

Pressing the Police and Policing the Press:  
The History and Law of the Relationship Between the News Media and Law  
Enforcement in the United States

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- To the members of the press and police doing the work to help our communities. The news media and law enforcement are both fundamental parts of society, affecting the public in the United States and around the world. Both institutions, individually and in concert, have positive goals, purposes, functions, and actions meant to serve the public. However, there are also problems that they need to address and ways they need to improve in order to best benefit each one of us, necessitating this study and future research.
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Five years ago, sitting by the fountain outside Murphy Hall, I never could have imagined what my time as a grad student would have in store. But to look back and see how far I've come and how much I have accomplished means so much. For the memories, friendships, opportunities, experiences, knowledge, skills, support, and so much more, I am forever thankful.

## **Dedication**

*Dedicated to my family, friends, colleagues, mentors, and teachers, as well as those who  
inform us, protect us, and strive for a better world.*

## **Abstract**

Amidst urbanization, immigration, industrialization, and rising crime in the United States in the 1830s-1840s, the modern conceptions of both the press and police were born. From early historical antecedents in the American colonies through the present, the news media and law enforcement have been, and continue to be, fundamental institutions in the United States. However, both parties face significant political, economic, social, and technological tension, pressure, and scrutiny, signifying the need for further research. Although past literature has covered some aspects of the press-police relationship, its history and law remain understudied. Through a new and original theoretical framework, in-depth literature review, three-part content analysis, and two-part legal analysis, this dissertation provides the most complete and comprehensive study of the history and law of the press-police relationship to date. It also aims to understand, analyze, and address how the history and law of the interactions between both parties inform the present and future of their relationship, including key implications on the press, police, and American public, as well as how the press-police relationship can be improved. This study therefore provides a series of important, tangible recommendations for the press and police to improve their relationship and better serve the public moving forward.

This dissertation first provides an original theoretical framework combining First Amendment theory and Social Responsibility Theory (SRT), thereby revealing that the press-police relationship can be mapped into three categories: 1) cooperative co-existence, 2) contentious, and 3) blurred. Second, this study provides a literature review

of the history of the press and the history of the police in the United States. By combining these histories, this study provides the most complete history of the press-police relationship to date, as well as revealing four types of interactions between the institutions: 1) press coverage of crime and police matters, 2) press investigations of law enforcement, 3) police arresting, searching and seizing, subpoenaing, and surveilling the press, and 4) both parties blurring the lines of their relationship. Significantly, the literature review also reveals that despite instances, moments, and eras of divisiveness between the press and police, the two institutions are also capable of moments of stronger and better relations, demonstrating that the press-police relationship can be improved in the present and future. Third, this dissertation includes a three-part content analysis of historical newspaper articles, providing new research and insight into three practices that blur the lines of the relationship: police impersonation of the press, press impersonation of police, and media ride-alongs. The content analysis therefore provides the most complete history of these practices to date and builds on the findings of the literature review. Fourth, this study provides a two-part, in-depth legal analysis of the four types of interactions between the press and police, focusing especially on the interactions that blur the lines of their relationship. In so doing, this study provides the most comprehensive analysis of the legal landscape around the press-police relationship to date. Finally, this dissertation analyzes the implications of the history and law of the categories and interactions between the press and police on both each other, their relationship, and the public. Significantly, the history and law of the press-police relationship reveals how both institutions can improve their relationship and better serve the public in the future.

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Pressing the Police and Policing the Press: The History and Law of the  
Relationship Between the News Media and Law Enforcement in the United States

*Scott Memmel*

**Chapter 1: Introduction**

On September 3, 1833, the *New York Sun*, under the heading “Police Office,” covered the story of John Evans, who was “brought up [by police to the watch-house] for throwing stones at the house of Eliza Vincent, who refused him admittance.”<sup>1</sup> A “watchman”<sup>2</sup> told the newspaper that he had “advised [the] prisoner to desist,” which led Evans to call him “a rascal.” The watchman responded by telling Evans to “clear out” or he would “get a devil of a flogging.” The watchman then seized Evans and “walked him up to the watch-house” where he was “held to bail for his appearance at court.”<sup>3</sup>

At first glance, this short excerpt appears to be just another crime story written by a journalist and distributed to a public that has, and continues to be, fascinated by criminals and wrongdoing.<sup>4</sup> However, the story was part of a series of firsts, including the

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<sup>1</sup> *New York Sun*, Sept. 8, 1833, 2. See also Frank Michael O’Brien, *The story of the Sun, New York: 1833-1928* (New York: D. Appleton and Company, 1928), 7-8.

<sup>2</sup> Samuel Walker, *Popular Justice: A History of American Criminal Justice* (Oxford: Oxford University Press, 1998), 27-28. A form of law enforcement prior to modern police forces was the “watch system” in which a “group of men patrolled the city to watch for fires, suspicious individuals, or possible riots.”

<sup>3</sup> *New York Sun*, 2.

<sup>4</sup> See Christopher B. Daly, *Covering America: A Narrative History of a Nation’s Journalism* (Amherst, Massachusetts: University of Massachusetts Press, 2012), 61-65; Mitchell Stephens, *A History of News* (Oxford: Oxford University Press, 2007), 100; William Huntzicker, *The Popular Press, 1833-1865* (Westport, Connecticut: Greenwood Press, 1999), 9-10; Jeremy Lipschultz and Michael Hilt, *Crime and Local Television News: Dramatic, Breaking, and Live from the Scene* (Mahwah, New Jersey: Lawrence Erlbaum Associated, Inc., 2002), 1; Ray Surette, *Media, Crime and Criminal Justice: Images, Realities, and Policies, Fourth Edition* (Belmont, California: Wadsworth, Cengage Learning, 2011), 52; Willard Grosvenor Bleyer, *Types of News Writing* (Cambridge, Massachusetts: The Riverside Press, 1916), 46-47; Jerry V. Wilson and Paul Q. Fuqua, *The Police and the Media* (Boston, Massachusetts: Little, Brown and Company, 1975), 4. See also Scott Bonn, “Why We Are Drawn to True Crime Shows,” *TIME*, Jan. 8, 2016,

first of nine crime stories appearing in the first issue of the *New York Sun*. This newspaper, established by Benjamin Day, marked the first of the “Penny Press,”<sup>5</sup> often regarded as the beginning of the modern conception of “news.”<sup>6</sup> Therefore, the story about Evans’ decision to throw rocks at Vincent’s house marks the first modern reported crime story and the beginning of “police news” aimed to inform and/or entertain the American public.<sup>7</sup>

Reporting on crime and covering police matters are just one facet of the complicated, but important relationship between the press<sup>8</sup> and police<sup>9</sup> in the United

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<https://time.com/4172673/true-crime-allure/>; Paige Smith, “This Is Your Brain On True Crime Stories,” *HuffPost*, April 5, 2018, [https://www.huffpost.com/entry/psychological-reasons-you-love-true-crime-stories\\_n\\_5ac39559e4b09712fec4b143](https://www.huffpost.com/entry/psychological-reasons-you-love-true-crime-stories_n_5ac39559e4b09712fec4b143).

<sup>5</sup> Wm. David Sloan, *The Media and America: A History* (Northport, Alabama: Vision Press, 2008), 127-28. Sloan explained that the “Penny Press” and “penny papers” got their name because, for the first time, newspapers were sold for a penny rather than five or six cents.; Huntzicker, *The Popular Press*, 13. Huntzicker noted that although earlier newspapers had required a \$4-per-year subscription, they are not considered to be penny papers, though they did include some police/crime news. See also Willard Grosvenor Bleyer, *Main Currents in the History of American Journalism* (Cambridge, Massachusetts, The Riverside Press, 1927), 165; George Henry Payne, *History of Journalism in the United States* (New York: D. Appleton and Company, 1920), 242-43; James Melvin Lee, *History of American Journalism* (Garden City, New York: The Garden City Publishing Co., Inc., 1923), 185; Frank Luther Mott, *American Journalism, A History: 1690-1960* (New York: The Macmillan Company, 1968), 216-20.

<sup>6</sup> Michael Schudson, *Discovering the News: A Social History of American Newspapers* (New York: Basic Books, 1978), 22.

<sup>7</sup> Schudson, 22. Schudson wrote, “[F]or the first time [newspapers] printed reports from the police, from the courts, from the streets, and from private households. . . . [Day] pioneered the coverage of the criminal, especially in reporting police news.” See also Huntzicker, *The Popular Press*, 19; Hazel Dicken-Garcia, *Journalistic Standards in Nineteenth-Century America* (Madison, Wisconsin: University of Wisconsin Press, 1989), 89; Stephens, *A History of News*, 184; Paul Starr, *The Creation of the Media: Political Origins of Modern Communication* (New York: Basic Books, 2004), 133.

<sup>8</sup> For the purposes of this study, members of the “press” or “news media” include professional reporters, photographers, camerapersons, and others employed by local, regional, or national print, radio, television, or internet-based news organizations. Additionally, this study at times discusses the media more generally, such as entertainment radio/television shows and documentary filmmakers, among others.

<sup>9</sup> “Police” and “law enforcement,” which are also used interchangeably, include officials and officers from federal authorities, namely the Federal Bureau of Investigation (FBI), statewide

States (“press-police relationship”).<sup>10</sup> On July 22, 2018, nearly 185 years after the *Sun* published the first modern crime story, the Minneapolis *Star Tribune* demonstrated another angle of this relationship when it published the first part of a special report investigating how “[s]exual assault cases in the Twin Cities and across Minnesota [were] being investigated poorly or not at all, leaving many women feeling betrayed by a system they once trusted.”<sup>11</sup> The report, “Denied Justice: Minnesota’s failed rape investigations,” used text, video, photographs, and more to investigate the police’s response to sexual assaults. In so doing, “Denied Justice” went beyond informing or entertaining the public and sought to hold police officers accountable.<sup>12</sup>

But the press-police relationship transcends the press covering or investigating police. The relationship has also been marked by federal, state, and local police arrests, searches and seizures, subpoenas, and surveillance of journalists and/or news

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authorities, and “local police.” See Samuel Walker and Charles M. Katz, *The Police in America: An Introduction* (New York: McGraw-Hill, 2008), 3. Walker and Katz defined law enforcement agencies as those that are “regularly engaged in (1) preventing crime, (2) investigating crimes and apprehending criminals, (3) maintaining order, and (4) providing other miscellaneous services.” They excluded “government regulatory agencies whose personnel often have law enforcement powers,” “investigatory and prosecutorial agencies, such as state bureaus of criminal investigation, coroner’s offices, and constables,” and “corrections agencies.” See also “Types of Law Enforcement Agencies,” *Discover Policing*, accessed June 19, 2020, <https://www.discoverpolicing.org/explore-the-field/types-of-law-enforcement-agencies/>. “Local police” include “municipal, county, tribal, and regional police that derive authority from the local governing body that created it.”

<sup>10</sup> Among the locations where the press and police may interact are the scene of story (public events, crime scenes, emergencies, special events), news/press conferences, interviews, courtrooms, jails/prisons, media ride-alongs, and during arrests, searches and seizures, and surveillance of journalists, such as in newsrooms, their homes, public spaces, etc.

<sup>11</sup> Brandon Stahl, Jennifer Bjorhus, and MaryJo Webster, “Denied Justice: Minnesota’s failed rape investigations,” *Minneapolis Star Tribune*, July 22, 2018, <http://www.startribune.com/when-rape-is-reported-in-minnesota-and-nothing-happens-denied-justice-special-report-part-one/487130861/>.

<sup>12</sup> See Vincent Blasi, “The Checking Value in First Amendment Theory,” *American Bar Foundation Research Journal* 2, no. 3 (1977): 521-649.

organizations. One notable example occurred after a violent protest at Stanford University in 1971.<sup>13</sup> Several demonstrators had seized Stanford University Hospital's administrative offices, occupying them for several hours. As officers from the Palo Alto Police Department and the Santa Clara County Sheriff's Department attempted to force their way into the offices, a group of demonstrators emerged from a separate set of doors and attacked the nine officers with sticks and clubs.<sup>14</sup>

Two days later, on April 11, 1971, a special edition of the *Stanford Daily*, the university's student newspaper, carried articles and photographs regarding the protest and violent confrontation between the protestors and the police.<sup>15</sup> On April 12, four officers, citing public safety and an active investigation into the confrontation, executed a search warrant on the *Daily*'s newsroom, searching the newspaper's laboratories, filing cabinets, desks, and wastepaper baskets, finding notes and correspondence. In response to the newspaper's lawsuit challenging the search, the U.S. Supreme Court held in 1978 that the First Amendment does not grant special protection from newsroom searches.<sup>16</sup> However, in 1980, Congress passed the Privacy Protection Act (PPA),<sup>17</sup> which provides journalists with qualified protection from searches and seizures by law enforcement of work product and documentary materials before they are released to the public.<sup>18</sup> *Zurcher v. Stanford*

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<sup>13</sup> *Zurcher v. Stanford Daily*, 436 U.S. 547, 550 (1978).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 551.

<sup>16</sup> *Id.* at 567–68 (citing *Branzburg v. Hayes*, 408 U.S. 665 (1972)); U.S. Const. amend. I. “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

<sup>17</sup> Privacy Protection Act, 42 U.S.C. § 2000aa *et seq.* (1980).

<sup>18</sup> *Id.* at § 2000aa-7(a). The PPA defines “work product” as materials created “in anticipation of communicating such materials to the public,” including conclusions, opinions, or theories. “Documentary materials” are those “upon which information is recorded,” such as written

*Daily* (1978) provides another good illustration of how the press and police can be at odds with each other, further complicating their relationship.

Finally, in some instances, the press' and police's goals, purposes, functions, and actions overlap in problematic ways. For example, on April 16, 1992, the U.S. Marshals Service and Montgomery County (Maryland) Police Department, in the course of executing three arrest warrants, entered the home of Charles Wilson, whose son, Dominic Wilson, had violated his probation on three felony charges.<sup>19</sup> The elder Wilson, wearing only a pair of briefs, ran into the living room to investigate, yelling at the police. The officers, thinking Charles was his son, wrestled him to the floor as his wife, Geraldine, entered the room wearing only a nightgown.<sup>20</sup> During the confusion, a *Washington Post* reporter and photographer took several photos and observed what took place. They were participating in a "media ride-along"<sup>21</sup> as part of coverage on "Operation Gunsmoke," an initiative to arrest dangerous criminals.<sup>22</sup> The Marshals Service had recently adopted a policy allowing journalists to "ride-along" with officers to observe and record operational missions.<sup>23</sup> When the Wilsons challenged the media presence under the Fourth

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materials, photographs, and electronically recorded tapes or discs. *See also* "The Privacy Protection Act of 1980," *Electronic Privacy Information Center*, accessed June 25, 2019, <https://epic.org/privacy/ppa/>.

<sup>19</sup> *Wilson v. Layne*, 526 U.S. 606 (1999).

<sup>20</sup> *Id.* at 607.

<sup>21</sup> "ride-along," *Oxford English Dictionary*, accessed June 28, 2019. The Oxford English Dictionary defines a ride-along as "a police programme under which observers accompany police officers on patrol, to provide the opportunity to learn about police work and to encourage closer relationships with the community.;" *Wilson*, 526 U.S. at 605. Chief Justice William Rehnquist explained that a media ride-along is when police "[invite] representatives of the media to accompany them.;" Rachel Costello, "Ride-alongs may cause legal trouble for the media," *The News Media & The Law* (2011): 35. Costello added that media ride-alongs are "a way to capture audio and video footage of newsworthy events."

<sup>22</sup> *Wilson*, 526 U.S. at 606.

<sup>23</sup> *Id.* at 626.

Amendment,<sup>24</sup> the Supreme Court held in *Wilson v. Layne* (1999) that the presence of the reporter and photographer violated the Wilsons' rights.<sup>25</sup> Thus, this case demonstrates one way in which the press-police relationship can become blurred in problematic ways.

These four examples, each from different historical moments, demonstrate the complexity of the press-police relationship in the United States. Yet, the history and law of the relationship, which can help illuminate important implications for both parties and the American public, remain understudied and, in some cases, completely missing. This study will aim to begin explaining the different aspects of the relationship, including the different categories and types of interactions between the press and police.

## **I. Research Questions**

This study seeks to further research and analyze the press-police relationship by focusing on its history and law, including how both inform the present and future of interactions between the press and police. This study therefore poses the following research questions:

- (1a) What is the history of the relationship between the press and the police in the United States?
- (1b) What are the legal considerations regarding the relationship in the United States?
- (2) What do the historical and legal analyses tell us about how the interactions between the press and police affect both parties, their relationship, and the American public?
- (3) What do they tell us about the press-police relationship in the present, including why the press and police can at times cooperatively co-exist, meaning they can work together while remaining independent institutions, while at other times the relationship is contentious or the lines are blurred between the parties?
- (4) What do they tell us about the future of the relationship?

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<sup>24</sup> U.S. Const. amend. IV. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

<sup>25</sup> *Wilson*, 526 U.S. at 614.

## II. Why Study the Press-Police Relationship and Why Now

These research questions in particular, and the press-police relationship in general, are important to study, and study now, for several reasons. First, both parties are fundamental players in American society that have significant influence.<sup>26</sup> The press and mass media are meant to be “society’s primary information system,” among other important purposes, while the police are meant to be society’s “primary system for legitimizing values and enforcing norms,” as well as ensuring public safety, law and order, and protection, among other responsibilities.<sup>27</sup>

Furthermore, although both the press and police had earlier antecedents, the modern conceptions of both in the United States began around the same time and have been continuously shaped by similar societal contexts and changes, as well as each other.<sup>28</sup> As the Penny Press emerged in the 1830s in New York City, modern police departments were forming in Boston in 1838, New York in 1845, Philadelphia in 1854, and Chicago and Milwaukee in 1855, among other major cities.<sup>29</sup> Each party faced, and was affected by, urbanization, industrialization, immigration, and rising crime.<sup>30</sup>

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<sup>26</sup> Walker, *Popular Justice*, 6. Walker argued that the police “reflect[] the highly democratic character of American politics and society,” which can also be extrapolated to the press.

<sup>27</sup> Ray Surette, *Media, Crime & Criminal Justice: Images and Realities, First Edition* (Pacific Grove, California, Brooks/Cole Publishing Company, 1992), 5-6.

<sup>28</sup> Surette, *Media, Crime & Criminal Justice, First Edition*, 2-3, 5-6. Surette argued that it is important to study the intersection of the press and criminal justice for several reasons, including that both have “longstanding histories traced to antiquity, but have only recently gained serious attention” and that the two parties have “high amounts of interaction.” Jarret S. Lovell, *Good Cop / Bad Cop: Mass Media and the Cycle of Police Reform* (Boulder, Colorado: Lynne Rienner Publishers, Inc., 2010), 55.

<sup>29</sup> Thomas A. Reppetto, *American Police: The Blue Parade, 1845-1945, A History* (New York: Enigma Books, 2011), 40, 90, 155; Jean-Paul Brodeur, et al., “Early Police in the United States,” *Encyclopedia Britannica*, Feb. 20, 2018, <https://www.britannica.com/topic/police/Early-police-in-the-United-States>.

<sup>30</sup> Lovell, *Good Cop / Bad Cop*, 8, 55.

Lastly, both parties' actions implicate several constitutional rights, including the First Amendment protections for free speech and freedom of the press;<sup>31</sup> Third Amendment protection from quartering soldiers;<sup>32</sup> Fourth Amendment protection from illegal searches and seizures;<sup>33</sup> and Sixth Amendment guarantees of a fair trial.<sup>34</sup> The influence of the press-police relationship on these rights demonstrates the significant ways in which both parties affect the public.

Second, the press-police relationship is worth studying *now* because both parties face significant political, economic, social, and technological tension, pressure, and scrutiny, warranting further research on each group and their relationship. Politically, President Donald Trump frequently referred to journalists and news outlets as the “fake news media” and “enemies of the people.”<sup>35</sup> His administration also took several anti-press actions, including attempting to suspend *Playboy* magazine senior White House reporter Brian Karem's press credential, revoke CNN reporter Jim Acosta's hard press pass to the White House, and banning CNN reporter Kaitlan Collins from a press availability with the president.<sup>36</sup>

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<sup>31</sup> U.S. Const. amend. I.

<sup>32</sup> U.S. Const. amend. III. “No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.”

<sup>33</sup> U.S. Const. amend. IV.

<sup>34</sup> U.S. Const. amend. VI. “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial. . .”

<sup>35</sup> Scott Memmel, “President Trump Continues Anti-Press Rhetoric and Actions,” *Silha Bulletin* 24, no. 1 (Fall 2018): 9-16.

<sup>36</sup> Scott Memmel, “Federal Judge Orders White House Reinstate Reporter's Press Credential,” *Silha Bulletin* 25, no. 1 (Fall 2019): 4-5; Scott Memmel, “Journalists Face Physical Violence, Other Dangers in the United States and Abroad,” *Silha Bulletin* 23, no. 3 (Summer 2018): 1-8.

The U.S. media also face significant economic pressures ranging from decreased resources to layoffs to shutting down local newspapers.<sup>37</sup> Socially, the press faces ongoing accusations of bias and fake news, and growing distrust by the public.<sup>38</sup> Additionally, the media has adapted technologically, such as shifting to multimedia formats and a social media presence.

Similarly, law enforcement also faces growing distrust by the public, particularly by minority communities.<sup>39</sup> Officer-involved shootings and misconduct have led to increased scrutiny of and attention to the police through movements such as “Black Lives Matter.” One technological response was the implementation of police body-worn cameras (BWCs), which potentially provide a record of police-public interactions, as well as promote accountability. However, BWCs, as well as other new police technologies, also raise questions about high costs, reliability, accuracy, and effectiveness, as well as risks to privacy, among other concerns.<sup>40</sup>

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<sup>37</sup> See e.g. Sara Fischer, “Local news sites rise as newspapers face cuts,” *Axios*, July 23, 2018, <https://www.axios.com/local-news-sites-rise-as-newspapers-face-cuts-3a708a59-9b05-49e2-accd-893845437aa7.html>; “Financial Woes Now Overshadow All Other Concerns for Journalists,” *Pew Research Center*, March 17, 2008, <https://www.people-press.org/2008/03/17/financial-woes-now-overshadow-all-other-concerns-for-journalists/>; Dianne Lynch, “The State of American Journalism: New faces and a new frontier,” *Knight Foundation*, accessed June 25, 2019, <https://knightfoundation.org/features/je-conclusions-and-recommendations/>.

<sup>38</sup> Uri Friedman, “Truth Is Collapsing in America,” *The Atlantic*, Jan. 21, 2018, <https://www.theatlantic.com/international/archive/2018/01/trust-trump-america-world/550964/>; Mathew Ingram, “Most Americans say they have lost trust in the media,” *Columbia Journalism Review*, Sept. 12, 2018, [https://www.cjr.org/the\\_media\\_today/trust-in-media-down.php](https://www.cjr.org/the_media_today/trust-in-media-down.php); “Public trust in the media is at an all-time low. Results from a major new Knight-Gallup report can help us understand why,” *Medium*, Jan. 15, 2018, <https://medium.com/trust-media-and-democracy/10-reasons-why-americans-dont-trust-the-media-d0630c125b9e>; Scott Memmel, “Silha Center Spring Forum Addresses Ethical Challenges Related to Fake News,” *Silha Bulletin* 22, no. 2 (Winter/Spring 2017): 49-51.

<sup>39</sup> See generally Scott Memmel, “Police Body Cameras: Historical Context, Ongoing Debate, & Where To Go From Here,” M.A. thesis, (University of Minnesota, 2017).

<sup>40</sup> Memmel, 4.

Third, although past research has focused on other aspects of the press-police relationship, such as media effects, the history and law of the relationship remain understudied. No single volume tackles the history and law of the relationship, necessitating this study, which aims to synthesize research that does touch on these areas and fill gaps in the literature.

Finally, the history and law of the press-police relationship are important to study not only to fill a gap in the literature, but also present new insight into both parties and their relationship. Scholars have explained the importance of media history, including that it helps illuminate the present and future<sup>41</sup> by improving our understanding of current events.<sup>42</sup> Observers have also emphasized the importance of media law, including how it affects reporters, current events, the public, and the future.<sup>43</sup>

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<sup>41</sup> Kyra Marie Miller, “Context is key: How journalists and historians can work together to help audiences understand the news,” *Medium*, July 17, 2019, <https://medium.com/lenfest-institute-for-journalism/bridging-the-communication-divide-between-journalists-and-historians-60aa27b19382>. Miller contended that “no matter how journalists and historians are able to collaborate . . . they can help readers make sense of today’s news, how it relates to the past, and how it can shape our future.”; John Maxwell Hamilton and Heidi J. S. Tworek, “Why the history of news explains its future,” *The Conversation*, May 17, 2016, <http://theconversation.com/why-the-history-of-news-explains-its-future-59150>.

<sup>42</sup> John Nerone, “Does Journalism History Matter,” *American Journalism Historians Association* 28, no. 3 (2011), 27; “Robert Jensen Quotes,” *QuoteFancy*, <https://quotefancy.com/quote/1734569/Robert-Jensen-History-matters-It-matters-whether-we-tell-the-truth>. University of Texas emeritus professor Robert Jensen argued, “History matters. It matters whether we tell the truth about what happened centuries ago, and it matters whether we tell the truth about more recent history. It matters because if we can’t we will never be able to face the present, guaranteeing that our future will be doomed.”

<sup>43</sup> Nikki Osman, “Diary of a budding journalist: the importance of media law,” *The Guardian*, May 22, 2011, <https://www.theguardian.com/careers/budding-journalist-media-law>; Genelle I. Belmas, Jason M. Shepard, and Wayne E. Overbeck, *Major Principles of Media Law* (Boston, Massachusetts, Cengage Learning, 2016); T. Barton Carter, Juliet Lushbough Dee, and Harvey L. Zuckman, *Mass Communication Law in a Nutshell* (St. Paul, Minnesota: West Academic Publishing, 2014), v; Robert Trager, Susan Dente Ross, and Amy Reynolds, *The Law of Journalism and Mass Communication* (Thousand Oaks, California: Sage Publications, 2016), xxv. Trager, Ross, and Reynolds wrote, “[T]he law is best understood when we see and feel its effects on real people, mundane conflicts and actions not only of our government but also of our

Ultimately, the press-police relationship represents a crucial aspect of American society: two institutions deeply engrained into the history and legal structure of the United States. However, the press and police both face political, economic, social, and technological tension, pressure, and scrutiny, complicating how the two parties interact with each other and the public. However, existing literature has not fully researched the press-police relationship through the lenses of history and law, necessitating this study and providing an opportunity to better understand the present and future of the press, the police, and their relationship.

### **III. Roadmap & Thesis**

In order to begin studying the history and law of the press-police relationship and to start answering the research questions raised above, this dissertation will first provide a new and original theoretical framework combining First Amendment theory and Social Responsibility Theory (SRT) (Chapter 2). This dissertation will apply the framework to the press-police relationship by expanding on how the press' and police's important goals, purposes, functions, and actions are at times independent of each other, while at other times are similar and overlap, or are at odds. This dissertation will therefore suggest that the relationship can be mapped into three categories — 1) cooperative co-existence, 2) contentious, and 3) blurred — and begin explaining why this is the case.

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friends, neighbors and families.” See also Clay Calvert, Dan V. Kozlowski, and Derigan Silver, *Mass Media Law, Twentieth Edition* (New York: McGraw-Hill Education, 2018), x; *Communication and the Law*, ed. W. Wat Hopkins (Northport, Alabama: Vision Press, 2019); Donald M. Gillmore, et al., *Fundamentals of Mass Communication Law* (St. Paul, Minnesota: West Publishing Company, 1996), xvii. Gilmore et al. argued that “[a]n understanding of present and past law will help in working with and understanding future law.”

Second, this dissertation will provide a literature review of the history of the press and the history of the police in the United States (Chapter 3). By combining these histories and defining moments where they overlap, this dissertation will provide the most comprehensive history of the press-police relationship to date. In the process, this dissertation will also suggest four types of interactions that map onto the three categories, including: 1) press coverage of police, 2) press investigations of police, 3) law enforcement arresting, searching and seizing, subpoenaing, and surveilling of the press, and 4) both parties blurring the lines of the relationship through police impersonation of the press,<sup>44</sup> press impersonation of police, and media ride-alongs. Through these interactions, the literature review will demonstrate that there have been instances, moments, and even eras, where there has been tension and division between the press and police. However, there have also been many cases of cooperation and reform between the two institutions. This suggests that changes, including those revealed by the content analysis and legal analysis and discussed in Chapter 6, can be made to improve the press-police relationship, therefore benefiting the public.

Third, the history of the fourth type of interaction (i.e. blurred lines), which is almost completely missing from existing literature, will be studied more extensively through a three-part content analysis of historical newspaper articles (Chapter 4). In so doing, this dissertation will expand on the history offered by the literature review and

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<sup>44</sup> “[I]mpersonation,” *Cambridge English Dictionary*, accessed June 28, 2019. The Cambridge English Dictionary defines “impersonation” as the practice of “intentionally copy[ing] another person’s speech, appearance, or behavior.” “Police impersonate reporters in ploy to end hostage crisis,” *The News Media & The Law* (Summer 2000): 12. RCFP defines impersonation as when police “represent themselves as members of the news media” in order to accomplish some form of law enforcement activity/investigation.

provide new research and insight into three particular practices — police impersonation of the press, press impersonation of police, and media ride-alongs — by providing not only a timeline and examples that demonstrate these blurring lines, but also relevant contextual information, such as the effects of these practices. Taken together, the history of the interactions between the press and police will reveal several important implications for both parties and the American public, as well as help further explain why the press-police relationship is a combination of cooperative co-existence, contentious, and blurred.

Fourth, this dissertation will provide the most comprehensive legal analysis of the press-police relationship to date by examining the legal considerations of the four types of interactions, focusing especially on the blurring of lines between the press and police (Chapter 5). To do so, the legal analysis will incorporate constitutional, statutory, and common law, as well as federal, state, and local law enforcement policies, rules, and guidelines. Combined with relevant historical and contemporary examples, the legal landscape will provide new insight into the implications of these interactions on the press, police, their relationship, and the public.

Finally, the history and law of the press-police relationship will inform the future of both parties and their relationship, namely how it can be improved moving forward (Chapters 6-7). This dissertation will argue that cooperative co-existence is ideal because it best allows both parties to accomplish their purposes and functions. However, this dissertation will also acknowledge that contentiousness is a natural part of the relationship, though both the press and police can, and should, take steps to minimize these types of interactions or, at the very least, ensure that the relationship reaches this point only when absolutely necessary.

But most significantly, this dissertation will argue that significant actions need to be taken regarding the interactions that blur the lines of the press-police relationship. In particular, this dissertation will call for the elimination of police impersonation of the press and press impersonation of police in order to decrease the negative effects of these practices to the greatest extent possible. Although this dissertation will not call for the elimination of media ride-alongs, it will argue that the press, and to some degree the media, should find alternative means of covering and investigating the police. When media ride-alongs cannot be avoided or provide a valuable opportunity for the press, journalists and news organizations need to be more transparent about what is and is not accomplished through the practice, as well as use additional means of reporting to fully inform the public about law enforcement and hold the police accountable. It is impossible to change and improve the press-police relationship overnight, such as eliminating what transpired amidst the protests over the death of George Floyd in 2020.<sup>45</sup> However, this dissertation will provide tangible recommendations to begin improving the relationship, as well as the press' and police's relationship with the public, moving forward.

Ultimately, this dissertation will argue that the history and law of the press-police relationship not only reveal important implications for both parties, their relationship, and the public, but also illuminate ways to curtail negative effects while ensuring that both parties provide the benefits associated with their goals, purposes, functions, and actions.<sup>46</sup>

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<sup>45</sup> See notes 1900-2025 below.

<sup>46</sup> This dissertation approaches the history and law of the press-police relationship from a First Amendment and press-centric perspective, rather than from a law enforcement, media effects, or public relations perspective. Nevertheless, this dissertation is an opportunity to converge the fields of mass communication, history, law, and criminal justice.

## **Chapter 2: Theoretical Framework**

The following new and original theoretical framework (Appendix A) combines First Amendment theory and Social Responsibility Theory (SRT) to begin demonstrating how the goals, purposes, functions, and actions of the press and police are both similar and different. This framework is then further applied to the press-police relationship by expanding on how the goals and purposes of each party are at times independent of each other, while at other times are at odds or overlap in problematic ways. The framework therefore suggests that the relationship can be mapped into three categories: 1) cooperative co-existence, 2) contentious, and 3) blurred.

### **I. Why the Press and Police May be More Contentious: First Amendment Theory**

First Amendment theory begins to illuminate how the press and police interact by demonstrating the importance of the news media being independent from government and holding public officials and institutions accountable. Significantly, federal, state, and local police represent “public servants” and an arm of government in the United States,<sup>47</sup> meaning law enforcement is, therefore, implicated by First Amendment theory.<sup>48</sup>

#### **A. Press’ Independence from the Government (Police)**

The idea of press independence from government in the United States can be traced back to the formation of the republic and the drafting of the First Amendment. In 1768, Samuel Adams expressed the necessity of the free press, writing,

There is nothing so fretting and vexatious, nothing so justly terrible to tyrants, and their tools and abettors, as a free press. . . . For this reason, it is ever watched by those who are

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<sup>47</sup> See note 9 above.

<sup>48</sup> Jerome H. Skolnick and Candace McCoy, “Police Accountability and the Media,” *American Bar Foundation Research Journal* 9, no. 3 (1984): 531-32. Skolnick and McCoy directly apply First Amendment theory to the press’ relationship with the police.

forming plans for the destruction of the people's liberties, *with an envious and malignant eye*. . . But *your* Press has sounded the alarm . . . *Your* press has spoken to us the words of truth.<sup>49</sup>

James Madison wrote in 1800, "In every State, probably, in the Union, the press has exerted a freedom in canvassing the merits and measures of public men of every description which has not been confined to the strict limits of the common law."<sup>50</sup>

David Anderson argued that one of the "essential roles" of the Press Clause is to "protect the press from a concerted government campaign to intimidate or control it."<sup>51</sup> He continued, "The notion of journalistic independence lies close to the core of the concept of press, and it seems to be an expansive notion[.]"<sup>52</sup> Rachel Lubberda contended that the purpose of the First Amendment is to "[provide] the press with a constitutional safeguard against government encroachment into its professional duties."<sup>53</sup>

## **B. Press Holding the Government (Police) Accountable**

Connected to the press' independence from the government and, by extension, the police, is the normative responsibility of holding public officials and entities accountable,

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<sup>49</sup> "History Speaks: Essays – Samael Adams as Populus," *First Amendment Watch*, Nov. 27, 2017, <https://firstamendmentwatch.org/history-speaks-essays-samuel/> (emphasis in original). See also Jim Rutenberg, "Independent Press Is Under Siege as Freedom Rings," *New York Times*, July 2, 2017, <https://www.nytimes.com/2017/07/02/business/media/independent-press-is-under-siege-as-freedom-rings.html>.

<sup>50</sup> *The Writings of James Madison*, ed. Gaillard Hunt (New York: G. P. Putnam's Sons, 1900).

<sup>51</sup> David A. Anderson, "Freedom of the Press," *Texas Law Review* 80, no. 3 (2002): 429.

<sup>52</sup> Anderson, 453. See also Randall P. Bezanson, "The Developing Law of Editorial Judgment," *Nebraska Law Review* 78, no. 4 (1999): 760. Bezanson wrote, "Independent [means] free of forces from government or from outside of government that compromise the free independent judgment of those assigned the task of writing and composing the publication."

<sup>53</sup> Rachel Lubberda, "Fourth Branch of the Government: Evaluating the Media's Role in Overseeing the Independent Judiciary," *Notre Dame Journal of Law, Ethics & Public Policy* 22, no. 2 (2008): 507-13; Walter H. Annenberg, "The Fourth Branch of the Government," in *Impact of Mass Media: Current Issues*, eds. Ray Eldon Hiebert & Carol Reuss (London: Longman Publishing, 1985); Douglas Cater, *The Fourth Branch Of Government* (New York: Vintage Books, 1959).

often referred to as the “watchdog” role. In 1917, Zechariah Chafee, Jr., wrote, “Truth can be sifted out from falsehood only if the government is vigorously and constantly cross-examined”<sup>54</sup> by the press.

In First Amendment theory, the press is often referred to as the “Fourth Estate,” suggesting that its function is similar to a fourth branch of government, while operating independently of it.<sup>55</sup> The earliest reference was by Thomas Carlyle in *On Heroes, Hero-Worship, & the Heroic in History*, published in 1840.<sup>56</sup> He wrote that Edmund Burke, a member of English Parliament from 1766 to 1794, had said, “[T]here were Three Estates in Parliament; but, in the Reporters’ Gallery yonder, there sat a Fourth Estate more important far than they all.”<sup>57</sup>

The Fourth Estate concept encompasses the press’ role in informing the public and holding government accountable.<sup>58</sup> For the press to serve as the Fourth Estate, it must be independent from the government and free from intrusion.<sup>59</sup> George Henry Payne wrote in 1920,

[By the Revolutionary War,] a new institution was born and developed an actual power – the veritable creation of a new Estate. . . . [I]t fed on the oppression that would have annihilated it. . . . [It was] a power hitherto unknown, -- a power which, in the language of Burke, should be more powerful than [the three branches of government] combined[.]. . .

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<sup>54</sup> Zechariah Chafee, “Freedom of Speech in War Time,” *Harvard Law Review* 32, no. 8 (1919): 958.

<sup>55</sup> Stuart Allan, *The Routledge Companion to News and Journalism* (London: Routledge, 2009), Ch. 1.

<sup>56</sup> See Thomas Carlyle, *On Heroes, Hero-Worship, & the Heroic in History* (London: James Fraser, 1840).

<sup>57</sup> *Ibid.* Carlyle continued, “Printing, which comes necessarily out of Writing, I say often, is equivalent to Democracy: invent Writing, Democracy is inevitable.”

<sup>58</sup> Luberda, “Fourth Branch of the Government,” 513. Luberda contended that “freedom of the press was intended to ‘curtail and restrict the general powers granted to the [federal government].’” See also Lucas Powe, *The Fourth Estate and the Constitution: Freedom of the Press in America* (Berkeley, California: University of California Press, 1991), 13.

<sup>59</sup> Allan, *The Routledge Companion to News and Journalism*, Ch. 1.

At practically the same time that there began to spread throughout the colonies the idea of a nation . . . the Fourth Estate began to show conscious power. The new institution was no longer a thing of threads and patches. . . . The people were beginning to be sovereign. The press, as the leaders in the revolutionary movement said over and over again, was the expression of that sovereignty.<sup>60</sup>

Ultimately, the press' role as the Fourth Estate has "elevat[ed it] to a special position within the democratic process," suggesting the "[p]ower and value of the Press."<sup>61</sup>

In 1977, Vincent Blasi referred to the press' watchdog role as the "checking value" of the press. Blasi contended that "a primary purpose of the freedoms of speech and press, then and now, [is] to check government as a way of preventing abuses."<sup>62</sup> He continued,

[O]ne of the most important values attributed to a free press by eighteenth-century . . . thinkers was that of checking the inherent tendency of government officials to abuse the power entrusted to them . . . the checking value rests on a most impressive foundation.<sup>63</sup>

Blasi cited John Locke's *Second Treatise on Civil Government* in which he "set forth an influential theory that the general citizenry has a right to overthrow rulers who abuse the public trust." Additionally, Blasi provided four reasons why the checking value of the press needs to be protected, including that 1) "the abuse of official power is an especially serious evil,"<sup>64</sup> 2) "the potential impact of government on the lives of individuals is unique because of its capacity to employ legitimized violence,"<sup>65</sup> particularly through law

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<sup>60</sup> Payne, *History of Journalism in the United States*, 59, 76-77.

<sup>61</sup> Lubarda, "Fourth Branch of the Government," 513. See also Frederick Knight Hunt, *The Fourth Estate: Contributions Towards a History of Newspapers, and of the Liberty of the Press* (D. Bogue, 1850), 1. Hunt wrote, "By the value and fidelity of these various services, now rendered day by day, the Newspaper has earned its power and its position; has grown with increasing years, and strengthened with increasing rectitude, until it has received the cognomen, and wields the power of a FOURTH ESTATE.")

<sup>62</sup> Blasi, "The Checking Value in First Amendment Theory," 521.

<sup>63</sup> Blasi, 521.

<sup>64</sup> Blasi, 538.

<sup>65</sup> Blasi, 538.

enforcement,<sup>66</sup> 3) the press is the only institution with the capacity to properly hold government accountable,<sup>67</sup> and 4) that it is necessary to protect the public from a government official's "inflated sense of self-importance."<sup>68</sup> Thus, the checking value requires that the press be free from government intrusion into its independent functions in order to monitor government conduct as a means of accountability.

The notion of an independent press holding government accountable was perhaps most eloquently stated by Justice Hugo Black in *New York Times v. United States* (1971):

In the First Amendment the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. The Government's power to censor the press was abolished so that the press would remain forever free to censure the government. The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government.<sup>69</sup>

This emphasis on the press being independent from the government can be extended to the police because the press is expected to, and has, held law enforcement officers, officials, and institutions accountable. However, this concept is largely at odds with at least one theoretical model under criminal justice theory. In 1964, Herbert L. Packer laid out the "Crime Control Model," which is based on the premise that "the repression of criminal conduct is by far the most important function to be performed by the criminal process," with the failure to do so resulting in a "breakdown of public

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<sup>66</sup> Skolnick and McCoy, "Police Accountability and the Media," 531-32. Skolnick and McCoy wrote that these reasons can be directly applied to police departments, officials, and officers.

<sup>67</sup> Blasi, "The Checking Value in First Amendment Theory," 539.

<sup>68</sup> Blasi, 540.

<sup>69</sup> *New York Times v. United States*, 403 U.S. 713, 717 (1971) (Black, J. concurring). Further discussion of Supreme Court precedent demonstrating the value that the press should be separate and independent from government is provided in the legal analysis.

order.”<sup>70</sup> The model encourages a “high rate of apprehension and conviction,” with a “premium on speed and finality.”<sup>71</sup> The model therefore advocates increased police and prosecutorial powers, with a tougher stance taken towards crime over the protection of individual liberties.<sup>72</sup> Although the Crime Control Model is not the only set of values driving policing,<sup>73</sup> and has been the subject of criticism,<sup>74</sup> it remains a key consideration in law enforcement,<sup>75</sup> with many jurisdictions increasing police power, such as in the War on Drugs<sup>76</sup> and the militarization of police.<sup>77</sup> This model’s advocacy of increased authority puts it at odds with the values of the press, including because police may attempt to limit the news media’s ability to hold law enforcement accountable.

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<sup>70</sup> Herbert L. Packer, “Two Models of the Criminal Process,” *University of Pennsylvania Law Review* 113, no. 1 (1964): 9.

<sup>71</sup> Packer, 10.

<sup>72</sup> Robert M. Rich, “Crime Control-A Theoretical View,” in *Essays on the Theory and Practice of Criminal Justice*, ed. Robert M. Rich (Maryland: University Press of America, 1977): 91-117; “Crime Control Model Law and Legal Definition,” *USLegal*, accessed June 25, 2019, <https://definitions.uslegal.com/c/crime-control-model/>.

<sup>73</sup> Packer, “Two Models of the Criminal Process,” 13. Packer also laid out the “Due Process Model,” which places more emphasis on the “primacy of the individual and the complementary concept of limitation on official power.” It calls for “minimizing criminal justice system intervention in favor of developing and using informal community persuasive and rehabilitative social controls.” Thus, this model also demonstrates that policing does not have to be completely at odds with individual liberties.

<sup>74</sup> See generally Kent Roach, “Four Models of the Criminal Process,” *Journal of Criminal Law and Criminology*, 89, no. 2 (Winter 1999): 671-716.

<sup>75</sup> Walker, *Popular Justice*, 214-30. Walker detailed several ways in which the “anticrime mood” and crime control efforts increased beginning in the 1980s, such as the new “war on drugs” declared by President George H.W. Bush in 1989, which included street-level antidrug enforcement, cooperation with other countries to stem importation of drugs, tougher sentencing laws, and a new campaign against marijuana, as well as several Supreme Court rulings and new tactics, including “crackdowns” and other controversial practices that showed a clear pattern of racial bias. Walker added that President Bill Clinton continued to call for more police officers and prisons, as well as longer prison terms.

<sup>76</sup> Walker, 214-30. See also Laurence Armand French, *The History of Policing America: From Militias and Military to the Law Enforcement of Today* (Lanham, Maryland: Rowman & Littlefield, 2018), 171-75; Balko, *Rise of the Warrior Cop*, 121, 141, 150-51, 157, 193-95, 242.

<sup>77</sup> See generally Balko, *Rise of the Warrior Cop*.

Ultimately, First Amendment theory, by positing the fundamental value of the press being independent from law enforcement, demonstrates why the press and the police are, at times, antagonistic. It is often the role of the press to hold police departments, officials, and officers accountable, putting the news media at odds with law enforcement. Conflict only further arises when police actions undermine press purposes and functions.

## **II. Why the Press and Police Cooperatively Co-Exist: Social Responsibility Theory (SRT)**

However, SRT demonstrates that many of the goals, purposes, functions and actions of the press and police are geared towards benefiting the public, suggesting that the press may not always be at odds with the law enforcement. SRT was first officially introduced by the Hutchins Commission in 1947 publication *A Free and Responsible Press*,<sup>78</sup> though the ideas behind the theory can be found in prior years.<sup>79</sup> The Commission was tasked with understanding how freedom of the press worked in the United States and found that the news media “has responsibilities to the general spread of information” and that “an overall social responsibility for the quality of press service to the citizen cannot be escaped.”<sup>80</sup> In 1956, Frederick S. Siebert, Theodore Peterson, and Wilbur Schramm elaborated on this idea, claiming that the power possessed by the press

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<sup>78</sup> The Commission on Freedom of the Press, *A Free and Responsible Press* (Chicago: The University of Chicago, 1947), <https://archive.org/details/freeandresponsib029216mbp>.

<sup>79</sup> See e.g. Lee, *History of American Journalism*, 430. Lee quoted former University of Minnesota President George Edward Vincent, who called the press in the United States “fundamental to the national life, exerting profound influence upon it. . . [It] is a public service corporation with all of the social responsibility that this implies. The American press reflects the life of all of us, and it affects . . . all of us.”

<sup>80</sup> The Commission on Freedom of the Press, *A Free and Responsible Press*, 125-26.

requires an obligation to be socially responsible.<sup>81</sup> They cited several newspapers, including the *Milwaukee Journal* and Cowles newspapers in Iowa and Minnesota, as examples of the press “serv[ing] the public interest.”<sup>82</sup> In 1957, Schramm, in *Responsibility in Mass Communication*, wrote, “[T]he communicator . . . must satisfy [their] perceived duty to society.”<sup>83</sup> Thus, how the press should act is based in a wider public interest.<sup>84</sup> Although most often applied to the news media, SRT can also be applied to law enforcement because, as discussed more below, law enforcement’s purposes and functions are generally aimed at benefiting or serving the public.

Perhaps the most important requirement of SRT is that the ideals of how something ought to operate must be weighed or balanced with other public interests. Thomas Scanlon argued that “freedom of expression . . . rests upon a balancing of competing goods.”<sup>85</sup> He suggested that a key element of freedom of expression is “an appropriate balancing of the value of certain kinds of expression relative to other social goods.”<sup>86</sup> Similarly, Schramm found that there must be “a combination of responsibility and freedom,” requiring that public interests be considered,<sup>87</sup> even if they limit the press’s freedom or the police’s power.

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<sup>81</sup> Frederick S. Siebert, Theodore Peterson, and Wilbur Schramm, *Four Theories of the Press: The Authoritarian, Libertarian, Social Responsibility, and Soviet Communist Concepts of What the Press Should Be and Do* (Urbana, Illinois: University of Illinois Press, 1956), 74.

<sup>82</sup> Siebert, Peterson, and Schramm, 76.

<sup>83</sup> Wilbur Schramm, *Responsibility on Mass Communication* (New York: Harper & Brothers, 1957), 96.

<sup>84</sup> Denis McQuail, *Mass Communication Theory* (London: Sage Publications, 2010), 162.

<sup>85</sup> Thomas Scanlon, “A Theory of Freedom of Expression,” in *The First Amendment: A Reader*, eds. John H. Garvey and Frederick Schauer (St. Paul, Minnesota: West Publishing Co., 2002), 130-32.

<sup>86</sup> Scanlon, 130-32.

<sup>87</sup> Schramm, *Responsibility in Mass Communication*, 103.

Thus, SRT posits that an institution must act in a way that is responsible to the public, meaning that public interests can limit the press' or police's core values or interests. Thus, both parties must, at times, accommodate the other because they are both meant to benefit and serve the public. The result is that the press and police share some similarities in their purposes and functions, and that they can, and often do, cooperate and/or co-exist, though the relationship can also become blurred as well.

