating—and I believe we are—that if you can provide high quality content that makes a difference, there is a large or significant fast-growing constituency that is willing to help contribute to paying for it.

Q777 Lord Gordon of Strathblane: To take you back to this business of paying for content, while accepting that newspapers in the States or here cannot afford to pay for the

entire cost, they surely could make a contribution that would help you to defray the costs of the investigation that you have undertaken.

Mr Tofel: I think I have to leave it to them whether they can afford that or not. A lot of those institutions are loss-making at the moment. Some of them admit it, others do not, but I think that condition is fairly widespread. I would say that every little helps and we would be happy to receive it. But I do want to put the focus where it ought to be in this, which is that the cost of doing this kind of work is extraordinary and the kinds of fees that people would expect to pay, if they were going to pay at all, would be a very small fraction of that total cost.

Q778 Lord Gordon of Strathblane: You would rather not in any way deter them from publishing? That is the main goal for you: that the story is actually published?

Mr Tofel: That is right. Frankly, one of the considerations that we had early on was that if we asked prospective partners to pay, we would ultimately inevitably be in a discussion with their business operations, whereas if we are providing the content for free, the discussion between us and our partner is limited to editor-to-editor conversations. That has one effect, which is quite important in the news business: being able to move a great deal faster.

Q779 Lord Gordon of Strathblane: Can I ask you about another aspect of your distribution of stories? It is described as being made available for reprint under a Creative Commons licence. That is not an expression that we are familiar with in this country. Could you just explain slightly what that means?

Mr Tofel: I am happy to. The sound cut out there for a second. Did you say that people are not generally familiar with Creative Commons?

Q780 Lord Gordon of Strathblane: We are not particularly familiar in this country with the term “Creative Commons licence”, so could you explain what it is?

Mr Tofel: Sure. It is a standard intellectual property licence that permits publishers, such as us, who want to make it possible for other people to share their work, to do so on a standard basis that forgoes all the rather complicated negotiations of the circumstances and controls of that licence. We therefore publish on our site something that we actually head “Steal Our Stories”. We invite people in most cases to reprint them, but then we have set out standard conditions. They must be reprinted in full without editing. The internal hyperlinks must be preserved. Credit must be given to us and a link provided somewhere back to our site. All the intellectual property licensing language is provided by Creative Commons, which is itself an independent non-profit. This has made an enormous difference to our operations from the very beginning with organisations all over the country, and actually around the world; we have had a number of UK web publishers who avail themselves of this opportunity regularly with parts of our content.

Q781 The Chairman: Mr Tofel, if I might I will interject here and ask two questions that occur to me arising from what you have just said. First, you talk about your partners; I think you said that the *Washington Post* had published a lot of the information that you were talking about earlier. How do you pick your partners? Secondly, traditionally, from the evidence we have heard, it seems that newspapers have perceived and felt that doing a certain amount of investigative journalism was part of their brand. Have you found that newspapers who previously might have carried out investigative journalism think, “Oh well, *ProPublica* is there, we need not bother with this”?

Mr Tofel: Let me take those questions in turn. We pick our partners to the extent that we have a choice—and we are very fortunate that we frequently do—with an eye again to our

mission, and the mission is impact. We will select the partners that we believe give the story the greatest opportunity for impact. In a story about the New Orleans police, that is the New Orleans *Times-Picayune*. Clearly, in a story about California nursing it is the *Los Angeles Times* for the very reason that the Governor was reading it at his home on a Sunday. In the story about pardons, the *Washington Post* is an ideal partner because, frankly, that story ultimately has an audience of one or maybe two, including the Attorney-General, or maybe three, the First Lady of the United States, who is also a lawyer. That is about it, and if you want to reach those people there is probably no better way than the *Washington Post*.

On your question about our partners retreating, I do not think that is the problem. A lot of our partners frankly have had to retreat from investigative reporting over the last six or seven years. I do not think they have done it at all because of us. I think they have done it because they are under enormous economic pressure, and if I were in their position I think I might make some of the same judgments.

