GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

January 11, 2013

Lee Levine, Esq.
Levine Sullivan Koch & Schulz, LLP
1899 L Street, N.W., Suite 200
Washington, D.C. 20036

Re: Meet The Press

Dear Mr. Levine:

As you know, the Metropolitan Police Department (MPD) has referred to this office (OAG) the results of its investigation of the broadcast by your client, the National Broadcasting Company (NBC), of the news program "Meet the Press" on Sunday December 23, 2012. On that broadcast, during the course of an interview of a guest regarding firearms policy in the United States, the program host, David Gregory, exhibited on camera a large capacity ammunition feeding device ("magazine") in violation of D.C. law. I have also received and reviewed your letter to me of January 9, 2013, explaining the circumstances under which Mr. Gregory came into possession of the magazine, the purported confusion from the allegedly conflicting advice from federal and local law enforcement sources, and assurances by your client of future compliance with our laws.

The device in the host's possession on that broadcast was a magazine capable of holding up to 30 rounds of ammunition. The host also possessed and displayed another ammunition magazine capable of holding five to ten rounds of ammunition. Neither magazine contained any ammunition nor was either connected to any firearm. The broadcast took place from NBC studios located at 4001 Nebraska Avenue, N.W. in Washington, D.C.

It is unlawful under D.C. Code Section 7-2506.01(b) for any person while in the District of Columbia to "possess, sell, or transfer any large capacity ammunition feeding device regardless of whether the device is attached to a firearm" or loaded. Under the Subsection, the term "large capacity ammunition feeding device" means a "magazine, belt, drum, feed strip or similar device that has the capacity of, or that can be readily restored or converted to accept more than ten rounds of ammunition." Under D.C. Code Section 7-2507.06, any person convicted of a violation of this Subsection may be imprisoned for not more than one year, fined not more than $1,000, or both.

The larger of the two ammunition feeding devices in question here meets the definition under the statute. OAG has responsibility for prosecuting such offenses and takes that responsibility very seriously. We have a history of aggressively prosecuting violations of this statute where the circumstances warrant. There is no doubt of the gravity of the illegal conduct in this matter, especially in a city and a nation that have been plagued by carnage from gun violence. Of course, the recent tragic, heart-breaking events, particularly at Sandy Hook elementary school in Newtown, Connecticut, which appear to have led to the program in question, also underscore our belief in the vigorous enforcement of such laws.

Having carefully reviewed all of the facts and circumstances of this matter, as it does in every case involving firearms-related offenses or any other potential violation of D.C. law within our criminal jurisdiction, OAG has determined to exercise its prosecutorial discretion to decline to bring criminal charges against Mr. Gregory, who has no criminal record, or any other NBC employee based on the events associated with the December 23, 2012 broadcast. OAG has made this determination, despite the clarity of the violation of this important law, because under all of the circumstances here a prosecution would not promote public safety in the District of Columbia nor serve the best interests of the people of the District to whom this office owes its trust.

Influencing our judgment in this case, among other things, is our recognition that the intent of the temporary possession and short display of the magazine was to promote the First Amendment purpose of informing an ongoing public debate about firearms policy in the United States, especially while this subject was foremost in the minds of the public following the previously mentioned events in Connecticut and the President's speech to the nation about them. There were, however, other legal means available to demonstrate the point and to pursue this line of questioning with the guest that were suggested to NBC and that could have and should have been pursued.

OAG also appreciates that the magazine was immediately returned to the source that NBC understood to be its lawful owner outside of the District and that the magazine in question, with NBC's assistance, has been surrendered to MPD. OAG also recognizes the cooperation NBC has provided in the investigation of this matter.

On the other hand, no specific intent is required for this violation, and ignorance of the law or even confusion about it is no defense. We therefore did not rely in making our judgment on the feeble and unsatisfactory efforts that NBC made to determine whether or not it was lawful to possess, display and broadcast this large capacity magazine as a means of fostering the public policy debate. Although there appears to have been some misinformation provided initially, NBC was clearly and timely advised by an MPD employee that its plans to exhibit on the broadcast a high capacity magazine would violate D.C. law, and there was no contrary advice from any federal official. While you argue that some NBC employees subjectively felt uncertain as to whether its planned actions were lawful or not, we do not believe such uncertainty was justified and we note that NBC has now acknowledged that its interpretation of the information it received was incorrect.

NBC should be made aware that OAG's decision not to press charges in this matter was a very close decision and not one to which it came lightly or easily. Accordingly, NBC and its employees should take meticulous care in the future to ensure that it is in full compliance with D.C. law whether its actions involve firearms or any other potential violation. Repetition by NBC or any employee of any similar or other firearms violation will be prosecuted to the full extent supported by the facts and the law.

I am confident that you will convey our deep concern and warning to your client.

Sincerely,

Irvin B. Nathan
Attorney General for the District of Columbia