### **III. Goals, Purposes, Functions, and Actions of the Press and Police**

In order to fully apply the theoretical framework to the press-police relationship, the following section provides the goals, purposes, functions, and actions of each party, including those found under First Amendment theory and SRT. These values and interests further demonstrate how both the press and police have important values and interests that are meant to serve the public. However, they also reveal how both parties can at times be more adversarial.

Although First Amendment theory addresses the press' function of holding government accountable, there are additional goals and purposes that generally aim to serve the public, but can also be in contrast with those of police. Michael Schudson articulated seven "functions" of U.S. journalism, including first that the press should inform the public about political, economic, and social information and developments.<sup>88</sup> Thomas Emerson contended that by informing the public, the press "[f]osters self-fulfillment and self-expression."<sup>89</sup>

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<sup>88</sup> Michael Schudson, *Why Democracies Need an Unlovable Press* (Cambridge: Polity Press, 2008), 13.

<sup>89</sup> Thomas Emerson, *Toward a General Theory of the First Amendment* (New York: Random House, 1966), 4-7.

The second function of the press is “investigation,” which, according to Schudson, means that the press must not only inform the public, but “probe” the “political world.”<sup>90</sup> Connected to informing the public and the press’ watchdog role is the First Amendment theory that the press must serve as an “instrument of the search for truth.”<sup>91</sup> John H. Garvey and Frederick Schauer argued that the “earliest basis for the defense of . . . freedom of the press . . . [and] likely also the most enduring . . . is free speech as the instrument of the search for truth.”<sup>92</sup> They traced this idea back to John Milton’s speech to Parliament in 1644, in which he said, “[L]et [Truth] and Falsehood grapple; who ever knew Truth put to the words, in a free and open encounter.”<sup>93</sup> This idea of letting speech compete is the basis of the “marketplace of ideas” theory.<sup>94</sup>

Third, Schudson argued that the press should “publicize representative democracy,”<sup>95</sup> which other scholars have explained means that the public needs to be informed so that individuals can be involved in democracy, including being informed

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<sup>90</sup> Schudson, *Why Democracies Need an Unlovable Press*, 76.

<sup>91</sup> *The First Amendment: A Reader*, eds. John H. Garvey and Frederick Schauer (St. Paul, Minnesota: West Publishing Co., 2002), 57-58.

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*; *Speech of Mr. John Milton for the Liberty of Unlicensed Printing, to the Parliament of England* (New York: The Grolier Club, 1890), 167. *See also* J. Herbert Altschull, *From Milton to McLuhan, The Ideas Behind American Journalism* (White Plains, New York: Longman, 1990), Ch. 5; Eric Sevareid, “The Big Truth,” in *The Press in Perspective*, ed. Ralph D. Casey (Baton Rouge, Louisiana: Louisiana State University Press, 1963), 91.

<sup>94</sup> Articulated by Milton, Justice Oliver Wendell Holmes, John Stuart Mills, Chaffee, and others, this theory posits that ideas and arguments should be allowed to compete in a free market, where, hopefully, truth and “good” speech prevail. Put differently, the marketplace of ideas calls for free speech with limited, if any, government intrusion, allowing for the free flow of ideas and information. *See* *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting) (“the ultimate good desired is better reached by free trade in ideas — that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which [people’s] wishes safely can be carried out. That at any rate is the theory of our Constitution.”).

<sup>95</sup> Schudson, *Why Democracies Need an Unlovable Press*, 23-25.

voters.<sup>96</sup> Fourth, a primary goal of the press should be “mobilization,”<sup>97</sup> meaning that the news media should help at different moments to create change in society.<sup>98</sup> Fifth, the press should act as a “public forum” by fostering debate among the American public.<sup>99</sup> Sixth, the news media should provide “analysis” in addition to reporting facts and information, therefore helping to explain complicated events or processes in a comprehensive narrative.<sup>100</sup> Finally, Schudson argued that a main goal of the press should be to contribute to “social empathy,” meaning journalists should create stories about people so that all members of American society can see and understand them.<sup>101</sup>

In addition to those listed by Schudson, the press’ functions are often intertwined with the business functions of media organizations or owners, including publishing or broadcasting advertising in order to generate income, as well as draw in readers, listeners, and viewers.<sup>102</sup> The press may also aim to entertain its audience or “make news interesting.”<sup>103</sup> Lastly, the press often contributes to community building and forming “public communities.”<sup>104</sup>

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<sup>96</sup> Emerson, *Toward a General Theory of the First Amendment*, 8-11; Alexander Meiklejohn, *Free Speech and Its Relation to Self-Government* (New York: Harper Brothers Publishers, 1948).

<sup>97</sup> Schudson, *Why Democracies Need an Unlovable Press*, 21.

<sup>98</sup> Emerson, *Toward a General Theory of the First Amendment*, 11-15; Schramm, *Responsibility on Mass Communication*, 218. Anderson, “Freedom of the Press,” 505.

<sup>99</sup> Schudson, *Why Democracies Need an Unlovable Press*, 20-21.

<sup>100</sup> Schudson, 16-17; Richard L. Kaplan, *Politics and the American Press: The Rise of Objectivity, 1865-1920* (Cambridge: Cambridge University Press, 2002), 186-87.

<sup>101</sup> Schudson, *Why Democracies Need an Unlovable Press*, 17.

<sup>102</sup> Anderson, *Freedom of the Press*, 463.

<sup>103</sup> Schudson, *Why Democracies Need an Unlovable Press*, 76; Starr, *The Creation of the Media*, 134.

<sup>104</sup> David Paul Nord, *Communities of Journalism: A History of American Newspapers and Their Readers* (Urbana, Illinois: University of Illinois Press, 2001), 2, 5. Nord wrote, “At the vortex of many collective efforts to build community . . . has been formal, public, printed communication, including journalism.” See generally Benedict Anderson, *Imagined Communities* (London, New York: Verso, 1983).

Ultimately, the press' goals, purposes, functions, and actions particularly the responsibility of the press to hold government accountable and inform the public, have deep roots in the history of the United States and in First Amendment theory. Although they may conflict with those of law enforcement, the press' purposes and functions are generally meant to benefit the public, presenting a commonality with the police.

Walker and Katz articulated four goals of law enforcement, including 1) prevent crime, 2) conduct investigations and apprehend criminals, 3) maintain order, and 4) provide other miscellaneous services.<sup>105</sup> The American Bar Association (ABA) provided 11 specific roles and responsibilities, including that police should:

1. Identify criminal offenders and criminal activity and, when appropriate, apprehend offenders and participate in subsequent court proceedings.
2. Reduce the opportunities for the commission of some crimes through preventive patrol and other measures.
3. Aid individuals who are in danger of physical harm.
4. Protect constitutional guarantees.
5. Facilitate the movement of people and vehicles.
6. Assist those who cannot care for themselves.
7. Resolve conflict.
8. Identify problems that are potentially serious law enforcement or government problems.
9. Create and maintain a feeling of security in the community.
10. Promote and preserve civil order.
11. Provide other services on an emergency basis.<sup>106</sup>

Much like those of the press, the purposes and functions of law enforcement are generally meant to serve and benefit the public in a variety of ways, including through maintaining public safety, targeting and investigating crime, and more.<sup>107</sup> This commonality between the press' and police's responsibilities suggests that they may not entirely be at odds with each other, leading both to, at times, cooperate or co-exist.

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<sup>105</sup> Walker and Katz, *The Police in America*, 3.

<sup>106</sup> American Bar Association, *Standards Relating to the Urban Police Function* (Boston, Massachusetts: Little, Brown, 1980), 1-31 to 1-32, Standard 1-2.2, "Major Current Responsibilities of Police."

<sup>107</sup> Lovell, *Good Cop / Bad Cop*, 22. Lovell quoted Fred Rogers, who said, "When I was a boy and I would see scary things in the news, my mother would say to me, 'Look for the helpers. You will always find people who are helping,'" reflecting the police's role in aiding the public.

However, in executing these responsibilities, the police may push against the press' purposes and functions, such as by keeping some information secret to preserve an investigation. The news media may do the same, pushing against arrests, searches and seizures, subpoenas, or surveillance. Thus, the fact that both the press and police are meant to serve the public does not eliminate the possibility that the relationship could also be contentious.

#### **IV. Three Categories of Interactions Between the Press and Police**

The theoretical framework, as well as the goals, purposes, functions, and actions of the press and police, demonstrate that the interactions between the parties can be divided into three categories: 1) cooperative co-existence, 2) contentious, and 3) blurred. Significantly, the press-police relationship has, and continues to be, a mixture of all three.

The first category includes interactions in which the press and police practice “cooperative co-existence”<sup>108</sup> meaning they act independently and do not interfere with the goals, purposes, functions, or actions of the other. In some instances, the two parties may work together successfully or work toward similar goals,<sup>109</sup> but they are able to maintain independence as separate entities without blurring the lines of the relationship. Under this category, the relationship has been described by past literature as a “symbiotic

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<sup>108</sup> See Alan Vinegrad, “Law Enforcement and the Media: Cooperative Co-Existence,” *New York University Annual Survey of American Law* (1999): 237. Vinegrad wrote, “[T]his relationship can fairly be described as a generally cooperative co-existence. Each is an independent institution with independent goals and interests. Sometimes these goals coincide; other times, they clash. Fortunately, there are laws, rules, and policies that seek to promote the cooperative co-existence between these two institutions while maintaining the independence of each, and . . . to provide a check on the potential excesses of both.”

<sup>109</sup> Mozee, “Police/Media Conflict,” in *Police and the Media: Bridging Troubled Waters*, ed. Patricia A. Kelly (Springfield, Illinois: Charles C Thomas Publisher, 1987), 141; Vinegrad, “Law Enforcement and the Media,” 248.

relationship,”<sup>110</sup> “[u]nholy [a]lliance,”<sup>111</sup> “working relationship,”<sup>112</sup> and having “[h]ints of a [p]artnership,”<sup>113</sup> “trust,”<sup>114</sup> goals that “coincide,”<sup>115</sup> or a “complex loop of interdependence.”<sup>116</sup>

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<sup>110</sup> Larry E. Sullivan, *Encyclopedia of Law Enforcement* (Thousand Oaks, California: Sage Publications, 2005), 303; James E. Guffey, “The Police and the Media: Proposals for Managing Conflict Productively,” *American Journal of Police* 9 no. 1 (1992): 33-34. Guffey wrote, “The relationship can be described as symbiotic [when] the media need the police to supply . . . information . . . [or] the police need the media to . . . publicize major crimes.”

<sup>111</sup> Karen M. Markin, “An ‘Unholy Alliance’: The Law of Media Ride-Alongs,” *Journal of Communications Law and Policy* (2004): 33.

<sup>112</sup> Nancy L. Trueblood, “Curbing the Media: Should Reporters Pay When Police Ride-Alongs Violate Privacy?” *Marquette Law Review* 84, no. 2 (Winter 2000).

<sup>113</sup> John Barbour, “Police Work, 1983,” in *Police and the Media: Bridging Troubled Waters*, ed. Patricia A. Kelly (Springfield, Illinois: Charles C Thomas Publisher, 1987), 5.

<sup>114</sup> Brian A. Jackson, “Strengthening Trust Between Police and the Public in an Era of Increasing Transparency,” *RAND Office of External Affairs*, October 2015,

[https://www.rand.org/content/dam/rand/pubs/testimonies/CT400/CT440/RAND\\_CT440.pdf](https://www.rand.org/content/dam/rand/pubs/testimonies/CT400/CT440/RAND_CT440.pdf); Nick Davies, “Can the police and the media trust each other?,” *The Guardian*, April 26, 2009, <https://www.theguardian.com/media/2009/apr/27/ipcc-police-g20-death-media>.

<sup>115</sup> Vinegrad, “Law Enforcement and the Media,” 237.

<sup>116</sup> Louise Cooke and Paul Sturges, “Police and media relations in an era of freedom of information,” *Policing & Society* 19, no. 4 (2009): 407. Cooke and Sturges contended that the “media depend on the police for the constant release of ‘crime and crash’ information as the lifeblood of their news stories” while the “police depend on media coverage for help in crime prevention and detection and in the promotion of a positive image of policing work.”; Lovell, *Good Cop / Bad Cop*, 132-35. Lovell wrote that the press is “dependent upon the police for a constant supply of crime information that comprises a large portion of the news,” while the police “are dependent upon the news media to publicize crimes, request public cooperation with police investigations, and generate public support for additional law enforcement resources.”; Michael Kiernan, “Police vs. the Press: There’s Always Tension,” in *Police and the Media*, 65. Kiernan explained that “at any given moment . . . an exchange is taking place between these two venerable American institutions. Often, it is no more than an exchange of information[.]” He added that although the “police and the press are more at odds than ever . . . [they] have . . . some striking similarities,” including that both are “powerful, visible institutions.” See also Steve Chibnall, *Law-and-order news: an analysis of crime reporting in the British Press* (London: Tavistock, 1977); Richard V. Ericson, Patricia M. Baranek, and Janet B. L. Chan, *Negotiating Control: A Study of News Sources* (Milton Keynes, UK: Open University, 1989); Raymond Boyle, “Spotlighting the Police: Changing U.K. Police-Media Relations in the 1990s,” *International Journal of the Sociology of Law* 27, no. 3 (1999): 229-50; Robert Reiner, *The politics of the police* (Oxford: Oxford University Press, 2000); Steven Chermak and Alexander Weiss, “Maintaining legitimacy using external communication strategies: an analysis of police-media relations,” *Journal of Criminal Justice* 33, no. 5 (2005): 501-12; Rob C. Mawby, “Continuity and change, convergence and divergence: the policy and practice of police media relations,” *Criminology and Criminal Justice* 2, no. 3 (2002): 303-24.

The theoretical framework suggests that the press and police can often cooperatively co-exist because each has purposes and functions that require that they serve the public. One result is that the two parties may work together to best do so, such as tracking down a suspect of missing person. Moreover, the press and police may sometimes act in ways that allow the other party to do their job properly, including the news media not reporting certain details about criminal investigations or police officials and officers acting as sources. Ultimately, because the two parties may be working toward similar goals, the press and police can work together or, at the very least, co-exist at the same locations without one party targeting the other. The literature review, content analysis, and legal analysis will build on this foundation and further demonstrate and analyze ways in which the parties can, and do, cooperate and/or co-exist.

The second category of interactions includes those where the press-police relationship is “contentious,” meaning that the two parties’ goals, purposes, functions, and/or actions are at odds, requiring one party to target the other or otherwise act in a way counter to the other party’s responsibilities. Previous literature has referred to the relationship, when contentious, as “not always so symbiotic,”<sup>117</sup> “controversial,”<sup>118</sup> “asymmetrical,”<sup>119</sup> “unnecessarily adversarial,”<sup>120</sup> “always [having] tension,”<sup>121</sup>

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<sup>117</sup> Vinegrad, “Law Enforcement and the Media,” 237.

<sup>118</sup> Larry Jones, “Police and Media Relations: How to Bridge the Gap,” *Florida Department of Law Enforcement*, accessed Oct. 20, 2017, 1.

<sup>119</sup> Howard Giles, *Law Enforcement, Communication, and Community* (Amsterdam: John Benjamins Publishing, 2002), 47.

<sup>120</sup> Gerald W. Garner, *The Police Meet the Press* (Springfield, Illinois: Charles C Thomas Pub., 1984), 1.

<sup>121</sup> Kiernan, *Police vs. the Press*, 66-67.

“conflicted,”<sup>122</sup> and “strained,”<sup>123</sup> as well as being a “relationship [that] has been a hostile one”<sup>124</sup> where there is friction<sup>125</sup> and the parties “get in one another’s way”<sup>126</sup> or “do not always work cooperatively.”<sup>127</sup> Some authors have also taken initial steps to explain why this is the case, providing a starting point for this study.<sup>128</sup>

The theoretical framework also begins to demonstrate how the press-police relationship can be more contentious. Specifically, some of the key goals, purposes,

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<sup>122</sup> Pati Hendrickson and Howard Swindle, “The Symbiotic, But Conflicted Relationship Between Law Enforcement and the Media: A Case Study,” *Quarterly Journal of Ideology* 32, no. 3 (March 2010): 1; Mozee, “Police/Media Conflict,” 141; William Selke and Marshall Bartoszek, “Police and Media Relations: The Seeds of Conflict,” *Criminal Justice Review* 9, no. 2 (1984): 25.

<sup>123</sup> Jeremy Borden, “‘Cease and desist’: Journalism’s strained relationship with police,” *Columbia Journalism Review*, Oct. 18, 2017, [https://www.cjr.org/united\\_states\\_project/chicago-police-union-reporters.php](https://www.cjr.org/united_states_project/chicago-police-union-reporters.php); Kiernan, “Police vs. the Press,” 65.

<sup>124</sup> Patricia A. Kelly, “Police and the Media: Debunking the Myths,” in *Police and the Media*, 127.

<sup>125</sup> Mawby, “Continuity and change, convergence and divergence,” 305.

<sup>126</sup> Garner, *The Police Meet the Press*, vii.

<sup>127</sup> Guffey, “The Police and the Media,” 33-34. Guffey explained that this is because the two parties “do not always work cooperatively,” including when the press covers “miscarriages of justice . . . caus[ing] tension” due to their “watchdog role.”; Lovell, *Good Cop / Bad Cop*, 132-35. Lovell wrote that the two can “sour at any given moment,” such as when reporters expose misconduct or police limit interactions.

<sup>128</sup> Kelly, “Police and the Media,” 130. Kelly argued that there are three reasons for contentiousness: “(1) the naturally adversary function of the media’s objective to disseminate information to serve the public’s right to know, and [the police’s] often juggled objectives to protect the privacy of victim and victim’s family, the welfare of informant and compliant, the rights of the accused and the integrity of an on-going investigation . . . (2) a preconception, historically deeply-rooted and widely-held . . . that the[ir] values and attitudes . . . are mutually exclusive [and] . . . , (3) the negative stereotypical views that police officers and journalists hold of one another’s professions.”; Gerald W. Garner, *Chief, the Reporters are Here’: The Police Executive’s Personal Guide to Press Relations* (Springfield, Illinois: Charles C Thomas Publisher, 1987), 4-5. Garner contended that a “very basic mistrust and perhaps even mutual dislike . . . between some journalists and some police can be traced at least partially to the improper actions . . . in the past.”; David M. Mozee, “Police/Media Conflict,” in *Police and the Media*, 141. Mozee argued that some “conflict between the police and media is bound to occur because both groups have responsibilities that sometime ‘seem’ to be at odds. . . Both also perpetuate the myth that the other group is the ‘enemy’ when in reality they should be working toward the same end – good government, justice, public confidence and equal treatment of all citizens.”

functions, and actions of the press and police, including under First Amendment theory, are often at odds. For example, whereas the press may aim to obtain information to inform the public, law enforcement may avoid sharing to preserve an investigation or protect their reputation. In other instances, one party may target the other, such as through investigations. Thus, although the press and police are both meant to benefit the public and may work toward similar goals, there are still moments when their purposes and functions are opposed, as this study will further demonstrate.

Finally, a category largely missing from previous literature is that in which the press' and police's interactions are blurred in problematic ways. In these instances, the parties undermine their independence as separate institutions. Additionally, their goals, purposes, functions, or actions overlap in ways that raise questions about whether each is actually working in their best interest or, more significantly, in the public interest.

The theoretical framework suggests that blurring lines happen in two ways. First, there are instances where the press and police, in working together, undermine their own purposes and functions, therefore leading to several negative effects. This type of blurred lines is seen in media ride-alongs. Second, the press and police can pose as or pretend to be the other, thereby also undermining their important goals and actions and leading to negative effects on both institutions. This manifests as police impersonation of the press and press impersonation of police. In both cases, the press and police, by undermining their independence, not only negatively affect their relationship by making it blurred and more contentious, but also fail to adequately serve and benefit the public, among other negative effects.

Ultimately, the theoretical framework, in detailing the different ways in which the press and police interact, begins to explain why their relationship is, at times, cooperative co-existence, while other times is contentious or blurred. This study, by analyzing the history and law of the press-police relationship, aims to better understand these categories, as well as why the relationship is a mixture of all three, improving our understanding of the present and future of the press-police relationship.

### **Chapter 3: Literature Review**

To begin detailing the history of the press-police relationship in the United States, this in-depth literature review combines the histories of both parties, revealing moments and ways in which the press and police have interacted over time. The literature review first provides a brief discussion of areas covered more extensively regarding the press-police relationship, as compared to the history and law, including how the media covers police matters, ethical considerations, police representations in the media, media effects, law enforcement public relations, and fair trial rights. Second, the literature review includes the history of journalism and the history of the police in the United States.<sup>129</sup>

Third, the following sections determine and discuss moments where these histories overlap, providing the first comprehensive history of the press-police relationship. In so doing, four types of interactions between the parties are illuminated, including 1) press coverage of police 2) press investigations of police, 3) police arresting, searching and seizing, subpoenaing, or surveilling the press, and 4) both parties blurring the lines of the relationship. Through these interactions, the following sections will demonstrate that there have been instances, moments, and eras, where there has been tension and divisiveness between the press and police. However, there have also been cases of cooperation and reform between the two institutions. This suggests that changes, including those revealed by the content analysis and legal analysis, can be made to improve the press-police relationship, therefore benefiting both parties and the American public.

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<sup>129</sup> Previous literature on the law of the press-police relationship will be included in the legal analysis (Chapter 5).

Finally, the literature review illuminates areas missing from existing scholarship on the history of the relationship, namely where the lines between the press and police are blurred, the basis of the content analysis, which begins to demonstrate how the press-police relationship can be improved.

### **I. Areas of the Press-Police Relationship Researched More Extensively**

Before turning to the literature review of the history of the press and the police in the United States, it is important to summarize areas of the press-police relationship more thoroughly covered by previous research.<sup>130</sup> One such area discusses how the relationship works, including how journalists cover crime<sup>131</sup> and other police matters, such as mass shootings.<sup>132</sup> Second, previous research has discussed a number of ethical considerations for journalists covering law enforcement.<sup>133</sup> Third, there are media effects studies related to the police and the public, such as how the media influences public opinion of the police or how press coverage can lead to copycat crimes.<sup>134</sup> Other media effects research

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<sup>130</sup> The examples provided for each area of research are far from exhaustive, but instead are meant to illustrate that these areas have been covered by past and current literature in productive ways. Future research can provide a more extensive literature review identifying the areas of research that have been covered regarding the press-police relationship.

<sup>131</sup> E.g., David D. Perlmutter, *Policing the Media: Street Cops and Public Perceptions of Law Enforcement* (California: Sage Publications, 2000), 1-14; Roy Lotz, *Crime and the American Press* (New York: Praeger Publishers, 1991); Peter N. Grabosky and Paul R. Wilson, *Journalism and Justice: How Crime is Reported* (London: Pluto Press, 1989).

<sup>132</sup> See Denise-Marie Ordway, "How journalists cover mass shootings: 5 recent studies to consider," *Journalist's Resource*, Dec. 3, 2018, <https://journalistsresource.org/studies/society/news-media/mass-shootings-news-research/>.

<sup>133</sup> E.g., Bonnie Bucqueroux and Anne Seymour, "A Guide for Journalists Who Report On Crime And Crime Victims," *Justice Solutions*, Sept. 2009, <http://www.mediacrimevictimguide.com/journalistguide.pdf>; "Ethics of reporting crime," *The News Manual*, accessed June 25, 2019, [https://www.thenewsmanual.net/Manuals%20Volume%202/volume2\\_38.htm](https://www.thenewsmanual.net/Manuals%20Volume%202/volume2_38.htm).

<sup>134</sup> E.g., Ray Surette, *Justice and the Media: Issues and Research* (Springfield, Illinois: Charles C Thomas Publisher, 1984); Surette, *Media, Crime & Criminal Justice, First Edition*; Dennis Howitt, *Crime, The Media, and the Law* (West Sussex: John Wiley & Sons Ltd., 1998); Steven

has dealt with police representations in the media, whether for news or entertainment purposes.<sup>135</sup> Fourth, previous research includes how police use public relations,<sup>136</sup> including in dealing with the press.<sup>137</sup> Finally, research has focused on the balancing of First Amendment protections for freedom of the press and Sixth Amendment protections of a right to a fair trial.<sup>138</sup> Although the historical and legal considerations around the free press versus fair trial debate have received significant attention, the history and law of the press' relationship with the previous step in the criminal justice system, the police,<sup>139</sup> has received far less attention, necessitating this study.

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Chermak, Edmund McGarrell, and Jeff Gruenewald, "Media coverage of police misconduct and attitudes toward police," *Policing: An International Journal of Police Strategies & Management* 29, no. 2 (2006): 261-81; Kenneth Dowler, "Media Consumption and Public Attitudes Toward Crime and Justice," *Policing and Society* 12, no. 3 (2002): 109-26; Kenneth Dowler, "Media Influence on Citizen Attitudes Toward Police Effectiveness," *Policing and Society* 12, no. 3 (2002): 227-38; Kevin Morrell, "How does the media shape perceptions of the police," *Warwick WBS Research Projects*, Oct. 26, 2015.

<sup>135</sup> See Alyce McGovern, "Policing Media: Controlling Representations of the New South Wales Police Force," PhD Diss., (2008). McGovern provided a literature review of areas of the relationship covered by scholars in the United States, United Kingdom, and Australia, including on press depictions of police.

<sup>136</sup> E.g., Murray Lee and Alyce McGovern, *Policing and Media: Public Relations, Simulations and Communications* (Oxford: Routledge, 2014), 9; G. Douglas Gourley, "Police Public Relations," *The Annals of the American Academy* 291 (1954): 135-42; Raymond E. Clift, "Police, Press, and Public Relations," *Journal of Criminal Law and Criminology* 39, no. 5 (1949): 667-74; Anja Johansen, "Police-Public Relations: Interpretations of Policing and Democratic Governance," in *The Oxford Handbook of the History of Crime and Criminal Justice*, eds. Paul Knepper and Anja Johansen (Oxford: Oxford University Press, 2016); Chermak, McGarrell, and Gruenewald, "Media coverage of police misconduct and attitudes toward police," 261-81.

<sup>137</sup> E.g., Wilson and Fuqua, *The Police and the Media*, vii.

<sup>138</sup> E.g., Wallace Westfeldt and Tom Wicker, *Indictment: The News Media & The Criminal Justice System* (Washington, D.C.: First Amendment Center, 1998); John Lofton, *Justice and the Press* (Boston, Massachusetts: Beacon Press, 1966); Alfred Friendly and Ronald L. Goldfarb, *Crime and Publicity: The Impact of News on the Administration of Justice* (New York: Twentieth Century Fund, 1967).

<sup>139</sup> Wilbur R. Miller, *Cops and Bobbies: Police Authority in New York and London, 1830-1870* (Chicago, Illinois: The University of Chicago Press, 1977), 45. Miller wrote that the police "is the initial element in a complex system of criminal justice. . . . Police initiate operation of the criminal justice system[.]"

## II. History of the Press in the United States

The literature review of the history of journalism in the United States provides a timeline beginning with early historical antecedents, as well as publications in colonial America, before focusing on the “partisan press” through the present. For each key era included in the timeline, the 1) societal and cultural context, 2) changes to and characteristics of journalism and the press, and 3) relevant larger trends will also be provided. This study will also focus on the press’ relationship with government and authority, particularly how the press at times cooperatively co-existed with police, while at other times was more contentious or blurred.

### A. Pre-17th Century: Historical Antecedents

The history of journalism can be traced to antecedents in oral cultures,<sup>140</sup> in which “news,” meaning information about happenings in a community, was spread through word of mouth, including about topics like local misbehavior and crime.<sup>141</sup> Journalism can also be traced back to the first written cultures as early as 3100 B.C.E.,<sup>142</sup> in which early examples exist of writings about official corruption.<sup>143</sup> Finally, journalism can be traced back to the development of printed news.<sup>144</sup> The 1570s marked the first instances

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<sup>140</sup> Stephens, *A History of News*, 9, 12-13, 17.

<sup>141</sup> Stephens, 20, 31, 91; John Nerone, *Media and Public Life, A History* (Cambridge: Polity, 2015), 13. Nerone wrote, “[C]rime reports [have] always [been] a staple of popular news, whether oral or printed.”; Daniel Cohen, *Pillars of Slat, Monuments of Grace: New England Crime Literature and the Origins of American Popular Culture, 1674-1860* (Amherst, Massachusetts: University of Mass. Press, 2006).

<sup>142</sup> Stephens, *A History of News*, 46, 48; Lee, *History of American Journalism*, 1; Nerone, *Media and Public Life*, 12. Nerone contended that the first formal news media was in 16th-century Imperial China and Korea where handwritten bulletins of court information was circulated to bureaucratic elites.

<sup>143</sup> Stephens, *A History of News*, 46.

<sup>144</sup> Starr, 26-33; Richard R. John, *Spreading the News: The American Postal System from Franklin to Morse* (Cambridge, Massachusetts: Harvard University Press, 1995), 1-24.

of printed news and sensationalism about crime in Europe,<sup>145</sup> with the first European newspapers containing crime news in the 1600s-1640s.<sup>146</sup> Broadsheets, an antecedent to newspapers in Europe and America, also contained news about local crimes, as well as scandals or news about notable persons.<sup>147</sup> The stories often took the form of ballads, which were “sung by hawkers who offered them for sale on the street,” much like newsboys on city streets, who would shout the most important news beginning with the Penny Press.<sup>148</sup>

## **B. 1638-1762: First American Publications and the Colonial Press**

Journalism in American began with the establishment of printing presses in the New World, including first in Cambridge, Massachusetts in 1638.<sup>149</sup> From the 1630s through about 1762, much of the materials circulating in the colonies were European books, diaries, letters, religious texts, and newspapers.<sup>150</sup> The first materials published by American presses were government decrees, legal documents, pamphlets, almanacs, educational materials, sermons, and religious writings.<sup>151</sup> Among other content, these

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<sup>145</sup> Stephens, *A History of News*, 90-91. See also Surette, *Media, Crime, and Criminal Justice, First Edition*, 50. Surette wrote that “[p]rinted news about crime and justice is nearly as old as printing, and a detailed account of a witchcraft trial can be found in an English newsletter as early as 1587.”

<sup>146</sup> Stephens, *A History of News*, 131, 150; Lee, *History of American Journalism*, 5-7; Payne, *History of Journalism in the United States*, 3; Bleyer, *Main Currents in the History of American Journalism*, 4-6, 28.

<sup>147</sup> Bleyer, *Main Currents in the History of American Journalism*, 3, 8. Bleyer wrote that the broadsheet ballads, which later became common in the American colonies, were about “news events [that] . . . helped to satisfy the news-hunger of the readers of [the colonial] years. . . . Ballads were common: let a . . . local scandal catch the public interest, and some local rhymester and the printer would collaborate in bringing out a piece of doggerel, set to some well-known tune[.]”

<sup>148</sup> Bleyer, 3.

<sup>149</sup> Bleyer, 43; Sloan, *The Media in America*, 17; Mott, *American Journalism*, 6.

<sup>150</sup> Sloan, 17, 19, 23; Mott, *American Journalism*, 8.

<sup>151</sup> Nord, *Communities of Journalism*, 35, 37; Sloan, *The Media in America*, 28-29.

publications contained reports of current events, with some instances of covering wrongdoing and punishments, such as public hangings.<sup>152</sup>

In 1690, Benjamin Harris published the first newspaper in America, titled “Publick Occurrences.”<sup>153</sup> Harris wrote in the one and only issue of the newspaper that its purpose was to furnish the country once a month with an account of “such considerable things as have arrived upon our notice[.]”<sup>154</sup> Such accounts included the kidnapping of two children by Native Americans, as well as two fires, one of which destroyed a printing press,<sup>155</sup> providing early examples of news on criminality in American newspapers.

From the creation of *The Boston News-Letter* in 1704 through the following decades, several additional newspapers were established in New England.<sup>156</sup> There were several reasons colonists wanted and needed newspapers, including that they had a “taste for news”<sup>157</sup> and were growing increasingly literate due to evolving education systems.<sup>158</sup>

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<sup>152</sup> Nord, *Communities of Journalism*, 31, 41.

<sup>153</sup> Stephens, *A History of News*, 131. Stephens argued that to be considered a “newspaper,” a publication must be 1) published regularly or frequently, 2) carry news and information about a variety of events or topics, 3) display content using a “consistent and recognizable” format or title, and 4) be disseminated to a wide audience. See also Wm. David Sloan and Julie Hedgepeth Williams, *The Early American Press, 1690-1783* (Westport, Connecticut: Greenwood Press, 1994), 1-10; Lee, *History of American Journalism*, 9-15; Payne, *History of Journalism in the United States*, 19-20; Bleyer, *Main Currents in the History of American Journalism*, 44-47; Mott, *American Journalism*, 9-10; Sidney Kobre, *Development of American Journalism* (Dubuque, Iowa: W.M. C. Brown Company Publishers, 1969), 698-99.

<sup>154</sup> Payne, *History of Journalism in the United States*, 19.

<sup>155</sup> Payne, 20-21, 376-77. Payne contended that Publick Occurrences was one of the first efforts by an American printer to use free speech and press rights later found under the First Amendment.

<sup>156</sup> Payne, 26; Sloan and Williams, *The Early American Press*, 11; Lee, *History of American Journalism*, 17; Bleyer, *Main Currents in the History of American Journalism*, 47.

<sup>157</sup> Sloan, *The Media in America*, 35; *New-York Gazette Revived in the Weekly Post-Boy*, Jan. 22, 1750, 1.

<sup>158</sup> Kobre, *Development of American Journalism*, 9.

Newspapers were also created in the southern colonies, though later than in the north due to the establishment of large farming units rather than populous towns.<sup>159</sup>

Although uncommon, early American newspapers included some information on local happenings and human-interest news, including related to crime<sup>160</sup> and the forms of law enforcement at the time.<sup>161</sup> However, the main focus of these papers was European affairs<sup>162</sup> and verbatim English political stories, as well as commercial and trading

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<sup>159</sup> Mott, *American Journalism*, 40; Payne, *History of Journalism in the United States*, 66; Kobre, *Development of American Journalism*, 45-48.

<sup>160</sup> Nerone, *Media and Public Life*, 32. Nerone wrote, “There was local news, which was ‘either episodic – a report of a powerful storm or a dramatic crime – or dully official, like the text of the Governor’s annual address to the provincial assembly.’”; Daly, *Covering America*, 20. Daly explained that stories also covered the weather and strange occurrences, such as two-headed goats and lightning strikes.; Mott, *American Journalism*, 12, 49-52. Mott explained that the *New England Courant* became known for publishing “the most comical and diverting Incidents of Humane Life,” as written in an introductory statement by Benjamin Franklin. Mott also noted that the first “extra” in America “was the broadsheet issued from the News-Letter office telling of the trial of Quelch the pirate and his hanging June 30, 1704.”; Lee, *History of American Journalism*, 67. Lee wrote that “[s]ome of the news items published as early as 1747 ‘had a modern flavor. . . . When the American colonies were raising men to defend northern frontiers against the invasions by the French and Indians[,] . . . there were newspapers which brought charges of graft[.]’”; Bleyer, *Main Currents in the History of American Journalism*, 61. Bleyer wrote that the first newspaper published outside Boston was the *American Weekly Mercury*, in which “[I]ocal news was given more space, and was rather better written. . . . Longer accounts were printed of fires, accidents, crimes, executions, and last speeches of criminals.”; William J. Bopp and Donald O. Schultz, *A Short History of American Law Enforcement* (Springfield, Illinois: Charles C Thomas Publishers, 1975), 19, 29. Bopp and Schultz quoted Fisher Ames, a noted writer of the era, who wrote, “[T]here seems to be a rivalry among printers, who shall have the most wonders, and the strangest and most wonderful crimes.”

<sup>161</sup> James F. Richardson, *The New York Police: Colonial Times to 1901* (New York: Oxford University Press, 1970), 13, 19. Richardson explained that the *Gazette* covered the Citizen’s Watch, the form of law enforcement in New York at the time. He wrote, “The *Gazette* of February 21, 1757, referred to it as a ‘Parcel of idle, drinking, vigilant Snorers, who never quell’d any nocturnal Tumult in their Lives[.]’”; *Gazette*, Feb. 21, 1857; Carl Bridenbaugh, *Cities in the Wilderness: The First Century of Urban Life in America, 1625-1742* (New York: Ronald Press Company, 1938); Carl Bridenbaugh, *Cities in Revolt* (New York: Knopf, 1955). Richardson also explained that newspapers reported “many serious individual crimes” around 1800 and provided another example of a newspaper criticizing law enforcement in 1812 when “the *Evening Post* attacked “the abominable practices of the marshals, constables, low attornies [*sic*].. . . These are the worst blood-suckers that prey upon the vitals of a great part of the community.”

<sup>162</sup> Nerone, *Media and Public Life*, 32-33; Bleyer, *Main Currents in the History of American Journalism*, 50-51, 74.

information.<sup>163</sup> The purpose of such stories included allowing colonists to obtain information<sup>164</sup> and sparking public debate.<sup>165</sup>

Additionally, this era saw the beginning of conflict between printers and authority, as early American newspapers increasingly began to criticize colonial government.<sup>166</sup> In turn, public officials began to impose censorship.<sup>167</sup> The era also saw the use of seditious libel to target printers,<sup>168</sup> such as in the famous 1735 trial of New York printer John Peter Zenger.<sup>169</sup>

### C. 1763-1832: Partisan Press

In 1763, as the colonies were approaching the Revolutionary War, as well as the formal establishment of the two-party system, newspapers and pamphlets shifted to

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<sup>163</sup> Sloan and Williams, *The Early American Press*, 19; Daly, *Covering America*, 20; Nerone, *Media and Public Life*, 32-33; Mott, *American Journalism*, 48-50; Bleyer, *Main Currents in the History of American Journalism*, 74.

<sup>164</sup> Sloan, *The Media in America*, 35.

<sup>165</sup> Starr, *The Creation of the Media*, 5.

<sup>166</sup> Stephens, *A History of News*, 165-66. See also Leonard W. Levy, *Emergence of a Free Press* (New York: Oxford University Press, 1985); Jeffery A. Smith, *Printers and Press Freedom* (New York: Oxford University Press, 1988); Payne, *History of Journalism in the United States*, 35.

<sup>167</sup> Lee, *History of American Journalism*, 32.

<sup>168</sup> See generally Peter Charles Hoffer, *The Free Press Crisis of 1800: Thomas Cooper's Trial for Seditious Libel* (Lawrence, Kansas: University Press of Kansas, 2011).

<sup>169</sup> Daly, *Covering America*, 28; Nerone, *Media and Public Life*, 37; Lee, *History of American Journalism*, 40-42; Payne, *History of Journalism in the United States*, 49-58; Nord, *Communities of Journalism*, 66; John R. Vile, "John Peter Zenger," *The First Amendment Encyclopedia*, accessed June 25, 2019. The case arose after the *New York Weekly Journal* criticized royal governor William S. Cosby, accusing him of rigging elections, among other claims. Zenger, a German immigrant, only published the *Journal*, but agreed to keep the authors of the articles anonymous. Nevertheless, Zenger was jailed for seditious libel. During the trial, Zenger's lawyer, Andrew Hamilton, convinced the jury to find him not guilty, arguing that New York's seditious libel law was unjust. He also argued that the stories were true, making truth a defense in libel actions. Zenger was later described as "the germ of American freedom, the morning star of that liberty which subsequently revolutionized America."; Bleyer, *Main Currents in the History of American Journalism*, 64-67; Kobre, *Development of American Journalism*, 37-42. Bleyer noted that because the *New-York Weekly Journal* was "the first newspaper established in America by a political faction as a means of carrying out a political controversy," it marked perhaps the beginning of the Partisan Press, which would arise closer to the Revolutionary War.

focusing on partisan debates related to independence from England, as well as other political issues argued by the opposing political parties.<sup>170</sup> Referred to as the “partisan press,” or “party press,”<sup>171</sup> editors abandoned the concept of an “open press” and took sides on issues in public discourse,<sup>172</sup> often becoming “[o]utrageously partisan” in order to vilify the party’s opponents.<sup>173</sup>

Prior to and during the Revolutionary War, the partisan press targeted issues related to the war and splitting from England.<sup>174</sup> Despite the “cutting off [of] importation of presses, type, and paper,” among other limitations, the press covered important political issues,<sup>175</sup> taking sides on different controversies, including the Stamp Act.<sup>176</sup> Following the war, newspapers aligned themselves with the two new political parties at the time, the Federalists and Anti-Federalists.<sup>177</sup> As a result, this period saw the continued

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<sup>170</sup> Carol Sue Humphrey, *The Press of the Young Republic, 1783-1833* (Westport, Connecticut: Greenwood Press, 1996), xiii.

<sup>171</sup> Starr, *The Creation of the Media*, 57.

<sup>172</sup> Daly, *Covering America*, 35; Nerone, *Media and Public Life*, 47.

<sup>173</sup> Nord, *Communities of Journalism*, 81.

<sup>174</sup> Payne, *History of Journalism in the United States*, 86, 101, 117; Bleyer, *Main Currents in the History of American Journalism*, 76.

<sup>175</sup> Bleyer, *Main Currents in the History of American Journalism*, 90, 93; Mott, *American Journalism*, 71; Kobre, *Development of American Journalism*, 53, 71-72.

<sup>176</sup> Mott, *American Journalism*, 63-64; Bleyer, *Main Currents in the History of American Journalism*, 77-79; Kobre, *Development of American Journalism*, 66-70; Arthur M. Schlesinger, “The Colonial Newspapers and the Stamp Act,” in Edwin H. Ford, *Readings in the History of American Journalism* (Minneapolis, Minnesota: University of Minnesota, 1938), 92; Lee, *History of American Journalism*, 82. Lee contended that the Stamp Act led newspapers of all political persuasions to cooperate in arguing for freedom of the press. After the Act was repealed, “newspapers became more critical and debates became more numerous” as they “enjoyed for the first time a freedom which rapidly changed the . . . press.”

<sup>177</sup> Bleyer, *Main Currents in the History of American Journalism*, 102-05, 115; Payne, *History of Journalism in the United States*, 153, 190; Mott, *American Journalism*, 113; Kobre, *Development of American Journalism*, 106-10; Lee, *History of American Journalism*, 100-01. Lee perhaps put it best when he wrote, “After the constitution was adopted political leaders found that they needed mouthpieces for a wider expression of their views. . . . To get the people to take sides on political questions they founded newspapers which . . . advance[d] and spread the doctrines of party leaders[.]”

growth of criticizing opposing public officials,<sup>178</sup> as well as increased coverage of major political and social issues,<sup>179</sup> communicating them in the “public sphere.”<sup>180</sup> The partisan press perhaps reached its zenith in the first decades of the 19th century, a period called the era of “black journalism”<sup>181</sup> and the “Dark Ages of Partisan Journalism.”<sup>182</sup>

A result of the shift to partisanship was an increased focus on domestic news, which was largely missing during the earlier colonial period.<sup>183</sup> The rise of the partisan press also led to the introduction of daily newspapers,<sup>184</sup> an increase in the number of publications,<sup>185</sup> and the creation of editors<sup>186</sup> and correspondents,<sup>187</sup> who were generally assigned to the capital.<sup>188</sup> In 1792, Congress passed the Postal Act, which not only formally established the postal service in the United States as publicly owned, but also

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<sup>178</sup> Nerone, *Media and Public Life*, 70-72; Lee, *History of American Journalism*, 101.

<sup>179</sup> Humphrey, *The Press of the Young Republic*, 158.

<sup>180</sup> Daly, *Covering America*, 36-37.

<sup>181</sup> Lee, *History of American Journalism*, 143. Lee wrote, “The darkest period in the history of American journalism was that which began at the close of the second war with England, a time truthfully characterized as the ‘period of black journalism,’ when a greater depth of degradation was reached than was ever touched in the so-called ‘yellow’ period[.]. . . [T]he customary courtesies of life were put aside; that the papers of both parties employed the vilest, grossest epithets found in the English language[.]”

<sup>182</sup> Mott, *American Journalism*, 168-69. Mott wrote that from 1801-1833, “So far as scurrility and vulgar attack on personal character were concerned, the period . . . exceeded all that had been known before. . . . Indeed, the whole period . . . was in many respects disgraceful—a kind of ‘Dark Ages’ of American journalism.” Mott explained that an exception was the “era of good feelings” during President Madison’s administration because he had presented freedom of the press to Congress in the First Amendment.

<sup>183</sup> Sloan, *The Media in America*, 91; Humphrey, *The Press of the Young Republic*, 155; Payne, *History of Journalism in the United States*, 136.

<sup>184</sup> Sloan, *The Media in America*, 90; Lee, *History of American Journalism*, 118; Bleyer, *Main Currents in the History of American Journalism*, 101; Mott, *American Journalism*, 115.

<sup>185</sup> Humphrey, *The Press of the Young Republic*, 158. Humphrey wrote, “[R]esidents of cities (and to some degree towns) found newspapers essential for knowing what was going on in their community, [the United States, and abroad],” increasing the importance of the press.

<sup>186</sup> Humphrey, 156; Mott, *American Journalism*, 47.

<sup>187</sup> Nerone, *Media and Public Life*, 13-14.

<sup>188</sup> Sloan, *The Media in America*, 90-91.

helped expand the dissemination of newspapers through direct subsidies.<sup>189</sup> Although crime news and coverage of law enforcement were still found in American newspapers, such stories were often overshadowed by the political news and editorials that characterized the era.<sup>190</sup>

One additional effect of the changes to the press prior to and following the Revolutionary War was that newspapers and pamphlets provided a forum for the first debates over the meaning of free speech and a free press.<sup>191</sup> However, although this time period saw the adoption of the First Amendment,<sup>192</sup> there were also efforts by the government to suppress opposition through censorship during the Revolutionary War,<sup>193</sup>

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<sup>189</sup> Jean Folkerts, Dwight L. Teeter, and Edward Caudill, *Voices of a Nation: A History of Mass Media in the United States* (Boston, Massachusetts: Pearson/Allyn and Bacon, 2009), 89; Nerone, *Media and Public Life*, 56-57; Starr, *The Creation of the Media*; John, *Spreading the News*; Kobre, *Development of American Journalism*, 7. Kobre explained that antecedents of the postal service began in the 1690s.

<sup>190</sup> Payne, *History of Journalism in the United States*, 136. Payne asserted that the end of the Revolutionary War meant citizens “[took] greater interest in the ‘news.’”; Bleyer, *Main Currents in the History of American Journalism*, 136. Bleyer noted that newspapers “[gave] some reports of ‘shocking accidents,’ ‘horrid murders,’ suicides, and other crimes, [but only] when these stories could be obtained without much effort.”; Mott, *American Journalism*, 101. Mott wrote that newspapers during this era covered “[a]ccidents, wrecks, fires, storms, . . . and crime news[.]” See e.g. Henry Mann, *Our Police. A History of the Providence Force from the First Watchman to the Latest Appointee* (Providence, Rhode Island, 1889), 361. Mann wrote that the “first police report of a criminal proceeding [in Providence] appear[ed] in the *Providence Gazette*, of March 31, 1764,” covering the trial of Robert Bevelin, who was convicted of “altering lawful money bills.”

<sup>191</sup> Humphrey, *The Press of the Young Republic*, 158; Starr, *The Creation of the Media*, 73-77; Kobre, *Development of American Journalism*, 106-07; Lee, *History of American Journalism*, 117; Payne, *History of Journalism in the United States*, 135.

<sup>192</sup> Daly, *Covering America*, 45-47.

<sup>193</sup> Mott, *American Journalism*, 95, 103-04. Mott contended that several newspapers did not make it through the Revolutionary War, including because of government censorship, though their efforts were “limited by the unwillingness of grand juries to indict for such offenses.” Mott added that “invasion of liberty of the press by mobs and threats of violence, . . . [also led] to the suppression of several papers.”

as well as the 1798 Alien and Sedition Acts,<sup>194</sup> which targeted at least 10 newspapers publishers and editors.<sup>195</sup>

Finally, this era marked the growth of the press outside New England. In the South, several weekly papers were founded following the Revolutionary War.<sup>196</sup> However, the number of newspapers still lagged behind New England, including because the population was more spread out, newspapers only reached plantation owners and educated individuals, and there was less infrastructure, such as roads.<sup>197</sup> As the United States expanded westward, so too did the “Frontier Press,” which, although disorganized, was characterized by small newspapers in settlements and towns, often relying on the Pony Express and postal service for information and circulation.<sup>198</sup> The press in the American West would continue to grow throughout the 20th century as cities and states were established.<sup>199</sup>

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<sup>194</sup> Nerone, *Media and Public Life*, 60-61; Lee, *History of American Journalism*, 102; Payne, *History of Journalism in the United States*, 177-80; Kobre, *Development of American Journalism*, 134. Kobre explained that the Alien Act “permitted the President (1) to order out of the country all aliens thought to be dangerous to the peace and safety of the United States; (2) to imprison for three years any alien found in the country after receiving such an order.” The Sedition Act made it a misdemeanor “(1) to conspire against the government, or (2) to print, publish or quote any false scandal or scurrilous writings against the government of the United States, the President, or either House of Congress.”