I used to be the Assistant Publisher of the *Wall Street Journal* and I know that news budgeting in some sense is arbitrary. If you tell an editor that he has \$1 million he will get you the best news product he can for \$1 million. For \$2 million it ought to be better. For \$500,000, frankly, it is not going to be as good. At some point you cut news budgets back to the point where an editor starts to say, "Well, I only have enough to do the minimum, and what is the minimum? I have to cover City Hall, I have to cover the local schools and I may have to cover the local ball club because people care about that. How much left do I have for enterprise work like investigative reporting?" Sometimes the answer could be none and it is hard to argue with that judgment.

Going back to the previous question, I want to make one point that occurred to me about the Creative Commons licence, which is important. Under that licence we also require that people not make commercial use of our content, which is to say that it is fine with us for

them to put advertisements on the web pages, but it is not fine with us for them to resell the content or to sell advertising specifically against it. So in effect they cannot go into an economic competition with us having appropriated our content. Again, Creative Commons has some rather carefully drafted licences that make that possible.

Q782 Lord Gordon of Strathblane: I was going to switch slightly to new technologies. We have heard in the inquiry so far from other witnesses that new technologies, as well as posing a threat to traditional newspapers, are often a great help to journalists, but I would imagine that that does involve learning new skills. How do they learn to gather data online, interrogate it and present it in an acceptable way? What skills are you looking for in the modern investigative journalist?

Mr Tofel: I think you are precisely right. Two things have, frankly, come into their own, even since we started to operate, that make a big difference in our work. As you suggest, one is databased reporting. We call that work news applications. They are coders who are really journalists, and there is an increasing need for people like that. Last year, we began a project called Dollars for Docs. That charts payments by the pharmaceutical companies to doctors in the United States to promote the writing of prescriptions for prescription drugs. Hundreds of millions of dollars, probably literally billions of dollars, are being spent on this in the States and paid to hundreds of thousands of doctors. We have pulled together a database that names those doctors in many hundreds of thousands of cases, gives the amount of the payment and the company that it is from. To do that required quite sophisticated data analysis and scraping and other techniques on the web. One consequence of that is that in our company—at 54—I am the third oldest person in the place, and that is not an accident.

The second phenomenon is social media, which has to some extent become an enormously valuable way to gather information and certainly to distribute it. We distribute our content on the web but we also distribute it in a daily e-mail to 55,000 people on a Facebook feed that now has 25,000 fans, and on Twitter where we have 87,000 or 88,000 followers. Those are critical phenomena in our work, and they have really come into their own, as I say, just since we began publishing.

Q783 Lord Gordon of Strathblane: My final question is whether you try to recruit people who already have these skills or whether you provide any kind of training, or retraining, of what you might call traditional journalists to equip them to use the new technologies.

Mr Tofel: Some of both. It is critical to hire people who have a solid grounding in this field and are innovators, but also to give them the licence to innovate for themselves. We are very eager to train anybody in our place who shows an affinity for this kind of work. The other thing is we have made active use of an internship programme, which can not only provide us with great young talent but can begin to train that young talent in ways that send them out into the new world of journalism. In just three years *ProPublica* interns have gone on to full-time jobs at the *New York Times*, the *Chicago Tribune*, *Frontline*, *Bloomberg News*, *Bloomberg Business Week*—I could go on and on.

Q784 Lord Clement-Jones: As you explained, you had the benefit of hearing Sir Harold Evans' evidence to us. At the time he said that one of the major constraints for investigative journalists in the UK is the law surrounding issues such as libel and defamation. Then you talked about contempt and prior restraint, which I interpret as the ability to obtain injunctions before publication. Are there any stories that you think you have been able to

publish in the US that you do not think would have been possible to publish in the UK due to those types of legal constraints?