<sup>195</sup> Lee, *History of American Journalism*, 102-03; Mott, *American Journalism*, 148; Payne, *History of Journalism in the United States*, 179-80; John Spencer Bassett, *The Federalist System* (New York: Harper, 1906), 264.

<sup>196</sup> Mott, 135; Kobre, *Development of American Journalism*, 276-77.

<sup>197</sup> *Ibid.*

<sup>198</sup> Sloan, *The Media in America*, 179, 183-86; Payne, *History of Journalism in the United States*, 190-92, 296; Kobre, *Development of American Journalism*, 282-83. Kobre explained that printers were among those who decided to migrate, sometimes using newspapers to draw other people in and for political reasons.

<sup>199</sup> Kobre, *Development of American Journalism*, 460-61, 480, 551, 561. Kobre noted that the Scripps family created a chain of newspapers in Midwest and West, further expanding the number and importance of newspapers away from the east coast. E. W. Scripps would build the chain through the early 20th century, though other key figures provided competition, including Joseph Medill of the *Chicago Tribune*, which became a leading publication by the 20th century.

#### D. 1833-1850s: Penny Press

In 1833, Benjamin Day established the *New York World*, the first Penny Press newspaper (“penny paper”) in existence.<sup>200</sup> Day soon had several competitors, including James Gordon Bennett, the founder of the *New York Herald*, and Horace Greeley, the founder of the *New-York Tribune*.<sup>201</sup> This time period marked the perfect context for the establishment of penny papers as it saw the rise of urbanization, industrialization, and immigration.<sup>202</sup> In particular, urbanization and immigration helped create a larger, increasingly literate lower class, leading to higher economic and cultural demand for news circulation.<sup>203</sup> Industrialization led to a growing working class, as well as innovations like the steam press, allowing for larger and faster newspaper production.<sup>204</sup>

The Penny Press was so named because the newspapers sold for only one penny, as opposed to existing papers that generally sold for six cents or more. The lower price helped the penny papers, which became known as the “popular press,”<sup>205</sup> appeal to all

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<sup>200</sup> Huntzicker, *The Popular Press*, 1-2; Schudson, *Discovering the News*, 22; Sloan, *The Media in America*, 127-28. General overviews of the development of the popular press are also found in John D. Stevens, *Sensationalism and the New York Press* (New York: Columbia University Press, 1991); John Nerone, “The Mythology of the Penny Press,” *Critical Studies in Mass Communication* 4, no. 4 (1987); Alfred M. Lee, *The Daily Newspaper in America: The Evolution of a Social Instrument* (New York: Macmillan, 1937); Lee, *History of American Journalism*, 187; Mott, *American Journalism*, 222-23; Kobre, *Development of American Journalism*, 197.

<sup>201</sup> Payne, *History of Journalism in the United States*, 245-47; Bleyer, *Main Currents in the History of American Journalism*, 155; Mott, *American Journalism*, 228-29; Kobre, *Development of American Journalism*, 262-67).

<sup>202</sup> Huntzicker, *The Popular Press*, 164-66, 169, 174; Lovell, *Good Cop / Bad Cop*, 8; Payne, *History of Journalism in the United States*, 255; Mott, *American Journalism*, 215; Kobre, *Development of American Journalism*, 198.

<sup>203</sup> Huntzicker, *The Popular Press*, 13-14, 165, 173.

<sup>204</sup> Huntzicker, 26; Nerone, *Media and Public Life*, 98-99; Kobre, *Development of American Journalism*, 216-20; Mott, *American Journalism*, 314. These newspapers could therefore pander to readers’ desires, such as related to crime, much like the gossip papers of the 1810s-1820s.

<sup>205</sup> Starr, *The Creation of the Media*, 169; Schudson, *Discovering the News*, 17; Huntzicker, *The Popular Press*, 1.

classes, especially the growing lower and working classes in the urban center of New York, making them the first true “mass medium.”<sup>206</sup> The Penny Press also led to the increased production of daily issues and the commercialization of the press, with newsboys selling the papers daily on the streets.<sup>207</sup> Additionally, penny papers also increasingly relied on circulation and advertising to make a profit,<sup>208</sup> rather than the subscriptions or political subsidies of the past.<sup>209</sup>

Perhaps the most significant change brought about by the Penny Press that would forever impact the press-police relationship was the beginning of the modern concept of “news,”<sup>210</sup> particularly through the increased publishing of stories about crime and coverage of police doings.<sup>211</sup> The penny papers did so through the first paid American

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<sup>206</sup> Huntzicker, *The Popular Press*, 1, 14; Lee, *History of American Journalism*, 163; Kobre, *Development of American Journalism*, 215, 224; Payne, *History of Journalism in the United States*, 240-41; Mott, *American Journalism*, 215, 241; Edwin Emery, *The Press and America: An Interpretive History of Journalism, Second Edition* (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1962), 216-17.

<sup>207</sup> Nerone, *Media and Public Life*, 103-04; Payne, *History of Journalism in the United States*, 254, 256; Bleyer, *Main Currents in the History of American Journalism*, 161; Lee, *History of American Journalism*, 201. Lee wrote that “[f]or the first time journalism was brought directly to the people. By making the daily papers easy to buy, the penny press brought something of a revolution into American journalism.”

<sup>208</sup> Nerone, *Media and Public Life*, 94.

<sup>209</sup> Schudson, *Discovering the News*, 17-18; Kaplan, *Politics and the American Press*, 11. Although the Penny Press freed itself from dependence upon party funding through circulation and advertising, partisanship endured until the end of the century.

<sup>210</sup> Schudson, *Discovering the News*, 22; Mott, *American Journalism*, 243-44.

<sup>211</sup> Schudson, 28. Schudson explained that for the first time, the press printed reports from the police, from the courts, from the streets, and from private households. . . . [T]he *Sun* pioneered the coverage of the criminal, especially in reporting police news.”; Dicken-Garcia, *Journalistic Standards in Nineteenth-Century America*, 89. According to Dicken-Garcia, the Penny Press brought “dramatically increased attention to cops, crime, and courts. The editor added titillation by covering sex crimes and other forms of violence.”; Lofton, *Justice and the Press*, 71-110; Nerone, *Media and Public Life*, 104; Huntzicker, *The Popular Press*, 3, 19, 26; Stephens, *A History of News*, 184; Starr, *The Creation of the Media*, 133; Patrick File, ‘Bad’ News Travels Fast: *The Telegraph, Syndicated Libel, and Conceptualizing Freedom of the Press, 1890-1910*, PhD diss. (University of Minnesota, 2013); Lee, *History of American Journalism*, 202; Payne, *History of Journalism in the United States*, 240; Emery, *The Press and America*, 215; Bleyer,

reporters,<sup>212</sup> who, along with some editors, would seek out news.<sup>213</sup> Reporters were assigned to work “beats,” often taking them to crime scenes, police courts, and police departments.<sup>214</sup> For example, George Wisner, who was hired by Day at the *New York Sun* as the first full-time police reporter, would often go early in the morning to police stations and police courts to obtain the latest news, before publishing it the same day.<sup>215</sup> During this era and in ensuing decades, it was common to find reporters in police departments and regularly interacting with officials and officers.<sup>216</sup> Editors would also go to even greater lengths to get news, including the use of speedboats, pigeons, the pony express, and, eventually, the telegraph.<sup>217</sup> Other modern practices of journalism that arose during

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*Main Currents in the History of American Journalism*, 156, 160-65. Bleyer wrote that the “basis of the *Sun*’s success is unquestionably to be found in its giving the masses what they wanted – sensational, ‘human interest’ news[. . .] [including police] court news . . . [and] accounts of murders, suicides, and other crimes[.]” He added that the penny papers had drawn inspiration from newspapers covering crime in London in the 1820s.; Mott, *American Journalism*, 243-44, 297. Mott noted that although the Penny Press was not the first to include crime news, it popularized and revolutionized such coverage. He also argued that penny papers “caused a shift in the news concept. There were there main elements in this shift: . . . (1) an increase of local . . . news; (2) a much greater emphasis on sensational news, especially that of crime and sex; (3) the appearance of . . . ‘human-interest news[.]’” Mott therefore argued that the Penny Press marked the beginning of “[m]odern reporting.”

<sup>212</sup> Huntzicker, *The Popular Press*, 3; Stephens, *A History of News*, 216-29. Stephens noted that the act of reporting has a long history, beginning with Herodotus traveling for his histories through the early-19th century when printers would send workers to various places, such as to report on Congress.

<sup>213</sup> Starr, *The Creation of the Media*, 135. Starr wrote that “[t]wo aspects of the penny press – their focus on local news and independent news-gathering—were representative of general trends in American journalism.” See also Schudson, *Discovering the News*, 23-24; Nerone, *Media and Public Life*, 105-06; Lee, *History of American Journalism*, 188; Mott, *American Journalism*, 222; Emery, *The Press and America*, 215; Kobre, *Development of American Journalism*, 224-25; Payne, *History of Journalism in the United States*, 243-44; Bleyer, *Main Currents in the History of American Journalism*, 160, 188.

<sup>214</sup> Schudson, *Discovering the News*, 26-27; Nerone, *Media and Public Life*, 105-06.

<sup>215</sup> Huntzicker, *The Popular Press*, 3. See also note 213 above.

<sup>216</sup> See notes 214-215 above.

<sup>217</sup> Mott, *American Journalism*, 244-48, Kobre, *Development of American Journalism*, 229; Emery, *The Press and America*, 251-52.

this time period were the attribution of sources and follow-up stories,<sup>218</sup> though penny papers also included sensationalism and self-advertising.<sup>219</sup> Penny papers also increasingly incorporated opinion, which would, at times, target the police, sometimes helping prompt changes to law enforcement.<sup>220</sup>

However, editors and reporters not only focused on news about crime and law enforcement, but also conducted their own investigations,<sup>221</sup> often solving crimes before

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<sup>218</sup> Huntzicker, *The Popular Press*, 5. The era also saw the beginning of specialized columns, such as for sports and financial news.

<sup>219</sup> Huntzicker, 22-24; Schudson, *Discovering the News*, 118; Mott, 235; Lee, *History of American Journalism*, 223; Payne, *History of Journalism in the United States*, 247-69; Kobre, *Development of American Journalism*, 225-26; Mott, *American Journalism*, 242-43; Bleyer, *Main Currents in the History of American Journalism*, 158, 164, 174, 183. Bleyer wrote that the level and degree of sensationalism was “hitherto unknown in American journalism” as the papers were “‘playing up’ news of crime[.]”

<sup>220</sup> Bopp and Schultz, *A Short History of American Law Enforcement*, 41, 46. Bopp and Schultz explained that “[j]ournalists often complained that the police ‘inspired no respect.’ Newspaper stories abounded with tales of policemen actually fleeing from the scene of trouble,” as well as officers “plac[ing] themselves above the law they had sworn to enforce. . . . America’s police had come under rather scathing criticism from journalists, public officials, and professors, and stories abounded about their inefficiency and incompetence.”; Richardson, *The New York Police*, 62. One example of the press criticizing law enforcement during this time period was the “*Police Gazette* not[ing] that one or two of those [officers] ‘who are . . . never to be found anywhere, except out of the city’ had received more in rewards than the other nine hundred men in the department.” For additional examples of the press criticizing police during this era, see Miller, *Cops and Bobbies*, 42, 61, 71, 151-52; Roger Lane, *Policing the City: Boston, 1822-1885* (Cambridge, Massachusetts: Harvard University Press, 1967), 78; Mark H. Haller, “Introduction to Reprint Edition” in John J. Flinn, *History of the Chicago Police* (Montclair, New Jersey: Patterson Smith Publishing Corp., 1973), xv; Kenneth G. Alfers, *Law and Order in the Capital City: A history of the Washington Police, 1800-1886* (Washington, D.C.: George Washington Studies, 1976), 1; Bruce Smith, *Police Systems in the United States* (New York: Harper & Brothers, 1949), 1-2; Edward Eldefonso, Alan Coffey, and Richard C. Grace, *Principles of Law Enforcement* (New York: John Wiley & Sons, Inc., 1968), 6-8; Lane, *Policing the City*, 96-99. Lane provided the example of the *Boston Herald* in 1852-1853 criticizing the leader of the Boston watch system, which helped lead to the merging of the watch and police, providing greater and more effective patrols.; *Boston Herald*, Jan. 11, 15, 18, 24, 25, 1853.

<sup>221</sup> Huntzicker, *The Popular Press*, 21. Huntzicker wrote that the Penny Press marked the beginning of the practice of investigations, the use of first-person accounts in reporting, and the exposing of corruption.; Wilbur R. Miller, *The Social History of Crime and Punishment in America* (London: Sage Publishing, 2012), 1249. Miller argued that penny papers not only investigated crime, but also brought attention to and exposing police corruption and ineffectiveness.; Lovell, *Good Cop / Bad Cop*, 61-62; Emery, *The Press and America*, 246-47.

the police. The result was placing pressure on officials and officers, exposing corruption, and helping prompt changes to law enforcement, including the creation of modern police departments and detective units discussed more below.<sup>222</sup> Whereas the rise of crime coverage would generally bring the press and police closer together, the growth of investigations would often make the relationship more contentious.

Perhaps the most famous crime coverage during the Penny Press era was the *New York Herald's* reporting and investigating of the 1836 murder of Helen Jewett.<sup>223</sup>

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Emery contended that the penny papers not only popularized crime news, but also introduced “crusades” seeking to expose corruption and wrongdoing, including related to police.; Mott, *American Journalism*, 242-43. Mott added that the penny papers provided early examples of seeking to report on and expose “abuses” in addition to news coverage.

<sup>222</sup> Stephens, *A History of News*, 229, 238. Stephens explained that journalists “beg[an] to go to different places to conduct investigations . . ., including related to local crime.” Stephens further argued that the press was often more successful than police in solving crimes, leading to changes in the police. He wrote, “Modern reporters did not simply arrive in a world of unheralded police detectives [and] of public relations specialists writing unread press releases. . . . These prying, fact-hungry reporters asked questions that penetrated more deeply, forcing [police officials and other] newsmakers to explain themselves more thoroughly. . . . In peering over the shoulders of police as they attempted to solve crimes, journalists such as James Gordon Bennett increased the pressure on police officials to commission crime-solving specialists – detectives. . . . [In response,] governments and businesses hired public relations experts to hand out measured portions of news to hungry reporters.”; Thomas A. Reppetto, *American Police*, 148. Reppetto similarly suggested that it was often the Penny Press that would solve crimes, rather than the police.; Bopp and Schultz, *A Short History of American Law Enforcement*, 34. Bopp and Schultz argued that “with the pyrotechnic entry of the penny press, the normal pressure on the police to solve gruesome murders became even greater as the fledgling newspaper industry sensationalized every case to the horrified delight of a fascinated public. . . . Publicized crimes of the day, couple with extreme collective violence, indicated to citizens that cities needed to be secured, and public officials moved to secure them by implementing urban police systems.”; Lee, *History of American Journalism*, 206-07. Lee argued that “[m]any reforms grew out of the agitations of the penny press,” including related to police. For example, “*The Herald* . . . fought for the adoption of uniforms by the city police. . . . The reforms in the police department brought about by *The Herald* added much to the respect for law and order in New York.” He added that “the penny press of Philadelphia secured even greater reforms for that city.”

<sup>223</sup> Huntzicker, *The Popular Press*, 20; Starr, *The Creation of the Media*, 133; Daly, *Covering America*, 68; Bleyer, *Main Currents in the History of American Journalism*, 169-70, 181-83; Mott, *American Journalism*, 233; Kobre, *Development of American Journalism*, 225, 234-35; Emery, *The Press and America*, 222.

Bennett, who was known to go to crime scenes to conduct interviews and his own investigations,<sup>224</sup> provided especially significant detail of the crime scene where Jewett had been set on fire in a luxury brothel. He also conducted several interviews with people connected with the case. Bennett, and soon other editors and reporters, wrote that Richard P. Robinson was accused and charged with the crime, with each paper providing a different opinion, implicit or explicit, about whether he was guilty.<sup>225</sup> Ultimately, a jury acquitted Robinson, but not before Bennett had already concluded he was innocent.<sup>226</sup>

### **E. 1820s-1890s: Antebellum, Civil War, Reconstruction, and Gilded Age**

The press saw several key developments amidst the context of the debate over slavery, the Civil War, and post-war developments related to politics and race. First, although the Mexican War marked perhaps the first instances of war correspondents, such journalists became more common during the Civil War, providing eyewitness accounts of battles by using telegraph lines, riding on horseback, and embedding with soldiers.<sup>227</sup> Other effects of the Civil War on the press included that the scarcity of paper led to increased subscription rates, and that war news became the focal point of coverage by the press.<sup>228</sup> Additionally, the press' reporting on battles and major events led to

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<sup>224</sup> Bleyer, *Main Currents in the History of American Journalism*, 181.

<sup>225</sup> Huntzicker, *The Popular Press*, 21.

<sup>226</sup> See generally Dan Schiller, *Objectivity and the News: The Public and the Rise of Commercial Journalism* (Philadelphia, Pennsylvania: University of Pennsylvania Press, 1981), 12-75; Andi Tucher, *Froth & Scum: Truth, Beauty, Goodness, and the Ax Murder in America's First Mass Medium* (Chapel Hill: University of North Carolina Press, 1994); Patricia Cline Cohen, *The Murder of Helen Jewett: The Life and Death of a Prostitute in Nineteenth-Century New York* (New York: Alfred A. Knopf, 1998).

<sup>227</sup> Lee, *History of American Journalism*, 260; Mott, *American Journalism*, 329-30; Giovanna Dell'Orto and Hazel Dicken-Garcia, *Hated Ideas and the American Civil War Press* (Spokane, Washington: Marquette Books, 2008).

<sup>228</sup> Lee, *History of American Journalism*, 292, 307.

people demanding, even after the war, the latest news, prompting newspapers to “put forth every energy, regardless of the cost” to “supply this demand.”<sup>229</sup>

Second, the era marked several instances of the federal government imposing censorship on the press, especially during the Civil War.<sup>230</sup> Sidney Kobre argued that Union censorship evolved in three stages.<sup>231</sup> The first stage, 1861-1862, was characterized by “a period of uncertainty and groping by the government for some workable solution,” as well as voluntary self-censorship by the press, including regarding military secrets and information that could help the enemy.<sup>232</sup> The second stage, 1862-1864, was marked by “further clarification of censorship regulations,” though it remained a subjective decision about what to restrict.<sup>233</sup> During this time period, all telegraph lines were placed under supervision of government, and correspondents, who generally needed to be accredited or recognized, agreed to submit copy to a provost marshal for approval.<sup>234</sup> The third stage, 1864-1865, saw correspondents “cooperate[] more fully with the federal government,” though problems arose when military commanders “undertook to exert pressure on publishers whom the military felt were traitors.”<sup>235</sup> In the South,

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<sup>229</sup> Lee, 318. Lee added, “After the war the press . . . continued . . . seeking the news which interested people. The chief contribution of the [Civil War] to American journalism, save for the mechanical improves in production[,] . . . was the willingness of newspapers to spend money for news-gathering.”

<sup>230</sup> Sloan, *The Media in America*, 172-76. See generally James Carey, *Communication As Culture: Essays on Media and Society* (London: Psychology Press, 1992), Ch. 8; Lee, *History of American Journalism*, 288-89; Mott, *American Journalism*, 336-37.

<sup>231</sup> Kobre, *Development of American Journalism*, 327-29.

<sup>232</sup> Kobre, 327. See also Mott, *American Journalism*, 337.

<sup>233</sup> Kobre, *Development of American Journalism*, 328.

<sup>234</sup> Kobre, 328-29.

<sup>235</sup> Kobre, 329. Kobre added that the federal government generally allowed for more unrestricted printing and publishing.

several newspapers were “destroyed, suspended, and severely censored by [Confederacy] military commanders.”<sup>236</sup> At a minimum, newspapers were “closely supervised.”<sup>237</sup>

Third, this era marked the return or renewal of the partisan press in two phases. Prior to and during the Civil War, debates around slavery and suffrage brought renewed partisanship to the press,<sup>238</sup> though newspapers also took sides on other issues, including criticizing or defending President Abraham Lincoln.<sup>239</sup> Following the war, partisanship remained a key aspect of the press,<sup>240</sup> especially in light of the contentious issues (i.e. impeachment of Andrew Johnson, Jim Crow, etc.) and “spoils system” of the time period.<sup>241</sup> The result was that during Reconstruction (1860s-1870s), newspapers became the chief publicists and propagandists for political parties, with partisanship playing a normative public role.<sup>242</sup> During the Gilded Age (1872-1896), newspapers remained loyal party papers, though they became less proponents of a particular view, but more supporters of a party as a power-aggrandizing organization.<sup>243</sup>

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<sup>236</sup> Mott, *American Journalism*, 360; Kobre, *Development of American Journalism*, 331; Lee, *History of American Journalism*, 289; James G. Randall, “The Newspaper Problem in Its Bearing Upon Military Secrecy During the Civil War,” in Ford, *Readings in the History of American Journalism*, 264-80.

<sup>237</sup> Mott, *American Journalism*, 363.

<sup>238</sup> Lee, *History of American Journalism*, 279-83; Payne, *History of Journalism in the United States*, 217; Kobre, *Development of American Journalism*, 317.

<sup>239</sup> Payne, *History of Journalism in the United States*, 307-08, 311-12, 321.

<sup>240</sup> Lee, *History of American Journalism*, 318; Mott, *American Journalism*, 369; Payne, *History of Journalism in the United States*, 325. Payne wrote that the Civil War “left many newspapers in a stronger position than before the struggle; the power wielded by the important journalists had established the right to be heard and has set a standard of conduct for those were to come after.”

<sup>241</sup> Sloan, *The Media in America*, 145; Nerone, *Media and Public Life*, 74-79; Payne, *History of Journalism in the United States*, 349.

<sup>242</sup> Kaplan, *Politics and the American Press*, 23, 48.

<sup>243</sup> Kaplan, 72.

Despite this shift to partisanship, newspapers continued to cover crime, including sensational reporting on murders and draft riots in major cities.<sup>244</sup> Given the partisanship of this era, even crime news sometimes had a political angle. For example, in May 1856, Representative Preston Brooks attacked Senator Charles Sumner with a cane after Sumner had finished delivering a rhetorical attack on slavery and its defenders.<sup>245</sup> Several newspapers covered the attack, taking sides on who was to blame.<sup>246</sup> However, it would not be until the 1870s-1890s that newspapers shifted away from partisanship and focused on human interest instead.<sup>247</sup>

Fourth, this era saw the development and/or growth of several alternative newspapers, often providing dissenting voices in American society.<sup>248</sup> These included German-language,<sup>249</sup> French-language,<sup>250</sup> Spanish-language,<sup>251</sup> and Chinese-language newspapers and/or presses,<sup>252</sup> as well as the Black, Native American, immigrant, and labor presses, along with women's magazines and publications.<sup>253</sup>

Finally, the Penny Press era included the advent of the telegraph by Samuel Morse in 1844, as well as the subsequent rise of the Associated Press (AP) in 1846 as a

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<sup>244</sup> Mott, *American Journalism*, 376, 381; Lee, *History of American Journalism*, 286-88.

<sup>245</sup> Daly, *Covering America*, 98.

<sup>246</sup> Daly, 98.

<sup>247</sup> Kaplan, 118; Mott, *American Journalism*, 411; Kobre, *Development of American Journalism*, 428-29.

<sup>248</sup> Mott, *American Journalism*, 317-23; Payne, *History of Journalism in the United States*, 223-24, 228-29.

<sup>249</sup> Folkerts, Teeter, and Caudill, *Voices of a Nation*, 93-99.

<sup>250</sup> Folkerts, Teeter, and Caudill, 93-99.

<sup>251</sup> Juan González and Joseph Torres, *News for All the People: The Epic Story of Race and the American Media* (London, New York: Verso, 2011), 69.

<sup>252</sup> González and Torres, 69; Huntzicker, *The Popular Press*, 81-82.

<sup>253</sup> González and Torres, *News for All the People*, 63-64, 96, 103-04, 162-63; Folkerts, Teeter, and Caudill, *Voices of a Nation*, 95, 99; Huntzicker, *The Popular Press*, 79-89.

“wire-service.”<sup>254</sup> AP correspondents spread throughout the country and territories to gather news to be sent via telegraph lines, broadening the acquisition and dissemination of news in the United States.<sup>255</sup>

#### **F. 1870s-1890s: Yellow Journalism, Serious Journalism, and Advocacy Journalism**

The 1870s-1890s resembled the Penny Press era in which urbanization, industrialization, and immigration continued to grow in the United States.<sup>256</sup> The result was that three different types of journalism arose that would have implications for years to come: 1) “yellow journalism,” 2) “serious journalism,” and 3) “advocacy journalism.”

In what became known as “yellow journalism,”<sup>257</sup> Joseph Pulitzer and William Randolph Hearst pioneered a style of sensationalism, exaggeration, lurid details, and self-advertising.<sup>258</sup> Michael Schudson called this style of journalism the “Ideal of the Story” or “action journalism,” in which the goal was to spread newspapers to as many readers as possible by focusing on entertainment, shock, and emotionality, as well as lowering the

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<sup>254</sup> Starr, *The Creation of the Media*, 5, 12-13; Daly, *Covering America*, 77, 104-05; Sloan, *The Media in America*, 133; Stephens, *A History of News*, 214, 216; Lee, *History of American Journalism*, 273-75.

<sup>255</sup> Ibid.

<sup>256</sup> W. Joseph Campbell, *Yellow Journalism: Puncturing the Myths, Defining the Legacies* (Westport, Connecticut: Praeger, 2001), 8-9; Schudson, *Discovering the News*, 97-102; Bleyer, *Main Currents in the History of American Journalism*, 389-96; Kobre, *Development of American Journalism*, 349-50.

<sup>257</sup> “U.S. Diplomacy and Yellow Journalism, 1895-1898,” *United States Office of the Historian*, accessed June 26, 2019, <https://history.state.gov/milestones/1866-1898/yellow-journalism>; “Yellow Journalism,” *Great Projects Film Company*, 1999, <https://www.pbs.org/crucible/journalism.html>. The phrase “yellow journalism” was at first derived from a cartoon strip by Richard F. Outcault, which had a main character known as the “Yellow Kid” living in New York’s slums. An ensuing battle over control of the cartoon between Pulitzer and Hearst led to their new sensationalist style being called “yellow journalism.”

<sup>258</sup> Campbell, *Yellow Journalism*, 11; Lovell, *Good Cop / Bad Cop*, 63; Payne, *History of Journalism in the United States*, 360-61; Mott, *American Journalism*, 519, 524; Bleyer, *Main Currents in the History of American Journalism*, 328, 338-41. Bleyer explained that only after significant criticism did Pulitzer “tone[] down” the sensationalism.

price.<sup>259</sup> Pulitzer and Hearst led the development of mass circulation as yellow journalists appealed to, and reached, a wider audience, including lower classes.<sup>260</sup>

Yellow journalism focused largely on human interest stories, including about crime and the police, though often in a sensational way.<sup>261</sup> Significantly, Pulitzer and Hearst, like the Penny Press editors and reporters, also conducted investigations and “multiple crusades against local abuses.”<sup>262</sup> However, both also went a step further and “undertook active detective work in locating criminals.”<sup>263</sup> Put differently, because the

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<sup>259</sup> Schudson, *Discovering the News*, 89, 105.

<sup>260</sup> Schudson, 98; Payne, *History of Journalism in the United States*, 360-61, 363, 370; Mott, *American Journalism*, 519; Bleyer, 328-29.

<sup>261</sup> Schudson, *Discovering the News*, 95, 98-99. Schudson argued that crime news continued the tradition of the Penny Press.; Kobre, *Development of American Journalism*, 356-57, 388. Kobre wrote, “Pulitzer and Hearst recognized [crime] news as a circulation builder, and these editors became known for their exploitation of crime news. . . [They] revived the sensationalism of the 1830s, stressing crime . . . and conflict[.]”; Nerone, *Media and Public Life*, 133; Bleyer, *Main Currents in the History of American Journalism*, 357; Lee, *History of American Journalism*, 382-84; Mott, *American Journalism*, 434, 523; Stephens, *A History of News*, 251-53.

<sup>262</sup> Mott, *American Journalism*, 415; Folkerts, Teeter, and Caudill, *Voices of a Nation*, 202-04; Reppetto, *American Police*, 148; Kobre, *Development of American Journalism*, 563, 380, 392. Kobre wrote that “Pulitzer, Hearst, . . . and others carried on campaigns exposing local government graft[.]. . . [Pulitzer developed] the technique of the crusade. . . [through which] he . . . gave Americans an insight into the inner working of politics and business. . . His campaigns led other publishers of dailies in New York and elsewhere to follow him. He provided the impetus for magazine muckrakers who protested on a national scale just as [Pulitzer] was doing locally. . . Following the Pulitzer pattern, Hearst became the crusading champion of the middle and working classes, fighting . . . and battling for other public service causes.”; Will Irwin, “Yellow Journalism,” in Ford, *Readings in the History of American Journalism*, 404. Irwin wrote that Pulitzer discovered “the means of fighting popular causes by the news. . . [He] was [perhaps] first to go out systematically and find evil before [it] obtruded itself on public notice. . . Now they hunted down the criminal with blaring horns.”; Starr, *The Creation of the Media*, 256. Starr asserted that Pulitzer “combined sensationalism and storytelling with a crusading liberal reforms and built circulation . . . with investigations of . . . official misconduct,” including police brutality.

<sup>263</sup> Lee, *History of American Journalism*, 360; “The Romance of a News Story,” *Wichita Beacon*, Sept. 24, 1922. The article read, “The police reporter makes the call with the police car. He does not go along to stand on the outside of the house and wait[.]. . . He assists, insofar as he does not hinder the officers, in inspecting the body, in looking around the house, in learning all he can. The fame of the newspaper reporter as a detective has been lauded[.]. . . For many are the mysteries that are helped in their solution by facts uncovered by some ‘prowling’ and ‘get-to-the-bottom of things’ reporter.”

police were often corrupt and ineffective, “reporters turned detectives to solve many crimes.”<sup>264</sup> Hearst in particular sought to create “New Journalism,” which was largely predicated on “[seeking] to excel in running down criminals.”<sup>265</sup>

There are multiple examples of Pulitzer’s and Hearst’s newspapers undertaking such detective work, including

[t]he most remarkable instance, [which was] the identification by *The World*, of New York, of the man who made an attempt upon the life of Russell Sage. Isaac D. White, then a reporter on *The World*[,] . . . secured a button from the trousers and a piece of cloth from the clothing of the would-be murderer. The button was stamped ‘Brooks, Boston.’ Going to that city White found that there was only one tailor by the name of Brooks.” Using “order books” from the store, White identified a suspect named “Norcross,” after which the suspect’s parents recognized the piece of clothing and identified their son as the culprit of the attempted murder.<sup>266</sup>

Among other examples “of the excellent work that the press has done in the field of detection of criminals” was “*The Daily News*, of Chicago, Illinois, follow[ing] D.D. Spencer, president of the State Savings Institution, who had absconded with something like half a million dollars from the vaults of the Bank of Chicago” and “*The Argus* of Albany, New York, [which] after the police of that city were completely baffled in an attempt to locate a kidnapper, not only found the child, but also captured the criminal.”<sup>267</sup>

An example that illustrates well how Pulitzer and Hearst not only covered crime and conducted investigations, but also acted as detectives, was the “Guldensuppe

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<sup>264</sup> Kobre, *Development of American Journalism*, 357.

<sup>265</sup> Bleyer, *Main Currents in the History of American Journalism*, 368. Bleyer added that the newspaper explained [in an editorial] what it conceived to be the importance of new journalism, contending that “Time has been when the utmost art of the literary man or the journalist has been employed in making a criminal a heroic figure in an engrossing romance. That was the era of the old journalism. The new journalism strives to apprehend the criminal, to bring him to the bar of justice and thereafter not to convict him but to show him as he is.”; *New York Journal*, September 11, 1897.

<sup>266</sup> Lee, *History of American Journalism*, 360-61.

<sup>267</sup> Lee, 360-61. Bleyer, *Main Currents in the History of American Journalism*, 369.

mystery.”<sup>268</sup> In 1897, a group of kids found a headless torso in New York’s East River.<sup>269</sup> The next day, another corpse washed up along the Harlem River, prompting stories and investigations by Pulitzer’s *New York World* and Hearst’s *New York Journal*. In particular, the *Journal* “undertook to solve . . . the ‘murder mystery’” and “threw the entire force of its news-gathering machinery into the work[.]”<sup>270</sup> After identifying “the pattern on a piece of oil cloth in which a part of the body of the murdered man had been wrapped, the *Journal* assigned 30 reporters to find the purchaser of the cloth. The investigation led to the arrest of the wife of the murdered man and her lover.”<sup>271</sup>

Significantly, yellow journalists not only formally adopted detective duties, but also succeeded where the police could not. Police reporters delved “[d]eeper even than the detectives . . . into the hidden workings of crime, for within a few hours [the reporter] is compelled to lay before the public not only a detailed account of the act, but an analysis of the motives and impulses.”<sup>272</sup> As a result, the press sometimes provided police with “valuable assistance in tracking a criminal or spreading the network for a capture,” while at others times provided “a check on the more exuberant of the force, who fear more to see their misdeeds spread forth by [the reporter’s] trenchant pen, than to receive a stern admonitions of their superiors,”<sup>273</sup> echoing the press’ watchdog role. In fact, the

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<sup>268</sup> Mott, *American Journalism*, 523-24.

<sup>269</sup> “How A New York ‘Murder’ Sparked The Tabloid Wars,” *National Public Radio*, June 25, 2011, <https://www.npr.org/2011/06/25/137351785/how-a-new-york-murder-sparked-the-tabloid-wars>; Paul Collins, *The Murder of the Century: The Gilded Age Crime that Scandalized a City & Sparked the Tabloid Wars* (New York: Crown Publishing Group, 2011), 3-7.

<sup>270</sup> Bleyer, *Main Currents in the History of American Journalism*, 368.

<sup>271</sup> Bleyer, 368; *New York Journal*, July 4, 1897.

<sup>272</sup> G.M. Roe, *Our Police: A History of the Cincinnati Police Force, From the Earliest Period Until the Present Day* (Cincinnati, Ohio, 1890), 390-92.

<sup>273</sup> *Ibid.*

press' success led "[e]very police commissioner in New York [City to] frankly admit[] the great assistance of the press" and instilling in police officers "fear [of] exposure of their incompetence by the daily press."<sup>274</sup>

Another example of yellow journalists succeeding where the police failed was "in connection with another mysterious murder, when the *Journal* offered a \$5000 reward for the arrest and conviction of the murdered."<sup>275</sup> In an editorial following the solving of the crime, the *Journal* argued that it succeeded where the police could not, writing that

[s]ome hold that a newspaper has no business to do anything but print the news[. . .]. The *Journal* acts upon a different theory. It believes that it is the right and duty of a newspaper to do anything whatever that will promote the public interests, and that can be better done by the newspaper than by any other agency. The *Journal* has made itself the most efficient ally of justice in this city. . . . Not only has its staff of reporters constituted a detective force at least as efficient as that maintained at public expense by this or any other city, but by enlisting its millions of readers in the work it has created a new instrument of detection of incomparable power.<sup>276</sup>

Thus, a key characteristic of reporters who undertook such detective duties "was that they fancied themselves super-sleuths. Time and again [they] proved themselves better detectives than the professional policemen."<sup>277</sup> Ultimately, although the Penny Press

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<sup>274</sup> Lee, *History of American Journalism*, 361.

<sup>275</sup> *New York Journal*, Jan. 28, 1899; Bleyer, *Main Currents in the History of American Journalism*, 369. Bleyer added that in a different editorial quoted by *The New York Times*, the *Journal* further argued that it often succeeded where the police failed. The editorial read, "Th[e] immense usefulness [of the press] has been repeatedly demonstrated by the *Journal*. . . . Without waiting for the slow developments of the case under the cautious handling of professional detectives, the *Journal* has investigated along its own lines, examining every [clue], tracing every rumor and unravelling every theory. So thorough has been its work, and so accurate its deductions, that the detectives of New York City and Newark, and the entire metropolitan press, have been compelled to accept its views of the subject."

<sup>276</sup> *Ibid.*

<sup>277</sup> George Murray, *The Madhouse on Madison Street* (Chicago, Illinois: Follett Publishing Company, 1965), 105, 205-06. Murray continued, "[I]f a newspaper is interested in a story – a story that sells papers – it will spend a great deal more money getting it than most policemen are permitted to spend. If an editor sees a chance to sell papers with a story, he will assign a reporter full time for days or weeks, something no police force can afford to do." Murray added that Frank Carson, one of Hearst's editors, had "gained so much renown in solving crimes that he was called

marked among the first instances of newspapers attempting to solve crimes, the late-19th and early-20th centuries saw journalists begin acting as detectives, seeking to solve the crimes that the police could not.

Conversely, *The New York Times*, started as a penny paper by Henry J. Raymond,<sup>278</sup> represented a more serious, fact-based approach to reporting.<sup>279</sup> Raymond founded the paper to provide “all the news of the day from all parts of the world”<sup>280</sup> without personal or party bias,<sup>281</sup> as well as without “being objectionable on the grounds of morality”<sup>282</sup> and having “a higher moral tone” than the other penny papers.<sup>283</sup> In 1860, the *Times* emphasized that its “proper business is to publish *facts*[.]”<sup>284</sup> Around this time, the *Times* became a “local crusader,” “exposing” facts and calling for the “righting of wrongs.”<sup>285</sup> For example, in the 1870s, the *Times* gained prominence by exposing the Tweed Ring in New York City, demonstrating the paper’s ability to not only create change in government,<sup>286</sup> but also the police by pressing officers to arrest William

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in to help the police on many occasions” and would be “granted privileges [by lawmen] denied others because [the police] knew that all he wanted was the story and that he was generous in giving the glory to the police.” Murry therefore called Carson “a pioneer in the process of getting the news fast and transmitting it faster.” He added that “the fight of the newspapers in those days strengthened the police . . . [and] restored some sort of order to Chicago.”

<sup>278</sup> Bleyer, *Main Currents in the History of American Journalism*, 239.

<sup>279</sup> Schudson, 119; Daly, *Covering America*, 144.

<sup>280</sup> Bleyer, *Main Currents in the History of American Journalism*, 241.

<sup>281</sup> Kobre, *Development of American Journalism*, 259-60. Kobre wrote that the *Times*’ crime reporting was more thorough and without sensationalism. He added that the *Times* “did not exploit criminal news [and] reported [crimes and] criminal trials consistently. More significant was the *Times*’ scientific approach to crime, showing a genuine concern for causes and punishment[.]”

<sup>282</sup> Bleyer, *Main Currents in the History of American Journalism*, 251.

<sup>283</sup> Mott, *American Journalism*, 280

<sup>284</sup> Mott, 389; *New York Times*, March 22, 1860.

<sup>285</sup> Kobre, *Development of American Journalism*, 259-60.

<sup>286</sup> Bleyer, *Main Currents in the History of American Journalism*, 405; Lee, *History of American Journalism*, 329.

Magear (Boss) Tweed and his associates.<sup>287</sup> However, the *Times* faced bankruptcy until Adolph S. Ochs took over the newspaper near the turn of the century, bringing an “intention to conduct ‘a high-standard newspaper, clean, dignified and trustworthy,’ giving ‘the news, all the news, in concise attractive form, in language that is parliamentary in good society,’” and without partisanship.<sup>288</sup> The *Times* gained notoriety once more during WWI when it frequently obtained government documents, a practice it had started in the 1890s.<sup>289</sup>

Schudson called the *Times*’ style of journalism the “Ideal of Information” because it underscored the press being the public’s agents in attacking abuses of big business, as well as corrupt government and law enforcement.<sup>290</sup> The writing emphasized impartiality, as well as providing facts of individual crimes and using more sources, leading to a standard reporting style.<sup>291</sup> *The New York Times* therefore acted as the opposite or

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<sup>287</sup> Bopp and Schultz, *A Short History of American Law Enforcement*, 61. Bopp and Schultz explained that “[b]y analyzing Tweed’s massive financial empire, the . . . *Times* was able to present front page evidence of millions of dollars in graft, thus forcing city policemen into action.”; Raymond Fosdick, *American Police Systems* (New York: The Century Co., 1920), 94.

<sup>288</sup> Bleyer, *Main Currents in the History of American Journalism*, 405, 409. Bleyer added that the *Times*’ success showed that a paper could achieve large circulation without sensationalism, by “confinin[ing] itself entirely to news and editorials” and having the “primary purpose [of] furnish[ing] timely information rather than entertainment.” See also Whalen and Whalen, *The NYPD’s First 50 Years*, 63. Perhaps the clearest example demonstrating the difference between yellow journalists and the *Times* was that in the 1890s, yellow journalists “began publishing sensational stories about drunken patrolmen who abused their authority.” Conversely, only the *Times* “came to the aid of the beleaguered patrolmen, declaring that ‘Many of the tales told about it . . . are gross exaggerations’ and that ‘Patrolmen need their clubs at night, especially in bad neighborhoods, for self-defense.’”; *New York Times*, Aug. 19, 1896.

<sup>289</sup> Mott, *American Journalism*, 551, 619-20; Bleyer, *Main Currents in the History of American Journalism*, 408.

<sup>290</sup> Schudson, *Discovering the News*, 89; Garner, *The Police Meet the Press*, 4-8; Sloan, *The Media in America*, 217.

<sup>291</sup> Surette, *Media, Crime, and Criminal Justice, First Edition*, 53-56; Stephens, *A History of News*, 243-44; Robert Drechsel, *News Making in the Trial Courts* (White Plains, New York: Longman, 1983); John D. Stevens and Hazel Dicken-Garcia, *Communication History* (Thousand Oaks, California: Sage Publications, 1980).

opponent to yellow journalism,<sup>292</sup> marking an antecedent to muckraking and investigative journalism in the following century.<sup>293</sup>

The third form of journalism was advocacy journalism, which in many ways was another antecedent to muckraking and investigative journalism because it targeted wrongdoing and corruption in the United States, attempting to alter the composition of public institutions.<sup>294</sup> Although *The New York Times*' coverage of Tweed was more closely related to investigative journalism, advocacy journalists practiced "stunt journalism" to target different abuses in society.<sup>295</sup> Notable reporters who led this style of reporting were Nellie Bly, who posed as a patient of an insane asylum to expose the maltreatment at the facility, and Ida B. Wells, who continuously reported on lynching of Black men when white journalists paid little attention.<sup>296</sup>

Despite their differences, each type of journalism included stories about crime and police.<sup>297</sup> Each also carried reform-minded reporting and editorials, with editors and

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<sup>292</sup> Mott, *American Journalism*, 549.

<sup>293</sup> Folkerts, Teeter, and Caudill, *Voices of a Nation*, 202-04. Folkerts, Teeter, and Caudill argued that the 1870s marked an important antecedent to the muckrakers. They wrote, "[N]ewspapers [increasingly] covered city life from the bottom up, as well as municipal corruption. In St. Louis, Pulitzer criticized the high profits and poor service of gas and streetcar monopolies, published questionable real estate deals, described fraud at the polls, and attacked the traditional institutions of vice – the brothels and the gambling halls. . . . [S]uch exposure of local and national corruption evolved from the crime reporting of the early penny papers. . . . [T]he 'muckrakers . . . were the legitimate heirs of the crime story and the first to make the whole nation take notice.' . . . Beginning as early as the 1870s, [American] newspapers critically examined local governments." See also Lovell, *Good Cop / Bad Cop*, 63.

<sup>294</sup> Ibid.

<sup>295</sup> Mott, *American Journalism*, 573-74.

<sup>296</sup> Daly, *Covering America*, 125-27, 145-47.

<sup>297</sup> Stephens, *A History of News*, 243-44, 251-53; Schudson, *Discovering the News*, 95, 105; Nerone, *Media and Public Life*, 133; Surette, *Media, Crime, and Criminal Justice, First Edition*, 53-56; Folkerts, Teeter, and Caudill, *Voices of a Nation*, 202-04; Augustine E. Costello, *History of the Fire and Police Departments of Minneapolis: Their Origin, Progress, and Development* (Minneapolis, Minnesota: Relief Association, 1890), 127; Alix J. Muller and Frank J. Mead,

reporters conducting investigations that exposed police wrongdoing, following the tradition of the Penny Press.<sup>298</sup> In some instances, the press' reporting on the police even helped lead to changes in law enforcement.<sup>299</sup> The era also saw changes across the different forms of journalism, including newspapers using photography for the first time, as well as increasingly using telephones, allowing reporters to more quickly and easily communicate with the newspaper office.<sup>300</sup> The combination of the press covering police matters while also seeking to expose wrongdoing meant that the press-police relationship was a mixture cooperative co-existence and contentiousness.

### **G. 1900-1912: Muckraking Journalism**

During the Progressive Era in the United States, the style of journalism known as muckraking, as coined by President Theodore Roosevelt, arose.<sup>301</sup> Like the Progressive

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*History of the Police and Fire Departments of the Twin Cities, Their Origin in Early Village Days and Progress to 1900* (Minneapolis, Minnesota: American Land & Title Register Association, 1899), 147.

<sup>298</sup> See note 262 above.

<sup>299</sup> Alfery, *Law and Order in the Capital City*, 44-46. Alfery wrote that in one instance, the press connected the New York detective bureau to gambling, leading to the abolishing of the unit. He wrote, "A more widespread and more damaging scandal within the detective bureau [broke] . . . [o]n November 25, 1882 [when] the *New York Sun* printed a story which linked the detective force with 'the uninterrupted success' of gambling operations in Washington." A citizens' committee summarily found that "stolen property was recovered only after payment to the thieves with detectives acting as conduits for the exchange," in addition to connections with gambling. The D.C. Commissioners launched their own investigation and suspended two detectives, though they, along with other detectives, were later acquitted. More significantly, the Commissioners' requested that Congress abolish the detective force, which it did in 1883. For additional instances in which the press during this time period helped expose police wrongdoing, criticized police, held officers accountable, and, in some cases, led to changes in law enforcement, see Alfery, *Law and Order in the Capital City*, 38-40; Miller, *Cops and Bobbies*, 146-47; Lane, *Policing the City*, 121-22; Whalen and Whalen, *The NYPD's First 50 Years*, 23, 26, 75-78; Marilyn S. Johnson, *Street Justice: A History of Police Violence in New York City* (Boston, Massachusetts: Beacon Press, 2003), 12-13, 17, 38-39.

<sup>300</sup> Stephens, *A History of News*, 267; Schudson, *Discovering the News*, 96; Nerone, *Media and Public Life*, 131; Bleyer, *Main Currents in the History of American Journalism*, 396-97.

<sup>301</sup> Daly, *Covering America*, 149.

Era more broadly and the likes of Bly, Wells, and other advocacy journalists of the 1870s-1880s,<sup>302</sup> the muckrakers were reform-minded, exposing corruption and mistreatment of immigrants, residents and workers in growing U.S. cities, prison inmates, and others.<sup>303</sup> The muckrakers would also target other individuals and institutions, including the police.<sup>304</sup> For example, in 1907, both *McClure's Magazine* and *Cosmopolitan* ran stories about police accepting bribes and being ineffective against growing crime and unrest.<sup>305</sup> *McClure's* would also cover the police's role in corruption in New York around the turn of the century, among several other examples.<sup>306</sup> This era therefore marked a clear antecedent to the investigative reporting of the 1960s-1970s and further demonstrated how the press-police relationship could be more contentious.

#### **H. 1908-1920s: Professionalization and Objectivity**

Perhaps one of the largest effects of yellow journalism was the criticism its sensationalism and self-advertising received from many in the newspaper industry.<sup>307</sup> The result was a push toward objectivity and independence in the first decades of the 20th century.<sup>308</sup> Other reasons included the decreased power of political parties and the rise of

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<sup>302</sup> Folkerts, Teeter, and Caudill, *Voices of a Nation*, 202-04.

<sup>303</sup> Mott, *American Journalism*, 575.

<sup>304</sup> Lovell, *Good Cop / Bad Cop*, 8-9, 63-65. Lovell argued that one of the targets of the muckrakers was the police and police corruption. He added that the police were not exempt from the calls for widespread reform. *See also* Nerone, *Media and Public Life*, 136.

<sup>305</sup> Lovell, *Good Cop / Bad Cop*, 64-65.

<sup>306</sup> Lovell, 65.

<sup>307</sup> Leonard Ray Teel, *The Public Press: 1900-1945* (Westport, Connecticut: Praeger, 2006), 4; Lee, *History of American Journalism*, 401-02; Mott, *American Journalism*, 583.

<sup>308</sup> Schudson, *Discovering the News*, 151. Schudson explained that “[d]aily reporters still needed to believe in the value of their own best work and the gathering and presentation of facts. . . . This was what the notion of ‘objectivity’ . . . tried to provide.”; Nerone, *Media and Public Life*, 167. Nerone found that objectivity was used in the 1920s-1930s to distinguish the press from tabloids, advertisers, and PR.; Kaplan, *Politics and the American Press*, 184. Kaplan wrote, “[T]he American press drastically revised how it reported the everyday dramas and rites of American

public relations (PR), including by police.<sup>309</sup> Thus, the concept of objectivity marked a turn towards increased focus on facts, moving away from the practices of yellow journalism, though those would remain in “jazz journalism” during the 1920s and tabloid publications through the present.<sup>310</sup>

The resulting characteristics of journalism included an emphasis on impartiality and factual reporting, as well as public service and autonomy.<sup>311</sup> Journalists increasingly saw themselves as mediators between public officials and the public, ensuring Americans were not manipulated, and continuing the crusade of the muckrakers to expose political and social problems, though perhaps to a lesser extent.<sup>312</sup> Coverage of crime and the police also continued in the first decades of the 20th century,<sup>313</sup> including the press reporting on race riots and police brutality of Black individuals in large cities.<sup>314</sup> Ultimately, the press began to gain an independent role in democratic society.<sup>315</sup>

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public life. Journalists . . . adopt[ed] a sober style of impartial, expert reporting. . . [T]he ideal of objectivity is a particularly refined and elevated philosophy of journalistic independence.”

<sup>309</sup> Lovell, *Good Cop / Bad Cop*, 96-97. Lovell wrote that early PR campaigns aimed to provide a good public image of police and begin adapting to working with the press, such as providing access in exchange for favorable coverage. See also Kaplan, *Politics and the American Press*, 170; Schudson, *Discovering the News*, 137; Bopp and Schultz, *A Short History of American Law Enforcement*, 89; Gene E. Carte and Elaine H. Carte, *Police Reform in the United States: The Era of August Vollmer 1905-1932* (Berkeley, California: University of California, 1975).

<sup>310</sup> Teel, *The Public Press*, 119-20. Teel argued that the rise of tabloids and increased use of photography, created Jazz Age journalism, which also marked the nationalizing of music on the radio by playing jazz.; Sloan, *The Media in America*, 289. Sloan explained that “reporters and photographers would carry bulky cameras and roam the streets, looking for scenes that recorded the frenzies of an era [of] bootleggers, speakeasies, love nests, [and] movie stars[.]”; Mott, *American Journalism*, 666; Kobre, *Development of American Journalism*, 605-10.

<sup>311</sup> Kaplan, *Politics and the American Press*, 141, 163; Lee, *History of American Journalism*, 401.

<sup>312</sup> Kaplan, 141, 161.

<sup>313</sup> See e.g. Michael P. Roth and Tom Kennedy, *Houston Blue: The Story of the Houston Police Department* (Denton, Texas: University of North Texas Press, 2012), 60-65.

<sup>314</sup> See Johnson, *Street Justice*, 58-61, 69-80, 80-86; Regina G. Lawrence, *The Politics of Force: Media and the Construction of Police Brutality* (Berkeley, California: University of California Press, 2000).

<sup>315</sup> Kaplan, *Politics and the American Press*, 141.

Connected with objectivity and independence, the press, like the police, shifted towards professionalization,<sup>316</sup> which called for better education and training of reporters, including at newly formed schools of journalism starting with the University of Missouri and followed by the University of Wisconsin and the University of Minnesota, among others.<sup>317</sup> Professionalization also introduced an emphasis on ethics<sup>318</sup> and professional organizations, resulting in the press becoming its own institution, like the sciences, and independent of outside influences.<sup>319</sup> Professionalization also led to new academic publications, changes to newsroom structure, including more power to reporters and more jobs for women,<sup>320</sup> and an emphasis on trustworthiness and collective autonomy.<sup>321</sup> The ultimate goal of professionalization was to “uplift[] the practice of journalism” as researchers, publishers, and the American public increasingly recognized the power of news.<sup>322</sup> However, the years during and after World War I (WWI) would also see the beginning of interpretation and political commentary.<sup>323</sup>

### **I. 1920s-1950s: Film, Radio, and Television**

Although developed earlier, film, radio, and television in the 1920s-1950s would change how the media created and distributed news and entertainment to Americans. Each followed the antecedent of the dime novel, which was the “favored form of

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<sup>316</sup> Nerone, *Media and Public Life*, 163; Daly, *Covering America*, 153-57.

<sup>317</sup> Mott, *American Journalism*, 727-28; Kobre, *5 Development of American Journalism*, 33-34, 734-37; Nerone, *Media and Public Life*, 158.

<sup>318</sup> Teel, *The Public Press*, 2-3; Lee, *History of American Journalism*, 388; Bleyer, *Main Currents in the History of American Journalism*, 389, 391.

<sup>319</sup> Nerone, *Media and Public Life*, 143, 158-59, 162, 165.

<sup>320</sup> Nerone, 164, 166, 168-69.

<sup>321</sup> Teel, *The Public Press*, 115; Nerone, *Media and Public Life*, 158.

<sup>322</sup> Nerone, 163.

<sup>323</sup> Folkerts, Teeter, and Caudill, *Voices of a Nation*, 359; Starr, *The Creation of the Media*, 385.

entertainment read by nearly everyone, including adolescents and the working class.”<sup>324</sup> These inexpensive books sold millions of copies and became the “first profitable mass literature in the United States.”<sup>325</sup> Like film, radio, and television to follow, the dime novels “reflected and helped shape society,” such as through depictions of crime and police.<sup>326</sup> Another antecedent was photography, which was used by newspapers beginning in the 1880s and tabloids by the turn of the century.<sup>327</sup>

Following several decades of technological advances,<sup>328</sup> the modern film industry began in the 1890s as films began to reach large numbers of people, though they were initially silent, shorter than a minute, and shown in storefronts, libraries, department stores, and recital halls.<sup>329</sup> Early films, which were generally meant for lower classes who could not afford to attend traditional theater performances,<sup>330</sup> often depicted “topics represented slices of daily life,” including related to crime and police.<sup>331</sup> For example, “The Great Train Robbery” (1903) in some sense depicted crime, though with “exaggerate[ion] . . . , split-second timing, and incongruous film cutting.”<sup>332</sup> “Fred Ott’s

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<sup>324</sup> Sloan, *The Media in America*, 249.

<sup>325</sup> Sloan, 249.

<sup>326</sup> Sloan, 249.

<sup>327</sup> Daly, *Covering America*, 111-12; Sloan, *The Media in America*, 171-72. Daly and Sloan both note that photojournalism developed during the Civil War.

<sup>328</sup> Irving Fang, *Alphabet to Internet: Media in Our Lives, 3rd Edition* (New York: Routledge, 2015), 185.

<sup>329</sup> Folkerts, Teeter, and Caudill, *Voices of a Nation*, 322, 338-39; Sloan, *The Media in America*, 248; Fang, *Alphabet to Internet*, 183; Starr, *The Creation of the Media*, 295.

<sup>330</sup> Fang, *Alphabet to Internet*, 187, 190-93; Starr, *The Creation of the Media*, 295; Sloan, *The Media in America*, 381; Starr, *The Creation of the Media*, 298, 303. Nickelodeons were five-cent films that, because of their low price, attracted lower and middle classes.

<sup>331</sup> Starr, *The Creation of the Media*, 303; Lewis Jacobs, *The Rise of the American Film: A Critical History* (New York: Harcourt Brace, 1939), 67.

<sup>332</sup> Fang, *Alphabet to Internet*, 195.

Sneeze” (1893) depicted police as nonsensical and incompetent, providing viewers an entertaining view of law enforcement.<sup>333</sup>

By the 1920s, motion pictures were a full industry,<sup>334</sup> moving to cinemas and now containing sound.<sup>335</sup> Newspapers increasingly covered movie stars and films, expanding their entertainment sections.<sup>336</sup> Additionally, film was used for propaganda during WWI,<sup>337</sup> but production slowed during the Great Depression due to economic hardship and censorship.<sup>338</sup> In the first decades of the 20th century, some films showed newsworthy events, such as President William McKinley’s inauguration in 1897.<sup>339</sup> Newsreels, ten-minute productions that showed news events before films in theaters, “provided a dramatic mixture of actual news pictures, staged reenactment, sports, war coverage, and human interest material,” including crime.<sup>340</sup>

Some films during this time period depicted interactions between the press and police.<sup>341</sup> For example, “The Front Page” (1931) included both comedic and dramatic depictions of the press-police relationship.<sup>342</sup> A humorous scene was when Officer

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<sup>333</sup> Fang, 195. Fang wrote that the film “invited people to laugh at a social institution [the police] that was anything but funny. For immigrants from repressive police states, regarding the policeman as a figure of ridicule must have been a strange and liberating experience.”

<sup>334</sup> Folkerts, Teeter, and Caudill, *Voices of a Nation*, 338-39; Starr, *The Creation of the Media*, 304, 318.

<sup>335</sup> Kobre, *Development of American Journalism*, 568; Sloan, *The Media in America*, 381-82; Fang, *Alphabet to Internet*, 183.

<sup>336</sup> Kobre, *Development of American Journalism*, 568-69.

<sup>337</sup> Starr, *The Creation of the Media*, 315-16, 325.

<sup>338</sup> Starr, 325; Edwin Emery and Michael Emery, *The Press and America: An Interpretive History of the Mass Media, Fifth Edition* (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1984), 749.

<sup>339</sup> Sloan, *The Media in America*, 248.

<sup>340</sup> Sloan, 302-03.

<sup>341</sup> Fictional depictions of the press-police relationship can also be found in theatre productions, newspaper and magazine stories, books, and radio and television programs. Future research can, and should, further study how popular culture depicts and represents the press-police relationship.

<sup>342</sup> *The Front Page*, directed by Lewis Milestone (1931).

Woodenshoes came to the Press Room in the Criminal Court Building with a story he thought the press “might be interested in.” However, the reporters, who were depicted playing poker, ignored the officer, instead sending him to get hamburgers. A more serious interaction occurred when reporters heard gunfire as Earl Williams, who was accused of killing a police officer, escaped from prison, prompting them to rush to the scene, hopping onto police cars to do so. *Morning Post* reporter Hildy Johnson, along with managing editor Walter Burns, hid Williams in a desk in the Press Room to get an exclusive interview until police uncovered him, initially arresting the reporter and editor until a messenger threatened to tell Johnson and Burns incriminating information about the sheriff and mayor.<sup>343</sup>

Developed around the turn of the 20th century, radio brought both entertainment and news into listeners’ living rooms.<sup>344</sup> The American public would listen to entertainment shows, as well as serious reporting of World War II (WWII) by the likes of Edward R. Murrow, including coverage of the bombings of London.<sup>345</sup> Presidents Calvin Coolidge and FDR would use the radio to address the nation, such as Coolidge’s public addresses to Congress and FDR’s “Fireside Chats.”<sup>346</sup> These developments led radio to

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<sup>343</sup> Ibid.

<sup>344</sup> Lovell, *Good Cop / Bad Cop*, 92-93; Daly, *Covering America*, 205.

<sup>345</sup> Philip Seib, *Broadcasts from the Blitz: How Edward R. Murrow Helped Lead America into War* (Lincoln, Nebraska: Potomac Books, 2007); Edward R. Murrow, *In Search of Light: The Broadcasts of Edward R. Murrow, 1938-1961*, ed. Edward Bliss, Jr. (New York: Alfred A. Knopf, 1967); Alexander Kendrick, *Prime Time: The Life of Edward R. Murrow* (Boston, Massachusetts: Little, Brown and Company, 1969); A.M. Sperber, *Murrow: His Life and Times* (New York: Fordham University Press, 1986).

<sup>346</sup> See generally James Eric Black, “Silent Cal And The Invisible Audience: The Sociotechnological Significance Of The Presidential Voice,” *A Review of General Semantics*, 69, no. 1 (2012): 3-20; John L. Blair, “Calvin Coolidge and the Advent of Radio Politics,” *Vermont History*, 44, no. 1 (1976): 28-37; Kerry W. Buckley, “A President for the ‘Great Silent Majority’: Bruce Barton’s Construction of Calvin Coolidge,” *The New England Quarterly* 76, no. 4 (2003):

be the first “national medium,”<sup>347</sup> changing the U.S. media system from being solely “newspapers” to “the news *media*.”<sup>348</sup>

News and entertainment about crime and the police were not isolated to newspapers and soon became part of radio programming beginning as early as the 1920s.<sup>349</sup> For example, radio executives created the format of having 30- to 60- second “news spots” presenting different categories of news, including related to crime.<sup>350</sup> Radio would also develop “short-term, visceral, emotional news coverage of discrete ‘crime events,’” as well as establish and increase the popularity of broadcasting “breaking news” stories.<sup>351</sup> In terms of entertainment, radio dramas of the 1930s and 1940s included some programming centered around crime-fighting and detectives, including shows like *Dragnet* and *Gang Busters*.<sup>352</sup> Significantly, radio allowed listeners to create mental images that could not be shown in film at the time, foreshadowing the violent, graphic

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593-626; Elmer E. Cornwell, “Coolidge and Presidential Leadership,” *The Public Opinion Quarterly* 21, no. 2 (1957): 265-78; Matthew A. Baum, and Samuel Kernell, “Economic Class and Popular Support for Franklin Roosevelt in War and Peace,” *The Public Opinion Quarterly* 65, no. 2 (2001): 198-229; Lumeng Yu, “The Great Communicator: How FDR’s Radio Speeches Shaped American History,” *The History Teacher* 39, no. 1 (2005): 89-106; Lou Orfanella, “Radio: The Intimate Medium,” *The English Journal* 87, no. 1 (1998): 53-55.

<sup>347</sup> Teel, *The Public Press*, 171.

<sup>348</sup> Daly, *Covering America*, 215 (emphasis in original).

<sup>349</sup> Surette, *Media, Crime and Criminal Justice, Fourth Edition*, 10, 12; Lovell, *Good Cop / Bad Cop*, 92-93. Lovell asserted that radio was not just for crime news, but was also a form of entertainment.; Teel, *The Public Press*, 146-47. Teel contended that radio’s coverage of crime and other news often beat newspapers to the first information on stories. In 1932, the CBS network affiliate in New York was the first to cover news of the kidnapping of Charles A. Lindbergh’s infant son.; Daly, *Covering America*, 205; Sloan, *The Media in America*, 294; Mott, *American Journalism*, 703.

<sup>350</sup> Surette, *Media, Crime and Criminal Justice, Fourth Edition*, 10.

<sup>351</sup> Surette, 10; Teel, *The Public Press*, 146. See also Anthony R. Fellow, *American Media History, Second Edition* (Boston, Massachusetts: Wadsworth, 2010), 253.

<sup>352</sup> Surette, *Media, Crime and Criminal Justice, Fourth Edition*, 11; Fellow, *American Media History*, 251.

images that would later be found on television.<sup>353</sup> Although crime news and entertainment were never a dominant part of radio programming, they still played an important role in paving the way for such content on television beginning in the 1950s.<sup>354</sup>

However, the rise of radio also led to government regulation of the new medium, justified on the basis that there were a limited number of frequencies available to broadcasters, known as “scarcity.”<sup>355</sup> As a result, Congress passed legislation like the Radio Act of 1927, which established the Federal Radio Commission (FRC),<sup>356</sup> and the Communications Act of 1934, which established the Federal Communications Commission (FCC).<sup>357</sup> Significantly for journalists, this regulation, among other actions like the Fairness Doctrine, marked some of the first instances of government regulating the content of the press, including new networks like NBC and CBS.

Delayed by WWII, development and sales of televisions boomed in the 1950s to early-1970s,<sup>358</sup> known as the “Golden Age of Television.”<sup>359</sup> Like radio, television brought a rise in entertainment and news, ranging from *I Love Lucy* to Murrow’s

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<sup>353</sup> Surette, *Media, Crime and Criminal Justice, Fourth Edition*, 11. Surette added, “[R]adio crime-and-justice reality programming provided the models for modern day . . . programming, the contemporary stereotypes of criminals and criminal justice, the heavy emphasis on law enforcement activities[, . . . and the exploitation of sensational heinous crimes.”

<sup>354</sup> Surette, 10, 12.

<sup>355</sup> *National Broadcasting Co. v. United States*, 319 U.S. 190 (1943); *Red Lion Broadcasting Co. v. Federal Communications Commission*, 395 U.S. 367 (1969); Robert McChesney, *The Problem of the Media: U.S. Communication Politics in the Twenty-First Century* (New York: Monthly Review Press, 2004).

<sup>356</sup> Radio Act of 1927, ch. 652, § 602(a), 48 Stat. 1102 (1927) (repealed 1934).

<sup>357</sup> Communications Act of 1934, 47 U.S.C. § 151 *et seq.* (2006).

<sup>358</sup> James Brian McPherson, *Journalism at the End of the American Century, 1965-Present* (Westport, Connecticut: Praeger, 2006), 177.

<sup>359</sup> Stephens, *A History of News*, 273-76. *See also* Nerone, *Media and Public Life*, 181; Daniel C. Hallin, “The Passing of the High Modernism of American Journalism,” *Journal of Communications* 42, no. 3 (1992): 14-25. Observers called this the “High Modern Moment,” the culmination of institutionalization and professionalization.

marveling that CBS could simultaneously show live images of the Brooklyn Bridge and the Golden Gate Bridge. Also like radio, television brought government regulation and use.<sup>360</sup>

Beginning in the 1950s, crime shows “became a staple of prime time television entertainment” and would continue through the 21st century.<sup>361</sup> Local crime news would take longer to develop,<sup>362</sup> but, as discussed more below, by the late-1970s, such coverage had become common on local broadcast channels, and soon on cable television.<sup>363</sup>

The 1950s and early-1960s also marked some early instances of television helping expose corruption and lead to reforms, including related to the police. For example, from 1950 to 1951, the U.S. Senate Crime Committee, known as the Kefauver Committee, conducted a nationwide investigation into organized crime and police corruption.<sup>364</sup> Although coverage of “crime and corruption had occurred before in America with only minor public outrage,” the revelations by the Kefauver Committee “were different, thanks to the youthful television industry.”<sup>365</sup> Television once again exposed police corruption in 1961 with the airing of the CBS television documentary titled “Biography

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<sup>360</sup> Daly, *Covering America*, 291-92. See also James L. Baughman, *Television's Guardians: The FCC and the Politics of Programming, 1958-1967* (Knoxville, Tennessee: University of Tennessee Press, 1985).

<sup>361</sup> Surette, *Media, Crime and Criminal Justice, Fourth Edition*, 12-13.

<sup>362</sup> David R. Davies, *The Postwar Decline of American Newspapers, 1945-1965* (Westport, Connecticut: Praeger, 2006), 50-52. Davies noted that in the 1940s-1950s, “television stations and networks put little effort into covering day-to-day, routine news,” though the time period saw the first efforts to gather news for television, leading to “on-the-spot coverage.”; Daly, *Covering America*, 291-92.

<sup>363</sup> Lipschultz and Hilt, *Crime and Local Television News*, 1.

<sup>364</sup> Bopp and Schultz, *A Short History of American Law Enforcement*, 126-27.

<sup>365</sup> Bopp and Schultz, 126. Bopp and Schultz continued, “The committee’s hearings were televised to the nation. . . Millions of viewers watched enthralled as an almost endless parade of hoodlums immortalized the phrase: ‘I refuse to testify on the grounds that it might tend to incriminate me’ [and exposed] how easy it was to corrupt the nation’s underpaid police forces.”

of a Bookie Joint.”<sup>366</sup> The program depicted several Boston policemen and one detective “entering and leaving with great frequency a South Boston Horse Parlor,” implicating the officers in illegal bookmaking and gambling.<sup>367</sup> Following the documentary and several public hearings, in March 1962, Boston Police Commissioner Leo J. Sullivan resigned.<sup>368</sup>

The power of television during the 1950s and early-1960s was perhaps best apparent in 1955 with the coverage of the funeral of Emmett Till.<sup>369</sup> Televised pictures showed the body of Till, a Black teenager, who had been shot and mutilated by two white men.<sup>370</sup> By the late-1960s through the early-1970s, television would prove to be even more significant, especially for the press’ relationship with the government and authority, including the police. During this era, news outlets broadcast images of the Vietnam War, reaching millions of Americans as they watched in their living rooms.<sup>371</sup> Known as the first “Television War,” the Vietnam War coverage included stark and violent images recorded by war correspondents.<sup>372</sup> When CBS anchor Walter Cronkite, the “most trusted man in America,” went to Vietnam, he discovered and helped expose the problematic nature of the war, leading to growing discontent by the American public.<sup>373</sup> Violence

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<sup>366</sup> Bopp and Schultz, 138; William J. Bopp, *The Police Rebellion* (Springfield, Illinois: Charles C Thomas Publisher, 1971), 173.

<sup>367</sup> Bopp and Schultz, *A Short History of American Law Enforcement*, 138.

<sup>368</sup> Bopp and Schultz, 138.

<sup>369</sup> See Sloan, *The Media and America*, 455; Stephen J. Whitfield, *A Death in the Delta: The Story of Emmett Till* (New York: The Free Press, 1988); Christine Harold and Kevin Michael DeLuca, “Behold the Corpse: Violent Images and the Case of Emmett Till,” *Rhetoric & Public Affairs* 8, no. 2 (2005): 263-86.

<sup>370</sup> Ibid.

<sup>371</sup> Lovell, *Good Cop / Bad Cop*, Ch. 6; Daniel C. Hallin, *The “Uncensored War”: The Media and Vietnam* (Berkeley, California: University of California Press, 1989), 4. Hallin wrote that “television . . . decisively changed the political dynamics of war so that no ‘televised war’ can long retain political support.”

<sup>372</sup> McPherson, *Journalism at the End of the American Century*, 1-6, 45, 128.

<sup>373</sup> McPherson, 6.

against Vietnam War protesters was also depicted on television, including the “Dow Riots” at the University of Wisconsin.<sup>374</sup>

The distrust of government and the police only grew with televised images of police using fire hoses and dogs against Civil Rights marchers in Birmingham, Alabama and the use of horses to trample those trying to cross a bridge in Selma, known as “Bloody Sunday.”<sup>375</sup> These images raised new concern about police treatment of the Black community, as well as reporters and protestors. Furthermore, they demonstrated the importance of television news, which would continue to cover crime and the police at the national and local levels in the ensuing decades.

## **J. Great Depression, World War I, World War II, and Beginning of Cold War**

The first half of the 20th century brought several significant societal events and changes that would have important effects on the press and journalism. During the Great Depression, although newspapers were generally able to maintain circulations, they saw significant decreases in advertising, as well as increased competition from the growing radio industry.<sup>376</sup> The press covered the poor economic conditions and government responses, complicated stories of which the public had a deep interest.<sup>377</sup> The press also

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<sup>374</sup> See generally David Maraniss, *They Marched into Sunlight* (New York: Simon and Schuster, 2003). Police beat students and demonstrators protesting the on-campus presence of recruiters from Dow Chemical, a company that manufactured napalm during the Vietnam War.

<sup>375</sup> Sarah Brady Siff, “Policing the Police: A Civil Rights Story,” *Origins Current Events in Historical Perspective* 9, no. 8 (2016): 1-2; David G. Embrick, “Two Nations, Revisited: The Lynching of Black and Brown Bodies, Police Brutality, and Racial Control in ‘Post-Racial’ Amerikkka,” *Critical Sociology* 41, no. 6 (2015): 836-37; Carol Anderson, *White Rage: The Unspoken Truth of Our Racial Divide* (New York: Bloomsbury, 2016), 43; Lovell, *Good Cop / Bad Cop*, Ch. 6.

<sup>376</sup> Mott, *American Journalism*, 675.

<sup>377</sup> Kobre, *Development of American Journalism*, 565; Daly, *Covering America*, 217; Teel, *The Public Press*, 129-30, 137.

covered growing organized crime and “gangster killings” in the 1920s-1930s.<sup>378</sup> During Prohibition, the news media reported on “night-clubs, speakeasies, and home-made ‘hooch,’”<sup>379</sup> following the passage of the Eighteenth Amendment and The National Prohibition Act of 1919, known as the Volstead Act.<sup>380</sup>

WWI and WWII both prompted government efforts to censor and monitor journalists, as well as spread propaganda. During WWI, Congress passed the Espionage Act (1917),<sup>381</sup> the Trading with the Enemy Act (1917), and the Sedition Act (1918), through which they targeted dissenting voices.<sup>382</sup> The executive branch also created the Committee on Public Information (CPI), which aimed to mobilize press and public cooperation by controlling wartime information, imposing censorship, and spreading propaganda.<sup>383</sup> During WWI, the federal government was also known to “monitor” journalists, further creating division between the government and press.<sup>384</sup>

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<sup>378</sup> Mott, *American Journalism*, 704.

<sup>379</sup> Mott, 700.

<sup>380</sup> Lee, *History of American Journalism*, 398-99; The Volstead Act, ch. 85, 41 Stat. 307 (1919).

<sup>381</sup> Espionage Act, 18 U.S.C. § 793 (2009). See Mott, *American Journalism*, 623-25. Mott explained that over 50 papers lost their mailing privileges until they agreed to print no discussions of the war. Mott added that “the Supreme Court affirmed a decision under the Espionage Act which sent three editors of the Philadelphia *Tageblatt* to prison for publishing disloyal articles.”

<sup>382</sup> See *Abrams*, 250 U.S. at 616; *Schenck v. United States*, 249 U.S. 47 (1919); *Debs v. United States*, 249 U.S. 211 (1919).

<sup>383</sup> Teel, *The Public Press*, 76-78; Daly, *Covering America*, 165; Nerone, *Media and Public Life*, 153; Emery, *The Press and America*, Ch. 27; Bleyer, *Main Currents in the History of American Journalism*, 421; Lee, *History of American Journalism*, 423; Mott, *American Journalism*, 625-27; Kobre, *Development of American Journalism*, 576-77; Ralph O. Nafziger, *International News and the Press: Communications, Organizations of News-Gathering, International Affairs and the Foreign Press* (New York: H.W. Wilson Co., 1940), xvii.

<sup>384</sup> Folkerts, Teeter, and Caudill, *Voices of a Nation*, 390, 401. Folkerts, Teeter, and Caudill argued that the FBI, U.S. Department of Justice (DOJ), and Post Office kept “suspicious” journalists and members of the Black press under surveillance and that government agencies, “including Army Military Intelligence and the Bureau of Investigation, active in World War I in monitoring newspaper content, continued to investigate journalists and question their levels of loyalty[.]”; Nerone, *Media and Public Life*, 153.

However, the 1920s also saw a “Liberal Turn,” in which society increasingly favored pro-First Amendment considerations,<sup>385</sup> echoing the Free Speech Movement of the Progressive Era.<sup>386</sup> Such efforts would continue in the 1930s amidst New Deal legislation by Franklin Delano Roosevelt (FDR).<sup>387</sup> WWI would have several positive effects on the press, including the increased importance of evening papers to cover the war news from across the Atlantic, as well as the increased size of issues to cover the war and domestic news.<sup>388</sup>

WWII became known as the “First Broadcast War”<sup>389</sup> and marked the “first global war newsmen had to cover.”<sup>390</sup> This was exemplified by the famous radio broadcasts at the time, including by Murrow from the rooftops of London during the Blitz.<sup>391</sup> Additionally, war correspondents began the trend toward more aggressive reporting and “clear-eyed writing,”<sup>392</sup> stemming from the coverage of major events like

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<sup>385</sup> Starr, *The Creation of the Media*, 274, 291-92. Starr argued that WWI brought free press and speech issues to the forefront, including through the Espionage Act, the Sedition Act, and the Trading with the Enemy Act, as well as general suppression of dissent by the government. However, he cited *Gitlow v. New York*, 268 U.S. 652 (1925); *Near v. Minnesota*, 283 U.S. 697 (1931); and *Stomberg v. California*, 283 U.S. 359 (1931) to demonstrate the turn to pro-First Amendment rulings by the Supreme Court.

<sup>386</sup> Starr, *The Creation of the Media*, 267-68. Starr explained that press freedom had been carried through by the popular press, public debate, subsidies of newspapers, and structure of media markets. During the Progressive Era, newspapers, legal scholars, and others founded the Free Speech League and pushed for greater First Amendment protections. However, until 1917, the courts had failed to protect it, including in *Patterson v. Colorado*, 205 U.S. 454 (1907) when Justice Holmes found that First Amendment only prohibits prior restraint, not post-publication punishment. The “bad tendency” doctrine posited that government could use its “police power” to restrict speech that tended to produce a result the government had authority to prevent.

<sup>387</sup> Emery, *The Press and America*, Ch. 28.

<sup>388</sup> Lee, *History of American Journalism*, 419-21.

<sup>389</sup> Folkerts, Teeter, and Caudill, *Voices of a Nation*, 390.

<sup>390</sup> Kobre, *Development of American Journalism*, 684. Kobre explained that the press had to not only cover two fronts, but also domestic issues, including drafts, rationing of resources, etc.

<sup>391</sup> Folkerts, Teeter, and Caudill, *Voices of a Nation*, 390.

<sup>392</sup> Daly, *Covering America*, 286.

the landing on Normandy.<sup>393</sup> However, FDR's administration also sought to influence and limit the press through the formation of the Office of Censorship, the central gatekeeper of war news in the United States,<sup>394</sup> and the Office of War Information (OWI), which produced and distributed war news and propaganda.<sup>395</sup> WWII also marked the imposition of a formal system of censorship, including review of journalists' materials after the United States entered the war.<sup>396</sup> The government also continued monitoring and tracking journalists as it had during WWI.<sup>397</sup>

Nevertheless, in the years during and following WWII, the press and government often cooperated or had an "uneasy alliance."<sup>398</sup> This was perhaps most clearly demonstrated in that the press generally did not depict FDR in his wheelchair,<sup>399</sup> among other instances of self-imposed censorship.<sup>400</sup> Additionally, in the initial years of the Cold

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<sup>393</sup> Mott, *American Journalism*, 788.

<sup>394</sup> Teel, *The Public Press*, 214; Mott, *American Journalism*, 707-08, 761-63; Kobre, *Development of American Journalism*, 684, 687-88, 697.

<sup>395</sup> Teel, 214-15; Nerone, *Media and Public Life*, 175; Sloan, *The Media in America*, 439; Mott, *American Journalism*, 765-68.

<sup>396</sup> Daly, *Covering America*, 264; Teel, *The Public Press*, 214; Nerone, *Media and Public Life*, 175-77.

<sup>397</sup> Folkerts, Teeter, and Caudill, *Voices of a Nation*, 390, 401; Teel, *The Public Press*, 215.

<sup>398</sup> Daly, *Covering America*, 270; Folkerts, Teeter, and Caudill, *Voices of a Nation*, 433.

<sup>399</sup> Daly, *Covering America*, 270; Mott, *American Journalism*, 723. Mott noted, however, that FDR did not completely escape criticism, especially as he imposed public-relations style efforts. See generally Thomas J. Johnson, Wayne Wanta, John T. Byrd, and Cindy Lee, "Exploring FDR's relationship with the press: A historical agenda-setting study," *Political Communication* 12, no. 2 (1995): 157-72; "Prof. FDR film shows wheelchair," *Associated Press*, July 20, 2013, <https://www.politico.com/story/2013/07/franklin-delano-roosevelt-wheelchair-footage-093942>.

<sup>400</sup> Daly, *Covering America*, 270; Mott, *American Journalism*, 763. Mott wrote that voluntary censorship was common, marking "extraordinary performance, outstanding in the entire history of our democratic processes. It kept war production efforts secret until they had reached safe levels, kept Germany uninformed of the near-success of [the] marine blockade of 1942, suppressed all hints of preparations for the invasion landings in North Africa and Normandy, kept silence about Presidential tours even when such precautions seemed a little ridiculous, preserved as top secrets the early development of radar and the preparation of the atomic bomb." Mott added that although there were some exceptions, "on the whole it was a remarkable success."

War, the “press, by reporting in a straightforward manner on what the elites said and did, helped to create and sustain the Cold War consensus.”<sup>401</sup> The result was that members of the press “were associates, not adversaries.”<sup>402</sup>

There were several reasons that likely contributed to the “broad immunity granted to FDR and [the government] in general.”<sup>403</sup> One reason was reporters’ “perpetual pragmatic concern over access: if you break the gentlemen’s agreement about what can and cannot be reported, you will be shut out of those cozy press conferences around the president’s desk.”<sup>404</sup> Another reason was “the growing professional ideal in journalism [that] keyhole scandals [were] beneath the level of dignity to which journalists increasingly aspired.”<sup>405</sup> Along these lines, elaborating on or challenging statements by government officials was largely seen as biasing the news, which went against the still generally accepted practice of objectivity, meaning professional standards “protected the status quo.”<sup>406</sup>

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<sup>401</sup> Matthew Pressman, *On Press: The Liberal Values That Shaped the News* (Cambridge, Massachusetts: Harvard University Press, 2018), 7-8. Pressman wrote that “[i]n the ‘muckraking era . . . , reporters had prided themselves on challenging the powerful—the newspapers role, according to a famous saying, was to ‘afflict the comfortable and comfort the afflicted.’ The emphasis on this aspect of journalism faded during times of national crisis and consensus.”

<sup>402</sup> Pressman, *On Press*, 186.

<sup>403</sup> Daly, *Covering America*, 270.

<sup>404</sup> Daly, 270; Mott, *American Journalism*, 763. Mott wrote that in return for voluntary censorship, the press saw more willingness of the official sources to talk.”; Pressman, *On Press*, 8. Pressman explained that in the first half of the 20th century, “[a] sort of historical trade-off took place: journalists gave up the right to speak with a political voice of their own, and in turn they were granted a regular right of access to the inner councils of government.”; James L. Aucoin, *The Evolution of American Investigative Journalism* (Columbia, Missouri: University of Missouri Press, 2005), 47-48; James L. Baughman, *The Republic of Mass Culture* (Baltimore, Maryland: Johns Hopkins University Press, 2006).

<sup>405</sup> Daly, *Covering America*, 271.

<sup>406</sup> Aucoin, *The Evolution of American Investigative Journalism*, 45.

In terms of WWII, reporters and correspondents did not want to risk the lives of American soldiers overseas, or the success of the United States, and were, therefore, largely willing to self-censor or submit their reports to prior review.<sup>407</sup> Even during the early years of the Cold War, the press did not want to undermine the federal government's efforts.<sup>408</sup> Thus, the 1940s, influenced by earlier antecedents,<sup>409</sup> marked general cooperation between the press and government. However, some editors still expressed frustration about censorship and the banning of information about diplomatic negotiations, rumors, enemy propaganda, and more.<sup>410</sup>

Amidst this context, the 1940s and 1950s saw significant partnerships between the press and law enforcement as the news media sought to gain, and keep, access to police departments, crime scenes, and other locations.<sup>411</sup> These decades therefore saw the continuation of a trend in which it was common for the press in the last decades of the 19th century and the first half of the 20th century to have significant access to police

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<sup>407</sup> Daly, *Covering America*, 271; Teel, *The Public Press*, 213. Teel wrote, "Despite complaints about censorship, the media generally cooperated in suppressing military and political developments." See also note 400 below.

<sup>408</sup> Aucoin, *The Evolution of American Investigative Journalism*, 44; Pressman, *On Press*, 7-8.

<sup>409</sup> Mott, *American Journalism*, 721. Mott noted that President Woodrow Wilson established semi-weekly press conferences open to all correspondents and reporters, which were later revived by President Warren G. Harding, who owned a newspaper in Ohio and was known to talk "too freely" to his fellow journalists.

<sup>410</sup> Teel, *The Public Press*, 218; Mott, *American Journalism*, 723; Emery, *The Press and America*, 688.

<sup>411</sup> Richard Weinblatt, "How history makes the future of police media relations clearer," *PoliceOne*, April 3, 2005, <https://www.policeone.com/media-relations/articles/98373-How-history-makes-the-future-of-police-media-relations-clearer/>; Amber Brozek, "Relations between media and law enforcement have changed since 1959," *Lawrence Journal-World*, April 3, 2005; Aucoin, *The Evolution of American Investigative Journalism*, 44-47; Lovell, *Good Cop / Bad Cop*, 134-35; Ellen Warren, "The scene of the crimes: Gun-toting reporters, impersonating officers, poker, booze, 'the couch' . . . memories of the soon-to-be demolished 11th and State cop shop," *Chicago Tribune*, April 15, 2002.

departments, often spending significant time in the buildings where space was allocated for journalists near officers and officials.<sup>412</sup> For example, in 1944, *The Houston Post* explained that “[i]t was common for police officers waiting for shifts to . . . drift[] in small groups, ‘visiting the press room’ where off-duty reporters could be talked into a game of dominoes.”<sup>413</sup> However reporters still remained vigilant for a story, sometimes going great lengths to cover it.<sup>414</sup>

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<sup>412</sup> Roth and Kennedy, *Houston Blue*, 131; Brozek, “Relations between media and law enforcement have changed since 1959”; Melinda Henneberger, “How would journalists report the story of JFK’s assassination today? Very differently.,” *Washington Post*, Nov. 22, 2013, [https://www.washingtonpost.com/lifestyle/style/how-would-journalists-report-the-story-of-jfks-assassination-today-very-differently/2013/11/21/5426b73e-5226-11e3-9e2c-e1d01116fd98\\_story.html](https://www.washingtonpost.com/lifestyle/style/how-would-journalists-report-the-story-of-jfks-assassination-today-very-differently/2013/11/21/5426b73e-5226-11e3-9e2c-e1d01116fd98_story.html); Warren, “The scene of the crimes.” For examples of the press being in police departments, see John J. Hickey, *Our Police Guardians: History of the Police Department of the City of New York, and the Policing of Same for the Past One Hundred Years* (New York, 1925), 85; Augustine E. Costello, *Our Police Protectors: History of the New York Police from the Earliest Period to the Present Time* (New York, 1885), v; Mann, *Our Police*, 367; Roe, *Our Police*, 392. Roe explained that newspapers in Cincinnati in the 1890s and 1900s had “at police headquarters what is called a ‘day’ and a ‘night’ man. These two divide the twenty-four hours, and are expected to write up every accident or crime that occurs in the allotted space of time.”; Ridgely Hunt, “The People Vs. The Police,” *Chicago Tribune*, Sept. 7, 1969. Hunt perhaps put it best and most explicitly when he wrote, “Many reporters . . . spent their days in the station house, outsiders but quick to pick up the police outlook and language. Reporters in this environment often admire[d] policemen, and the police have usually reciprocated this feeling. To this day, many Chicago traffic cops will not knowingly ticket a reporter. . . . Usually [newspaper men] don’t even both to report [police brutality] to their city desks.” Thus, Hunt demonstrated that reporters in Chicago, and elsewhere, were commonly found in police departments. However, in return for that important access, reporters would provide favorable coverage for police, a trend that continues to some extent today.

<sup>413</sup> Roth, and Kennedy, *Houston Blue*, 131.

<sup>414</sup> See e.g. John D. Alexander, “Reporters Forced to Steal Cops’ Car to Nab Slayer,” *Carlsbad Current-Argus*, April 17, 1955. Alexander wrote that reporters would spend “a long evening at police headquarters” and would “play hunches that make big stories out of things other people miss.” Alexander recalled an instance from the first half of the 20th century in which “a couple of reporters well known to this writer played a hunch which got them a whale of a story and also landed them in the pokey for a few hours.” According to Alexander, the desk sergeant one night received a call from a woman, which he assumed to be intoxicated, telling her to “got to bed and sleep it off.” However, the reporters “smelled a story” and “decided to quietly check the call and find out for themselves if such an act had taken place. But how to get clear across town was another matter, for neither of the scribes had any means of transportation and no dough for cab fare.” It was then that the reporters “did the only thing good reporters on the way to get a story could do. There was a shiny Model T marked ‘Police Department’ parked at the curb, so they

The press also aimed to maintain the cooperation of police officials and officers as sources,<sup>415</sup> sometimes self-censoring stories that would portray law enforcement in a negative way.<sup>416</sup> Another reason for the increased partnerships was that reporters and police officers came from similar backgrounds, allowing both parties to socialize and not “rock the boat.”<sup>417</sup> It is therefore no surprise that, crime coverage was still common during this time period.<sup>418</sup> Additionally, beginning in the 1930s, law enforcement agencies even “worked closely with media producers in order to rehabilitate their image.”<sup>419</sup> The result was that the police and the media industry, including film, radio, and television, saw greater collaborations. However, it would also lead to a one-sided view of law enforcement, namely that police always do the right thing, ignoring the voices of those targeted or otherwise affected by the police.<sup>420</sup> This trend would continue through the present with numerous shows about policing discussed further below.

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climbed in and drove off,” therefore “steal[ing]” the police car. Upon reaching the home of the woman, they found that her husband had been murdered, providing them “a terrific exclusive.” But it came at great risk not only because they ended up in jail for a few hours, but also that they had caused an “uproar” in the police department by making the police “look silly,” therefore risking future access and partnerships that defined the first half of the 20th century.

<sup>415</sup> Weinblatt, “How history makes the future of police media relations clearer”; Brozek, “Relations between media and law enforcement have changed since 1959”; Lovell, *Good Cop / Bad Cop*, 134.

<sup>416</sup> Hunt, “The People Vs. The Police.”

<sup>417</sup> Weinblatt, “How history makes the future of police media relations clearer”; Cooke and Sturges, “Police and media relations in an era of freedom of information,” 407; Brozek, “Relations between media and law enforcement have changed since 1959.”

<sup>418</sup> Mott, *American Journalism*, 845. Mott wrote, “Crime[,] . . . always important in the news, had [its] share of headlines in the 1950’s,” including because “[c]rime . . . increased in greater proportion than the population during the decade.”; Roth and Kennedy, *Houston Blue*, 29.

<sup>419</sup> Carol A. Stabile, “During Floyd protests, media industry reckons with long history of collaboration with law enforcement,” *Conversation*, June 11, 2020, [https://theconversation.com/during-floyd-protests-media-industry-reckons-with-long-history-of-collaboration-with-law-enforcement-140221?utm\\_medium=email&utm\\_campaign=](https://theconversation.com/during-floyd-protests-media-industry-reckons-with-long-history-of-collaboration-with-law-enforcement-140221?utm_medium=email&utm_campaign=).

<sup>420</sup> Ibid.

However, the 1950s also saw the beginning of gradual distrust between the press and government, including because growing PR efforts by the federal government changed how reporters worked with sources.<sup>421</sup> Reporters increasingly dealt with intermediaries, namely PR experts.<sup>422</sup> The result was growing resentment by the press towards the government, though the 1950s still marked numerous instances of the press working directly with government sources.<sup>423</sup>

A “low point of press-government relations in the 1950s” was President Harry Truman’s 1951 executive order creating a classification system of government information.<sup>424</sup> The result was the expansion of the amount of information deemed secret, confidential, or classified, including at the federal, state, and local levels.<sup>425</sup> This led several reporters and editors to push against the withholding of information in peacetime, calling it unnecessary and against the values of a free press.<sup>426</sup> Litigation by the press increased as news organizations sought to “force open records and meetings,” which often prompted “government arrogance” in refusing to disclose information, despite the appearance of existing “gentlemen’s agreements.”<sup>427</sup> It was not until 1966 with President

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<sup>421</sup> Davies, *The Postwar Decline of American Newspapers*, 36; Sloan, *The Media in America*, 443.

<sup>422</sup> Davies, *The Postwar Decline of American Newspapers*, 36.

<sup>423</sup> Davies, 36.

<sup>424</sup> Davies, 37; Mott, *American Journalism*, 860-61; Kobre, *Development of American Journalism*, 698-700.

<sup>425</sup> Daly, *Covering America*, 287; Davies, *The Postwar Decline of American Newspapers*, 33.

Davies wrote, “In the early postwar years, government secrecy seemed to rise on all fronts.; Kobre, *Development of American Journalism*, 698-700. Kobre argued that increased secrecy at “the federal level led to secrecy on the state and local level. Governors, mayors, sheriffs, school superintendents and boards became tougher as a result of the federal example.”

<sup>426</sup> Davies, *The Postwar Decline of American Newspapers*, 34.

<sup>427</sup> Davies, 35-36. See also James S. Pope, “U.S. Press Is Free to Print the News But Too Often Is Not Free to Gather It,” *Quill*, July 1951, 9, 22. In 1951, executive editor of *The Courier-Journal* and *The Louisville Times* and the president of the American Society of Newspaper Editors (ASNE) James S. Pope called secretive government officials “a well-entrenched enemy,” adding,

Lyndon B. Johnson's signing of the Freedom of Information Act (FOIA), which went into effect in 1967, that there was a presumption of public access to the records of any federal agency.<sup>428</sup>

This context led many journalists, experts, scholars, and others to begin questioning the goal of objectivity in the 1950s, especially in light of the tumultuous nature of society and politics, including McCarthyism,<sup>429</sup> the Cold War, and more.<sup>430</sup> This era therefore marked an increase in interpretation in journalism, which, although not new, allowed greater latitude for reporters to provide critical reporting, commentary, and opinions about the government, which it was increasingly growing to distrust.<sup>431</sup> This would manifest in at least some investigations of the police by the press during this time period.<sup>432</sup> Nevertheless, the "fissure" between the press and government that had

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"Certainly there is a vital connection . . . between growing scandals in government and the growing concealment of information."

<sup>428</sup> See generally Suzanne J. Piotrowski, *Governmental Transparency in the Path of Administrative Reform* (New York: State University of New York Press, 2007); Michael R. Lemov, *People's Warrior: John Moss and the Fight for Freedom of Information and Consumer Rights* (Fairleigh Dickinson University Press, 2011).

<sup>429</sup> "McCarthyism and the Red Scare," *Miller Center*, accessed Aug. 12, 2019, <https://millercenter.org/the-presidency/educational-resources/age-of-eisenhower/mcarthyism-red-scare>. In the early 1950s, U.S. Senator Joe McCarthy (R-Wis.) launched investigations into the alleged invasion of the federal government by Communists, helping prompt the Red Scare and leading journalists like Murrow to push against objectivity in favor of interpretation and critical coverage of the government.

<sup>430</sup> Schudson, *Discovering the News*, 160-63. Schudson argued objectivity was criticized because it failed to examine the basic structures of power and privilege. See also Daly, *Covering America*, 299; Kaplan, *Politics and the American Press*, 3. Kaplan argued that the press always possesses a political dimension.; Teel, *The Public Press*, 243; Davies, *The Postwar Decline of American Newspapers*, 48; Sloan, *The Media in America*, 454-55; Mott, *American Journalism*, 835; Kobre, *Development of American Journalism*, 565-66; Pressman, *On Press*, 6-7, 184. Pressman added that another reason for this shift was newspapers were competing with radio and television, requiring "more complete, meaningful coverage."

<sup>431</sup> Davies, *The Postwar Decline of American Newspapers*, 48; McPherson, *Journalism at the End of the American Century*, 183-84.

<sup>432</sup> See Johnson, *Street Justice*, 222-27; Roth and Kennedy, *Houston Blue*, 167.

developed in the late-1940s and early-1950s “was evident, but not great.”<sup>433</sup> It was in the 1960s and 1970s that “this breach would . . . reach great proportions.”<sup>434</sup>

### **K. 1960s-1970s: Adversarial Press**

The late-1960s and early-1970s marked an era of distrust of government by much of the American public, who increasingly turned to the press to find information about the Vietnam War, Civil Rights Movement, and other developments.<sup>435</sup> This tumultuous era was marked by an “adversarial press”<sup>436</sup> targeting the government, military, and police,<sup>437</sup> with two submerged traditions in journalism gaining renewed support.<sup>438</sup>

First, the “literary tradition” of journalism in which reporters told compelling, human interest stories to the public led to the development of “new journalism” in the 1960s. Journalists now had the “desire to write a good story, not a safe story or an

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<sup>433</sup> Davies, *The Postwar Decline of American Newspapers*, 48.

<sup>434</sup> Davies, 48.

<sup>435</sup> Schudson, *Discovering the News*, 163, 180. Schudson wrote that the era had an “adversary culture,” meaning denying government a level of trust it had had in the past, and more skeptical journalism. The result was that muckraking efforts went the next step to not only expose corruption, but question power relations and structures of power.; McPherson, *Journalism at the End of the American Century*, ix-x, 178; Pressman, *On Press*, 10-11. Pressman wrote that in the “late-1960s through the 1970s saw “almost every major institution in American society experience[] a crisis of authority. People lost faith in the effectiveness, trustworthiness, and essential value of [the] government,” among other institutions. he added that this

“antiestablishment ethos” was carried by not only the public, but also the press.; Aucoin, *The Evolution of American Investigative Journalism*, 52. Aucoin wrote that “[t]rust in the government . . . by the [public] and the press weakened during the late 1950s. In the early 1960, it collapsed.”

<sup>436</sup> Folkerts, Teeter, and Caudill, *Voices of a Nation*, 446-47. Folkerts, Teeter, and Caudill argued that the news media was no longer the victimized press of 1950s, but a new potent adversary press in 1960s that challenged authority, including public officials, resulting in “an adversarial approach[.]”; Aucoin, *The Evolution of American Investigative Journalism*, 49; Pressman, *On Press*, 14, 185, 188. Pressman traced the rise of the adversarial press to 1965 with the first major student uprising at the University of California, Berkeley and several Vietnam protests, after which journalists “no longer felt a responsibility to protect politicians or to take them at their word when they invoked the national interest.”