Mr Tofel: That is a very good question. It is hard to answer that for sure because the systems have grown up so differently with such strong, and in this sense divergent, traditions. I do not think the libel laws in Britain would have constrained any of our stories. We are very careful, we are quite determined and we hold ourselves to a very high standard along those ways. The libel law is very important. Principally, I was a libel litigator for nine years earlier in my life. Frankly I think it is protection for error, which is inevitable given that we are all human, but that has been less important in our work so far. By analogy, with a lot of the stories that we have done, had we tried to do a similar kind of story in Britain we might well have fallen foul of one form of prior restraint or another. For instance, I would be very, very surprised if we had to deal as much with a prerogative of the Executive or the Monarch if we had been permitted to publish what we published this past weekend with that level of intrusion into monitoring those kinds of prerogatives.

Lord Clement-Jones: You think we have a rather different approach to freedom of information and that sort of thing.

Q785 Lord Razzall: Because one of the other things that Sir Harold Evans said in his evidence—particularly in relation to the investigation here of the phone hacking scandal—was that that would have been covered much more quickly in the United States. I am looking at the transcript of evidence here. The difference here was that here the police were bribed, he said, and he did not think that would happen in the United States. Would you agree with that?

Mr Tofel: Of course one would like to believe that, and there certainly have been instances of police bribery in the United States. There was a very extensive one 40 or 50 years ago in

New York City where I grew up, and there have obviously been others since. I agree with the thrust of those comments, though. I do think that law breaking on that scale would have been very unlikely to go undetected for that long and, with respect—and I am treading on ground about which I do not know nearly as much as Harry or all of you—I do think that the degree of concentration of the press in Britain probably played a significant role in that.

Lord Razzall: Yes, he said that as well.

Mr Tofel: Yes, he did, I know. We have nothing like that in this country and, if we did, I can imagine it giving rise to the same kind of harm.

Q786 The Chairman: A similar point to this is that whether you are in Britain or in the United States and you are carrying out an investigation, you aim to get to the truth. If you get to the truth, you are certainly going to be pretty clear of a lot of the problems that the laws of defamation and the laws surrounding the press can constrain you.

Mr Tofel: Yes, that is a much better statement.

Q787 The Chairman: But do these laws burn you off sometimes from starting even to look at something where you are sure there is something rotten and where you think, “We will just never manage to get this one sorted”?

Mr Tofel: They do not in this country, and I just do not know enough to know whether they do in your country. Your first statement—and I am sorry to have interrupted—is a much better statement of what I was trying to say about the libel laws a little earlier. We have done seven stories with UK partners. We did a story on General Electric’s MRI drug with the *Sunday Times*. We have done stories on natural gas drilling and the Mumbai attacks, and actually the Murdoch scandal and post-9/11 air quality with the *Guardian*. We have done a couple of stories on global banks and US taxes with the *Financial Times*. We certainly were

not deterred in any of those stories by UK libel laws, and I would be very surprised if we would be by anything I can imagine.

Q788 Lord Clement-Jones: You mentioned contempt as well. That is obviously in the context of a legal case. Therefore, do you think that your contempt laws are not as strong as ours? Is there some feeling on your part that our contempt laws are too heavy in protecting defendants?

Mr Tofel: Our contempt laws essentially do not exist. For American lawyers trying to understand the British system, it is contempt that is the greatest mystery and the one thing that, when you learn about it, you sort of go, "Huh?" There really is no analogy in the States. Again, I tread on to this ground with some deference and care, but I will say that in the modern world of the internet it is not clear at all to me that anything bad would happen in the UK if all the contempt laws were repealed. I say with the greatest respect and in a world where what is quickly becoming the dominant information medium is a global medium that the contempt laws actually often hold the courts up to ridicule and have little other effect.

Q789 Lord Clement-Jones: That is a very interesting comment in light of the fact that our Attorney-General is tightening up the contempt laws as far as he can. Can I just move on to the treatment of those laws by journalists? Do you think it is ever right for a journalist to break the law in order to uncover an issue that is in the public interest? Have any of your journalists used illegal methods in order to investigate a story?