<sup>437</sup> Folkerts, Teeter, and Caudill, *Voices of a Nation*, 466.

<sup>438</sup> Schudson, *Discovering the News*, 187-88.

objective story, but one finely crafted and forceful in its emotional impact.”<sup>439</sup> This new emphasis on literary journalism included feature-length and long-form stories containing action, dialogue, subjectivity, and detailed descriptions of events, people, and more.<sup>440</sup>

Second, the muckraking tradition gained renewed support in the 1960s-1970s with the rise of investigative reporting, notably the efforts of *Washington Post* reporters Bob Woodward and Carl Bernstein during the Watergate Scandal.<sup>441</sup> Investigative journalists also targeted the Vietnam War,<sup>442</sup> including *The New York Times*’ and *The Washington Post*’s publishing of portions of the Pentagon Papers, which helped expose lies and other embarrassing information about the federal government and the war, further emphasizing the need for independent investigative reporting to hold the government accountable.<sup>443</sup> The Civil Rights Movement was also a major focus of the press, leading to additional criticism of government and authority.<sup>444</sup>

The result of the rise in investigative reporting was a sharp division between the press and government during this era,<sup>445</sup> including a “break between government sources

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<sup>439</sup> Schudson, 187-88.

<sup>440</sup> Daly, *Covering America*, 343; Folkerts, Teeter, and Caudill, *Voices of a Nation*, 465, 476.

<sup>441</sup> Schudson, *Discovering the News*, 189-91. Woodward and Bernstein not only revealed information about the 1972 break-in to the Watergate Hotel headquarters of the Democratic National Committee, but also details provided by “Deep Throat” and other sources that revealed lies by President Nixon, which, eventually, led to obstruction of justice charges and his resignation.; Pressman, *On Press*, 14-15, 190. Pressman wrote that muckraking values “came roaring back . . . in the late 1960s and early 1970s, thanks to an unpopular war about which the government routinely lied, a presidential administration that treated the press as a political enemy, and an urge to ‘question authority’ . . . then permeating American society.” The result was increased investigations of government officials and other powerful institutions.

<sup>442</sup> McPherson, *Journalism at the End of the American Century*, 1-6, 45, 128; Aucoin, *The Evolution of American Investigative Journalism*, 56-57, 62.

<sup>443</sup> *New York Times v. United States*, 403 U.S. 717 (1971).

<sup>444</sup> Aucoin, *The Evolution of American Investigative Journalism*, 52.

<sup>445</sup> Folkerts, Teeter, and Caudill, *Voices of a Nation*, 446-47; Carter, Dee, and Zuckman, *Mass Communication Law in a Nutshell*, 509-10. Carter, Dee, and Zuckman explained that “mutual

and the news media.”<sup>446</sup> There were several additional reasons for this change, including that the press would increasingly expose lies by the federal government, starting with President John F. Kennedy’s (JFK) administration.<sup>447</sup> Further complicating the press’ relationship with authority was President Lyndon B. Johnson’s (LBJ) struggles with dealing with the press<sup>448</sup> and President Richard Nixon’s targeting of reporters with anti-press rhetoric and actions,<sup>449</sup> including an increase in subpoenas and investigations.<sup>450</sup>

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distrust . . . between public officials and reporters began to grow[.]. . . Fueled at least in part by the Vietnam War, a troubled economy, widespread graft and corruption at all levels of government, leaks of secret government information, doubtful media coverage of government and its personnel, and what some might characterize as anti-establishmentarianism by some elements of the media.” See also McPherson, *Journalism at the End of the American Century*, 58; Davies, *The Postwar Decline of American Newspapers*, 99; Pressman, *On Press*, 14, 185, 188.

<sup>446</sup> Aucoin, *The Evolution of American Investigative Journalism*, 62.

<sup>447</sup> Davies, *The Postwar Decline of American Newspapers*, 99, 103-10. Davies explained that claims and efforts by JFK to have a more open government, including through live televised press conferences and government officials as sources, halted with the Bay of Pigs invasion in 1961 in which the federal government and military sought to control information, and often lied about the operation to the press. The publication of part of the invasion plans by *The New York Times* led to further criticism by JFK’s administration. Lastly, the 1962 Cuban missile crisis led to even greater distrust as JFK imposed tight controls over information. Davies concluded that the “increasing distrust between reporters and government officials in the Kennedy years expanded a rift that had been gradually widening since WWII.”; Aucoin, *The Evolution of American Investigative Journalism*, 53.

<sup>448</sup> Davies, *The Postwar Decline of American Newspapers*, 110.

<sup>449</sup> See e.g. Oscar Winberg, “When it comes to harassing the media, Trump is no Nixon,” *Washington Post*, Oct. 16, 2017, <https://www.washingtonpost.com/news/made-by-history/wp/2017/10/16/when-it-comes-to-harassing-the-media-trump-is-no-nixon/>; Richard Harris, “The Presidency and the Press,” *New Yorker*, Sept. 24, 1973, <https://www.newyorker.com/magazine/1973/10/01/the-presidency-and-the-press>; Louis Liebovich, *Richard Nixon, Watergate, and the Press: A Historical Retrospective* (Westport Connecticut: Greenwood Publishing Group, 2003); James Keogh, *President Nixon and the Press* (New York: Funk & Wagnalls, 1972); Debra Gersh Hernandez, “Nixon and the Press,” *Editor & Publisher* 127, no. 26 (1994): 82.

<sup>450</sup> See *Branzburg*, 408 U.S. at 665; *Zurcher*, 436 U.S. at 547; Linda Moon, Bruce D. Brown, and Gabe Rottman, “New DOJ reports provide detail on use of law enforcement tools against the news media,” *Reporters Committee for Freedom of the Press*, Nov. 9, 2018, <https://www.rcfp.org/new-doj-reports-provide-detail-use-law-enforcement-tools-against-new/>. Moon, Brown, and Rottman wrote that there was a “press uproar about the growing number of subpoenas seeking to compel journalists to reveal confidential news sources” in 1970, prior to *Branzburg*. See also RonNell Andersen Jones, “Avalanche or Undue Alarm? An Empirical Study of Subpoenas Received by the News Media,” *Minnesota Law Review* 93, no. 2 (2008): 596.

Each of these administrations also augmented PR efforts, cutting public officials off from the press.<sup>451</sup>

Furthermore, the Vietnam War “left the United States deeply divided” as distrust of the government increased.<sup>452</sup> Hostility towards power and authority was “expressed particularly strongly by the media” as journalists increasingly saw themselves as “‘adversaries’ of government and political power” and “champions of truth and openness, checking the tendency of the powerful to conceal and dissemble,” therefore acting in their “role of the ‘fourth estate.’”<sup>453</sup> The result was that the relationship “between the media and the government during [and after] Vietnam was . . . one of conflict: the media contradicted the more positive view of the war officials sought to project, and for better or for worse it was the journalists’ view that prevailed with the public, whose disenchantment forced an end to American involvement.”<sup>454</sup>

Regarding the press-police relationship in particular, the 1960s-1970s saw a sharp decrease in partnerships and trust between the press and police as the relationship became more contentious.<sup>455</sup> There were several reasons for this shift, including first that investigative journalists engaged in “unforeseen levels of investigative reporting” and

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<sup>451</sup> Aucoin, *The Evolution of American Investigative Journalism*, 49; Pressman, *On Press*, 196.

<sup>452</sup> Hallin, *The “Uncensored War”*, 3-4. See also Aucoin, *The Evolution of American Investigative Journalism*, 56-57, 62. Aucoin wrote that the Vietnam War “fractured the relationship between the press and government.” He added that the resurgence and growth of alternative newspapers, radio stations, and other forms of media only increased this divide.

<sup>453</sup> Hallin, *The “Uncensored War”*, 5.

<sup>454</sup> Hallin, 3-4.

<sup>455</sup> Weinblatt, “How history makes the future of police media relations clearer”; Brozek, “Relations between media and law enforcement have changed since 1959”; Lovell, *Good Cop / Bad Cop*, 134-35.

“took on American institutions” like the police.<sup>456</sup> For example, in 1968, the *Miami Herald* detailed high crime rates versus low arrest rates.<sup>457</sup> Another example was a 1968 *Detroit Free Press* report that used survey data to analyze riots in Detroit.<sup>458</sup> In Los Angeles, the *Los Angeles Times*’ relationship with the Los Angeles Police Department (LAPD), “once characterized by beat reporters sharing drinks with cops how gave them access to crime scenes, also changed,” with stories often questioning or criticizing police tactics in dealing with minority communities, among other concerns.<sup>459</sup> Whereas police officers were previously used as sources in crime stories by the *Los Angeles Times*, they were now being targeted, leading many to characterize newspapers as “anti-cop.”<sup>460</sup>

Perhaps the best representation of the division that grew between the press and the police in the 1960s-1970s was *The New York Times* “develop[ing] a more adversarial relationship with its local government.”<sup>461</sup> Previously, the *Times* had “a tacit understanding with the police force: the paper got special treatment and news tips, and the police got sympathetic coverage.”<sup>462</sup> However, in 1968, reporter David Burnham

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<sup>456</sup> McPherson, *Journalism at the End of the American Century*, 47; Aucoin, *The Evolution of American Investigative Journalism*, Ch. 2; Pressman, *On Press*, 15, 198.

<sup>457</sup> McPherson, *Journalism at the End of the American Century*, 51.

<sup>458</sup> McPherson, 51-52.

<sup>459</sup> Pressman, *On Press*, 199-201; Max Felker-Kantor, *Policing Los Angeles: Race, Resistance, and the Rise of the LAPD* (Chapel Hill, North Carolina: University of North Carolina Press, 2018), 106-07.

<sup>460</sup> Pressman, *On Press*, 203.

<sup>461</sup> Pressman, 204.

<sup>462</sup> Pressman, 204. Pressman added, “When press cars were parked illegally or *New York Times* delivery trucks blocked traffic as they were being loaded with papers, officers looked the other way (or accepted payoffs). Reporters did special favors for beat cops and police officials, hoping to be rewarded with news scoops later on. As late as 1968, *New York Times* management received advance notice when the police planned to evict student protestors from several administration buildings in Columbia. *Times* journalists knew that corruption was rampant in the NYPD, but for years they declined to report on it.”; Gay Talese, *The Kingdom and the Power* (New York: Random House, 1969), 75; Arthur Gelb, *City Room* (London: Penguin Books, 2004), 154; Edwin

revealed that police officers “routinely slept on the job during their overnight shifts instead of patrolling the streets.”<sup>463</sup> An ensuing six-month investigation revealed “in vivid detail . . . endemic corruption,” prompting several officials to resign, as well as a commission to be appointed to investigate police corruption. The result was that the *Times* would “no longer be able to count on friendly treatment from the police, but the adversarial approach . . . burnished the paper’s reputation immeasurably.”<sup>464</sup>

Through such investigative reports into law enforcement, the press provided the public with more information about the police, some of which “undermined the political and social legitimacy of law enforcement, resulting in image, organizational, and strategic reform.”<sup>465</sup> The press helping lead to change was also apparent in that the media’s coverage of the Civil Rights Movement, including of bloody conflicts between protestors and police<sup>466</sup> that led to greater calls for police reform,<sup>467</sup> as well as for even more investigative reporting and “special assignment teams.”<sup>468</sup> Ultimately, the television coverage of police brutality led law enforcement officials and officers to question their relationships with members of the press.<sup>469</sup> The rise of investigative reporting also had this effect as police increasingly feared that media reports would negatively affect their

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Diamond, *Behind the Times: Inside the New New York Times* (New York: Villard Books, 1994), 50.

<sup>463</sup> Pressman, *On Press*, 205.

<sup>464</sup> Pressman, 205.

<sup>465</sup> Lovell, *Good Cop / Bad Cop*, 4.

<sup>466</sup> See notes 375 and 444 above.

<sup>467</sup> Lovell, *Good Cop / Bad Cop*, 116, 119-20, 126-27.

<sup>468</sup> Schudson, *Discovering the News*, 189-90.

<sup>469</sup> See notes 374-376 above; Weinblatt, “How history makes the future of police media relations clearer”; Tom Tiede, “Police and the press: view from squad car,” *Newspaper Enterprise Association*, Sept. 28, 1968. Tiede provided the viewpoint of Chicago Police officer Frank Crawford, who explained that he and other officers believed that television unfairly targeted the police for allegations of brutality and, conversely, “never showed” attempts to harm the police.

investigations or reputations.<sup>470</sup> The result was a more adversarial relationship, as well as a decline in the media's access to police activities, information, and officials and officers themselves.<sup>471</sup> Nevertheless, through investigative reporting and television coverage, the press was able to fulfill its responsibilities under SRT and its watchdog role by informing the public and holding government and police accountable.<sup>472</sup>

Second, the events surrounding the JFK assassination in 1963 have been cited as a key reason for the decreased partnerships between the press and police.<sup>473</sup> Prior to the assassination, the Dallas Police Department, among other departments across the country, were "extremely open" with the press and often allowed reporters to enter their departments with few limitations.<sup>474</sup> Reporters had "so much access" that they were able to walk up to JFK's body at Parkland Hospital.<sup>475</sup> Additionally, fewer PR experts or spokespeople meant police officials and officers remained journalists' primary sources.<sup>476</sup>

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<sup>470</sup> See notes 456-472 above; Brozek, "Relations between media and law enforcement have changed since 1959." Brozek added, "For better, or worse, this new attitude . . . of the press had the predictable reaction of public officials trying to hide bad events from public view, and the press was seen as the enemy."

<sup>471</sup> Aucoin, *The Evolution of American Investigative Journalism*, 52; Weinblatt, "How history makes the future of police media relations clearer."

<sup>472</sup> Aucoin, *The Evolution of American Investigative Journalism*, 66, 78. Aucoin added that several Supreme Court opinions, as discussed more below, helped promote investigative reporting, as did technological advances, such as the tape recorder, smaller cameras, and computers.

<sup>473</sup> Brozek, "Relations between media and law enforcement have changed since 1959."; Henneberger, "How would journalists report the story of JFK's assassination today? Very differently"; Jon Herskovitz, "How the JFK assassination transformed media coverage," *Reuters*, Nov. 21, 2013, <https://www.reuters.com/article/us-usa-jfk-media/how-the-jfk-assassination-transformed-media-coverage-idUSBRE9AK11N20131121>.

<sup>474</sup> Brozek, "Relations between media and law enforcement have changed since 1959"; Henneberger, "How would journalists report the story of JFK's assassination today?."

<sup>475</sup> Herskovitz, "How the JFK assassination transformed media coverage."

<sup>476</sup> Henneberger, "How would journalists report the story of JFK's assassination today?."

The years before the Vietnam War and Watergate also meant somewhat greater trust of authority by the press and public.<sup>477</sup>

However, this openness and trust changed after newspapers in Dallas and across the nation printed information about Lee Harvey Oswald after he was charged with assassinating JFK.<sup>478</sup> Law enforcement criticized such coverage and argued that the press had contributed to Jack Ruby shooting Oswald, and that, even if Oswald had lived, he would not have received a fair trial.<sup>479</sup> The “perp walk,” in which police escorted Oswald in front of numerous reporters and television cameras, further led police to criticize the press and, as a result, change their practices, such as eliminating the practice.<sup>480</sup> Another change was the establishment of police-press and bar-press guidelines around the country, which aimed to establish how and what journalists could report regarding police investigations and defendants’ Sixth Amendment rights.<sup>481</sup> But most significantly, journalists began to lose access to the police not only in Dallas, but across the United States.<sup>482</sup> Police and government officials increasingly “ke[pt] the media at a greater distance” and “became more concerned with what information was made public.”<sup>483</sup>

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<sup>477</sup> Ibid.

<sup>478</sup> Brozek, “Relations between media and law enforcement have changed since 1959.”

<sup>479</sup> Ibid.

<sup>480</sup> Herskovitz, “How the JFK assassination transformed media coverage.”

<sup>481</sup> Brozek, “Relations between media and law enforcement have changed since 1959”; “Police Records: A reporter’s state-by-state access guide to law enforcement records,” *Reporters Committee for Freedom of the Press*, Winter 2008, 1-24, <https://www.rcfp.org/wp-content/uploads/imported/POLICE.pdf>.

<sup>482</sup> Henneberger, “How would journalists report the story of JFK’s assassination today?.”

<sup>483</sup> Brozek, “Relations between media and law enforcement have changed since 1959”; Henneberger, “How would journalists report the story of JFK’s assassination today?.”

Finally, the 1968 Democratic National Convention (DNC) held in Chicago marked another key moment for the straining of the press-police relationship.<sup>484</sup> Large protests erupted, leading to 125 arrests, significant damage, and hundreds of injuries, most of which were at the hands of police.<sup>485</sup> Among those injured were members of the press, resulting in 22 media representatives filing brutality charges against the police.<sup>486</sup> Although the press had and would continue to cover police violence against anti-war and Civil Rights protestors during this time period,<sup>487</sup> the events at the 1968 DNC hit especially close to home because the violence targeted reporters and white people.<sup>488</sup> And like with the anti-war and Civil Rights protests, it was aired on network television news, with the police response being to defend the officers' actions while blaming reporters for being attacked and exaggerating what had taken place.<sup>489</sup> Significantly, journalists and

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<sup>484</sup> See Tanner Howard, "Journalism still carries the mark of 1968," *Columbia Journalism Review*, Sept. 13, 2008, <https://www.cjr.org/analysis/chicago-dnc-1968.php>; Craig Wall, "Former Newsweek reporter recalls 1968 Democratic Convention," *ABC 7*, Aug. 28, 2018, <https://abc7chicago.com/politics/former-newsweek-reporter-recalls-1968-democratic-convention-riots/4079449/>.

<sup>485</sup> *Ibid.*

<sup>486</sup> Tiede, "Police and the press: view from squad car."

<sup>487</sup> See note 375 above.

<sup>488</sup> Howard, "Journalism still carries the mark of 1968." Howard quotes Don Rose, a political consultant who served as the press secretary for the National Mobilization to End the War during the 1968 Democratic Convention, who said, "One of the interesting things for white reporters (which is almost redundant at the time), was that there wasn't really such a thing as police brutality. In the newsrooms of the day, police brutality was the complaint of "those people out there," and whenever it was brought up, it was, "Oh, check with the mayor, is there police brutality? No." That's something that only happened to "those people," if it really happened. Finally we saw a bunch of white people getting beat up, and slowly it seeped in that there was such a thing as police brutality."

<sup>489</sup> David Taylor and Sam Morris, "The whole world is watching," *Guardian*, Aug. 19, 2018, <https://www.theguardian.com/us-news/ng-interactive/2018/aug/19/the-whole-world-is-watching-chicago-police-riot-vietnam-war-regan>; Howard, "Journalism still carries the mark of 1968."; Tiede, "Police and the press: view from squad car." Tiede included a quote by Chicago Police officer Frank Crawford, who said, "I don't know why the reporters did what they did. . . . We've always tried to treat them right. We've always had pretty good relations. But I don't know, [the [press] just ganged up on us at the convention. It was almost as if they were working against us."

news organizations began questioning whether they could trust the police and public officials.<sup>490</sup> The result was greater distrust between the two parties and the straining of the press-police relationship not only in Chicago, but across the United States.<sup>491</sup>

Ultimately, the Kennedy assassination and the 1968 DNC, combined with increased investigative journalism and critical television coverage, led to antagonism and decreased trust between the press and police during a time period when both parties were already changing in ways that would split them apart. Whereas the 1940s-1950s generally saw more cooperation and openness between the press and police, the 1960s-1970s marked a clear and growing divide, manifesting as decreased partnerships between the press and the police as the relationship grew increasingly contentious.

#### **L. 1980s-Present: Big Media, Digital Revolution, and Efforts to Improve Race Relations**

The final era of the evolution of journalism in the United States is the 1980s through the present, which brought several additional key developments. First, this era marked the rise of “big media”<sup>492</sup> as news organizations reached larger audiences, but also consolidated,<sup>493</sup> “went public,”<sup>494</sup> or both. Among other consequences for journalism, these changes meant that executives of the new media conglomerates focused less on news being their business, but “*business* [being] their business.”<sup>495</sup>

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<sup>490</sup> Howard, “Journalism still carries the mark of 1968.”

<sup>491</sup> Tiede, “Police and the press: view from squad car.”; Warren, “The scene of the crimes.” Warren wrote that the events at the 1968 DNC meant that the “chummy relationship between the police and press . . . was [frayed] after police bashed reporters’ heads.”

<sup>492</sup> Daly, *Covering America*, 397.

<sup>493</sup> Daly, 428; McPherson, *Journalism at the End of the American Century*, 189-92.

<sup>494</sup> Folkerts, Teeter, and Caudill, *Voices of a Nation*, 486-87.

<sup>495</sup> Daly, *Covering America*, 429 (emphasis in original).

Second, cable news, beginning with CNN in 1980, marked the beginning of the 24-hour news cycle, which included significant coverage of the police, sometimes exposing misconduct.<sup>496</sup> The rise of cable news also resulted in an increase in highly emotional coverage, including of crime, with the press increasingly looking over the shoulder of police and public officials in an effort to gather more news.<sup>497</sup> The significance of this shift was not only increased coverage of police, but also different ways for the press to do so.<sup>498</sup>

The coverage of crime and police was also pervasive on local broadcast television beginning in the late-1970s. Crime news became a staple of local television news around 1970,<sup>499</sup> a trend that continues in the 21st century.<sup>500</sup> They contended that “[v]iewers of local television newscasts across the country [were] regularly exposed to crime news stories”<sup>501</sup> and that local television news was, and still is, “a part of everyday life.”<sup>502</sup>

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<sup>496</sup> Daly, 406; Pressman, *On Press*, 225.

<sup>497</sup> Daly, *Covering America*, 406; McPherson, *Journalism at the End of the American Century*, 81-88.

<sup>498</sup> Daly, *Covering America*, 406.

<sup>499</sup> Lipschultz and Hilt, *Crime and Local Television News*, 13. Lipschultz and Hilt wrote that during the 1970s, the “Eyewitness News” format “emphasized reporting from the scene of events and use of film and video. . . . The format highlighted reporters covering events and then doing live reports featuring interaction with anchors. At times, this led to emphasis on crime coverage.” They added that the peak of this coverage came in the late 1970s through the 1980s and 1990s. See also Irving Fang, *Television News, Radio News* (St. Paul, Minnesota: Rada Press, 1985), 317.

<sup>500</sup> Simon Van Zuylen-Wood, “Oy, the TRAFFIC. And it’s POURING! Do I hear SIRENS?,” *Columbia Journalism Review*, Spring 2017, [https://www.cjr.org/local\\_news/tv-news-broadcast-jacksonville.php](https://www.cjr.org/local_news/tv-news-broadcast-jacksonville.php); Franklin D. Gilliam and Shanto Iyengar, “Prime Suspects: The Influence of Local Television News on the Viewing Public,” *American Journal of Political Science* 44, no. 3 (2000): 560-73.

<sup>501</sup> Lipschultz and Hilt, *Crime and Local Television News*, 1; McPherson, *Journalism at the End of the American Century*, 82.

<sup>502</sup> Lipschultz and Hilt, *Crime and Local Television News*, 1; Eleanor Randolph, “Bodybag Journalism,” *Chicago Tribune*, Nov. 5, 1989; Melissa Schwartz, “If It Bleeds, It Leads,” *HuffPost*, May 29, 2014, [https://www.huffpost.com/entry/if-it-bleeds-it-leads\\_b\\_5407863](https://www.huffpost.com/entry/if-it-bleeds-it-leads_b_5407863).

Significantly, television reporters and crews increasingly conducted live “on-the-scene” coverage, especially when covering breaking news and crime.<sup>503</sup>

This time period also saw the continued growth of television crime shows, which had become increasingly popular beginning in the 1950s.<sup>504</sup> The late 1980s and 1990s saw the development of reality television, including shows about the police.<sup>505</sup> The first such show was COPS, which was aired from 1989 through 2020. These shows followed a “ride-along style,” which purported to show the police conducting their normal functions of arrests, searches and seizures, traffic stops, and other interactions with members of the public.<sup>506</sup> However, the show was not meant to be newsworthy, but instead to be entertainment. This was in stark contrast to the depictions of police by investigative journalists and other more news-oriented coverage, meaning the public was presented with conflicting images of law enforcement, positive and negative.

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<sup>503</sup> Surette, *Media, Crime & Criminal Justice, First Edition*, 56; Scott Harrison, “TV breaking news was invented 70 years ago with tragic case of Kathy Fiscus,” *Los Angeles Times*, April 8, 2019, <https://www.latimes.com/local/lanow/la-me-tv-kathy-fiscus-breaking-news-20190408-story.html>.

<sup>504</sup> Surette, *Media, Crime and Criminal Justice, Fourth Edition*, 12. Surette wrote that “television executives found a gold mine in crime programming” beginning around 1977, though crime shows had been a staple of television entertainment since the 1950s.; Lovell, *Good Cop / Bad Cop*, 107, 118. Lovell contended that TV news and crime shows, which had first developed on radio, became increasingly popular in the 1950s and portrayed police work as fast action, sensational images, and rapid-fire scene cuts, therefore making the public perception different from what it had been in the past.; McPherson, *Journalism at the End of the American Century*, 82; Earl M. Sweeney, *The Public and the Police: A Partnership in Protection* (Springfield, Illinois: Charles C Thomas Publisher, 1982), 17.

<sup>505</sup> Markin, “An ‘Unholy Alliance,’” 33; DeLeith Duke Gossett, “Constitutional Law and Criminal Procedure—Media Ride-Alongs Into the Home: Can They Survive a Head-On Collision Between First and Fourth Amendment Rights?,” *UALR Law Review* 22, no. 4 (1999): 679-708; Robert M. O’Neil, “Ride-Alongs, Paparazzi, and Other Media Threats to Privacy,” *University of Richmond Law Review* 33, no. 4 (2000): 1167-85; John L. Worrall, “Constitutional issues in reality-based police television programs: Media ride-alongs,” *American Journal of Criminal Justice* 25, no. 1 (2000): 41.

<sup>506</sup> Markin, “An ‘Unholy Alliance,’” 33.

Beginning in the 1980s, there was an important shift in that the lines between news and entertainment, especially related to crime, became increasingly blurred.<sup>507</sup> During this era, news was more accessible, emotional, and entertaining, including due to the post-1960s-1970s era, the rise of cable news and local television coverage, and the growing questioning of the credibility of news by the public. Another reason for this shift was the growing use of on-scene and live reporting, as well as significant, and often problematic, coverage of celebrities.<sup>508</sup> Additionally, beginning in the 1960s, but becoming especially prominent in the 1980s, there was an increase in the prominence of “soft news” and reader-oriented stories meant to entertain readers, listeners, and viewers.<sup>509</sup> The combination of the above factors is perhaps most evident in the coverage of O.J. Simpson’s criminal trial, where the former star athlete and actor was ultimately acquitted amidst significant media coverage.<sup>510</sup> The blurring of news and entertainment was also seen in shows like *Nightline*, which was aired over broadcast stations and purported to provide newsworthy information, but in a way meant entertain a mass audience.<sup>511</sup>

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<sup>507</sup> McPherson, *Journalism at the End of the American Century*, 88.

<sup>508</sup> McPherson, 88; Surette, *Media, Crime & Criminal Justice, First Edition*, 56.

<sup>509</sup> Pressman, *On Press*, 11-12, 112. Pressman explained that newspapers no longer only sought to inform their readers, but also entertain and serve them by expanding press coverage to “[s]ocial movements, changes in culture, the condition of disadvantaged groups,” and other “personal interests of readers,” not just government and business.

<sup>510</sup> McPherson, *Journalism at the End of the American Century*, 88; Johnson, Wolfe, and Jones, *History of Criminal Justice*, 323-25.

<sup>511</sup> McPherson, *Journalism at the End of the American Century*, 88; Mott, *American Journalism*, 803. Mott contended that the rise of the six communication media (newspapers, magazines, books, radio, television, and motion pictures) led to the creation of the “mass audience,” building on commercialization in the 1830s and mass circulation in the 1890s.

Third, the 1980s through the present marked the digital revolution in which all facets of journalism were changed by the rise of the internet and social media, including technologically, politically, economically, and socially.<sup>512</sup> Nevertheless, media coverage of crime and police continued into the 21st century, including for news and entertainment purposes. Regarding news, the press continued to cover crime and the police, as well as investigate police wrongdoing, both of which have continued since at least the Penny Press. In terms of entertainment, new reality television shows depicted police and their everyday functions, such as “LivePD,” which purported to be “live” footage of police activities accompanied by a panel of experts discussing what took place, among several others. Additionally, some police departments began providing “virtual” ride-alongs for those following their social media accounts, allowing viewers to see videos, tweets, and other materials that showed officers’ daily activities.<sup>513</sup>

Finally, the 1980s to the present marked important changes and reforms regarding the press’s coverage of and working with race. Such changes came after a long history of the news media portraying minorities in problematic ways and also excluding them from newsrooms.<sup>514</sup> More specifically, the press for many years perpetuated racist views among the general population, including numerous instances of there being a disparity in

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<sup>512</sup> Daly, *Covering America*, 438, 459.

<sup>513</sup> Kristy Dalton, “What is a Twitter Ride-Along?” *Government Social Media*, Jan. 3, 2014, <http://governmentsocialmedia.com/2014/01/03/what-is-a-twitter-ride-along/>. See e.g. Gordon Severson, “Police statewide host ‘virtual ride-alongs,’” *KARE 11*, Feb. 16, 2019, <https://www.kare11.com/article/news/police-statewide-host-virtual-ride-alongs/89-0d637229-ff48-4ddc-a0b8-c504334542b2>; Matt Vandenlangenberg, “Be ‘Social’ with UWPD,” *UW-Madison Police Department*, Oct. 16, 2017, <https://uwpd.wisc.edu/news/be-social-with-uwpd/>.

<sup>514</sup> Gonzalez and Torres, *News for All the People*, 6-7; Pressman, *On Press*, 149. Pressman also contended that prior to the 1960s, the mainstream press “practiced rampant discrimination against minorities and women, both in employment practices and in news coverage.”

how crime news portrayed white versus Black individuals, including characterizing minorities as criminals, rather than victims.<sup>515</sup> Whereas European immigrants to the United States over time shed their perceived criminal identities in the press and society, Black individuals did not, remaining the focus of racist or otherwise problematic depictions in the press.<sup>516</sup>

Gonzalez and Torres broke down the press' relationship with race and working classes into several eras, some of which were closely tied to crime and the police. First, the 1700s saw colonial newspaper coverage of Native Americans and slaves described as "barbarous," "rebellious," and "lurking about," among other negative descriptions that focused on violence and crime against European settlers.<sup>517</sup> Second, in the 1830s, amidst urbanization, industrialization, and immigration, newspaper coverage of crime in urban centers helped "sow[] racial hatred, clamored for wars of conquest, and spearheaded bloody mob attacks against non-white communities and their abolitionist supporters."<sup>518</sup>

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<sup>515</sup> Gonzalez and Torres, *News for All the People*, 2, 9. Gonzalez and Torres provide several examples of the press fomenting mob violence and massacres against communities of color, including the press' reporting on anti-abolitionist riots in the 1830s, the armed white overthrow of duly elected Black leadership in Wilmington, North Carolina in 1898, riots in St. Louis in 1917 and Los Angeles in 1943, and instances violence on college campuses in the 1960s, among several other examples. See also Carol A. Stabile, *White Victims, Black Villains: Gender, Race, and Crime News in US Culture* (London: Routledge, 2006), 2, 4.

<sup>516</sup> Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Cambridge, Massachusetts: Harvard University Press, 2011), 4-5. Muhammad wrote that "notions about blacks as criminals materialized in national debates about the fundamental racial and cultural differences between African Americans and native-born whites and European immigrants. . . . Crime statistics [show] that blackness was a more stable racial category in opposition to whiteness, leading white criminality to lose its fearsomeness."

<sup>517</sup> Gonzalez and Torres, *News for All the People*, 21-22.

<sup>518</sup> Gonzalez and Torres, *News for All the People*, 41-45. Gonzalez and Torres noted that the press often depicted violence as being the fault of the Black men, though the penny press was "more objective" because it appealed to the working and lower classes.; Stabile, *White Victims, Black Villains*, 5-6. Stabile wrote, "Crime reporting has played a pivotal role in how U.S. society understands, identifies, and punishes behaviors considered . . . criminal."

Such coverage, however, also helped prompt the growth of minority presses discussed above.<sup>519</sup> Third, in the 1840s-1850s, telegraph and AP dispatches often contained “racist distortions” and unfavorable coverage of the Black and working class communities, especially related to their involvement in crime, riots, and other violence.<sup>520</sup> Fourth, during Reconstruction, newspapers, especially in the South, frequently stereotyped Black politicians and voters, and continued to cover mobs, portraying Black individuals as violent, inferior, and a threat to white race, therefore fitting into the larger narrative of Black crimes against white women.<sup>521</sup> In ensuing decades, even during the Progressive Era, racial issues like segregation were largely ignored by newspapers, though individuals like Ida B. Wells remained crucially important for the coverage of both race and gender in the United States.<sup>522</sup>

Lastly, WWI and WWII saw more coverage of racial violence by the press, though often in inaccurate or misleading ways.<sup>523</sup> Such reporting came amidst the government “targeting the most outspoken minority editors for surveillance and censorship” during both wars.<sup>524</sup> Additionally, during WWII and much of the 1950s, the mainstream press largely ignored the growing protests against racial segregation,<sup>525</sup>

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<sup>519</sup> See notes 248-253 above.

<sup>520</sup> Gonzalez and Torres, *News for All the People*, 149, 154-57.

<sup>521</sup> Gonzalez and Torres, 151-53. Gonzalez and Torres contended that this was perhaps best reflected in the coverage of lynching, where even those that condemned the practice, including *The New York Times*, provided “minute and gory details of the atrocities” and sometimes tried to rationalize the violence. In the South, several newspapers either did not condemn the practice or encouraged its further use. See also Kaplan, *Politics and the American Press*, 31-34; Stabile, *White Victims, Black Villains*, Ch. 3-4.

<sup>522</sup> Gonzalez and Torres, *News for All the People*, 181

<sup>523</sup> Gonzalez and Torres, 213-17, 225.

<sup>524</sup> Gonzalez and Torres, 209-10, 218; Teel, *The Public Press*, 90-92. See also notes 381-384, 396-397 above.

<sup>525</sup> Gonzalez and Torres, *News for All the People*, 266-69.

despite evidence of police misconduct, corruption, and brutality raised by the National Association for the Advancement of Colored People (NAACP), American Civil Liberties Union (ACLU), and others.<sup>526</sup> Instead, the press increasingly focused on what was perceived to be an “epidemic of street crimes” and police responses, as well as coverage “increase[d] hysteria of Japanese Americans and internment.”<sup>527</sup>

The 1960s-1970s would be a breaking point as the Civil Rights movement, feminist movement, and other cultural changes helped prompt several changes, including the hiring of Black and female reporters, though minorities remain underrepresented.<sup>528</sup> The era also led the press to have greater awareness of how to cover racial and social issues in ensuing decades.<sup>529</sup> Although the 1980s through the present marked some of the most meaningful changes in the press’ complicated history with race, class, and gender, including related to crime and the police, many questions still remain unresolved, necessitating further research.<sup>530</sup>

### **III. History of Federal, State, and Local Police in the United States**

The history of policing can be traced back to Ancient Rome and Greece, the Middle Ages, and Norman England, with additional antecedents found from other eras and cultures around the world.<sup>531</sup> Much like the press, law enforcement in the United

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<sup>526</sup> Muhammad, *The Condemnation of Blackness*, 11-12.

<sup>527</sup> Gonzalez and Torres, *News for All the People*, 264, 274-75.

<sup>528</sup> Gonzalez and Torres, 8, 302, 339; Pressman, *On Press*, 9, 13-14, 149-50, 236.

<sup>529</sup> Pressman, *On Press*, 13-14.

<sup>530</sup> Crime and Punishment in the Jim Crow South, eds. Amy Louise Wood and Natalie J. Ring (Urbana and Chicago: University of Illinois Press, 2019); Robert M. Entman and Andrew Rojecki, *The Black Image in the White Mind: Media and Race in America* (Chicago: University of Chicago Press, 2015).

<sup>531</sup> Baillie Reynolds, “The Police in Ancient Rome,” *The Police Journal* 1, no. 3 (1928): 432-42; Balko, *The Militarization of Police*, Ch.1; Bopp and Schultz, *A Short History of American Law Enforcement*, 5-7; Roth and Kennedy, *Houston Blue*, 1-2; Johnson, *Street Justice*, Ch. 2-5.

States began in the American colonies, modern policing did not develop until the 1830s with the creation of police departments in major U.S. cities.<sup>532</sup> This literature review discusses colonial law enforcement before tracing key eras in the 200 years of modern policing in the United States.

### **A. 1600s-1810s: Colonial System of Law Enforcement**

The first antecedents of police in the United States were found in the American colonies, which had several different types of law enforcement, including informal methods such as the local church and family members handling local disputes and bad behavior.<sup>533</sup> In many cases, individuals would take law enforcement into their own hands,<sup>534</sup> and/or form vigilante committees or “brotherly watches.”<sup>535</sup> Colonial law enforcement also included town sheriffs<sup>536</sup> and constables<sup>537</sup> who were generally

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<sup>532</sup> Walker, *Popular Justice*, 3.

<sup>533</sup> Walker, *Popular Justice*, 13, 18; Herbert A. Johnson, Nancy Travis Wolfe, and Mark Jones, *History of Criminal Justice, Fourth Edition* (Newark, New Jersey: Matthew Bender & Company, Inc., 2008), 121.

<sup>534</sup> Johnson, Wolfe, and Jones, *History of Criminal Justice*, 105; Bopp and Schultz, *A Short History of American Law Enforcement*, 21; Alferts, *Law and Order in the Capital City*, 7.

<sup>535</sup> *To Serve and Protect: The History of Policing*, ed. Lionel Pender (New York: Britannica Educational Publishing, 2017), 33; Walker, *Popular Justice*, 15, 18, 36; French, *The History of Policing*, 47.

<sup>536</sup> Walker and Katz, *The Police in America*, 26. “Sheriff” is defined as the “chief local government official, who was appointed by the colonial governor; duties included criminal law enforcement, collecting taxes, conducting elections, maintaining . . . roads, and other duties.”; Julian P. Boyd, “The Sheriff in Colonial North Carolina,” *North Carolina Historical Review* 5 (1928): 151-81.

<sup>537</sup> Walker and Katz, *The Police in America*, 26. “Constable” is defined as those with the “responsibility of enforcing the law and maintaining order,” which “evolved into a semiprofessional appointed office.” See also, Robert C. Wadman and William Thomas Allison, *To Protect and Serve: History of Police in America* (Upper Saddle River, New Jersey: Pearson Prentice Hall, 2004), 8-9; Roth and Kennedy, *Houston Blue*, 2-4; James Cramer, *A history of the police of Portsmouth: the story of the constables, tythingmen, watchmen and other peace officers of the Portsmouth area* (Portsmouth, New Hampshire, Portsmouth papers; no. 2., 1967), 5-11; Johnson, Wolfe, and Jones, *History of Criminal Justice*, 220.

appointed by local governors or mayors to handle administrative matters, such as holding elections or collecting taxes,<sup>538</sup> with far less emphasis on crime prevention.<sup>539</sup>

Perhaps the closest aspect of colonial law enforcement to modern conceptions of police were “Day and Night Watches” during which adult males would patrol the community for fires, suspicious individuals, or riots.<sup>540</sup> Service was mandatory, meaning that any adult male could be enlisted, regardless of qualifications.<sup>541</sup> The result was that watchmen were often “inadequate at best.”<sup>542</sup> In cases that were too much to handle, the military or state militia were called in, as well as the U.S. Marshalls beginning in 1779.<sup>543</sup>

During the colonial era, police corruption and brutality were common,<sup>544</sup> with sheriffs, constables, and watchmen often found in gambling dens, brothels, and bars.<sup>545</sup>

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<sup>538</sup> Walker, *Popular Justice*, 25-26; Bopp and Schultz, *A Short History of American Law Enforcement*, 26.

<sup>539</sup> Walker and Katz, *The Police in America*, 26-27; Richardson, *The New York Police*, 7. Richardson explained that although constables were the primary law enforcement officer “charged with keeping the peace, suppressing excessive drinking, gambling, and prostitution, and preventing disturbances while church services were in progress,” they generally focused on “common law duties and powers.”; Lane, *Policing the City*, 7-8. Lane clarified that constables executed arrest warrants signed by justices of the peace, while sheriffs could arrest individuals for civil or criminal offenses without a warrant. However, sheriffs and constables were paid just as much for civic matters, making dealing with crime less enticing.

<sup>540</sup> Walker and Katz, 26; Lane, *Policing the City*, 10; Richardson, *The New York Police*, 8-11.

<sup>541</sup> Reppetto, *American Police*, 5; Walker, *Popular Justice*, 27; David R. Johnson, *American Law Enforcement: A History* (St. Louis, Missouri: Forum Press, 1981), 5; Lane, *Policing the City*, 10; Richardson, *The New York Police*, 8-9.

<sup>542</sup> Richardson, *The New York Police*, 10.

<sup>543</sup> French, *The History of Policing America*, 21-26. French discussed the creation of the Continental Army and National Guard, as well as the role of the military’s own law enforcement branch: the military police, which “handled offenses within the military under the Uniform Code of Military Justice.”; Walker, *Popular Justice*, 27. Walker found that as communities grew and became less homogenous, civil leaders faced the necessity of creating additional law enforcement agencies.; Wadman and Allison, *To Protect and Serve*, 10, 55-56; Bopp and Schultz, *A Short History of American Law Enforcement*, 16, 27; Richardson, *The New York Police*, 8-9; Johnson, Wolfe, and Jones, *History of Criminal Justice*, 108-09.

<sup>544</sup> Walker, *Popular Justice*, 27.

<sup>545</sup> Walker and Katz, *The Police in America*, 27.

These individuals were subject to political interference and were largely inefficient, including because they had little capacity to prevent crime or apprehend offenders, had little training, were poorly paid, and garnered little respect from the local community.<sup>546</sup> Instead, sheriffs, constables, and watchmen were often paid for performing civic duties, such as running elections and collecting taxes, providing less incentive to deal with or prevent increasing crime.<sup>547</sup> The first decades of the 19th century would therefore see increased calls for new forms of law enforcement in major cities.<sup>548</sup>

### **B. 1820s-1840s: Development of Modern Police Departments**

In London in 1829, Sir Robert Peel founded the first modern police force, known as the Metropolitan Police Department.<sup>549</sup> Peel's force had three characteristics: a mission of crime prevention, the use of uniforms, patrols, and designated "beats," and a military ethos, including the use of military ranks and titles.<sup>550</sup> Despite concerns that a police force "resembling a standing army" was antithetical to American values,<sup>551</sup> several U.S.

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<sup>546</sup> Wadman and Allison, *To Protect and Serve*, 8-9; Richardson, *The New York Police*, 11, 30.

<sup>547</sup> See notes 538-539 above.

<sup>548</sup> Johnson, *American Law Enforcement*, 8; Miller, *Cops and Bobbies*, 5; Lane, *Policing the City*, 26; Richardson, *The New York Police*, 6.

<sup>549</sup> Lovell, *Good Cop / Bad Cop*, 56; Walker, *Popular Justice*, 53; Walker and Katz, *The Police in America*, 25; David Bauler, *Patterns of Policing: A Comparative International Analysis* (New Brunswick, New Jersey: Rutgers University Press, 1985), 23; Wadman, *To Protect and Serve*, 126-28; Johnson, *American Law Enforcement*, 18-22; Bopp and Schultz, *A Short History of American Law Enforcement*, 30-31; Miller, *Cops and Bobbies*, 2; Richardson, *The New York Police*, 24; Alfery, *Law and Order in the Capital City*, 1-3; Johnson, Wolfe, and Jones, *History of Criminal Justice*, 218-20; Johnson, *Street Justice*, 14; Kenneth J. Peak and William H. Sousa, *Policing America: Challenges and Best Practices, Ninth Edition* (New York: Pearson, 2018), 11.

<sup>550</sup> Walker, *Popular Justice*, 53; Walker and Katz, *The Police in America*, 25.

<sup>551</sup> Johnson, *American Law Enforcement*, 8-11; Alfery, *Law and Order in the Capital City*, 1; Richardson, *The New York Police*, 21-22, 42; *New York Sun*, March 24, 1843. A *Sun* editorial read, "The *Sun* could 'see no reason why it might not become an absolute police despotism. . . . It will never do to remove such tremendous powers from the people and deposit them with a body of watchmen in this matter.'"

cities adopted this “modern”<sup>552</sup> style of policing, including Boston in 1838, New York City in 1845, New Orleans and Cincinnati in 1852, Philadelphia in 1854, and Chicago and Milwaukee in 1855.<sup>553</sup> Cities adopted such measures for many of the same reasons that influenced the creation of the Penny Press; the 1830s saw a rise in urbanization, industrialization, and immigration, leading to growing lower and working classes, as well as greater diversity in expanding American cities.<sup>554</sup> The result was an increase in crime, including violent mobs and race riots in these urban centers, prompting local government to seek means of crime prevention like that devised by Peel.<sup>555</sup>

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<sup>552</sup> Wadman and Allison, *To Protect and Serve*, 17. Wadman and Allison wrote, “These early police departments . . . represent the genesis of modern police organizations.”

<sup>553</sup> See e.g. James A. Bultema, *The Protectors: A Photographic History of Police Departments in the United States* (Parks, Arizona: P.D. Publishing, 2016), 2-3; Repetto, *American Police*, Ch. 2-3, 5; Wadman and Allison, *To Protect and Serve*, 18-25; Lane, *Policing the City*; Richardson, *The New York Police*; Bopp and Schultz, *A Short History of American Law Enforcement*, 35-38.

<sup>554</sup> Lovell, *Good Cop / Bad Cop*, 8. Lovell wrote that the “history of the police so closely parallels that of the mass media. The first ‘modern’ police forces in the United States began to appear in the early to mid-1800s during a time of rapid urbanization, immigration, and industrialization, contributing to social instability and anomie. The [penny press] made its debut in America about the same time, and the stories featured . . . naturally gravitated toward the very issues relevant to the urban centers. . . . [M]odern police forces have been the target of media scrutiny since police first established ranks in urban centers.” See also Craig D. Uchida, “The Development of the American Police: An Historical Overview,” in *Critical Issues in Policing Contemporary Readings*, eds. Roger G. Dunham and Geoffrey P. Alpert (Prospect Heights, IL: Waveland Press; Davidson, 2001); James R. Boylan and Frederick T.C. Yu, *Mass Media: Systems and Effects* (New York: Holt Rinehart, and Winston, 1976); Wadman and Allison, *To Protect and Serve*, 14-16, 61-62; Johnson, *American Law Enforcement*, 6-8, 17, 22-24; Bopp and Schultz, *A Short History of American Law Enforcement*, 33-34; Miller, *Cops and Bobbies*, 4-5, 8; Roth and Kennedy, *Houston Blue*, 7; Alfors, *Law and Order in the Capital City*, 10; Johnson, Wolfe, and Jones, *History of Criminal Justice*, 241; Johnson, *Street Justice*, 13-14; Lane, *Policing the City*, 1-2, 14, 18, 26, 29-32; James P. Hall, *The History And Philosophy of Law Enforcement* (Dubuque, Iowa: Kendall/Hunt Publishing Company, 1975), 82, 88-90; Richardson, *The New York Police*, 15. Richardson perhaps put it best when he wrote, “From the mid-1820’s on, crime and disorder increased rapidly. The beginnings of industrialization, large-scale immigration, slums, religious, racial and ethnic rivalries, and the growth of machine politics all complicated the city’s police problem.” See also notes 202-204 above.

<sup>555</sup> Walker, *Popular Justice*, 49-51. See e.g. Richardson, *The New York Police*, 15. Richardson cited the *Commercial Advertiser* on Aug. 20, 1840, which read, “It is notorious that the New York police is wretchedly inadequate to the arrest of offenders and the punishment of crime; as to

Law enforcement in the South through the first decades of the 19th century included slave patrols, which marked an antecedent to state-wide police forces that would develop in the early 20th century.<sup>556</sup> In many ways, slave patrols represented the first efforts to reform colonial law enforcement into municipal departments and organized police forces in the United States.<sup>557</sup> At the very least, these patrols, which were often called “city guards,” had had similar characteristics to the modern departments developing first in New England, including that they were made up of uniformed, municipal employees who would patrol at night.<sup>558</sup> The first such force was developed in Charleston in the 1780s, with New Orleans, Savannah, and Mobile soon doing the same.<sup>559</sup> In 1836, New Orleans demilitarized its police force before adopting a new system in 1840, suggesting that New Orleans was perhaps the first major U.S. city, at least in the South, to install an urban, modern police force.<sup>560</sup>

### **C. 1840s-1890s: Partisan Era, Civil War, Reconstruction, and Gilded Age**

Although U.S. cities largely followed the format set out by Peel, two key differences led the police in the United States to have characteristics different from their counterparts in London. First, officers in the United States were given “unchecked

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*prevention* of crime, we might almost as well be without the name of a police, as we are all but without the substance” (emphasis in original).