Mr Tofel: The answer to the second question is, no. I will say this; it is hard to imagine a circumstance in which we or I would take that position. There is an important principle in American law enshrined most importantly in a Supreme Court case called *Walker v Birmingham*, which involved Dr Martin Luther King Junior, in which the Supreme Court

makes clear that if one chooses to break the law because one thinks the law is wrong or immoral, then—even if it is proved later that the law is wrong or immoral, or indeed unconstitutional—the punishment for breaking the law follows and should be upheld legally in any event. I would translate your question into: is there a circumstance in which we would choose to engage in civil disobedience? It is hard for me to imagine. I would not want to rule it out, but I would say that in America the law is fairly clear that if one engages in civil disobedience one holds oneself out to legal jeopardy and that that is not entirely inappropriate.

Q790 Lord Macdonald of Tradeston: Mr Tofel, at the moment you have a very novel media platform here but you are still projecting it through the most traditional areas in the main through the newspapers. Do you see this just as a transitional phase until you reach other collaborations some time in the future, perhaps with groups of citizen journalists, as indeed has happened with the *Guardian* and the LSE in a story that has just broken this week in the United Kingdom: that universities would work alongside newspapers or groups like you because they can put dozens or even hundreds of investigators into the field to try and establish the spread of a big story.

Mr Tofel: It is a very interesting question and it is one that we have thought about from the beginning. We have worked with newspapers, but I should hasten to point out we have also worked with magazines quite extensively, with television, with radio and with online sites. The 88 partners run quite a wide gamut. Increasingly, we also have the ability to publish with impact ourselves, and that is what the e-mail list, the Twitter stream and the Facebook following increasingly give us. It is very hard to say how this evolves. For us, I think we can afford to be somewhat agnostic about it. If partners continue to provide the greatest opportunity for impact, I think we will stay there. If we find that they are increasingly

unnecessary or that their ability to provide impact weakens and our ability to deliver material directly to consumers strengthens, we will dictate our conduct accordingly.

One idea that I have heard brooded about, which I very much share, is that it is said that the atomic unit of journalism used to be the publication, the issue of a publication or the television or radio programme and that it has increasingly become the story. The individual story is now shared, sifted and distributed in such a way that it increasingly becomes the focus itself. If that is correct—and I believe it is—one can act quite differently, even conceptually differently, with respect to some kinds of stories and others.

Q791 Lord Macdonald of Tradeston: In America you have a much longer tradition of essays in investigative journalism. I wonder whether that what you were talking about when you mentioned the e-books that you might put on Kindle. Would that be a form of micropayment for a long investigative story rather than an old fashioned book?

Mr Tofel: It is possible. One of the things that Amazon has experimented with this year quite successfully is this idea around book publishing and magazine publishing and that a certain range of narrative, just in terms of length, was uneconomic to produce. It was too long for magazines and too short for books. One of the things that online publishing has done is explode that. In that middle ground now you can publish an e-book, or whatever we are going to end up calling it—I doubt we will end up calling it an e-book—something in that middle range, and really throughout that middle range, quite effectively. We have taken advantage of that, for example in pulling together collections of our work. Some of it is just long-form narrative. We find that there is an enormous audience for long-form narrative if it is sufficiently compelling to pull people through it.

Q792 Lord Macdonald of Tradeston: Have you found the pricing point at which you can get a mass sale? Is it \$1, \$2? Will people pay \$5 or \$10?

Mr Tofel: I think it depends on, among other things, length and probably brand. We have experimented mostly with 99 American cents, but we may well look at \$2 or \$3 in the near future for some other kinds of work.

Q793 Bishop Norwich: Mr Tofel, I was impressed in your written material by your stated aim of uncovering unsavoury practices and holding them up to public opprobrium. What if you thought that the public themselves were in favour of an unsavoury practice and you are convinced that the public's mind ought to be changed. For example, there would be those in the United States, and certainly plenty here, who think that the death penalty is an unsavoury practice. Would that be off limits as an investigation? I was not quite sure whether that would come into the lobbying category that you were talking about earlier.