<sup>556</sup> Walker and Katz, *The Police in America*, 26.

<sup>557</sup> Rousey, *Policing the Southern City*, 3; Roth and Kennedy, *Houston Blue*, 18; Sally E. Hadden, *Slave Patrols: Law and Violence in Virginia and the Carolinas* (Cambridge, Massachusetts: Harvard University Press, 2001), 21.

<sup>558</sup> Rousey, *Policing the Southern City*, 3-4; Bridenbaugh, *Cities in the Wilderness*, 112, 298-99; Richard Wade, *Slavery in the Cities: The South, 1820-1860* (New York, Oxford University Press, 1964), 98-100; Johnson, Wolfe, and Jones, *History of Criminal Justice*, 223, 225.

<sup>559</sup> Rousey, *Policing the Southern City*, 3; Johnson, Wolfe, and Jones, *History of Criminal Justice*, 223, 225.

<sup>560</sup> Rousey, *Policing the Southern City*, 6.

discretionary power,” therefore providing them more autonomy than those in England, which meant less oversight of their activities.<sup>561</sup> The result was that officers were often found in bars, gambling dens, and brothels, rather than patrolling the streets or preventing crime, much like colonial law enforcement.<sup>562</sup>

Second, U.S. police were influenced by powerful local governments and politicians under the “boss system,” such as Tammany Hall in New York City.<sup>563</sup> Under this system, politicians chose officers based on political connections rather than their qualifications.<sup>564</sup> In return, officers would carry out the wishes of politicians, such as beating or arresting political opponents and letting allies go,<sup>565</sup> resulting in departments being filled with corruption and unqualified officers whose motivations, rather than serving the public and preventing crime, were for political gain.<sup>566</sup> In this way, social

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<sup>561</sup> Lovell, *Good Cop / Bad Cop*, 56; Lane, *Policing the City*, 39.

<sup>562</sup> Walker and Katz, *The Police in America*, 27.

<sup>563</sup> Lee and McGovern, *Policing and Media*, 16; George L. Kelling and Mark H. Moore, *The Evolving Strategy of Policing* (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, 1989); Scott M. Cutlip, *The Unseen Power: Public Relations, a History* (Hillsdale, New Jersey: Lawrence Erlbaum Associates, 1994); Ray Surette, “Public information officers: the civilianization of a criminal justice profession,” *Journal of Criminal Justice* 29, no. 2 (2001): 107-17; Lane, *Policing the City*, 95, 119; Miller, *Cops and Bobbies*, 17; Johnson, *American Law Enforcement*, 26-27; Johnson, Wolfe, and Jones, *History of Criminal Justice*, 220-21; Wadman and Allison, *To Protect and Serve*, 63; Johnson, *Street Justice*, 3; Dennis C. Rousey, *Policing the Southern City: New Orleans, 1805-1889* (Baton Rouge, Louisiana: Louisiana State University Press, 1996), 68, 98.

<sup>564</sup> Lovell, *Good Cop / Bad Cop*, 56; Clive Emsley, *Policing and Its Context, 1750-1870* (New York: Schocken Books, 1984); Mark. H. Haller, “Historical Roots of Police Behavior, Chicago 1890-1925,” *Law and Society Review* 10, no. 2 (1976); Miller, *Cops and Bobbies*, 29, 43-44; Richardson, *The New York Police*, 45; Raymond Fosdick, “European Police Systems,” *Journal of Criminal Law and Criminology* 6, No. 1 (1915); Johnson, *American Law Enforcement*, 27; Johnson, Wolfe, and Jones, *History of Criminal Justice*, 220. Johnson, Wolfe, and Jones explained that because American officers’ badges were made from copper, they garnered the nickname “cops.”

<sup>565</sup> Richardson, *The New York Police*, 57.

<sup>566</sup> Walker and Katz, *The Police in America*, 31-33. Walker and Katz explained that jobs as police officers were a major award that politicians could offer. Politicians would offer kickbacks/payoffs for not enforcing drinking, gambling, and prostitution, as well as not targeting political allies.

order was a political game rather than an effective means of protecting the public, with officers having “very little impact on crime because they were not a deterrent, nor were they able to effectively respond to crime.”<sup>567</sup> Instead, officers would commit criminal activity, including police brutality, rather than preventing it.<sup>568</sup>

Ineffectiveness of the police during this time period was exacerbated by the lack of accountability of individual officers, who would have little motivation to do their jobs properly or to form relationships with the public.<sup>569</sup> This was because the few commanding officers that existed were also backed politically, and could only cover so much ground in monitoring and communicating with their subordinates.<sup>570</sup>

Political corruption, the ineffectiveness of police preventing or investigating crimes, and increases in, and panic about, street crime, mobs, and violence, were all reported by the press.<sup>571</sup> Ironically, the Penny Press was often more effective at investigating crimes than the police, one instance in which the press played a role in police reform.<sup>572</sup> The result was that cities responded by continuing to establish modern

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Officers often paid bribes for promotions and were known to be discriminatory.; Bopp and Schultz, *A Short History of American Law Enforcement*, 41-43; Haller, “Introduction to Reprint Edition,” xvi; Lovell, *Good Cop / Bad Cop*, 56-57; Miller, *Cops and Bobbies*, 29, 43-44; Richardson, *The New York Police*, 55; Bopp and Schultz, *A Short History of American Law Enforcement*, 41.

<sup>567</sup> Walker, *Popular Justice*, 59. See also Richardson, *The New York Police*, 53-54, 95.

<sup>568</sup> Walker, 58, 62. Walker wrote that citizens had low expectations of the police, and that anyone challenging their authority “faced billy clubs.”; Miller, *Cops and Bobbies*, 46-47, 62-63.

<sup>569</sup> Walker and Katz, *The Police in America*, 30-33.

<sup>570</sup> Walker and Katz, 30-33.

<sup>571</sup> Walker, *Popular Justice*, 3; Lane, *Policing the City*, 65; Haia Shpayer-Makov, *Ascent of the Detective: Police Sleuths in Victorian and Edwardian England* (Oxford: Oxford University Press, 2012), 303.

<sup>572</sup> See note 222 above. See also Matthew Pearl, “The incredible untold story of America’s first police detectives,” *Boston Globe*, April 28, 2016. Pearl wrote that the press solving crimes before police partially led to the creation of Boston’s detective unit.

police departments in the 1840s-1850s.<sup>573</sup> Some cities also created detective units, including the first such unit in Boston in 1846.<sup>574</sup> However, detective units were also largely ineffective and were later reorganized or reformed.<sup>575</sup>

The Civil War fell in the middle of the partisan era of policing and had several effects on the police. In the North, the war halted progress of law enforcement<sup>576</sup> because it led police forces to have “to deal with many wartime problems,” meaning “[i]ts size and the scope of its activities expanded.”<sup>577</sup> Such new functions included arresting deserters and bounty jumpers, as well as guarding military shipments and caring for wounded soldiers.<sup>578</sup> Police also protected President Lincoln when he came to their respective city, dealt with riots tied to anti-conscription, drafts, and emancipation, and addressed increased gambling and prostitution, which “flourish[ed]” during the war.<sup>579</sup> In order to coordinate these actions, the police increasingly used the telegraph to communicate, though it remained under the control of the federal government.<sup>580</sup>

In the South, police faced Confederate control, which manifested in the police enforcing orders to suppress disloyalty.<sup>581</sup> The result was the suppression of dissenting voices and the press, renewed tension between Black and white individuals, such as fear of Black crime, and increased violence between those believing in slavery and those who

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<sup>573</sup> See note 553 above.

<sup>574</sup> Pearl, “The incredible untold story of America’s first police detectives”; Lane, *Policing the City*, 57.

<sup>575</sup> “Early police in the United States,” 1.

<sup>576</sup> Bopp and Schultz, *A Short History of American Law Enforcement*, 44.

<sup>577</sup> Lane, *Policing the City*, 118.

<sup>578</sup> Lane, 126; Alfors, *Law and Order in the Capital City*, 25-26.

<sup>579</sup> Richardson, *The New York Police*, 124-25, 129, 153-55; Alfors, *Law and Order in the Capital City*, 26.

<sup>580</sup> Richardson, *The New York Police*, 136-37.

<sup>581</sup> Rousey, *Policing the Southern City*, 103-04.

did not.<sup>582</sup> Police were also tasked with military duties when invasion seemed imminent,<sup>583</sup> though at other moments police yielded to soldiers in patrolling cities.<sup>584</sup> Lastly, the Civil War led to the questioning of slave patrols, leading cities to adopt modern police departments like those in the North.<sup>585</sup>

However, the problem for police in the North and South in the 1860s was that departments, officials, and officers “did not have either the doctrine [nor] the materials to deal with disorder in any way other than violence.”<sup>586</sup> Adding to the problem was that police forces saw decreased personnel as departments saw policemen volunteer for or be required to serve as soldiers.<sup>587</sup> The result was not only greater inefficiency, but also increased police brutality during the war, as well as violence against the police.<sup>588</sup>

One additional change during the Civil War was the establishment of the Secret Service.<sup>589</sup> In 1865, the new branch of law enforcement was founded as a small unit under the Treasury Department.<sup>590</sup> It was comprised of about 30-40 agents through the remainder of the century and was primarily tasked with combatting counterfeiting.<sup>591</sup> After the assassination of three U.S. presidents between 1865 and 1901,<sup>592</sup> the Secret

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<sup>582</sup> Rousey, 103-04, 111, 114-19; Alfery, *Law and Order in the Capital City*, 33.

<sup>583</sup> Rousey, *Policing the Southern City*, 105.

<sup>584</sup> Rousey, 105-07; Alfery, *Law and Order in the Capital City*, 25.

<sup>585</sup> Wadman and Allison, *To Protect and Serve*, 36.

<sup>586</sup> Richardson, *The New York Police*, 143.

<sup>587</sup> Richardson, 125-26.

<sup>588</sup> Richardson, 143, 157-58.

<sup>589</sup> Reppetto, *American Police*, 263; Johnson, *American Law Enforcement*, 75-81; Bopp and Schultz, *A Short History of American Law Enforcement*, 80; Johnson, Wolfe, and Jones, *History of Criminal Justice*, 253-54.

<sup>590</sup> Reppetto, *American Police*, 263.

<sup>591</sup> Reppetto, 258-59; Johnson, *American Law Enforcement*, 85.

<sup>592</sup> “Presidential Assassinations,” *HISTORY*, accessed Aug. 5, 2019, <https://www.history.com/tag/presidential-assassinations>. Presidents Abraham Lincoln (1865), James A. Garfield (1881), and William McKinley (1901).

Service shifted to providing occasional guards for the president, even though there were no funds for the agency to do so.<sup>593</sup> In 1903, the assignment of the guards to protect the president became permanent, though only five agents were assigned to the detail until 1914 when the number began to gradually increase.<sup>594</sup>

During Reconstruction and the Gilded Age following the Civil War, the United States saw a new wave of urbanization, industrialization, immigration.<sup>595</sup> The result, like in the first decades of the 19th century, was an increase in crime, especially amidst increased nativism and fear of “dangerous classes,” including immigrants and unskilled workers.<sup>596</sup> In general, the post-Civil War era saw political, ethnic, and class tensions “intensif[y],” leaving police to address rising crime and disorder.<sup>597</sup>

The years following the Civil War also saw renewed partisanship and the influence of politics on the police.<sup>598</sup> The result was continued corruption of law enforcement, especially in New York due to the ongoing strong influence of Tammany

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<sup>593</sup> Reppetto, *American Police*, 266.

<sup>594</sup> Reppetto, 267.

<sup>595</sup> Wadman and Allison, *To Protect and Serve*, 17, 61-62; Bopp and Schultz, *A Short History of American Law Enforcement*, 59; Whalen and Whalen, *The NYPD's First 50 Years*, 40-41; Richardson, *The New York Police*, 165-66.

<sup>596</sup> Miller, *Cops and Bobbies*, 141-43; Alfes, *Law and Order in the Capital City*, 32; Richardson, *The New York Police*, 166; Lane, *Policing the City*, 133-34, 142, 150. Lane wrote, “During the 1860s professional criminality in America had come of age, set in patterns which would last through the nineteenth century and into the twentieth.” He added that continued ineffectiveness of police and detectives led to some press criticism, including by the Boston *Herald*, which asked, “What are detectives for? [Are they] simply to be detailed for when there is money on a job?” These were significant questions. The relation between the state, the public interest, and detective work was still unclear.”; *Boston Herald*, Feb. 15-16, 1870.

<sup>597</sup> Johnson, *Street Justice*, 13, 37.

<sup>598</sup> Johnson, 55, 57-59, 64; Lane, *Policing the City*, 118, 210, 219; Whalen and Whalen, *The NYPD's First 50 Years*, 3-4; Richardson, *The New York Police*, 109, 176-78; Roth and Kennedy, *Houston Blue*, 44.

Hall.<sup>599</sup> Additionally, inefficiency and ineffectiveness continued in the 1880s-1890s,<sup>600</sup> leading to growing criticism of police, including by the press,<sup>601</sup> as well as increased pushes for reform around the turn of the century.<sup>602</sup> One reason for the continued problems was, like in the first half of the century, “[s]evere limits on a superior officer’s ability to supervise his patrolmen,” which “enhanced the apparently chaotic nature of policing. Once a man left the station house, he was his own boss.”<sup>603</sup> Although cities like New York created the position of “roundsmen,” whose job was “to see that the patrolmen were on their beats,” it had little effect on increasing the effectiveness of police.<sup>604</sup>

#### **D. 1840s-1890s: Establishment and Growth of Police Forces in South and West**

In the second half of the 19th century, modern police forces resembling those in New York, Boston, and other cities, were increasingly established in the South and West, presenting some similarities, but also differences from their New England counterparts.

In many ways, police in the South and West followed “several larger trends in law enforcement in the United States,”<sup>605</sup> including adopting elements of the English tradition of policing such as night watches and constables.<sup>606</sup> In the years leading up to and following the Civil War, the “example of a state-controlled municipal police in New

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<sup>599</sup> Johnson, *Street Justice*, 60-61; Johnson, Wolfe, and Jones, *History of Criminal Justice*, 257-59; Richardson, *The New York Police*, 284-86.

<sup>600</sup> Richardson, *The New York Police*, 284.

<sup>601</sup> Richardson, 190; Rousey, *Policing the Southern City*, 160. Rousey wrote that the 1880s saw increased criticism of the police, citing the New Orleans *Times* in 1879, which “attributed the poor performance of the police to low salaries and to the ‘system by which the policemen are appointed, and by which appointments are distributed as political rewards instead of by the standard of efficiency.’”; *Times*, Jan. 4, 1879; *Daily Picayune*, Nov. 20, 1882.

<sup>602</sup> Richardson, *The New York Police*, 259.

<sup>603</sup> Johnson, *Street Justice*, 62.

<sup>604</sup> Richardson, *The New York Police*, 203.

<sup>605</sup> Rousey, *Policing the Southern City*, 2.

<sup>606</sup> Rousey, 2-3.

York was soon followed in a number of other cities and for much the same reasons,” including in Chicago, Detroit, New Orleans, San Francisco, and several others.<sup>607</sup> The result was that modern departments spread, bringing the principle of preventive policing,<sup>608</sup> as well as “around-the-clock patrols, a unified administration, salaries rather than fees, and eventually uniforms and revolvers as routine, if not always legal, sidearms.”<sup>609</sup> By the end of the Civil War, police departments in the various cities “were not only remarkably similar to each other, but had taken on an organizational structure that, with adaptations because of technological changes, would persist in the present.”<sup>610</sup> Such similarities in policing across the United States would continue as police in the South and West also went through eras of partisanship, ineffectiveness, police brutality, and reform.<sup>611</sup> And like the North, the press was there to cover crime and the police.<sup>612</sup>

However, police in these regions also raised unique concerns. In the South, police faced one key difference from other regions: the role of slavery and the added laws that came with it.<sup>613</sup> For example, although New Orleans was the first department in the South to integrate its police force after the Civil War, the ensuing decades saw “not only a diminution of African American involvement in policing but also financial retrenchment

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<sup>607</sup> Richardson, *The New York Police*, 123; Johnson, *American Law Enforcement*, 27.

<sup>608</sup> Johnson, *American Law Enforcement*, 27-28.

<sup>609</sup> Rousey, *Policing the Southern City*, 3; Allen Steinberg, *The Transformation of Criminal Justice, Philadelphia, 1800-1880* (Chapel Hill, North Carolina: University of North Carolina Press, 1989).

<sup>610</sup> Haller, “Introduction to Reprint Edition,” v.

<sup>611</sup> Rousey, *Policing the Southern City*, 7-8, 67, 198-99.

<sup>612</sup> Roth and Kennedy, *Houston Blue*, 37-38.

<sup>613</sup> Rousey, *Policing the Southern City*, 91.

and drastic reductions in the size of the police force, characteristics of all southern cities in the post-Reconstruction period.”<sup>614</sup>

Chicago represented throughout much of the 19th century “the West” in the United States as it faced many of the issues of a frontier town, which were generally characterized by widespread violence and struggles over morality.<sup>615</sup> Such characteristics were common throughout different territories and towns stretching to California over the course of the 19th and 20th centuries, including during the Gold Rush.<sup>616</sup> However, although the “men and women of the westward migration . . . brought with them preconceived ideas about law enforcement[.]. . . [they] found little organization in that regard when they arrived and began settling small communities and towns.”<sup>617</sup> Thus, the first stage of law enforcement in the West was little organized policing at all due to the “absence of well-developed, standardized government.”<sup>618</sup> This led to vigilantism by frontier settlers,<sup>619</sup> as well as the formation of private detective agencies and security, including the Pinkerton detectives.<sup>620</sup>

The second stage of policing in the West was the creation of local law enforcement, often drawing influence from systems of justice of Hispanic and Native American cultures.<sup>621</sup> When an area remained a territory, law enforcement was handled

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<sup>614</sup> Rousey, 7.

<sup>615</sup> Reppetto, *American Police*, 153; Wadman and Allison, *To Protect and Serve*, 42.

<sup>616</sup> Reppetto, *American Police*, 225.

<sup>617</sup> Wadman and Allison, *To Protect and Serve*, 42.

<sup>618</sup> Johnson, *American Law Enforcement*, 89.

<sup>619</sup> Johnson, *American Law Enforcement*, 92; Wadman and Allison, 42-43; Johnson, Wolfe, and Jones, *History of Criminal Justice*, 227-28.

<sup>620</sup> Wadman and Allison, *To Protect and Serve*, 56.

<sup>621</sup> Wadman and Allison, *To Protect and Serve*, 42-43, 45-47, 53-55.

by the U.S. marshals.<sup>622</sup> Small towns would sometimes appoint a local policeman, though he “had no legal authority to deal with criminals[.]”<sup>623</sup> Once a territory became a state, or several states, local law enforcement was comprised of sheriffs, who “actually spent little time chasing bandits . . . across the desert landscape,” instead focusing on duties like collecting taxes, maintaining streets, clearing sidewalks, serving civil papers, running the local jail, and more, much like the early police in New York and Boston.<sup>624</sup>

The third stage also followed a national trend as formal departments were founded in more established cities with standardized government, including in San Francisco in 1856, Dallas in 1881, and Portland, Maine in 1872.<sup>625</sup> Like in New England, departments were often corrupt and ineffective, prompting reform of police forces in ensuing decades, the fourth stage of police development in the West.<sup>626</sup>

The development of policing in Washington, D.C., was “unique” because the “problems faced in the policing of any large city were compounded by the peculiarities of policing the nation’s capital.”<sup>627</sup> In particular, the police were closely tied to the federal government, especially in times of war when the force more closely resembled the military.<sup>628</sup> However, there were still similarities to other departments, including moments of partisanship, corruption, and ineffectiveness, which prompted reform.<sup>629</sup>

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<sup>622</sup> Johnson, *American Law Enforcement*, 89.

<sup>623</sup> Johnson, 89.

<sup>624</sup> Johnson, 96-97, 100; Wadman and Allison, 52.

<sup>625</sup> Reppetto, *American Police*, 225; Wadman and Allison, *To Protect and Serve*, 43; Johnson, *American Law Enforcement*, 90.

<sup>626</sup> Wadman and Allison, *To Protect and Serve*, 43.

<sup>627</sup> Alfery, *Law and Order in the Capital City*, preface.

<sup>628</sup> Alfery, 53.

<sup>629</sup> Alfery, 53.

Ultimately, by the 1880s, most large cities across the United States had their own police forces, with smaller towns and localities beginning to adopt similar characteristics.<sup>630</sup> However, in much the same way as the second half of the 19th century saw the resurgence of the partisan press amidst political turmoil and tumultuous elections, partisan policing would continue until the turn of the century, prompting louder and louder calls for reform.<sup>631</sup>

### **E. 1900s-1970s: Reform Era and Additional Developments**

In the first decades of the 20th century, the Progressive Movement was seeking reforms throughout society, including criminal justice issues such as probation, parole, rehabilitation, and legal representation for all criminal defendants.<sup>632</sup> The key figure who brought reform to policing was August Vollmer, the Chief of Police in Berkeley, California.<sup>633</sup> Vollmer introduced “professionalization” of law enforcement, which included several key characteristics.<sup>634</sup> First, it aimed to decrease the influence of government and politics on policing, instead requiring officials and officers to follow the rule of law and to protect individual rights when possible.<sup>635</sup> Second, Vollmer advocated

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<sup>630</sup> Olivia B. Waxman, “How the U.S. Got Its Police Force,” *TIME Magazine*, May 18, 2017, <https://time.com/4779112/police-history-origins/>.

<sup>631</sup> Kaplan, *Politics and the American Press*, 1, 24.

<sup>632</sup> Walker, *Popular Justice*, 112-19, 126-31; Wadman and Allison, *To Protect and Serve*, 67; Johnson, *American Law Enforcement*, 68. Johnson noted that there are several instances of reform attempts prior to professionalization. He contended that “progressivism helped transform the disparate strands of police reform into a more coherent movement.”

<sup>633</sup> Reppetto, *American Police*, 242-54; Lovell, *Good Cop / Bad Cop*, 96-97; Wadman and Allison, *To Protect and Serve*, 131-33; Johnson, *American Law Enforcement*, 70; Bopp and Schultz, *A Short History of American Law Enforcement*, 84-85; Johnson, Wolfe, and Jones, *History of Criminal Justice*, 306-08.

<sup>634</sup> Walker and Katz, *The Police in America*, 35-37; Lovell, *Good Cop / Bad Cop*, 96-97.

<sup>635</sup> Walker, *Popular Justice*, 131; Walker and Katz, *The Police in America*, 36; Wadman and Allison, *To Protect and Serve*, 68; Bopp and Schultz, *A Short History of American Law Enforcement*, 89; Johnson, *American Law Enforcement*, 105-06.

for the creation of a central, bureaucratic command structure for each department, including the election of new, qualified officials who would ensure accountability of all members of police departments.<sup>636</sup> Vollmer also called for the continued use of military ethos, including parades, drills, titles, and uniforms.<sup>637</sup>

Third, professionalization called for the training of intelligent and healthy officers, who would be significantly more qualified than their predecessors and would treat the public with courtesy.<sup>638</sup> Universities began researching criminal justice as a formal area of study to help provide such training.<sup>639</sup> Fourth, key figures in the professionalization movement drafted codes of ethics for departments to follow and helped create police commissions in some jurisdictions.<sup>640</sup>

Fifth, PR efforts by law enforcement began developing in the first decades of the 20th century, partially in response to the press going to crime scenes and conducting investigations.<sup>641</sup> Early PR campaigns aimed to not only provide a good public image of police, but also begin adapting to working with the press, such as providing access to police files in exchange for more favorable coverage.<sup>642</sup> Sixth, Vollmer advocated for departments to create special units, often replacing the ineffective existing detective units

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<sup>636</sup> Walker, *Popular Justice*, 134; Wadman and Allison, *To Protect and Serve*, 74.

<sup>637</sup> Walker and Katz, *The Police in America*, 36-37; Wadman and Allison, *To Protect and Serve*, 76-77.

<sup>638</sup> Ibid; Bopp and Schultz, *A Short History of American Law Enforcement*, 88-89.

<sup>639</sup> Walker, *Popular Justice*, 132.

<sup>640</sup> Jarret S. Lovell, *Good Cop / Bad Cop*, 100; Lee and McGovern, *Policing and Media*, 17; John Pope, *Police-Press Relations: A Handbook* (Fresno, California: Academy Library Guild, 1954); Orlando W. Wilson, *Police Administration* (New York: McGraw-Hill, 1963); Bopp and Schultz, *A Short History of American Law Enforcement*, 89.

<sup>641</sup> See note 309 above.

<sup>642</sup> Lovell, *Good Cop / Bad Cop*, 96-97. See also note 309 above.

and improving law enforcement's social service functions.<sup>643</sup> For example, a special unit was created to address juvenile problems, leading to the first examples of women being hired on police forces.<sup>644</sup>

Finally, professionalization marked among the first instances where reformers targeted the technology of policing. Police communication technology can be traced back to the 18th and 19th centuries with night watches using "rattles" as an alarm to alert citizens.<sup>645</sup> Perhaps the first major innovation, however, was police's use of the telegraph to share information on fugitives and other issues with neighboring law enforcement authorities in the 1850s.<sup>646</sup> However, the use of the telegraph was largely inefficient, including because all communications had to go through the chief's office.<sup>647</sup> The 1880s-1890s saw the implementation of "call boxes" or "signal boxes," which were placed in several locations around the city, allowing citizens close to the boxes to call if they encountered or witnessed problems, while also deterring criminals in the area.<sup>648</sup>

Vollmer and others further improved communication technology by increasing police use of telephones, which were now found in many Americans' homes.<sup>649</sup> The

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<sup>643</sup> Walker and Katz, *The Police in America*, 36-37; Whalen and Whalen, *The NYPD's First 50 Years*, 83-84, 90; Johnson, Wolfe, and Jones, *History of Criminal Justice*, 306, 309-10.

<sup>644</sup> Walker, *Popular Justice*, 135; Walker and Katz, *The Police in America*, 36.

<sup>645</sup> Timothy Winkle, "'This is 9-1-1. What is your emergency?': A history of raising the alarm," *National Museum of American History*, Feb. 15, 2018, <https://americanhistory.si.edu/blog/9-1-1-history>.

<sup>646</sup> Wadman and Allison, *To Protect and Serve*, 108; Richardson, *The New York Police*, 68-69; Rousey, *Policing the Southern City*, 161.

<sup>647</sup> Wadman and Allison, *To Protect and Serve*, 109.

<sup>648</sup> Wadman and Allison, 109-10; Johnson, *American Law Enforcement*, 62; Whalen and Whalen, *The NYPD's First 50 Years*, 29; Richardson, *The New York Police*, 170; Bopp and Schultz, *A Short History of American Law Enforcement*, 66. Bopp and Schultz noted that call boxes were used as early as 1857.

<sup>649</sup> Walker, *Popular Justice*, 165.

result was that members of the public were able to call police departments directly from their homes and other locations to report emergencies, crimes, and other problems, a significant improvement from the call boxes.<sup>650</sup> In the 1920s, departments also instituted the use of the two-way radio, which allowed departments to contact officers to respond to the scenes.<sup>651</sup> It also meant that officials could better oversee officers on their beats.<sup>652</sup>

Because the public could now call the police from wider geographic areas, officers had to be able to respond more quickly, leading to the adoption of new technologies related to transportation, especially as criminals also gained access to faster forms of transportation.<sup>653</sup> Police used patrol wagons and, eventually, cars, motorcycles, and other vehicles, to get to crime scenes as fast as possible.<sup>654</sup> In fact, the New York Police Department (NYPD) created an aviation unit in 1929, which would include four planes by March 1930<sup>655</sup> and its first helicopter in 1947.<sup>656</sup>

Another significant technological development during the Progressive Era was the formalized use of firearms by police. Previously, in the 1850s through about the 1880s,

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<sup>650</sup> Walker, 165. Wadman and Allison, *To Protect and Serve*, 122. However, it was not until the 1968 when police introduced the 911 emergency telephone system.

<sup>651</sup> Walker, *Popular Justice*, 165; Wadman and Allison, *To Protect and Serve*, 112-13; Whalen and Whalen, *The NYPD's First 50 Years*, 191-92.

<sup>652</sup> Walker, *Popular Justice*, 165.

<sup>653</sup> Bopp and Schultz, *A Short History of American Law Enforcement*, 67.

<sup>654</sup> Walker, *Popular Justice*, 166; Wadman and Allison, *To Protect and Serve*, 115-16; Bopp and Schultz, *A Short History of American Law Enforcement*, 77, 85-86; Lane, *Policing the City*, 203-04; Whalen and Whalen, *The NYPD's First 50 Years*, 192, 197; Rousey, *Policing the Southern City*, 161; Johnson, Wolfe, and Jones, *History of Criminal Justice*, 318. The evolution of police vehicles will be discussed more fully in the content analysis.

<sup>655</sup> Whalen and Whalen, *The NYPD's First 50 Years*, 156.

<sup>656</sup> Pascal Storino, "'What's the Deal.' With the Early History of Police Aviation in New York City? Post WWI (1918) through Fixed Wing Aircraft (1950) – Part 3," *History of Policing in New York*, 2017, <http://nypdhistory.com/whats-the-deal-with-the-early-history-of-police-aviation-in-new-york-city-post->.

officers would carry revolvers, though often without the authority to do so.<sup>657</sup> Although it was more common for officers to carry clubs throughout this period, increasing violence against the police slowly led to city governments approving the use of handguns, such as in the 1890s in New York.<sup>658</sup> However, it was not until the first decades of the 20th century that there was a “full ‘coming over’ of police to the use of firearms,” including both revolvers and machine guns.<sup>659</sup>

Lastly, the professionalization era saw the growth of science used in policing, such as for fingerprinting and other forensic practices.<sup>660</sup> Eventually, such technology would be further improved with the implementation of computers in policing beginning in the 1970s-1980s.<sup>661</sup>

Ultimately, the professionalization agenda created a centralized, bureaucratic organization staffed by trained, educated, and disciplined officers, equipped with increasingly advanced technology.<sup>662</sup> By the 1930s, “real progress” was being made in policing regarding technology, improvements to administrative structure, and more,<sup>663</sup> though, as discussed more below, reforms and technological changes were largely slowed down due to the Great Depression and WWII.

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<sup>657</sup> Wadman and Allison, *To Protect and Serve*, 116-17; Johnson, *Street Justice*, 17.

<sup>658</sup> Wadman and Allison, *To Protect and Serve*, 117.

<sup>659</sup> Wadman and Allison, 117.

<sup>660</sup> Johnson, *American Law Enforcement*, 116.

<sup>661</sup> Wadman and Allison, *To Protect and Serve*, 122-23.

<sup>662</sup> Reppetto, *American Police*, 243; Walker, *Popular Justice*, 135; Lovell, *Good Cop / Bad Cop*, 98-100; Wadman and Allison, *To Protect and Serve*, 103; Johnson, *Street Justice*, 3.

<sup>663</sup> Bopp and Schultz, *A Short History of American Law Enforcement*, 110-11; Whalen and Whalen, *The NYPD's First 50 Years*, 213. Whalen and Whalen further argue that professionalization continued in New York in the 1940s under Mayor Fiorello LaGuardia and Police Commissioner Lewis Valentine, who “set a standard of professionalism by which all succeeding police administrations would be judged.”

## F. 1900s-1970s: Rise and Growth of Federal and State Police

In addition to professionalization, the first decade of the 20th century saw two further significant developments. First, formal state police forces, beginning with Pennsylvania's establishment in 1905 of the "Black Hussars," replaced sheriffs and constables who still had jurisdiction over large areas outside major cities.<sup>664</sup> These forces followed several antecedents, including slave patrols in the colonial South,<sup>665</sup> the Texas Rangers<sup>666</sup> and Massachusetts' "experiment" with a state police force, the Massachusetts District Police.<sup>667</sup> Formal state forces were created due to urbanization and industrialization making communities "more interdependent and interconnected."<sup>668</sup> State-wide law enforcement was also needed to reach a wider area due to the development of railroads, improving roads, and automobiles as "a large number of criminals, economically disposed people, and adventurers [made] their way across the country, preying on isolated settlements."<sup>669</sup> The rise of automobiles also meant that these new state forces would handle growing traffic regulations and busier roads.<sup>670</sup> Early state

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<sup>664</sup> Lane, *Policing the City*, 138; Reppetto, *American Police*, 122-23, 132-33, 141; Walker, *Popular Justice*, 140-41; French, *The History of Policing America*, 33; Bopp and Schultz, *A Short History of American Law Enforcement*, 77-79; Johnson, *American Law Enforcement*, 158-61; Katherine Mayo, *Justice for All: The Story of the Pennsylvania State Police* (New York: G.P. Putnam's Sons, 1917).

<sup>665</sup> See notes 556-560 above.

<sup>666</sup> Wadman and Allison, *To Protect and Serve*, 57-70; Johnson, *American Law Enforcement*, 156-57; Bopp and Schultz, *A Short History of American Law Enforcement*, 44-45; Roth and Kennedy, *Houston Blue*, 19-20; Johnson, Wolfe, and Jones, *History of Criminal Justice*, 309. Johnson, Wolfe, and Jones provided additional examples, including the Arizona Rangers (1901) and the New Mexico Mounted Police (1905), though, like the Texas Rangers, they were less formal and structured than the state police forces to follow.

<sup>667</sup> Johnson, Wolfe, and Jones, *History of Criminal Justice*, 309; Johnson, *American Law Enforcement*, 157-58.

<sup>668</sup> Johnson, *American Law Enforcement*, 155-56.

<sup>669</sup> Reppetto, *American Police*, 123; Johnson, *American Law Enforcement*, 155-56, 163.

<sup>670</sup> Johnson, *American Law Enforcement*, 156, 161-64.

police closely resembled the military, with most officers being war veterans.<sup>671</sup>

Additionally, state police often had conflicts with local police.<sup>672</sup> Nevertheless, this arm of law enforcement would continue to develop in ensuing decades, with Wisconsin being the last state to adopt such a force in 1939.<sup>673</sup>

Second, the 20th century saw the founding of the first U.S. federal law enforcement body. Although there were several antecedents, including postal inspectors,<sup>674</sup> the Secret Service,<sup>675</sup> and the U.S. Marshals,<sup>676</sup> the federal Bureau of Investigation allowed the federal government to “enter the police picture.”<sup>677</sup> The Bureau, which was founded in 1908 by President Teddy Roosevelt by executive order,<sup>678</sup> was assigned its first main responsibilities with the passage of the Mann Act, which made it a federal crime to transport an individual over state lines for immoral purposes.<sup>679</sup>

In 1924, J. Edgar Hoover was appointed head of the agency, which would become the Federal Bureau of Investigation (FBI) in 1934.<sup>680</sup> Among Hoover’s early tasks was

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<sup>671</sup> Reppetto, *American Police*, 123; Johnson, *American Law Enforcement*, 160.

<sup>672</sup> Reppetto, 133.

<sup>673</sup> Bopp and Schultz, *A Short History of American Law Enforcement*, 79-80, 111; Johnson, *American Law Enforcement*, 161.

<sup>674</sup> Johnson, *American Law Enforcement*, 75-81. Johnson explained that postal inspectors were an antecedent to federal police because they reviewed the mail to deal with crime, such as the sending of obscenity, embezzlements, and more.

<sup>675</sup> See notes 589-594 above.

<sup>676</sup> Johnson, *American Law Enforcement*, 89.

<sup>677</sup> Wadman and Allison, *To Protect and Serve*, 101.

<sup>678</sup> Johnson, Wolfe, and Jones, *History of Criminal Justice*, 256. Johnson, Wolfe, and Jones explained that Congress had initially “feared that the Bureau would become a political spy force and agents would be employed to police political enemies more than actual criminals. The fact that Roosevelt created the Bureau secretly and without Congressional authorization only bolstered their argument.”

<sup>679</sup> Walker, *Popular Justice*, 138, 160; Mann Act, 18 U.S.C. § 2421 *et seq.* (2010).

<sup>680</sup> Walker, *Popular Justice*, 160-64; Reppetto, *American Police*, Ch. 8; Johnson, *American Law Enforcement*, 172.

the introduction of PR efforts, such as portraying an FBI agent to be “an educated, highly trained, and relentlessly efficient champion of law and order who used skills rather than brutal ‘third-degree’ tactics.”<sup>681</sup> In 1930, Hoover gained control of the Uniform Crime Reports (UCR) System and the federal fingerprints system.<sup>682</sup> Two years later, the Bureau opened its scientific crime lab, allowing for the examination of hair samples, blood specimens, firearms, and other evidence.<sup>683</sup> The following decade would include additional efforts by Hoover to gain power for the FBI as it acquired jurisdiction over several other crimes, ranging from kidnapping to drug use.<sup>684</sup>

However, the FBI, under Hoover, was also involved in several problematic actions, including “working closely with sympathetic journalists, exaggerating FBI accomplishments, and glorifying crime in films.”<sup>685</sup> In the 1930s, the FBI began political spying, including conducting illegal wire-taps, break-ins, burglaries, and forging documents.<sup>686</sup> African-American leaders became the main targets of such surveillance in the 1960s, among other violations of their civil rights.<sup>687</sup> The FBI also augmented public hysteria around the “Red Scare” during the Cold War.<sup>688</sup> Conversely, the agency for several years gave little attention to organized crime, at least until the 1960s.<sup>689</sup>

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<sup>681</sup> Walker, *Popular Justice*, 160; Johnson, *American Law Enforcement*, 172, 175.

<sup>682</sup> Walker, *Popular Justice*, 160-62.

<sup>683</sup> Walker, 160.

<sup>684</sup> Walker, 162-64; Johnson, *American Law Enforcement*, 177, 179-82; Bopp and Schultz, *A Short History of American Law Enforcement*, 114-15, 120, 123.

<sup>685</sup> Walker, *Popular Justice*, 160.

<sup>686</sup> Walker, 160-63.

<sup>687</sup> Walker, 162-63; Johnson, *American Law Enforcement*, 176.

<sup>688</sup> Johnson, *American Law Enforcement*, 175.

<sup>689</sup> Johnson, 176-77.

This virtually unchecked power was increasingly brought into question, however, by the press investigations in the 1960s and 1970s.<sup>690</sup> For example, *The New York Times* and *The Washington Post* exposed the FBI's maintenance of "secret files" containing sensitive information about political leaders that Hoover could use to guarantee his position as director.<sup>691</sup> Additionally, the press began investigating larger cities' departments, including uncovering corruption in the NYPD.<sup>692</sup> The Knapp Commission in 1972 ultimately made several findings, including that the "Blue Code of Silence" had required that officers not disclose any imperfections or wrongdoing.<sup>693</sup>

### **G. 1910s-1940s: Prohibition, Great Depression, World War I, and World War II**

In the first half of the 20th century, Prohibition, the Great Depression, WWI, and WWII each had significant effects on law enforcement in the United States. Although objections to alcohol, and subsequent responses by the police can be traced back at least to the 1830s,<sup>694</sup> the passage of the Volstead Act meant control of Prohibition fell onto local law enforcement and, as a result, the politicians who controlled the police.<sup>695</sup> The

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<sup>690</sup> French, *The History of Policing America*, 151.

<sup>691</sup> Ronald Kessler, "FBI Director Hoover's Dirty Files: Excerpt From Ronald Kessler's 'The Secrets of the FBI'," *Daily Beast*, July 13, 2017, <https://www.thedailybeast.com/fbi-director-hoovers-dirty-files-excerpt-from-ronald-kesslers-the-secrets-of-the-fbi>.

<sup>692</sup> French, 152; Johnson, *Street Justice*, 273-74. Johnson explained how the press helped prompt the Knapp Commission, writing, "[T]he *New York Times* . . . published a series of front-page stories exposing widespread police graft and corruption in the gambling and narcotics units. . . . [T]he expose led to a major scandal and the appointment of a special investigating commission led by Whitman Knapp. During the two-and-a-half-year investigation, the Knapp Commission documented widespread corruption in both the plainclothes and uniformed divisions and a cover-up by [Mayor Lindsay's] administration."

<sup>693</sup> French, 152; The Commission to Investigate Alleged Police Corruption, *The Knapp Commission Report on Police Corruption* (New York: George Braziller, 1973).

<sup>694</sup> Richardson, *The New York Police*, 26-27; Johnson, Wolfe, and Jones, *History of Criminal Justice*, 221; Johnson, *American Law Enforcement*, 143.

<sup>695</sup> Johnson, *American Law Enforcement*, 143; Walker, *Popular Justice*, 140, 154, 158-59; Wadman and Allison, *To Protect and Serve*, 99-100; Roth and Kennedy, *Houston Blue*, 77.

police were therefore tasked with enforcing prohibitions on speakeasies and “bootlegging—the manufacture, sale, or transportation of illegal alcohol—[which] became a big business,” leading to the creation of organized crime, in which “[g]angs of all kinds and descriptions arose to form syndicates to capitalize on the demand for the illegal commodity.”<sup>696</sup> Unfortunately for the police, enforcing prohibition was difficult, especially because officers were “generally badly paid, ill-trained, and poorly equipped,” and also worked “under the heavy hand of domineering politicians who had entered into collusive relationships with gangsters to thwart, rather than suppress, liquor law violations.”<sup>697</sup> The result was frequent citizen complaints of police harassment and brutality.<sup>698</sup> Ultimately, prohibition “inaugurated the most extensive effort ever undertaken to legally change the social habits of an entire nation,” creating several difficulties for, and problematic actions by, the police.<sup>699</sup>

The Great Depression saw the continued growth of professional and organized crime,<sup>700</sup> necessitating police action of which there was “very little organization” in turn.<sup>701</sup> Additionally, individuals who were especially “[b]attered by economic hardships of the Great Depression, [including] a growing number of communists, labor radicals, and unemployed [workers,] . . . took to the streets to vent their grievances and

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<sup>696</sup> Bopp and Schultz, *A Short History of American Law Enforcement*, 93; Johnson, *American Law Enforcement*, 146-47; Johnson, *Street Justice*, 114-15, 121; Roth and Kennedy, *Houston Blue*, 83.

<sup>697</sup> Bopp and Schultz, *A Short History of American Law Enforcement*, 93, 95-97; Johnson, *Street Justice*, 116.

<sup>698</sup> Johnson, *Street Justice*, 115.

<sup>699</sup> Bopp and Schultz, *A Short History of American Law Enforcement*, 93.

<sup>700</sup> Johnson, *American Law Enforcement*, 124, 173.

<sup>701</sup> Bopp and Schultz, *A Short History of American Law Enforcement*, 94.

encountered violent repression at the hands of the police.”<sup>702</sup> These instances of police brutality led to press criticism, which helped prompt reforms aimed at moving away from “strikebreaking and antiradicalism” to “tolerance and restraint.”<sup>703</sup> Although the economic problems during this time led departments to limit technological advancements until the end of WWII, financial problems led departments to institute other reforms, including becoming more centralized.<sup>704</sup> Also significant was that “hard times” made more qualified police recruits available as they could not find jobs elsewhere, leading to more educated and intelligent officers.<sup>705</sup>

WWI would also have several effects on law enforcement, including further increasing confrontations and violence between dissenting voices and the police.<sup>706</sup> Law enforcement also wiretapped several hundred suspected criminals’ and minorities’ phones, leading state legislatures to conduct reviews of departments’ wiretapping policies.<sup>707</sup> In New York, the police worked with the young Bureau of Investigation in

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<sup>702</sup> Johnson, *Street Justice*, 149.

<sup>703</sup> Johnson, 149. Johnson detailed instances of press criticism of police actions towards demonstrators, therefore playing at least some role in prompting key reforms. She wrote, “Most of the New York press . . . condemned” the communist speakers, but were “also critical of police behavior. Both the *Telegram* and the *Herald-Tribune* censured those police officers that behaved like ‘bloodthirsty lunatics’ and demanded that they be brought up on disciplinary charges.” Johnson added, “Perhaps most tellingly, Commissioner Whalen personally appealed to film companies and theater chains to suppress a controversial newsreel showing NYPD officers brutally beating demonstrators in Union Square. In the most shocking scene, one officer was shown holding down a youth while another beat him repeatedly with his nightstick,” echoing the 1991 Rodney King case discussed below.; *New York World*, March 8, 1930; *New York Telegram*, March 7, 1930, *New York Herald-Tribune*, March 7, 1930; *New York News*, March 7, 1930; *New York Times*, March 8, 1930.

<sup>704</sup> Whalen and Whalen, *The NYPD’s First 50 Years*, 121-22, 175.

<sup>705</sup> Johnson, *American Law Enforcement*, 117.

<sup>706</sup> Whalen and Whalen, *The NYPD’s First 50 Years*, 91.

<sup>707</sup> Whalen and Whalen, 94.

continuing to target dissenting voices.<sup>708</sup> Additionally, much like the Civil War, WWI led police officers in several cities to act like soldiers. In New York, police operated as defense forces, known as the “Home Defense League,” which patrolled the “vulnerable waterfront” and also “ke[pt] an eye on German sympathizers lurking in the city.”<sup>709</sup> Also like the Civil War, some officers served as soldiers, reducing departments’ personnel.<sup>710</sup> Conversely, the war brought increased soldiers, visitors, and criminals to cities, especially those serving as a site of military training, leading to riots and violence.<sup>711</sup>

Similarly, during WWII, police often acted as internal defense in anticipation of a possible Axis attack, while other officers served in the war.<sup>712</sup> Also like WWI, police became increasingly involved in the surveillance and monitoring of dissenting voices, such as German saboteurs.<sup>713</sup> In Houston, for example, police were part of efforts to suppress rumors about the war and problems in the city, such as related to race.<sup>714</sup> Lastly, the police in several cities also dealt with increased race riots, further dividing the police and Black community in particular.<sup>715</sup>

#### **H. 1960s-1975: Police Crisis**

The growing distrust between police and the Black community, as well as with protestors in general, helped prompt the “Police Crisis” from the late-1960s through

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<sup>708</sup> Whalen and Whalen, 113.

<sup>709</sup> Whalen and Whalen, 98-99.

<sup>710</sup> Whalen and Whalen, 101; Roth and Kennedy, *Houston Blue*, 66.

<sup>711</sup> Roth and Kennedy, *Houston Blue*, 68-69.

<sup>712</sup> Roth and Kennedy, *Houston Blue*, 120, 129; Whalen and Whalen, *The NYPD’s First 50 Years*, 202-04.

<sup>713</sup> Roth and Kennedy, *Houston Blue*, 123-24.

<sup>714</sup> Roth and Kennedy, 128. Roth and Kennedy added that the *Houston Chronicle* even printed full page ads aimed to stop “rumor monger[s].”

<sup>715</sup> Whalen and Whalen, *The NYPD’s First 50 Years*, 209; Johnson, *Street Justice*, 192-93, 198.

about 1975.<sup>716</sup> The crisis arose for several reasons, including the ineffectiveness of police dealing with organized crime, race riots, discrimination, protests, and more.<sup>717</sup>

Additionally, as discussed above, television news depicted police brutality against Vietnam War protestors and Civil Rights marchers.<sup>718</sup> Such depictions, which were seen by millions of Americans across the country, prompted new attention to police and race, such as The National Advisory Commission on Civil Disorders, known as the Kerner Commission, which determined that the top problem facing U.S. society was police brutality and the separating of “white” and “black” cultures.<sup>719</sup> The Kerner Commission also found that the rioting was the worst in cities where the police were perceived to have strong leadership by the public and researchers, but lacked control over police use of force, raising questions about professionalization.<sup>720</sup>

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<sup>716</sup> Walker, *Popular Justice*, 180; Walker and Katz, *The Police in America*, 42.

<sup>717</sup> Walker, *Popular Justice*, 172; Walker and Katz, *The Police in America*, 41; Johnson, *Street Justice*, 177, 186-87, 255; Bopp and Schultz, *A Short History of American Law Enforcement*, 135; Wadman and Allison, *To Protect and Serve*, 143. Wadman and Allison perhaps put it best regarding the police response to the cultural changes in the 1960s, writing “The civil rights movement, Vietnam, public disorder and riots, political assassinations, and the counterculture/antiauthority movement threatened the very fabric of the nation. . . . Police in America should have been accustomed to these challenges, which characterized in varying degrees almost every decade since the 1830s. They had learned little from history, however, and the scale of civic disorder in the 1960s was indeed exceptional.”

<sup>718</sup> See notes 374-376 above. See also Lovell, *Good Cop / Bad Cop*, 108; Johnson, *Street Justice*, 260.