Mr Tofel: I do not think it is a question of lobbying, but I do think the question would be: is it investigative reporting in the sense of us revealing something that someone with some sense of power was trying to keep a secret. For instance, for two and a half years now we have worked very extensively on the dangers of natural gas drilling and hydraulic fracturing to the water supply in the country—to some extent the audience has been the public—to make people aware of the threat to the water supply when this work is conducted without appropriate safeguards. In that case, I think it was very appropriate investigative reporting because the industry was working quite hard to make sure that people did not understand these risks and did not understand how these processes worked, the chemicals they used and so forth.

In the case of the death penalty, that is a harder case unless one is talking about a particular case where the facts may not be known. But if we are talking about a matter where the facts

are known and we are simply arguing as a society about whether something is right or wrong, that is critical journalism that is very important societally but is not investigative journalism in my judgment.

Q794 Bishop Norwich: Thank you. Can I go on, just to make certain that I also understand what we were told about *ProPublica* supplementing its news stories by data-rich news applications? Is this online, Facebook, Twitter? Is that what is being referred to there?

Mr Tofel: That involves things like the Dollars for Docs database with the payments to doctors or the extensive work that we did on charting how secondary schools throughout the United States rank on various indications of college readiness and allowing people to look up how their school compared to others around the country or around their state. We have done a number of things: for example, charting the spending in the American stimulus legislation in 2009 and 2010 and how it was being spent at a very granular local level, and the bailout funds in 2008 and 2009 and how they were being spent. Again, it allowed people to disaggregate that data. A fair amount of work was done on redistricting in this country, which is a decennial task that accompanies our census in drawing legislative districts. These are databases and related stories that we pull together, which we hope tease out some important stories on a national level but also allow people to look at their local level and allow local journalists to explore at a local level. The payments to pharmaceutical companies—what we call Dollars for Docs—has had 120 different news organisations around the country pick up local stories in their own communities and explore the same subject at a local level.

Q795 Lord Razzall: You obviously have extraordinary experience in investigative journalism in the United States and clearly, from your very helpful answers, significant

knowledge about what has been happening over here. I think this is your opportunity to answer the \$64,000 question: what do you think we should recommend to secure the future of investigative journalism here?

Mr Tofel: I think I want to stay away from one \$64,000 question, which is public funding, because the culture in Britain is so different and I just do not feel that I know enough. I know enough to believe it would not work in this country, and I am confident that I do not know enough to know whether it would or not work in Britain. I know that the answer might well be different.

Lord Razzall: I do not think the Chancellor of the Exchequer would permit it, even if we recommended it.

Mr Tofel: Right. As I tried to indicate in my remarks on contempt, I think the historical record is clear that greater press freedom is a bet on the wisdom of the people that historically has always paid off. I know that part of this inquiry is in response to what started to come out this summer and, as a journalist, I suspect there is much more to come out. I think that the most appropriate instinct and reaction to that would be greater press freedom, not less. The need for responsibility in the press should be enforced by readers rather than by the state. I will drop one footnote in to say—as I did before—that one might well conclude that the press in Britain is too concentrated in one company and that that is not good for the country, but I do not think that that is so much a press question. Anti-trust laws are not unique to the press but they probably ought to apply to the press for the same reasons that they ought to apply to everyone else.

The Chairman: You have been extremely candid with us and we are obviously very grateful. When we approached you we said that we hoped you might speak to us for about an hour, which is indeed more or less what we have done. I do not want to take up any

more of your time unless there is any other burning issue that you would like to touch on with us.

Mr Tofel: No. The last question was the \$64,000 question, and I think that is probably the appropriate note on which to end. I will say we are quite honoured to have been asked to be here, both institutionally and personally, so thank you.

The Chairman: On behalf of everybody here, can I say thank you very much indeed. It has been extremely interesting and helpful. Thank you.