<sup>719</sup> See National Advisory Commission on Civil Disorders, *Report of The National Advisory Commission on Civil Disorders* (Washington, D.C.: Government Printing Office, 1968), 201; Thomas J. Hrach, *The Riot Report and the News: How the Kerner Commission Changed Media Coverage of Black America* (Amherst, Boston, Massachusetts: University of Massachusetts Press, 2016), 4-6; Walker, *Popular Justice*, 195-96; Wadman and Allison, *To Protect and Serve*, 148; Siff, “Policing the Police: A Civil Rights Story”; Embrick, “Two Nations, Revisited,” 837. Significantly, the Commission also targeted the press, including for insubstantial coverage of the Black community.

<sup>720</sup> Walker, *Popular Justice*, 197; Lovell, *Good Cop / Bad Cop*, 119-20. Lovell contended that professionalism could not cope with demands of TV and cultural changes.

The result was that the 1960s-1970s saw the beginning of key reforms, including the hiring of people of color by police departments<sup>721</sup> and a heightened public consciousness of the link between race, crime, poverty.<sup>722</sup> The era also saw rank-and-file officers organize police unions,<sup>723</sup> the creation of citizen review boards,<sup>724</sup> new control over police discretion,<sup>725</sup> and the criminal justice “research revolution.”<sup>726</sup> There were also a number of responses by the federal government, including the President’s Commission on Law Enforcement and Administration of Justice, which sponsored research on the criminal justice system,<sup>727</sup> and the Law Enforcement Assistance Administration (LEAA), through which the federal government provided funding to local departments and to universities to teach criminal justice.<sup>728</sup> The National Commission on the Causes and Prevention of Violence was also formed by LBJ, following the assassinations of Rev. Martin Luther King, Jr. and Sen. Robert F. Kennedy.<sup>729</sup> Additionally, in December 1964, Chicago became the first police department to design a formal program of ride-alongs in which minority individuals, especially Black teenagers, as well as members of the press, could ride with officers in their squad cars to scenes of

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<sup>721</sup> Walker, *Popular Justice*, 194.

<sup>722</sup> Walker, 195.

<sup>723</sup> Walker and Katz, *The Police in America*, 37-38, 49; Walker, *Popular Justice*, 199-200.

<sup>724</sup> Walker, *Popular Justice*, 198.

<sup>725</sup> Walker and Katz, *The Police in America*, 48-49.

<sup>726</sup> Walker, *Popular Justice*, 45-46.

<sup>727</sup> Walker, *Popular Justice*, 202-03; President’s Commission on Law Enforcement and the Administration of Justice, *The Challenge of Crime in a Free Society: A Report by the President’s Commission on Law Enforcement and the Administration of Justice* (Washington, D.C.: United States Government Printing Office, 1967).

<sup>728</sup> French, *The History of Policing America*, 156-57; Bopp and Schultz, *A Short History of American Law Enforcement*, 153; Johnson, *American Law Enforcement*, 178; Johnson, Wolfe, and Jones, *History of Criminal Justice*, 321.

<sup>729</sup> Hugh Davis Graham and Ted Robert Gurr, *Violence in America: Historical and Comparative Perspectives* (New York: Bantam Books, 1969).

police activity.<sup>730</sup> Similar efforts towards better community relations continued in the 1960s, but would take several years to “institutionally impress American policing.”<sup>731</sup>

### **I. 1975-Present: Conservative Era and Efforts to Improve Race Relations**

The police crisis also prompted the “Conservative Era” from 1975 through the present, which included four main characteristics.<sup>732</sup> First, the United States shifted to more of an “anticrime mood,”<sup>733</sup> as demonstrated by the growth of 1) the “war on drugs” led by the FBI and U.S. Customs and Border Protection (CBP),<sup>734</sup> 2) police militarization, including in Los Angeles,<sup>735</sup> and 3) the increased use of subpoenas, including on journalists to compel the disclosure of their confidential sources.<sup>736</sup> Supreme Court rulings in the 1950s-1960s versus the 1970s-2000s also demonstrated this shift to greater police power. Whereas the Warren Court (1953-1969) generally recognized equal protection and greater due process rights,<sup>737</sup> the Burger (1969-1986) and Rehnquist Courts (1986-2005) generally favored crime control measures.<sup>738</sup>

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<sup>730</sup> Walker, *Popular Justice*, 198. See also “Citizens Ride Squad Cars,” *Chicago Tribune*, Dec. 11, 1964; “ride-along,” *Oxford English Dictionary*, accessed June 25, 2019.

<sup>731</sup> Wadman and Allison, *To Protect and Serve*, 148-50.

<sup>732</sup> Walker, *Popular Justice*, 211-12.

<sup>733</sup> Walker, 211-12; Johnson, *Street Justice*, 291-92. Johnson explained there was a rise in anticrime efforts and “zero tolerance approach” by the NYPD in the 1990s, which “was widely heralded by the press and was emulated by other municipal police forces.”

<sup>734</sup> See note 76 above.

<sup>735</sup> See note 77 above.

<sup>736</sup> Jones, “Avalanche or Undue Alarm?,” 596.

<sup>737</sup> Walker, *Popular Justice*, 181-82 (citing *Mapp v. Ohio*, 367 U.S. 643 (1961) (holding that evidence obtained through an illegal search and seizure cannot be used in court); *Miranda v. Arizona*, 384 U.S. 436 (1966) (holding that officers must affirmatively advise suspects’ rights under Fifth Amendment); *Gideon v. Wainwright*, 372 U.S. 335 (1963) (holding that the Sixth Amendment guarantees every felony defendant the right to an attorney at trial)).

<sup>738</sup> Walker, *Popular Justice*, 214 (citing *United States v. Leon*, 468 U.S. 897 (1984) (created the “good faith” exception); *New York v. Quarles*, 467 U.S. 649 (1984) (created the public safety exception to Miranda warning requirement)).

Second, the Conservative Era saw the rise of “community-oriented”<sup>739</sup> or “problem-oriented” policing.<sup>740</sup> Scholars and officials reasoned that the development of the police car meant a decrease in foot patrols through which officers could better interact with members of the community, among other claims. As a result, calls for greater community-relations efforts were developed as early as the 1960s, including the formal ride-along programs.<sup>741</sup> Third, the last several decades have marked the continued development of technology relating to police, including improved weapons and defenses, as well as dash cameras and police body-worn cameras (BWCs).<sup>742</sup>

Finally, the era saw greater protections, legal and otherwise, for women and minorities in society.<sup>743</sup> This shift, combined with the implementation of community policing and BWCs, demonstrate that the police, much like the press, sought to make several changes and reforms related to race following a tipping point in the 1960s-1970s “police crisis” when distrust between police and Black community led to violence and confrontation.<sup>744</sup>

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<sup>739</sup> Walker and Katz, *The Police in America*, 15-16. Walker and Katz wrote that police, under this system, should work closely with community residents, instead of being an inward-looking bureaucracy. Police should also emphasize crime prevention, as opposed to law enforcement, as well as decentralize the decision-making authority to rank-and-file officers, as opposed to the top-down military-style organization.; Lee and McGovern, *Policing and Media*, 15; Walker, *Popular Justice*, 238-39. Walker wrote that community-oriented policing required that officers be “planners” and “problem-solvers” who worked closely with community residents, leaders, and organizers to solve local problems.

<sup>740</sup> Walker and Katz, *The Police in America*, 14; Wadman and Allison, *To Protect and Serve*, 151-52; Johnson, *American Law Enforcement*, 188; Bopp and Schultz, *A Short History of American Law Enforcement*, 131, 154-55; Johnson, *Street Justice*, 274-76.

<sup>741</sup> See note 730 above.

<sup>742</sup> Memmel, “Police Body Cameras,” 1.

<sup>743</sup> Walker, *Popular Justice*, 232-39.

<sup>744</sup> Walker, *Popular Justice*, 180; Walker and Katz, *The Police in America*, 42.

Although law enforcement's connection to race dates back to slave patrols in the South,<sup>745</sup> as well as urbanization, industrialization, and immigration in the 1830s,<sup>746</sup> a starting point for tracing the distrust between the police and Black community is the ratifying of the Thirteenth Amendment in 1865,<sup>747</sup> which formally ended slavery, but did not provide the Black community protection from the recreation of systems of exploitation and brutality.<sup>748</sup> One such system was "peonage," in which Black men who became convicts or prisoners were leased to commercial businesses, being paid little to nothing.<sup>749</sup> Local police were the primary enforcers of the new system, which spanned from the 1870s to WWI, arresting Black men for "minor crimes or trumped-up charges" and forced them to work off high fines and court fees.<sup>750</sup> Another example was vagrancy laws, in which law enforcement also played a major role, arresting Black individuals in particular if they were not able to prove that they were employed.<sup>751</sup> Additionally, the

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<sup>745</sup> See notes 556-560 above.

<sup>746</sup> See notes 202-204, 554-555 above.

<sup>747</sup> U.S. Const. amend. XIII, § 1. "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." See also Memmel, *Police Body Cameras*, 12.

<sup>748</sup> Douglas A. Blackmon, *Slavery by Another Name: The Re-enslavement of Black People in America from the Civil War to World War II* (New York: Doubleday, 2008), 7.

<sup>749</sup> "Slavery v. Peonage," *PBS*, March 6, 2017, <http://www.pbs.org/tpt/slavery-by-another-name/themes/peonage/>.

<sup>750</sup> Blackmon, *Slavery by Another Name*, 1, 7. Blackmon wrote that "[peonage] was capriciously enforced by local sheriffs and constables."

<sup>751</sup> Blackmon, *Slavery by Another Name*, 1-7, 61, 64, 66; Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness Revised Edition* (New York: The New Press, 2012), 28-31; Carol Anderson, *White Rage: The Unspoken Truth of Our Racial Divide* (New York: Bloomsbury, 2016), 19; "The Southern 'Black Codes' of 1865-66," *Constitutional Rights Foundation*, accessed March 28, 2017, <http://www.crf-usa.org/brown-v-board-50th-anniversary/southern-black-codes.html>. Lasting from Reconstruction through 1991 when they were officially repealed, vagrancy laws also limited the freedoms of former slaves, such as the right to vote, serve on juries, and work in occupations of their choice.

1870s saw police use physical force to control or suppress demonstrations or other political events by members of lower classes, a practice that would be used throughout the 20th century.<sup>752</sup> Amidst these new systems of oppression, people increasingly feared “black crime,” or at least the “myth” of Black crime, further encouraging violence and arrests by law enforcement.<sup>753</sup>

A second significant era leading to growing division between the police and the Black community was lynching.<sup>754</sup> In 1892, the number of lynchings of Black men peaked at 156, with its frequency not declining significantly until the 1930s,<sup>755</sup> despite repeated calls for the end of the practice by Black ministers, newspaper editors, and others.<sup>756</sup> Although some local law enforcement officers tried to stop lynching and other forms of mob violence, many other officers either actively engaged in the brutality or made no efforts to stop it.<sup>757</sup> In many cities, violence against Black individuals was, therefore, “almost totally unchecked by police,”<sup>758</sup> with police instead participating in the violence through actions like clubbing individuals with nightsticks or blackjacks.<sup>759</sup>

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<sup>752</sup> Johnson, *Street Justice*, 3-4; Bopp and Schultz, *A Short History of American Law Enforcement*, 33-34; Miller, *Cops and Bobbies*, 5; Lane, *Policing the City*, 29; Richardson, *The New York Police*, 24. The 1830s saw the rise of riots, many of which were often tied to race. However, these violent demonstrations largely took place before the creation of modern police departments, therefore representing a different set of circumstances than the violent confrontations between the police and minorities in the 1870s through the 20th century.

<sup>753</sup> Joel Williamson, *A Rage for Order: Black/White Relations in the American South Since Emancipation* (New York: Oxford University Press, 1986), 71, 83-84; Alexander, *The New Jim Crow*, 42.

<sup>754</sup> Williamson, *A Rage for Order*, 85.

<sup>755</sup> Williamson, 84-85.

<sup>756</sup> W. Fitzhugh Brundage, *Lynching in the New South: Georgia and Virginia, 1880-1930* (Urbana and Chicago: University of Illinois Press, 1993), 238.

<sup>757</sup> Williamson, *A Rage for Order*, 135-39; Brundage, *Lynching in the New South*, 180.

<sup>758</sup> Williamson, *A Rage for Order*, 137.

<sup>759</sup> Johnson, *Street Justice*, 3.

In the 1910s-1920s, a spike in race riots marked a key moment in the history of Black resistance to the police.<sup>760</sup> A U.S. House of Representatives Special Committee in 1918 found “many . . . cases of police complicity in the riots,” adding that “[i]nstead of being guardians of the peace they became a part of the mob by countenancing the assaulting and shooting down of defenseless negroes and adding to the terrifying scenes of rapine and slaughter.”<sup>761</sup> The 1920s also saw the implementation of the “third degree” violent interrogation tactics to elicit confessions.<sup>762</sup>

Following WWII and throughout the 1950s, there was little improvement by the police in race relations, especially in the South where local police “used violence and intimidation to enforce black subordination.”<sup>763</sup> In fact, relations between the police and minorities became more divisive due to new police tactics, including the use of warrantless searches, a practice that was “particularly prevalent in the city’s Black neighborhoods.”<sup>764</sup> Relations were also strained by “[a]ggressive patrol tactics in urban ghettos,” which became standard procedure in many cities by the 1960s.<sup>765</sup> The result was that the mid-1950s through the 1970s saw increased “[b]rutal beatings of protest marchers [and other citizens] by uniformed police officers[, which] seemed a constant feature on the nightly news,” as discussed above.<sup>766</sup> The era not only showed the

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<sup>760</sup> Wadman and Allison, *To Protect and Serve*, 82.

<sup>761</sup> U.S. Congress, House of Representatives, Special Committee Authorized by Congress to Investigate the East St. Louis Riots, Report, 1918, 65th Cong., 2nd sess., House Doc. 1231, Vol. 114, serial 7444, 8; Allen D. Grimshaw, “Actions of Police and the Military in American Race Riots,” *Phylon* 24, no. 3 (1963): 274.

<sup>762</sup> Johnson, *Street Justice*, 3.

<sup>763</sup> Johnson, 203-04.

<sup>764</sup> Johnson, 210.

<sup>765</sup> Johnson, 185-86; Wadman and Allison, *To Protect and Serve*, 140.

<sup>766</sup> Wadman and Allison, *To Protect and Serve*, 142-43, 145-47. See also notes 374-376 above.

ineffectiveness of the police in dealing with race riots and protests,<sup>767</sup> but also the height of division between minorities and law enforcement.

Such ineffectiveness, division, and violence prompted efforts in the 1980s to improve the relationship between the police and minority communities. However, the 1990s-2010s would see new reasons for division, including the videotaped police brutality against Rodney King in 1991,<sup>768</sup> the growth of mass incarceration of Black individuals,<sup>769</sup> and killings of several unarmed Black men by law enforcement between 2014 and 2019.<sup>770</sup> Thus, efforts at reform in the 1980s have, like past attempts, fallen short, leading to new attempted solutions like BWCs<sup>771</sup> as distrust between minorities and police continues in the present.

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<sup>767</sup> Walker, *Popular Justice*, 172; Walker and Katz, *The Police in America*, 41; Johnson, *Street Justice*, 177, 186-87, 255; Bopp and Schultz, *A Short History of American Law Enforcement*, 135; Wadman and Allison, *To Protect and Serve*, 143. Wadman and Allison perhaps put it best regarding the police response to the cultural changes in the 1960s, writing “The civil rights movement, Vietnam, public disorder and riots, political assassinations, and the counterculture/antiauthority movement threatened the very fabric of the nation[.]. . . Police in America should have been accustomed to these challenges, which characterized in varying degrees almost every decade since the 1830s. They had learned little from history, however, and the scale of civic disorder in the 1960s was indeed exceptional.”

<sup>768</sup> See Memmel, *Police Body Cameras*, 20-23; Johnson, *Street Justice*, 285-89; Johnson, Wolfe, and Jones, *History of Criminal Justice*, 322-23.

<sup>769</sup> See Memmel, *Police Body Cameras*, 18-19; Christopher Muller and Daniel Schrage, “Mass Imprisonment and Trust in the Law,” *The ANNALS of the American Academy of Political and Social Sciences* 651, no. 1 (2014): 139-58; Anderson, *White Rage*, 136-37; Alexander, *The New Jim Crow*, 98-99, 134; Michael Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (New York: Oxford University Press, 2004): 49, 52-53; Becky Pettit, *Invisible Men: Mass Incarceration and the Myth of Black Progress* (New York: Russell Sage Foundation, 2012), 50-82; Antonio Moore, “The Black Male Incarceration Problem Is Real and It’s Catastrophic,” *The Huffington Post*, Feb. 17, 2015, [http://www.huffingtonpost.com/antonio-moore/black-mass-incarceration-statistics\\_b\\_6682564.html](http://www.huffingtonpost.com/antonio-moore/black-mass-incarceration-statistics_b_6682564.html); John Pfaff, *The True Causes of Mass Incarceration—and How to Achieve Real Reform* (New York: Basic Books, 2017); James Forman, Jr., *Locking Up Our Own: Crime and Punishment in Black America* (New York: Farrar, Straus and Giroux, 2017).

<sup>770</sup> See Memmel, *Police Body Cameras*, 1-3; “Considering Police Body Cameras,” in “Developments in the Law: Policing,” *Harvard Law Review* 128, (2014-2015): 1794-1795.

<sup>771</sup> See generally Memmel, *Police Body Cameras*.

#### **IV. Where These Histories Overlap**

By overlaying the history of the press onto the history of the police. The following sections will provide the most comprehensive history of the press-police relationship to date, though also identifying where future research is still needed, the basis of the content analysis. First, this study will demonstrate and discuss how both parties were often affected by similar societal contexts and changes. Second, the following sections will describe four types of interactions between the press and police that can be traced through their history in the United States and that continue to define the relationship in the present. In so doing, the following sections further explain how and why the press-police relationship is sometimes cooperative co-existence, while at other times contentious or blurred.

##### **A. Influence by Societal Context**

Previous literature reveals that both the press and police were often affected by similar political, economic, social, and technological factors. First, both the press and police have antecedents traced back hundreds of years to Ancient Rome and Greece, the Middle Ages, Norman England, and more,<sup>772</sup> as well as to the American colonies, each of which have shaped journalism and criminal justice over time.<sup>773</sup>

Second, the Penny Press and modern police forces in the United States developed at the same time amidst urbanization, industrialization, and immigration, which led to the growth of lower and working classes, greater diversity, and increased crime.<sup>774</sup> The

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<sup>772</sup> See notes 141-146, 531 above.

<sup>773</sup> See notes 149-169, 533-547 above.

<sup>774</sup> See notes 202-204, 554-555 above.

Penny Press was a response to these factors in that it focused on commercialization<sup>775</sup> by selling one-cent newspapers to lower classes<sup>776</sup> and including more human-interest stories, including related to crime and the police.<sup>777</sup> Additionally, penny paper editors and reporters began conducting investigations, as well as incorporating opinion and criticism, each of which targeted the police, sometimes helping lead to change.<sup>778</sup> Modern police departments were formed in response to rising crime, which manifested as mobs and race riots in several cities,<sup>779</sup> as well as calls for greater effectiveness of law enforcement.<sup>780</sup>

Third, in the second half of the 19th century, both parties were influenced by political pressures. For the press, partisanship had begun in the years prior to the Revolutionary War<sup>781</sup> and following the creation of the two-party system.<sup>782</sup> However, the period prior to and following the Civil War saw the resurgence of the partisan press,<sup>783</sup> which meant the press would take sides on debates around slavery and suffrage.<sup>784</sup> During Reconstruction, newspapers became the chief publicists and

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<sup>775</sup> Nerone, *Media and Public Life*, 94, 103-04; Payne, *History of Journalism in the United States*, 254, 256; Bleyer, *Main Currents in the History of American Journalism*, 161; Lee, *History of American Journalism*, 201; Schudson, *Discovering the News*, 17-18; Kaplan, *Politics and the American Press*, 11.

<sup>776</sup> Starr, *The Creation of the Media*, 169; Schudson, *Discovering the News*, 17; Huntzicker, *The Popular Press*, 1; Lee, *History of American Journalism*, 163; Kobre, *Development of American Journalism*, 215, 224; Payne, *History of Journalism in the United States*, 240-41; Mott, *American Journalism*, 215, 241; Emery, *The Press and America*, 216-17.

<sup>777</sup> See notes 210-215 above.

<sup>778</sup> See notes 220-222 above.

<sup>779</sup> See notes 552-555 above.

<sup>780</sup> See notes 538, 546, 548, and 555 above.

<sup>781</sup> See notes 170-176 above.

<sup>782</sup> See notes 177-182 above.

<sup>783</sup> See notes 238-243 above.

<sup>784</sup> Lee, *History of American Journalism*, 279-83; Payne, *History of Journalism in the United States*, 217; Kobre, *Development of American Journalism*, 317.

propagandists for political parties,<sup>785</sup> while during the Gilded Age, newspapers became more supporters of a political party and less proponents of a particular view or policy.<sup>786</sup>

Also in the second half of the 20th century, law enforcement entered the partisan era of policing.<sup>787</sup> Following the Civil War, law enforcement also underwent the renewal of partisan control.<sup>788</sup> These two waves of partisanship meant corruption<sup>789</sup> and ineffectiveness, especially due to the lack of accountability for officers,<sup>790</sup> who were often unqualified to serve.<sup>791</sup> Such corruption and ineffectiveness increasingly became the focus of the public and press, each of which pushed for reform around the turn of the century.<sup>792</sup> Additionally, the modern conceptions of both the press and the police spread to the South and West during this time period, facing similar societal contexts in each.<sup>793</sup>

Fourth, the Civil War had several effects on both the press and the police. For the press, the war meant a greater focus on war coverage, which led consumers after the war to continue demanding the latest news.<sup>794</sup> During the war, the press also faced censorship, which in the Union was less organized than in the South where the Confederacy imposed greater restrictions on newspapers and correspondents.<sup>795</sup> For police in the North, the

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<sup>785</sup> Kaplan, *Politics and the American Press*, 23, 48.

<sup>786</sup> Kaplan, 72.

<sup>787</sup> See notes 563-568 above.

<sup>788</sup> See notes 598-606 above.

<sup>789</sup> Walker and Katz, *The Police in America*, 31-33; Bopp and Schultz, *A Short History of American Law Enforcement*, 41-43; Haller, "Introduction to Reprint Edition," xvi.

<sup>790</sup> Walker and Katz, *The Police in America*, 30-33; Richardson, *The New York Police*, 284; Johnson, *Street Justice*, 62.

<sup>791</sup> Lovell, *Good Cop / Bad Cop*, 56-57; Miller, *Cops and Bobbies*, 29, 43-44; Richardson, *The New York Police*, 55; Bopp and Schultz, *A Short History of American Law Enforcement*, 41; Walker and Katz, *The Police in America*, 31-33.

<sup>792</sup> Rousey, *Policing the Southern City*, 160; Richardson, *The New York Police*, 190, 259.

<sup>793</sup> See notes 605-631 above.

<sup>794</sup> Lee, *History of American Journalism*, 292, 307, 318.

<sup>795</sup> See notes 230-237 above.

Civil War largely halted progress as departments increasingly dealt with wartime problems, including responding to crimes ranging from desertion to gambling and prostitution.<sup>796</sup> The police also took on functions more resembling the military, such as guarding arms shipments, caring for wounded soldiers, and more.<sup>797</sup> In the South, police also took on increased duties,<sup>798</sup> including suppressing disloyalty to the Confederacy, leading to the suppression of dissenting voices and the press, among other actions.<sup>799</sup> On both sides, the police were largely ill-equipped to deal with their new duties, especially as officers volunteered or were drafted to serve in the war.<sup>800</sup> The result was greater violence against the police, but also increased police brutality.<sup>801</sup>

Fifth, the years following the Civil War saw not only renewed partisanship for both the press and the police, but also a new wave of urbanization, industrialization, immigration, and increased crime.<sup>802</sup> For the police, this meant addressing rising violence and disorder, including stemming from political, ethnic, and class tensions.<sup>803</sup> For the press, it meant the rise of three different types of journalism — yellow journalism, serious journalism, and advocacy journalism — each of which would cover and

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<sup>796</sup> See notes 576-579 above.

<sup>797</sup> Ibid.

<sup>798</sup> Rousey, *Policing the Southern City*, 105-07; Alfery, *Law and Order in the Capital City*, 25.

<sup>799</sup> Rousey, *Policing the Southern City*, 103-04, 114-19; Alfery, *Law and Order in the Capital City*, 33.

<sup>800</sup> Richardson, 125-26, 143, 157-58.

<sup>801</sup> Ibid.

<sup>802</sup> Wadman and Allison, *To Protect and Serve*, 17, 61-62; Bopp and Schultz, *A Short History of American Law Enforcement*, 59; Whalen and Whalen, *The NYPD's First 50 Years*, 40-41; Richardson, *The New York Police*, 165-66; Miller, *Cops and Bobbies*, 141-43; Alfery, *Law and Order in the Capital City*, 32; Lane, *Policing the City*, 133-34, 142, 150; Campbell, *Yellow Journalism*, 8-9; Schudson, *Discovering the News*, 97-102; Bleyer, *Main Currents in the History of American Journalism*, 389-96; Kobre, *Development of American Journalism*, 349-50.

<sup>803</sup> Johnson, *Street Justice*, 13, 37.

investigate crime and the police in different ways. Whereas yellow journalism promoted a style of sensationalism, including in coverage of crime and investigations into police doings,<sup>804</sup> *The New York Times* provided a more serious style of reporting, exposing wrongdoing through the obtaining of facts.<sup>805</sup> Advocacy journalism also aimed to expose misconduct, but did so through stunts targeting abuses in society.<sup>806</sup> The result was that each type of journalism would, in different ways, target the police, whether to report on crime or to investigate wrongdoing, sometimes leading to changes in police.<sup>807</sup>

Sixth, during the Progressive Era, the press and police both went through reforms related to professionalization, such as better training for reporters and officers, as well as efforts to better serve their communities.<sup>808</sup> However, the era also marked institutionalization for both parties, including the rise of objectivity, independence,<sup>809</sup> and muckraking for the press,<sup>810</sup> and PR efforts by the police.<sup>811</sup> Nevertheless, the era also saw continued coverage by the press of crime and the police.<sup>812</sup>

Seventh, Prohibition and the Great Depression in the 1920s-1930s led to different effects on, and responses by, the press and police. For the press, these large-scale events

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<sup>804</sup> See notes 257-271 above.

<sup>805</sup> See notes 278-292 above.

<sup>806</sup> See notes 294-296 above.

<sup>807</sup> See notes 297-299 above.

<sup>808</sup> See notes 316-322, 633-663 above. *See also* Wadman and Allison, *To Protect and Serve*, 73. Wadman and Allison wrote, “Before and during the Progressive Era, police, like many other ‘professions,’ moved toward professionalization by cleaning out corruption, instilling a sense of duty and service to the community, following a code of ethics, establishing training and education, converting to bureaucratic consistency and oversight and building professional organizations to . . . lobby for the ‘profession[.]’”

<sup>809</sup> See notes 307-315 above.

<sup>810</sup> See notes 301-306 above.

<sup>811</sup> See note 309 above.

<sup>812</sup> Roth and Kennedy, *Houston Blue*, 60-65; Johnson, *Street Justice*, 58-61, 69-80, 80-86.

led to new stories to cover, ranging from organized crime to government responses to the poor economic conditions of the 1930s.<sup>813</sup> Although newspapers were able to maintain their circulation numbers, they saw decreased advertising spending and increased competition from the radio industry.<sup>814</sup> Law enforcement also saw increased responsibilities amidst the economic downturn, including enforcing Prohibition and the subsequent rise of organized crime.<sup>815</sup> However, law enforcement was often unprepared, disorganized, and ill-equipped, leading to increased instances of harassment and brutality against the public.<sup>816</sup> Although the Great Depression largely halted police reform, some changes were still made, including departments becoming more centralized and being able to hire more qualified police recruits, as well as reforms aimed at greater tolerance and restraint in dealing with protestors.<sup>817</sup>

Eighth, WWI and WWII also led to changes by the press and police. During both wars, the press faced government censorship and monitoring of the press, such as through statutes like the Espionage Act and government agencies like the CPI and the Office of Censorship.<sup>818</sup> Nevertheless, reporters took great efforts to cover both wars and inform the American people.<sup>819</sup> In terms of the police, WWI led law enforcement to have increased confrontations between anarchists and other dissenting voices, which often

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<sup>813</sup> Kobre, *Development of American Journalism*, 565; Daly, *Covering America*, 217; Teel, *The Public Press*, 129-30, 137; Mott, *American Journalism*, 700, 704.

<sup>814</sup> Mott, *American Journalism*, 675.

<sup>815</sup> See notes 695-696, 700 above.

<sup>816</sup> See notes 697-702 above.

<sup>817</sup> See notes 703-705 above.

<sup>818</sup> See notes 381-384, 394-397 above.

<sup>819</sup> See notes 388-393 above.

became violent and included instances of police brutality.<sup>820</sup> WWI also led police forces to act as defense forces in some cases,<sup>821</sup> though the influx of visitors and criminals to cities led to riots and other violence that law enforcement was forced to address.<sup>822</sup> WWII also led police departments to act as internal defense<sup>823</sup> and respond to increased violence, especially race riots that would further divide the police and Black community.<sup>824</sup> Police also became increasingly involved in the monitoring of dissenting voices, such as German saboteurs.<sup>825</sup> Meanwhile, like the Civil War, WWI and WWII led to decreased personnel as officers served in the military, placing greater pressure on departments.<sup>826</sup>

Ninth, the years during WWII and the beginning of the Cold War generally marked greater cooperation between the press and the government<sup>827</sup> for several reasons, including the press' concern over maintaining access to public officials, as well as upholding, preserving, and practicing professional standards, including objectivity and the "new professional ideal."<sup>828</sup> Additionally, reporters generally wanted to protect soldiers and national security, therefore submitting to prior review and practicing self-censorship.<sup>829</sup>

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<sup>820</sup> Whalen and Whalen, *The NYPD's First 50 Years*, 91.

<sup>821</sup> Whalen and Whalen, 98-99.

<sup>822</sup> Roth and Kennedy, *Houston Blue*, 68-69.

<sup>823</sup> Whalen and Whalen, *The NYPD's First 50 Years*, 202-04; Roth and Kennedy, *Houston Blue*, 120, 129.

<sup>824</sup> Johnson, *Street Justice*, 192-93, 198; Whalen and Whalen, *The NYPD's First 50 Years*, 209.

<sup>825</sup> Roth and Kennedy, *Houston Blue*, 123-24.

<sup>826</sup> Roth and Kennedy, 66, 120, 129; Whalen and Whalen, *The NYPD's First 50 Years*, 101, 202-04.

<sup>827</sup> See notes 398-402 above.

<sup>828</sup> See notes 403-406 above.

<sup>829</sup> See notes 400, 407-410 above.

The result was that the 1940s saw increased partnerships between the press and police, especially as reporters aimed to maintain the cooperation of police officials and officers as sources.<sup>830</sup> Such partnerships continued a trend throughout much of the second half of the 19th century and the first half of the 20th century where it was common for the press to interact with officers within police departments where reporters had significant access.<sup>831</sup> Relations between reporters and police officers were especially strong because they often came from similar backgrounds and shared common viewpoints.<sup>832</sup> During this time period, crime coverage remained common, especially by newspapers,<sup>833</sup> though radio and television during this time period also included crime and police news and entertainment.<sup>834</sup>

However, cracks began to show in the late-1940s and 1950s as the federal government increased secrecy and shifted towards greater PR efforts, among other actions, which increased criticism from journalists and news organizations.<sup>835</sup> This context led many reporters, experts, scholars, and others to begin questioning the goal of objectivity in the 1950s and begin shifting towards more interpretative reporting.<sup>836</sup> The 1950s and early-1960s also saw early instances of television helping expose corruption and create change, including related to the police.<sup>837</sup>

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<sup>830</sup> See notes 411-418 above.

<sup>831</sup> See notes 214-215, 412-413 above.

<sup>832</sup> Weinblatt, "How history makes the future of police media relations clearer"; Cooke and Sturges, "Police and media relations in an era of freedom of information," 407; Brozek, "Relations between media and law enforcement have changed since 1959."

<sup>833</sup> Mott, *American Journalism*, 845; Roth and Kennedy, *Houston Blue*, 29.

<sup>834</sup> See notes 349-354, 361-363 above.

<sup>835</sup> See notes 421-428 above.

<sup>836</sup> See notes 429-434 above.

<sup>837</sup> Bopp and Schultz, *A Short History of American Law Enforcement*, 126-27, 138; Bopp, *The Police Rebellion*, 173.

Tenth, both the press and police were affected by the same context of the “adversary culture” of the 1960s-1970s,<sup>838</sup> during which the press became increasingly divided with government and authority, growing the rift that had developed in the 1950s.<sup>839</sup> This was for several reasons, including that the press increasingly exposed lies and misconduct by the federal government amidst increasingly complicated relationships with Presidents JFK, LBJ, and Nixon.<sup>840</sup> Supreme Court rulings and technological advances, as well as large-scale distrust and changes brought by the Vietnam War, Civil Rights Movement, and Watergate, further led to investigative reporting and a divide between the press and government.<sup>841</sup>

In terms of the press-police relationship, the 1960s-1970s saw an adversarial press<sup>842</sup> and a police crisis,<sup>843</sup> often leading to contentiousness between the two parties,<sup>844</sup> especially amidst television coverage of violent actions by the police,<sup>845</sup> as well as investigative reporting into police wrongdoing.<sup>846</sup> Past literature also highlighted the events surrounding the JFK assassination and 1968 DNC as a turning point in the relationship.<sup>847</sup> Furthermore, both the press and police were the subject of greater scrutiny

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<sup>838</sup> Schudson, *Discovering the News*, 163, 180; McPherson, *Journalism at the End of the American Century*, ix-x, 178; Pressman, *On Press*, 10-11.

<sup>839</sup> See notes 436-437, 441-446 above.

<sup>840</sup> See notes 447-451 above.

<sup>841</sup> See notes 374-376, 442-453 above.

<sup>842</sup> Folkerts, Teeter, and Caudill, *Voices of a Nation*, 446-47.

<sup>843</sup> Walker, *Popular Justice*, 180; Walker and Katz, *The Police in America*, 42.

<sup>844</sup> Weinblatt, “How history makes the future of police media relations clearer”; Brozek, “Relations between media and law enforcement have changed since 1959”; Lovell, *Good Cop / Bad Cop*, 134-35.

<sup>845</sup> See notes 374-376 above.

<sup>846</sup> See notes 456-472 above.

<sup>847</sup> Brozek, “Relations between media and law enforcement have changed since 1959”; Henneberger, “How would journalists report the story of JFK’s assassination today?”; Herskovitz, “How the JFK assassination transformed media coverage.”

as both were targeted by the Kerner Commission,<sup>848</sup> The result of the above factors and events was a decrease in partnerships between the press and police, as well as a decline in the news media's access to police activities, information, and sources.<sup>849</sup> Ultimately, this era saw a move away from cooperation between the press and police in the 1940s-1950s<sup>850</sup> toward decreased partnerships between the two institutions as the relationship grew increasingly contentious.<sup>851</sup>

Finally, in the 1980s through the present, both the press and police responded to the 1960s-1970s, including moves toward civic journalism<sup>852</sup> and community-oriented policing.<sup>853</sup> Both the press and the police also aimed to better cover, employ, and interact with individuals of different races and classes.<sup>854</sup> Lastly, both parties experienced and implemented changes to accommodate computers and the internet,<sup>855</sup> such as new multimedia formats for reporting and practices by police like virtual ride-alongs.

Taken as a whole, each of the above eras demonstrates that the press and police responded to the same political, economic, social, and technological contexts. In some cases, the parties would allow for greater cooperative co-existence. Conversely, other interactions made the press-police relationship more contentious or blurred the lines between the parties.

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<sup>848</sup> See note 719 above.

<sup>849</sup> See notes 455-471 above.

<sup>850</sup> See notes 411-418 above.

<sup>851</sup> See notes 456-483 above.

<sup>852</sup> Nord, *Communities of Journalism*, 10-11. Nord explained that civic journalism was “born in the late 1980s as a way for journalism to fulfill obligation to help civic life go well, increasing participation in political and community activities.”

<sup>853</sup> See notes 739-740 above.

<sup>854</sup> See notes 514-529, 743-771 above.

<sup>855</sup> Daly, *Covering America*, 438; Memmel, “Police Body Cameras,” 3-4.

## B. Four Types of Interactions Between the Press and Police

When mapped onto each other, the history of journalism and the history of police in the United States reveal four types of interactions between the institutions that have existed throughout much, if not the entirety, of their modern histories, as well as in the present. These interactions include: 1) press coverage of police, 2) press investigations of police, 3) law enforcement arresting, searching and seizing, subpoenaing, and surveilling the press, and 4) both parties blurring the lines of their relationship. Each interaction maps onto at least one of the three categories of the press-police relationship — 1) cooperative co-existence, 2) contentious, and 3) blurred — and also reflects the findings of this study’s theoretical framework, further explaining why the press-police relationship is a mixture of these categories.

The first type of interaction is press coverage of crime and other police matters, which can be traced back to spoken, written, and printed news, as well as the first publications in the New World.<sup>856</sup> The Penny Press marked the modern conceptions of news,<sup>857</sup> including of crime and police courts.<sup>858</sup> From then on, coverage of crime remained a fundamental part of U.S. journalism, including in yellow journalism<sup>859</sup> and jazz journalism,<sup>860</sup> among numerous additional examples of such reporting in other eras.

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<sup>856</sup> See notes 141-165 above.

<sup>857</sup> Schudson, *Discovering the News*, 22; Mott, *American Journalism*, 243-44.

<sup>858</sup> See notes 211-215 above.

<sup>859</sup> Stephens, *A History of News*, 251-53; Schudson, *Discovering the News*, 95, 98-99; Nerone, *Media and Public Life*, 133; Bleyer, *Main Currents in the History of American Journalism*, 357; Lee, *History of American Journalism*, 382-84; Mott, *American Journalism*, 434, 523; Kobre, *Development of American Journalism*, 356-57, 388.

<sup>860</sup> Teel, *The Public Press*, 119-20; Sloan, *The Media in America*, 289.

Crime coverage and entertainment were also seen in/on films,<sup>861</sup> radio,<sup>862</sup> television, including local TV news,<sup>863</sup> cable news,<sup>864</sup> and reality TV,<sup>865</sup> and the internet.

This type of interaction most often falls under the category of the press-police relationship being cooperative co-existence, rather than contentious or blurred. In these instances, the press and police work together or co-exist at crime scenes and other locations, with each aiming to accomplish its own goals, purposes, functions, and actions. At a minimum, the police allow the press to do its job and vice versa. Put differently, press coverage of police allows both parties to serve the public without blurring the lines of the relationship. For example, when reporting on crime, the press relies on the police for access and to be their primary sources of information. In so doing, the press informs the public, while the police carry out their investigations. In most cases, the parties do so without interfering with the other. This type of interaction was perhaps most evident in the 1940s-1950s when there was a general trend of partnerships between the press and police.<sup>866</sup>

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<sup>861</sup> Starr, *The Creation of the Media*, 303; Jacobs, *The Rise of the American Film*, 67; Fang, *Alphabet to Internet*, 195.

<sup>862</sup> See notes 350-355 above.

<sup>863</sup> Lipschultz and Hilt, *Crime and Local Television News*, 1, 12-13; Surette, *Media, Crime and Criminal Justice, Fourth Edition*, 12; Fang, *Television News, Radio News*; Davies, *The Postwar Decline of American Newspapers*, 50-52; McPherson, *Journalism at the End of the American Century*, 82, 88; Simon Van Zuylen-Wood, "Oy, the TRAFFIC," 1; Gilliam and Iyengar, "Prime Suspects," 560.

<sup>864</sup> See Daly, *Covering America*, 406; McPherson, *Journalism at the End of the American Century*, 81-88; Pressman, *On Press*, 225.

<sup>865</sup> Markin, "An 'Unholy Alliance,'" 33; Gossett, "Constitutional Law and Criminal Procedure—Media Ride-Alongs Into the Home," 679-708; O'Neil, "Ride-Alongs, Paparazzi, and Other Media Threats to Privacy," 1167-85; Worrall, "Constitutional issues in reality-based police television," 41.

<sup>866</sup> See notes 411-418 above.

The second type of interaction is the press' investigations of the police, exposing corruption, brutality, and other misconduct. Although there are some examples of colonial newspapers criticizing law enforcement,<sup>867</sup> modern investigations by the press can be traced back to the Penny Press, in which editors and reporters began to go to scenes of police activity and conduct their own investigations.<sup>868</sup> Penny papers also increasingly incorporated opinion, which would, at times, target the police.<sup>869</sup> Such actions placed increased pressure on the police and contributed to reform and accountability.<sup>870</sup> Penny papers did so not only by informing the public and public officials, but also by increasing the necessity of changes to police conduct and structure. For example, because reporters and editors were sometimes able to solve crimes before the police, they were one reason modern departments and detective units were established, and early PR efforts were utilized.<sup>871</sup> Although there were other reasons for these changes, the press' presence and observing of the police helped lead to change in law enforcement, demonstrating how press investigations could lead to a more contentious relationship.

This type of interaction was also seen in yellow journalism as Pulitzer and Hearst not only conducted investigations and "crusades,"<sup>872</sup> but also aimed to act like detectives, often solving crimes and catching criminals before the police.<sup>873</sup> Like with the Penny

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<sup>867</sup> See note 161 above.

<sup>868</sup> See note 221 above.

<sup>869</sup> See note 220 above.

<sup>870</sup> See notes 220-222 above.

<sup>871</sup> Ibid.

<sup>872</sup> See notes 262 and 298 above.

<sup>873</sup> See notes 263-271 above.

Press, such actions put pressure on law enforcement and, in some cases, helped prompt reform and change.<sup>874</sup> Efforts by the press to investigate the police were also seen in more serious journalism,<sup>875</sup> advocacy journalism,<sup>876</sup> and muckraking.<sup>877</sup>

The era that perhaps best demonstrates how press investigations of police can strain the relationship was the rise of investigative journalism in the 1960s-1970s. As discussed above, news coverage of the government and police, as well as the Vietnam War, Civil Rights Movement, and Watergate, among other key events, contributed to decreased public trust in government and the police, leading the press-police relationship to become more contentious.<sup>878</sup> Whereas reporters and the police previously cooperated in the 1940s-1950s,<sup>879</sup> the two parties saw a decrease in partnerships in the 1960s-1970s as the press increasingly investigated law enforcement, among other reasons.<sup>880</sup> Investigations by the press into the government and police would continue in the 1980s through the present.<sup>881</sup>

As suggested by the theoretical framework, the press, by investigating the police, accomplishes its watchdog role, an important responsibility that is largely at odds with the goals, purposes, functions, and actions of the police. Whereas the press aims to hold police officials and officers accountable by obtaining as much information as possible

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<sup>874</sup> See note 299 above.

<sup>875</sup> See notes 286-290 above.

<sup>876</sup> Folkerts, Teeter, and Caudill, *Voices of a Nation*, 202-04; Lovell, *Good Cop / Bad Cop*, 63; Mott, *American Journalism*, 573-74.

<sup>877</sup> Lovell, *Good Cop / Bad Cop*, 8-9, 63; Nerone, *Media and Public Life*, 136.

<sup>878</sup> Weinblatt, "How history makes the future of police media relations clearer." *See also* notes 374-376, 442-444 above.

<sup>879</sup> See notes 411-418 above.

<sup>880</sup> See notes 456-483 above.

<sup>881</sup> *E.g.* Stahl, Bjorhus, and Webster, "Denied Justice: Minnesota's failed rape investigations."

and sharing it with the public, law enforcement may withhold certain information to protect their reputation or their investigations. Law enforcement may also limit press access to crime scenes, departments, and other locations, as well as to police officials and officers who may otherwise have been sources for the press. In situations like these where one party targets the other, the conflicting goals, purposes, functions, and actions of the two parties do not allow for cooperative co-existence like when the press covers the police. Instead, when the press targets law enforcement through investigations, contentiousness is more likely to occur.

The third type of interaction also helps explain why the press-police relationship can be more contentious. In this case, law enforcement targets the news media, including through arrests, searches and seizures, subpoenas, and surveillance. Arrests of members of the press in the United States can be traced back to colonial era arrests of printers, often for seditious libel.<sup>882</sup> Such arrests have also been made under federal statutes, including the 1798 Alien & Sedition Acts, which led to the arrests of 25 individuals, including several printers and others tied to newspapers at the time.<sup>883</sup> The Espionage Act led to the arrests of several printers and other dissenting voices, including in 1919.<sup>884</sup> At

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<sup>882</sup> See note 450 above. See also Levy, *Emergence of a Free Press*, 22-37; Smith, *Printers and Press Freedom*; Belt, “Jailed & subpoenaed journalists — a historical timeline.”; Jones, “Avalanche or Undue Alarm,” 585-669.

<sup>883</sup> Gordon T. Belt, “Sedition Act of 1798 – a brief history of arrests, indictments, mistreatment,” *First Amendment Center*, October 2016, [https://www.freedomforuminstitute.org/wp-content/uploads/2016/10/Sedition\\_Act\\_cases.pdf](https://www.freedomforuminstitute.org/wp-content/uploads/2016/10/Sedition_Act_cases.pdf). See also Nerone, *Media and Public Life*, 60-61; Lee, *History of American Journalism*, 102; Payne, *History of Journalism in the United States*, 177-80; Kobre, *Development of American Journalism*, 134; Lee, *History of American Journalism*, 102-03; Mott, *American Journalism*, 148; Bassett, *The Federalist System*, 264.

<sup>884</sup> See *Abrams*, 250 U.S. at 616; *Schenck*, 249 U.S. at 47; *Debs*, 249 U.S. at 211. See also Starr, *The Creation of the Media*, 274; Daly, *Covering America*, 172; Teel, *The Public Press*, 77; González and Torres, *News for All the People*, 218-19; Mott, *American Journalism*, 623-25.

the state level, police have arrested members of the press under a variety of statutes, such as Jay Near of *The Saturday Press* under the 1925 Minnesota public nuisance law.<sup>885</sup>

Dating back to 1861, there are a wide range of reasons journalists have historically been arrested,<sup>886</sup> including when “[t]wo reporters of a New York paper were up last night on a charge of having stolen and published part of a report”<sup>887</sup> and in 1873 when detectives in Philadelphia arrested reporters because they had become so adept at “revelations concerning . . . wrong doings” in the city.<sup>888</sup> Over the course of the next 150 years, reporters would be arrested for several additional reasons, including for fighting each other in 1886,<sup>889</sup> “participating in an unlawful assemblage” in 1889,<sup>890</sup> public drunkenness in 1890,<sup>891</sup> criticizing the Chief of Police in 1893,<sup>892</sup> leading a violent riot in 1910,<sup>893</sup> resisting a police officer in 1921,<sup>894</sup> loitering in 1926,<sup>895</sup> organizing and participating in a strike in 1937,<sup>896</sup> vagrancy in 1952,<sup>897</sup> disorderly conduct in 1953 and

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<sup>885</sup> Near v. Minnesota, 283 U.S. 697, 700 (1931); Minn. Stat. §§ 10112, 10113 (1927).

<sup>886</sup> These examples are far from exhaustive, but are instead meant only to illustrate some additional reasons reporters have been arrested in the past. An area of future research is to provide a more extensive history of arrests of journalists by police, which would provide a more complete list of reasons for the arrests. Additional contexts and reasons will be provided through contemporary examples in the legal analysis.

<sup>887</sup> “Arrest of Reporters,” *Philadelphia Inquirer*, Dec. 6, 1861.

<sup>888</sup> “The Philadelphia Detectives’ Revenge,” *Evening Star*, Aug. 28, 1873.

<sup>889</sup> “Wholesale Arrest of Reporters,” *Livingston (Montana) Enterprise*, March 20, 1886. The article read, “A prize fight took place between two local reporters at San Francisco on Sunday night. The police got wind of the affair, surrounded the building and captured thirteen newspaper men at one haul.”

<sup>890</sup> “In the Line of Duty. Arrest of Reporter Clark for Witnessing a Prize Fight,” *Tennessean*, Aug. 3, 1889.

<sup>891</sup> “It Cost Him Five Dollars,” *Evening Star*, Aug. 20, 1890.

<sup>892</sup> “To Strike First,” *Brooklyn Citizen*, Nov. 22, 1893.

<sup>893</sup> “Nab 5 Scribes For Riot,” *Wisconsin State Journal*, March 10, 1910.

<sup>894</sup> “Mayor Nominee in Louisville Under Arrest,” *Associated Press*, Nov. 8, 1921.

<sup>895</sup> “Police Arrest Reporters,” *Associated Press*, Aug. 13, 1926.

<sup>896</sup> “Seattle Police Arrest Reporters,” *Associated Press*, Aug. 2, 1937.

<sup>897</sup> “Police Arrest Negro Reporter as Vagrant At Birmingham, Ala.,” *Associated Press*, March 31, 1952.

1973,<sup>898</sup> interfering with a fire rescue in 1964, and disobeying police orders in 1964, 1974, and 1999.<sup>899</sup> Although not exhaustive, these examples provide a wide range of historical reasons for arrests of members of the press, including in the course of their reporting duties, providing the foundation for the legal analysis which focuses on contemporary contexts and examples.

Law enforcement searches and seizures, subpoenas, and surveillance of the press can also be traced back many years,<sup>900</sup> such as to the seditious libel prosecution of Zenger in 1735 when he refused to reveal the writers of his newspaper's criticism of local government officials.<sup>901</sup> In particular, there has been a long history in the United States of the government issuing subpoenas seeking to compel reporters to divulge their sources and information, including of *New York Herald correspondent* John Nugent in 1848,<sup>902</sup> the *New York Tribune* in 1875,<sup>903</sup> *The Defiance* editor A.W. Burnett in 1887,<sup>904</sup> *San Francisco Examiner* news editor Andrew M. Lawrence and reporter L.L. Levings in 1897,<sup>905</sup> New Jersey reporter Julius Grunow in 1913,<sup>906</sup> *New York American* reporter

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<sup>898</sup> "Police Arrest Reporter While Working On Story," *Associated Press*, Dec. 6, 1953; "Police Arrest Reporter Alongside Nixon's Car," *Associated Press*, Jan. 21, 1973. See also Gordon T. Belt, "Jailed & subpoenaed journalists — a historical timeline," *First Amendment Center*, February 2010, 1-20, <https://www.freedomforuminstitute.org/wp-content/uploads/2016/10/Jailed-subpoenaed-timeline1.pdf>. The 1970s also saw a resurgence in arrests of members of the press.

<sup>899</sup> "Police Arrest, Jail Reporter Covering Beckel Hotel Fire," *Dayton Daily News*, March 2, 1964; Paul Travis, "Police Arrest Reporter During Beach Disorder," *Fort Lauderdale News*, Jan. 1, 1974; "Campus police arrest reporter after game," *Associated Press*, Oct. 3, 1999.

<sup>900</sup> Like the history of police arresting journalists, the history of police searches, subpoenas, and surveillance of the press is also an area of future research.

<sup>901</sup> Belt, "Jailed & subpoenaed journalists," 1.

<sup>902</sup> *Ibid*; Charles D. Tobin, "From John Peter Zenger to Paul Branzburg: The Early Development of Journalist's Privilege," *Media Law Resource Center*, August 2004, 33.

<sup>903</sup> Belt, "Jailed & subpoenaed journalists," 2.

<sup>904</sup> *Ibid*.

<sup>905</sup> Belt, 3.

<sup>906</sup> *Ibid*; *In re Grunow*, 84 N.J.L. 235, 85 A. 1011 (1913).

Martin Mooney in 1936,<sup>907</sup> *Miami Life* magazine editor Reubin Clein in 1950, and *New York Herald Tribune* columnist Marie Torre in 1958,<sup>908</sup> among several others beginning in the 1960s-1970s in the leadup to and aftermath of *Branzburg* and *Zurcher*.<sup>909</sup> For example, the FBI conducted investigations of Neil Sheehan of *The New York Times* and Ben H. Bagdikian of *The Washington Post* regarding their publishing of excerpts of the Pentagon Papers.<sup>910</sup> Law enforcement searches and seizures, subpoenas, and surveillance of the press were also seen during wartime, including the Civil War, as well as WWI and WWII, when the government and police not only censored,<sup>911</sup> but also monitored, surveilled, and investigated members of the press, especially dissident publications.<sup>912</sup>

In at least two cases, journalists were subpoenaed and jailed for refusing to disclose sources related to law enforcement. In 1886, Baltimore *Sun* reporter John T. Morris was jailed after refusing to disclose to a grand jury the source of his stories about police taking bribes and participating in illegal gambling.<sup>913</sup> Ten years later, Maryland

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<sup>907</sup> Belt, “Jailed & subpoenaed journalists,” 3-4; Ex Parte Holliway, 272 Mo. 108 (1917).

<sup>908</sup> Belt, “Jailed & subpoenaed journalists,” 4. Belt explained that in *Garland v. Torre*, actress Judy Garland became the first litigant to face a formal First Amendment challenge to her demand for a journalist’s sources.; *Garland v. Torre*, 259 F.2d 545 (1958).

<sup>909</sup> Belt, 4-20; Moon, Brown, and Rottman, “New DOJ reports provide detail on use of law enforcement tools against the news media,” 1; *Zurcher*, 436 U.S. at 547; *Branzburg v. Hayes*, 408 U.S. 665 (1972).

<sup>910</sup> Seth Rosenfeld, “The FBI’s secret investigation of Ben Bagdikian and the Pentagon Papers,” *Columbia Journalism Review*, Aug. 29, 2018, <https://www.cjr.org/investigation/ben-bagdikian-pentagon-papers.php>; *New York Times Co.*, 403 U.S. at 713.

<sup>911</sup> See notes 381-383, 394, 396 above.

<sup>912</sup> Folkerts, Teeter, and Caudill, *Voices of a Nation*, 390, 401; Nerone, *Media and Public Life*, 153; Sloan, *The Media in America*, 172-76; Teel, *The Public Press*, 215.

<sup>913</sup> *Ibid.* Belt cited several newspaper accounts, including Nathan Siegel, “Our History of Media Protection,” *Washington Post*, Oct. 3, 2005. See also Gerald Johnson, Frank Kent, H. L. Mencken, and Hamilton Owens, *The Sunpapers of Baltimore, 1837-1937* (New York: Alfred A. Knopf, 1937), 215-16.

became the first state to pass a shield law.<sup>914</sup> In 1911, *Augusta Herald* reporter T.J. Hamilton served five days in jail after refusing to disclose to a police review board the name of an officer who had allegedly leaked information about a murder.<sup>915</sup>

As discussed by the theoretical framework, law enforcement's targeting of journalists and media organization divides the two parties, reflecting how freedom of the press can be at odds with the goals, purposes, functions, and actions of law enforcement, especially under the Crime Control Model. As the legal analysis will further demonstrate, police arrests, searches and seizures, subpoenas, and surveillance, which continue in the present, undermine the press' independence, ability to gather news, inform the public, and hold the government accountable. The result is increased contentiousness between the two parties, much like when the press investigates the police. Put simply, when one party targets the other, it puts their goals, purposes, functions, and actions at odds with each other, increasing contentiousness in the relationship.

The final type of interaction between the press and police is when cooperation between the two becomes problematic, blurring the lines of the relationship, therefore mapping directly onto the third category discussed above. This is apparent in three historical practices that continue in the present: 1) police impersonation of the press, 2) press impersonation of police, and 3) media ride-alongs. Significantly, in each case, both the press and police lose their independence as separate institutions, blurring the lines between the two parties and undermining their ability to properly serve and benefit the

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<sup>914</sup> Ibid.

<sup>915</sup> Belt, "Jailed & subpoenaed journalists," 3; "Jail Term Price of Tip — Augusta Reporter Protects Policeman Who Gave Him Murder Story," *Washington Post*, March 15, 1911.

public. Significantly, the interactions that blur the lines between the press and police therefore result in negative effects not only for both parties and their relationship, but also, most importantly, the public.

However, the history and law of blurred lines of the relationship, despite their importance, are almost completely missing from previous literature. More specifically, regarding the history of police impersonation of the press, previous research has focused almost entirely on the CIA's "use" and impersonation of journalists during the Cold War<sup>916</sup> and the FBI's impersonation of an AP reporter and documentary filmmakers in the 2000s-2010s,<sup>917</sup> leaving gaps regarding 1) other instances of federal law enforcement conducted the practice and 2) similar efforts by local and state police, which remain almost completely unexamined. Similarly, past research has not examined the history of press impersonation of police and media ride-alongs. The law around each of these three practices, as well as the press-police relationship more generally, also requires further research as past literature has covered some aspects of the legal landscape, but has left important gaps.

As a result, this dissertation will provide the first complete histories of police impersonation of the press, press impersonation of police, and media ride-alongs, therefore building off of and augmenting the history of the press-police relationship provided by the literature review. This dissertation will also include the most comprehensive legal analysis of these practices, as well as the press-police relationship more generally, to date. In so doing, the following chapters will further explain why the

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<sup>916</sup> See notes 980-1002 below.

<sup>917</sup> See notes 1135-1148 below.

relationship is a mixture of cooperative co-existence, contentious, and blurred, as well as provide crucial insight into interactions between the press and police that have important implications for both parties, their relationship, and the public. The content analysis and legal analysis will also build off the literature review by providing tangible ways in which the press-police relationship can be improved, benefiting American society as a whole.

## Chapter 4: History of the Blurred Lines Between the Press and Police

Over 130 years ago, perhaps the first documented instances of practices blurring the lines of the press-police relationship — police impersonation of the press, press impersonation of the police, and media ride-alongs — were found in the 1870s-1880s. In 1877, the *Pittsburgh Post-Gazette* provided perhaps the first documentation that members of the press impersonated law enforcement when it reported on March 30 that a “City Hall clerk and a reporter impersonated police officers, Wednesday evening.”<sup>918</sup> On June 20, 1883, several newspapers around the United States carried a story detailing the potentially first documented media ride-along in U.S. history, which took place when a *Chicago Times* reporter recounted his experiences riding the first horse-drawn patrol wagon, which was introduced in Chicago less than two years earlier.<sup>919</sup> Finally, on November 13, 1889, *The Gazette* in Cedar Rapids, Iowa reported that “[t]wenty-five policemen” had attended an “anarchist” meeting “disguised as reporters,”<sup>920</sup> marking what may be the first documented instance of police impersonation of the press.

Significantly, all three practices have remained part of the fabric of the press-police relationship since these moments in the late-19th century. To provide as complete a history of these practices as possible, historical newspaper archives and articles<sup>921</sup> were obtained from ProQuest Historical Newspapers and ProQuest Recent Newspapers

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<sup>918</sup> “Brevities,” *Pittsburgh Post-Gazette*, March 30, 1877.

<sup>919</sup> “The Patrol Wagon. An Institution of Modern Police Systems. A Night on ‘The Red Wagon,’” *The Republic* (Columbus, IN), June 20, 1883.

<sup>920</sup> “Watching the Anarchists,” *Gazette* (Cedar Rapids, IA), Nov. 13, 1889.

<sup>921</sup> For the purposes of this study, “historical newspaper archives,” which are also called “online” or “digital” newspaper archives, refers to: full newspapers, newspaper pages, and individual articles that have been converted into digital form and made available in an online database.

(ProQuest),<sup>922</sup> Access World News,<sup>923</sup> and newspapers.com,<sup>924</sup> thereby allowing for the searching of local, regional, and national newspapers from the mid-19th century through the present. Past literature has identified several benefits associated with historical newspaper archives, including providing 1) greater convenience and access, 2) an increasingly growing number of primary sources for deeper research and analysis, and, as a result of these affordances, 3) a means for researchers to discover and access evidence of past events from the point of view of journalists at the time.<sup>925</sup>

The analysis and conclusions below are based on an acquired sample of 432 articles from a variety of time periods and locations, with 298 being qualitatively coding. This content analysis therefore marks the most extensive and thorough history of police impersonation of the press, press impersonation of the police, and media ride-alongs to

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<sup>922</sup> *ProQuest Historical Newspapers*, accessed June 28, 2019; *ProQuest Recent Newspapers*, accessed Oct. 10, 2019. ProQuest was chosen because it includes archives of major U.S. newspapers primarily from the 19th century through about the 1980s, including *The New York Times*, *The Washington Post*, *The Wall Street Journal*, *Christian Science Monitor*, *Los Angeles Times*, *Chicago Tribune*, and *Minneapolis Star Tribune*. ProQuest Recent Newspapers included several of the same newspapers.

<sup>923</sup> *Access World News*, accessed October 20, 2019. Access World News was chosen to obtain more examples from the 1980s-present, including from more regional and local newspapers.

<sup>924</sup> *Newspapers.com*, accessed June 28, 2019, <https://www.newspapers.com/>. Newspapers.com was chosen to augment the sample from the late-1800s through the 1970s, including predominantly local newspapers.

<sup>925</sup> See Bob Nicholson, "The Digital Turn: Exploring the methodological possibilities of digital newspaper archives," *Media History* 19, no. 1 (2013): 61, 71; Adrian Bingham, "The Digitization of Newspaper Archives: Opportunities and Challenges for Historians," *Twentieth Century British History* 21, no. 2 (2010), 226-27; Nicole Maurantonio, "Archiving the Visual: The promises and pitfalls of digital newspapers," *Media History* 20, no. 1 (2014): 89. See also David Deacon, "Yesterday's Papers and Today's Technology: Digital Newspaper Archives and 'Push Button' Content Analysis," *European Journal of Communication* 22, no. 1 (2007): 5-25; Jenny L. Presnell and Sara E. Morris, "The Historical Newspaper Crisis: Discoverability, Access, Preservation, and the Future of the News Record," *International News Media Conference*, 2017. See also Kathleen A. Hansen and Nora Paul, "Newspaper Archives Reveal Major Gaps in Digital Age," *Newspaper Research Journal* 36, no. 3 (2015): 297; Bingham, "The Digitization of Newspaper Archives," 225-29; Maurantonio, "Archiving the Visual," 89.

date (Appendix B, Table 4.1), histories largely untouched by past literature. It not only provides a timeline of the practices, but also analyzes key aspects about them, including: 1) how the practice took place, 2) the purposes of the practice, 3) the effects of the practice, 4) legal and ethical implications, and 5) discussions of race and class. In so doing, this study reveals several important implications of police impersonation of the press, press impersonation of the police, and media ride-alongs on both parties and the American public. It also demonstrates important effects on the press-police relationship, including how these practices blur the lines between the two institutions and strain their relationship, resulting in both the press and police failing to properly serve the public.

### **I. Police Impersonation of the Press & Press impersonation of Police**

Beginning in the 1870s-1880s, police impersonation of the press and press impersonation of the police would become established, but often secretive, practices in ensuing decades, carrying important implications for the press, police, their relationship, and the public. Part I of the content analysis provides the history of both practices by building a timeline of each through historical examples from different time periods and locations around the United States. The following sections detail the 1) search procedures and sample, 2) three rounds of coding procedures, and 3) findings of the study.

#### **A. Search Procedures and Sample**

The sample for Part I of the content analysis was compiled through searches for examples in 1) existing research, 2) ProQuest, 3) Access World News, and 4) newspapers.com. Regarding existing research, 19 newspaper articles were found detailing

examples of police impersonation of the press by federal, state, or local police.<sup>926</sup>

Because previous literature almost exclusively focused on 1) the CIA's use and impersonation of journalists and news organizations during the Cold War and 2) the FBI's impersonation of the Associated Press (AP) and documentary filmmakers in the 2000s-2010s, these examples were used as case studies. No instances of press impersonation of police were found in existing literature (Appx. B, Table 4.1).

Because ProQuest allowed for advanced search syntax, this study used a boolean search combining ways of identifying journalists and members of the media, with ways of identifying police and synonyms for impersonation.<sup>927</sup> The search yielded 803 total results.<sup>928</sup> Using the preliminary step of the coding procedure detailed below, 50 articles were identified for instances of the police impersonating the press, and 14 instances were found regarding the press impersonating the police, providing the foundation for each sample (Appx. B, Table 4.1).

To further augment the sample with more contemporaneous examples, especially from regional and local newspapers, the same search was conducted through Access

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<sup>926</sup> However, most existing literature did not fully detail examples of impersonation by the press or police. See e.g. Sweeney, *The Public and the Police*, 158. Sweeney names several instances where undercover agents and officers impersonated members of the news media, but provides no further details or sources.; Ted Joseph, "Should Police Officers Impersonate Reporters?," *The Police Chief* (March 1981).

<sup>927</sup> The boolean search was: ((impersonat\* OR pose OR pretend OR imitate) NEAR/10 (journalist OR press OR "news media" OR reporter OR newsm?n OR newswom?n OR newscaster OR filmmaker OR "camera crew" OR cameram?n OR camerawom?n OR "camera person" OR "photographer")) AND ((impersonat\* OR pose OR pretend OR imitate OR disguise OR masquerade) NEAR/10 (police OR FBI OR "law enforcement" OR officer OR agent OR policem?n OR policewom?n OR investigator)). Although not exhaustive, the search terms provided the best combinations to acquire examples.

<sup>928</sup> There are likely several reasons ProQuest delivered fewer results than the other databases using the same search terms, namely that it includes fewer newspapers and is better equipped for boolean searches.

World News, netting 970 results. Using the preliminary step of the coding procedure, the author compiled 41 articles about police impersonation of the press and 12 about press impersonation of police (Appx. B, Table 4.1). Taken together, ProQuest and Access World News provided examples largely from the 1980s-present.

Newspapers.com was then used to augment the sample from the late-19th century to the 1960s-1970s through more regional and local newspapers, especially because these later decades were highlighted by existing literature as being a moment where police impersonation of the press became more common.<sup>929</sup> Because the database did not allow advanced search syntax and produced thousands of results, the sample was compiled through targeted searches using several combinations of the above search terms (ex. “impersonate reporter,” “disguised as officer,” “masquerading as reporter,” “police pose reporter,” and several more) by 20-year period, starting with the 1860s. Different tenses of verbs were also used. By limiting the searches to 20-year periods, most resulted in under 100-200 results. In such cases, using the preliminary coding step, the author reviewed all of the results. In limited instances where searches netted thousands of results, the author looked through the first several hundred, identifying enough results to

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<sup>929</sup> See Marguaret Genovese, “Impersonation: When cops pose as press, media credibility suffers. But would a law against it only make matters worse?,” *Presstime*, October 1984. Genovese wrote, “Police impersonation of reporters is nothing new. . . . In recent memory, at least, the activity may have drawn the most attention in the late 1960s and early 1970s when civil unrest was rampant and police routinely monitored the activities of potential troublemakers.” She continued, “In its Sept. 23, 1968, issue, *Newsweek* magazine reported that ‘lawmen all over the country slip undercover and disguise themselves as newsmen, particularly when they are tailing black militants, student activists and other dissenters.’ It cited incidents in [large cities] where impersonation . . . involving local and federal law enforcement[.]”; Gary T. Marx, *Undercover: Police Surveillance in America* (Berkeley, California: University of California Press, 1988), 151. Marx wrote that “[d]uring the protests of the 1960s, the tactic of police posing as [journalists] was often used,” though he noted that “most” cases were likely not discovered.

provide confidence that the examples found would be representative for that time period. From newspapers.com, the author identified and selected 78 articles discussing police impersonation of the press and 31 articles discussing the press impersonation of police (Appx. B, Table 4.1).

In total, the police impersonation of the press sample consisted of 10 articles each from the 1880s-1890s, 1900s-1910s, 1920s-1930s, and 1940s-1950s, 56 from the 1960s-1970s, 72 from the 1980s-1990s, and 22 for the 2000s-2010s. In all, 190 articles were included in the sample (Appx. B, Table 4.1). Regarding press impersonation of police, two articles were found from the 1870s, two from the 1880s-1890s, four from the 1900s-1910s, 11 from the 1920s-1930s, three from the 1940s-1950s, eight from the 1960s-1970s, 24 from the 1980s-1990s, and three from the 2000s-2010s. In all, 57 articles were selected (Appx. B, Table 4.1). Although the searches were not exhaustive, including due to the wide range of possible search terms, the compiled sample included sufficient representative examples to provide the most complete and comprehensive history of the practices to date.

## **B. Coding Procedure**

Before starting the two main rounds of coding, a preliminary coding step was used upon obtaining the results of the search(s) to eliminate results that were: 1) reviews, advertisements, or table of contents, 2) international stories, 3) duplicates, 4) articles where it was clear from initial reading and/or description that the discussion of impersonation did not apply to the press and police, or otherwise was otherwise clearly not relevant, and 5) articles that pertained to the case studies focusing on the CIA impersonating journalists during the Cold War and the FBI impersonating the AP and

documentary filmmakers in the 2000s-2010s. If an article did not fall under these categories, it was included in the sample.

Having obtained the sample, two rounds of coding were conducted for both police impersonation of the press and for press impersonation of police. The first round identified the assigned article ID, year of publication, source of the article, headline, and parties involved in the impersonation. The primary purpose of the first round of coding, however, was to quantitatively code (1 = Yes, No = 0) for whether the article was relevant or a duplicate, and whether it should be qualitatively coded, meaning it needed to provide an example and discuss at least one of the following: 1) how the impersonation took place, 2) the purposes of the practice, 3) the effects of the practice, 4) legal and/or ethical considerations, and 4) race and/or class. Taken together, the codes included:

- Code #1: Article ID
- Code #2: Year of the article
- Code #3: Publication in which the article appears
- Code #4: Is the article relevant? Yes = 1 No = 0
- Code #5: Is the article a duplicate (meaning the article is an exact copy of another, not that it gets at the same example as another story)? Yes = 1 No = 0
- Code #6: Does the article provide at least one example (meaning it is not purely commentary or opinion)? Yes = 1 No = 0
- Code #7: Does the article discuss a fictional example (TV show, movie scene, etc.)? Yes = 1 No = 0
- Code #8: Headline
- Code #9: The parties involved in the impersonation
- Code #10: Any discussion of how the police impersonated the press or vice versa (ex. used fake credentials or dressed up as reporters)? Yes = 1 No = 0
- Code #11: Any discussion of the purpose(s) of the practice (either apparent in the example or discussed in commentary within the article)? Yes = 1 No = 0
- Code #12: Any discussion of the effect(s) of the practice (either apparent in the example or discussed in commentary within the article)? Yes = 1 No = 0
- Code #13: Any discussion of legal and/or ethical considerations (either apparent in the example or discussed in commentary within the article)? Yes = 1 No = 0
- Code #14: Any discussion of race and/or class (either apparent in the example or discussed in commentary within the article)? Yes = 1 No = 0

If an article 1) was not relevant, 2) was a duplicate, 3) did not provide an example or instance of impersonation, 4) was regarding a hypothetical or fictional example, and/or 5) did not include any of Codes #10-14, it was not included in the next round of coding.

The second round of coding used qualitative procedures, including descriptive, thematic, and/or in-vivo subcodes for Codes #10-14.<sup>930</sup> These subcodes were determined through an inductive process during the first round of coding and were compiled using a formal codebook,<sup>931</sup> one for police impersonation of the press and one for press impersonation of police. Rather than code hard copies, this study used an excel spreadsheet organized based on the subcodes so that the author could more easily filter or sort the results.<sup>932</sup> Ultimately, the quantitative round of coding was used to determine 1) whether an article should be qualitatively coded and 2) the subcodes used in the second round of coding, which produced the findings and results detailed and analyzed below.

In total, 117 articles were qualitatively coded for police impersonation of the press, producing 93 distinct examples (Appx. B, Tables 4.2 & 4.3).<sup>933</sup> A total of 29 articles were coded for press impersonation of police, yielding 20 different examples (Appx. B, Tables 4.2 & 4.3). In each case, this study therefore provided the most thorough and complete history and analysis of these practices to date.

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<sup>930</sup> See Johnny Saldaña, *The Coding Manual for Qualitative Researchers*, Second Edition (Thousand Oaks, California: SAGE Publications, 2013).

<sup>931</sup> The codebooks included the following columns: 1) Code Theme/Topic/Area (Codes #10-14), 2) Fragmented Codes/Subcodes, 3) Description, 4) Inclusion Criteria, 5) Exclusion Criteria, 6) Examples, and 7) Type of Coding (i.e. descriptive, thematic, and/or in-vivo).

<sup>932</sup> The spreadsheet then had the following several columns for each of Codes #10-14: 1) How / Purpose / Effect / Law & Ethics / Race & Class Subcode #1, 2) Relevant Text, 3) Subcode #2, 4) Relevant Text, etc. If a column did not apply to a particular article, it was marked “no.”

<sup>933</sup> The number of articles qualitatively coded is different from the number of examples because some articles covered the same instance of impersonation.

### **C. Findings and Analysis**

Dating back to the second half of the 19th century, police impersonation of the press and press impersonation of police have continuously raised important implications for both parties, their relationship, and the public. To provide as complete a history as possible of police impersonation of the press and press impersonation of police, and to uncover the implications of these practices that blur the lines between their goals, purposes, functions, and actions, the following sections provide a historical timeline of each practice, as well as analyze how the impersonation took place, the purposes and effects of the practice, legal and ethical implications, and discussions of race and class, revealing the problematic nature of police impersonation of the press and press impersonation of police.

#### **1. Police Impersonation of the Press**

In the 1970s, it was revealed that CIA agents had been “using” and impersonating American journalists and news organizations since the early 1950s.<sup>934</sup> From that point forward, greater attention was given to the practice of police impersonation of the press. Those who looked into the practice began to recognize potential negative effects on the press, police, their relationship, and the American public. However, police impersonation of the press, as well as its effects, still remained largely unexamined and was seen as “rare”<sup>935</sup> by some observers.

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<sup>934</sup> See notes 980-1002 below.

<sup>935</sup> Jack Shafer, “Stop or I’ll write! Why cops shouldn’t fake being reporters,” *Reuters*, Nov. 11, 2014, <http://blogs.reuters.com/jackshafer/2014/11/11/stop-or-ill-write-why-cops-shouldnt-fake-being-reporters/>.

This study aimed to provide the most extensive history of police impersonation of the press to date by building a timeline of the practice and demonstrating that it is not as rare as some observers might expect. In all, 91 examples were found from across the United States, spanning from 1889 through the 2010s. This study also aimed to better understand, explain, and analyze different ways in which the police impersonation of the press worked and how it evolved over time. The examples, broken down by era, help trace the evolution of police impersonation of the press, including how it was accomplished by law enforcement, the purposes and effects of the practice, and any legal/ethical considerations that arose.<sup>936</sup>

Although the ways in which impersonation was carried out, as well as the purposes behind the practice, have largely remained the same since the late-19th century, and seem innocuous at first, the effects of the practice took longer to be revealed. However, the examples below demonstrate that members of the news media and press advocates increasingly raised concerns about police impersonation of the press, including undermining the press' 1) credibility, 2) source relationships, 3) newsgathering functions, 4) independence, and 5) physical safety, as well as the blurring and straining of the press-police relationship. These negative effects especially implicate the press, but also raise concerns for law enforcement, the press-police relationship, and the public. Significantly, the examples below also provided evidence that such negative effects actually occurred, suggesting the deeply problematic nature of the practice.

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<sup>936</sup> Race and class were also coded for, but were raised only in a few limited instances noted below.

Thus, a danger of the blurred lines of the press and police is that the perceived benefits of a practice like police impersonation of the press can be readily apparent, while negative consequences can be more easily hidden, missed, or ignored, allowing such effects to continue unless action is taken.

**a. Era #1: 1880s-1890s**

Although examples of private detectives impersonating journalists were found as early as 1880,<sup>937</sup> a report by *The Gazette* in Cedar Rapids, Iowa on November 13, 1889 marked the first clear instance from the compiled sample of police impersonating the press.<sup>938</sup> The newspaper reported that “[t]wenty-five policemen” had attended an “anarchist meeting . . . disguised as reporters” and “took notes” on one of the “incendiary” speeches. Besides providing perhaps the first documented instance of police impersonation of the press, this example detailed a reason why the police impersonated the press, namely to obtain information about and investigate particular individuals, accomplishing a law enforcement purpose. In this case, the investigation even went a step further in that the article claimed that the individual who gave the speech would “be called to account for it,” suggesting the officers potentially intended to arrest that person. The example also provided a key way law enforcement officers impersonated journalists, which was officers attempting to act like reporters, in this case disguising themselves as

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<sup>937</sup> “Toledo Topics,” *Cincinnati Enquirer*, Oct. 29, 1880. On Oct. 29, 1880, *The Cincinnati Enquirer* mentioned a man named “Lonegrin,” whose “detective style of working, it is said, is to pretend to be a reporter.” The article stated that he was investigating a man using “the same style.”; “The Hounds of Justice,” *Brooklyn Times Union*, March 31, 1887. On March 31, 1887, the *Brooklyn Times Union* reported that detectives had been “representing themselves as newspaper reporters” to “question individuals employed . . . in the District Attorney’s office under the previous administration in the city.”

<sup>938</sup> “Watching the Anarchists,” *Gazette* (Cedar Rapids, IA), Nov. 13, 1889.

journalists and attempting to mimic a reporter taking notes.<sup>939</sup> One year later, the *Buffalo Express* in New York included a two-sentence snippet explaining that police had “act[ed] as reporters at Irish Nationalist meetings,” echoing the actions of the officers in Iowa.<sup>940</sup>

Another police investigation, though with a different goal, was accomplished through impersonation of the press in 1895.<sup>941</sup> The AP reported on January 19 that Denver Police Chief Hamilton Armstrong, and two members of his detective force, had “[p]ose[d] as art critics” and “occupied a box at the Broadway Theater” in order to “pass judgment on the ‘living pictures’ to which the Police Board and ladies of the W.C.T.U. ha[d] objected.” After the performance, Armstrong informed management that portions of the films needed to be modified.<sup>942</sup>

One year later, impersonation of a reporter was used for a very different purpose. On December 18, 1896, *The Brooklyn Daily Eagle*, which was covering potential voter fraud in local Republican primaries in New York City, reported that Sheriff Buttlings had called the tax office and “[i]mpersonat[ed] a reporter of a New York paper.<sup>943</sup> He did so in order to determine the winner of the election for his own curiosity, and received a statement from the office that City Works Commissioner Willis had won.<sup>944</sup> This example is therefore significant in that it provided the first example of a “non-traditional”

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<sup>939</sup> Ibid.

<sup>940</sup> “Police Act,” *Buffalo Express*, Oct. 21, 1890.

<sup>941</sup> “Those ‘Pictures’: The Denver Chief of Police Poses as an Art Critic,” *Associated Press*, Jan. 19, 1895.

<sup>942</sup> Ibid.

<sup>943</sup> “Were Places Offered In Exchange For Votes?,” *Brooklyn Daily Eagle*, Dec. 18, 1896.

<sup>944</sup> Ibid.

law enforcement purpose<sup>945</sup> accomplished by impersonation of the press. Rather than use the practice to investigate voter fraud or some other law enforcement function, Buttling impersonated a reporter simply to learn election results more quickly. Furthermore, this example is significant in that Buttling identified himself as a reporter from a New York newspaper, demonstrating another way in which police were able to impersonate the press: by identifying themselves as members of a real or fake news organization.

Ultimately, from 1889 through 1896, early examples of police impersonation of the press introduced key aspects of the practice, including examples of officers acting like or disguising themselves as journalists, as well as identifying themselves as such, in order to conduct the impersonation. The examples also raised the first instances of impersonation being used for non-traditional law enforcement purposes. But by far the most common purpose of the practice was investigating an individual or organization and gathering evidence, whether through interviews, collecting information, or gaining access to an otherwise restricted location. In some cases, such investigations would lead to further action by police, such as obtaining a subpoena or leading to an arrest. But in doing so, law enforcement blurred the lines of the press-police relationship as officers used the press in efforts to accomplish law enforcement purposes. In future decades, coverage of

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<sup>945</sup> For the purposes of this content analysis, a “non-traditional” purpose refers to actions by the police outside of normal police operations, though still undertaken while on duty as a member of law enforcement. *See also* “The Mayor Was Mad,” *Baltimore Sun*, Aug. 27, 1895. According to *The Baltimore Sun*, Mayor Ferdinand Claiborne Latrobe was invited by C.K. Lord, the vice-president of the Baltimore and Ohio Railroad, to ride with Lloyd Lowndes, the republican candidate for governor, on Lord’s private train car. *The Sun* reported that “Mayor Latrobe was the victim . . . of a practical joke, in which . . . an alleged interviewer figured.” A stationmaster had identifying himself as “a representative of *The Sun*” in order to play a joke on the Mayor, namely that would ask repeated questions in order to frustrate the public official. Although done by a stationmaster and not by a police officer, the example still shows the range of non-traditional law enforcement purposes.

such instances would illuminate several negative effects and consequences, primarily for the news media and public.

**b. Era #2: 1900s-1910s**

In 1910, a new purpose for police impersonation of the press was reported by the AP, which covered an October standoff in Winter, Wisconsin, in which a man named John Dietz refused to surrender to police and exit his home.<sup>946</sup> Although a St. Paul, Minnesota man was permitted to go to Dietz's home to try to talk him into surrendering, the news media and others were not permitted near the house. The AP reported that "William Baxter, a detective who had been masquerading as a reporter for a Chicago newspaper . . . also presented his plea for passage through the cordon but was bluntly turned down by the sheriff." The AP added that Baxter had "attempted to run the blockade."<sup>947</sup> Although it is unclear whether Baxter was a private detective or a member of a police department, his actions suggested that a purpose for impersonating the press was to help end a standoff or hostage situation, a purpose that would become more common towards the end of the 20th century.

Six years earlier, on July 23, 1904, *The Macon Republican* in Missouri provided another non-traditional law enforcement purpose for impersonation of the press.<sup>948</sup> The newspaper included a short excerpt stating that the town of Webster City, Iowa had begun operating its own newspaper, in which the mayor served as the editor-in-chief and "the police act[ed] as local reporters."<sup>949</sup> The article noted that because of the setup, there

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<sup>946</sup> "Envoys Seek Dietz. Armistice Is On," *Associated Press*, Oct. 6, 1910.

<sup>947</sup> Ibid.

<sup>948</sup> "The town of Webster City, Ia.," *Macon Republican* (Macon, MO), July 23, 1904.

<sup>949</sup> Ibid.

were “no criticisms of the administration.” Although this example marked the only instance uncovered of such a setup taking place, it provided a clear instance of the police blurring the lines with the press in that law enforcement, by doing the work of journalists, led to a lack of accountability for law enforcement and the local government, undermining a key purpose of having a newspaper.<sup>950</sup>

Several examples of impersonation from this era also showed the wide range of ways in which the police, by posing as journalists, conducted investigations into public officials, police officers, and private figures, often leading to consequences for the individuals being investigated. In January 1917, *The Chicago Daily Tribune* covered the arrest, arraignment, and trial of Chicago Police Chief Charles C. Healey in connection to a series of bribes and a “vice graft ring.”<sup>951</sup> The *Tribune* reported that during arraignment, it was alleged that “[n]ine policemen, posing as reporters, broke into Chief Healey’s

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<sup>950</sup> Although it is unclear whether the individual impersonating the press was a police officer, three additional examples in 1910, 1913, and 1918 further show how non-traditional law enforcement purposes blur the lines between the press and police. “Anti-Kracke Forces Grope For An Issue,” *Brooklyn Daily Eagle*, July 29, 1910. On July 29, 1910, *The Brooklyn Daily Eagle* alleged that three “lieutenants” had “disguised [themselves] as reporters [and] slipped in at the door and secured seats . . . [at a meeting called by Republicans seeking to potentially oust Naval Officer F.J.H.] Kracke[.]” Once there, they acted like reporters by “taking notes,” which they later sent to Kracke, therefore attempting to ascertain what evidence had been acquired against a public official, but not for legitimate police reasons.; “Fake Reporter Given Grilling,” *Chicago Daily*, Sept. 11, 1913. On September 11, 1913, *The Chicago Daily* reported that after “investigators from Second Deputy Funkhouser’s office had inquired into [Sergeant John B. Lacey’s] affairs, [Harold Stanley] Brin, an acquaintance, endeavored to find out what their evidence against the sergeant was.” The *Chicago Tribune* reported that “[f]or this purpose, . . . he represented himself as a news gatherer for The Tribune.”; “Appeal Sent to War Labor Board,” *Richmond Item* (Richmond, IN), Oct. 3, 1918. *The Richmond (Indiana) Item* reported on October 3, 1918 that individuals from “a well-known detective bureau of Chicago” had “masquerade[ed] as reporters for a news service” to circulate “false statements [at a labor organization meeting] and had endeavored to get workmen to strike . . . in order to discredit the workman’s own cause.” What makes this article significant is that the individuals targeted a labor organization, implicating class as a target of the impersonation.

<sup>951</sup> “Two Confess; Hit Healey,” *Chicago Daily Tribune*, Jan. 10, 1917.

home . . . and served him with warrants.”<sup>952</sup> In this instance, the police used impersonation of the press in order to go beyond conducting an investigation, but also serve arrest and/or search warrants.

In 1919, police would use impersonation to detain an individual and bring him before a legislative hearing. *The New York Times* reported on the case against Jim Larkin and ex-Assemblyman Benjamin Gitlow, who were both out on bail after being indicted for criminal anarchy due to their participation in “Communist” activities.<sup>953</sup> During the trial, Larkin reportedly “told of his recent ‘honor’ of being arrested in his home by a detective, ‘a being of a low mental type,’ who, he asserted, was masquerading as a newspaperman in order to reach him” and bring him before a legislative hearing.<sup>954</sup> The purpose of the impersonation was, therefore, to arrest, or at least detain for a hearing, an individual in connection to an investigation into his political activities. The case would ultimately lead to a U.S. Supreme Court decision in 1925 holding that the Fourteenth Amendment extended First Amendment rights and protections to the states.<sup>955</sup>

A final example of law enforcement using impersonation of a journalist for investigative purposes was reported on September 6, 1918 by *The Macon Republican*.<sup>956</sup> The newspaper reported that a “government sleuth” had sought information about a man who recently deserted from the military. The detective reportedly located the home of the deserter’s sister where he said to her, “I just wanted to get something about him for a

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<sup>952</sup> Ibid.

<sup>953</sup> “Larkin Pledges 500 to Communism,” *New York Times*, Nov. 29, 1919.

<sup>954</sup> Ibid.

<sup>955</sup> *Gitlow v. New York*, 268 U.S. 652 (1925).

<sup>956</sup> “Federal Officer Played Reporter,” *Macon Republican* (Macon, MO), Sept. 6, 1918.

newspaper sketch – I’m a reporter, you know.” The sleuth alleged that the woman “told [him] all about the lad.” He added, “In the half hour’s talk I had with her I learned everything I needed to know, and she was not conscious of having given anything away.”<sup>957</sup> Thus, the detective aimed to mislead an interviewee into giving him information by misrepresenting himself as a reporter.

Taken together, the examples from the 1900s-1910s largely demonstrated that the purposes and means of impersonation raised in the 1880s-1890s had continued for another two decades. Many of the cases saw police impersonate the press in order to investigate an individual, in some cases leading to serving warrants or detaining a suspect. In several cases, the police did so by acting like or identifying themselves as reporters. In other instances, members of a police force would use the practice for non-traditional law enforcement purposes, such as the instance of police and government running their own newspaper in Iowa, providing a rare, but illuminating view of the blurring of the lines between the two parties. Additionally, this era saw a new purpose of police impersonation of the press: the ending of a standoff or hostage situation. Seen in ensuing decades, these instances, like those of police conducting investigations, would often include the rationale that the impersonation was used to protect public safety, making it easier to hide or ignore the negative effects of the practice. In fact, during this era, discussions of the effects, law, and ethics surrounding police impersonation of the press remained absent. This suggests a potential lack of concern or awareness of how the practice blurred the lines of the press-police relationship and could lead to negative

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<sup>957</sup> Ibid.

effects. Alternatively, police impersonation of the press may have been accepted at the time, though that would change in ensuing years.

**c. Era #3: 1920s-1930s**

The 1920s-1930s would see fewer examples of police impersonation of the press; however, the era would demonstrate new trends in the practice, including the first instances of press advocates speaking out against the practice.

On March 11, 1933, the International News Service (INS) provided a new angle on how police would use impersonation of the press for investigative purposes. INS reported that “[s]tate police [troopers], disguised as newspapermen, attended [a] conference” hosted by Pennsylvania Governor Gifford Pinchot.<sup>958</sup> The troopers walked into the conference “with a delegation of the recent invading jobless marchers” and monitored the demonstrators.<sup>959</sup> The troopers were also reportedly “[a]rmed’ with copy paper and pencils[.]. . . They mingled with the group and while bona fide newspapermen jotted down important details[,] . . . the troopers were taking mental notes,” in an effort to blend in and act like journalists. What makes this example particularly significant is that it demonstrated an instance where the police conducted an investigation through surveillance, meaning an effort to monitor or observe political officials, minority groups, protesters, lower classes, and others without necessarily making arrests or bringing charges.

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<sup>958</sup> “Pinchot May Back Schnader Boom For Post Of Governor,” *International News Service*, March 11, 1933.

<sup>959</sup> *Ibid.*

Two examples from this time period demonstrated that prohibition was an impetus for impersonation being used for investigative purposes, suggesting that societal factors could lead to the greater use of the practice, such as was the case in the 1960s-1970s.<sup>960</sup> On May 11, 1926, *The Indianapolis Star* covered an “alleged conspiracy to violate the national prohibition law.”<sup>961</sup> The article reported that two federal prohibition agents, both of whom were witnesses before a grand jury, “pos[ed] as newspaper reporters” to allegedly buy liquor as part of an investigation and possible arrests of several individuals suspected of selling alcohol.<sup>962</sup>

Two years later, on October 13, 1928, *The Washington Post* reported that Detective William F. Burke “declared himself to be a correspondent of a New York newspaper” in order to “trap” two men “whom he arrested and charged with transportation and possession of liquor.”<sup>963</sup> Burke reportedly “telephoned Mrs. Saunders [at whose home the two men were arrested] saying he was a newspaper man.” He also “called the number [of the two suspects he discovered] and announced himself as ‘Mr. Moore,’ of a New York newspaper.” The *Post* called the actions an instance of “members of the police vice squad . . . posing as newspaper men in order to ‘make a case’ upon the prohibition laws,”<sup>964</sup> in this case directly leading to arrests.

Significantly, this example also provided an important development in that the press advocates raised concerns with the practice of the police posing as journalists.

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<sup>960</sup> See note 929 above.

<sup>961</sup> “Vincennes Rum Probe Widened,” *Indianapolis Star*, May 11, 1926.

<sup>962</sup> *Ibid.*

<sup>963</sup> “Detective’s Ruse in Dry Case Causes Press Club Protest,” *Washington Post*, Oct. 13, 1928.

<sup>964</sup> *Ibid.*

According to the *Post*, a “[p]rotest against . . . members of the police vice squad in posing as newspaper men . . . was lodged [against] Maj Edwin B. Hesse, chief of police, . . . by the board of governors of the National Press Club.”<sup>965</sup> The *Post* reported that the impersonation was

taken up with Maj. Hesse by Paul Wooten, chairman of the board of governors of the [National Press Club], who declared it an outrage that members of the police department should act in a manner such as Burke is said to have done. Wooten said that on behalf of the club he intended to demand of the chief a complete explanation of the incident.<sup>966</sup>

Thus, for the first time, at least in the examples found in the content analysis, a press organization raised concerns about police impersonation of the press, suggesting that the practice had potentially strained or harmed the relationship between the two parties to the point that the organization called for an investigation or explanation.

Similarly, a Reuters telegram carried by several newspapers, including *The Guardian* in London, reported on March 7, 1930 that “[c]onsiderable resentment was caused in newspaper quarters” when the press learned that New York Police Commissioner Grover Whalen had “disguised a number of his detectives as reporters, even equipping them with special press badges.”<sup>967</sup> Once again, police impersonation of the press raised concern among journalists, suggesting that the practice could strain and blur the press-police relationship, at least to the point of the press calling for an explanation or investigation into the practice. This example was also significant for two additional reasons. First, it was meant not only to help suppress the demonstration, but

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<sup>965</sup> Ibid.

<sup>966</sup> Ibid.

<sup>967</sup> “Struggle In Front Of White House: Detectives Disguised as Reporters,” *Reuters*, March 7, 1930.

also to monitor it, providing another early example of impersonation used for surveillance purposes. Second, the detectives used a new technique: wearing a fake press credential. Both of these actions — surveillance and fake press credentials — would be used more frequently in future years, continuing to blur the lines between the press and police.

The 1920s-1930s ultimately marked an important time period in tracing the history of police impersonation of the press for several reasons. First, the era saw the continuation of trends seen in previous decades, including investigations and surveillance by police through impersonation of the press. Second, the era saw a new way in which the police were able to conduct impersonation: the use of fake press credentials. Finally, the 1920s-1930s saw early instances of the press raising concerns about police impersonation of journalists, demonstrating that the practice was perhaps more problematic than previously revealed or that there was greater awareness about it. Such criticisms also suggested that police posing as members of the press could strain their relationship, not only blurring it, but making it more contentious.

#### **d. Era #4: 1940s-1950s**

The 1940s-1950s would see a continuation of the trends found in previous decades, though without the press raising concerns about impersonation. However, this era would prove significant in that it marked the beginning of the CIA using and impersonating journalists. Although the practice would not be revealed until the 1970s, three articles from the 1940s-1950s provided hints that, at the very least, it was possible for the practice to take place and be kept secret by the U.S. government, as well as by law enforcement and press organizations.

On August 6, 1958, United Press International (UPI) published a story titled “Gun-Toting Grandma Outfoxed As Police Pose As Reporters.”<sup>968</sup> Despite the levity of the headline, the coverage provided a good example of how the 1940s-1950s would see the continuation of trends from the previous decades. UPI covered the standoff between Lomie Puckett and local sheriff’s deputies after Puckett refused to leave her home, which was set to be demolished for a Golden State Freeway extension.<sup>969</sup> To end the standoff, Sergeants Carl Slem and Robert Chapman acted like journalists by “walked into the [home] casually, along with 30 other reporters and cameramen, posing as newsmen.”<sup>970</sup> By posing as reporters and surrounding themselves with real journalists, the officers were able to “escort[] the Texas-born grandmother, widow of a policeman, from the house,” ending her “war against the freeway.”<sup>971</sup>

The 1940s-1950s also saw examples of police impersonation of the press being used for non-traditional law enforcement purposes. On August 23, 1943, the AP reported that the Army had issued a surprise order for the mobilization of five Maryland State Guard battalions as part of a training exercise.<sup>972</sup> According to the AP, “[o]ne ‘enemy’ soldier—a member of an army military police battalion stationed at Pikesville—disguised as a newspaperman succeeded in entering a radio broadcasting transmission station,”<sup>973</sup> therefore aiding in the training.

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<sup>968</sup> “Gun-Toting Grandma Outfoxed As Police Pose As Reporters,” *United Press Intern’l*, Aug. 6, 1958.

<sup>969</sup> *Ibid.*; “Deputies’ Tactics End Highway Siege,” *Valley Times* (North Hollywood, CA), Aug. 6, 1958.

<sup>970</sup> “Gun-Toting Grandma Outfoxed As Police Pose As Reporters.”

<sup>971</sup> “Deputies’ Tactics End Highway Siege.”

<sup>972</sup> “Five Guard Battalions Answer Surprise Call,” *Associated Press*, Aug. 23, 1943.

<sup>973</sup> *Ibid.*

Another example came on May 28, 1958 when *The Herald-News* in Passaic, New Jersey did a human-interest story on a police school session, in which

a staged hit-run accident was held during . . . police school . . . for members of the local force. Striving hard to lay down actual “battle” conditions, the instructor designated one patrolman to impersonate a reporter at the scene. . . He lasted two minutes. Brother officers promptly jailed him for “interfering with policemen in their duties.”<sup>974</sup>

According to *The Herald-News*, the “‘reporter’ took this assignment to heart, rounded up a hat (brim upturned) stuck a scrawled Press sign in the band and hurried to the scene,” therefore acting like a journalist and carrying a fake credential. The result was that his “[b]rother officers” did not hesitate to arrest a member of the news media.<sup>975</sup>

However, what makes the 1940s-1950s particularly significant is that it saw the beginning of CIA agents’ impersonation of journalists abroad. Three articles, despite being over 20 years before the CIA’s actions were revealed, provided potential hints that the practice was taking place in that they raised allegations that U.S. agents or military members abroad had impersonated reporters for different reasons.

First, on December 3, 1947, syndicated columnist Henry McLemore discussed how he and two fellow infantrymen during WWII had posed as reporters to gather information from military officers.<sup>976</sup> McLemore explained that they “would tell the officer that our newspapers wanted a story and pictures of him.” They would also “equip [themselves] with paper and pencils” or “borrow a camera of some kind.”<sup>977</sup> Although seemingly innocuous, such actions by agents would later be scrutinized and criticized.

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<sup>974</sup> “This Is How,” *Herald-News* (Passaic, NJ), May 28, 1958.

<sup>975</sup> Ibid.

<sup>976</sup> Henry McLemore, “The Lighter Side,” *Los Angeles Times*, Dec. 3, 1947.

<sup>977</sup> Ibid.

Second, on August 27, 1957, *The Eugene Guard* in Oregon reported on an accusation by the “Chinese Peoples’ Daily, a [Chinese government] party organ, . . . that Secretary Dulles [was] trying to send 24 American spies, disguised as reporters, into the Oriental Workers’ Paradise.”<sup>978</sup> Although this was denied by the U.S. government, it provided a hint that the practice was perhaps being used, or could be used, by the government, military, or law enforcement.

Finally, on November 30, 1958, the *Lansing State Journal* in Michigan reported that Cuban rebel agents had alleged that an American agent “bluffed his way into rebel headquarters in Cuba as a ‘news reporter’ and collected secret data for the enemy.”<sup>979</sup> The agent purportedly passed himself off as “Robert Moore of the Tri-City Herald, Washington.” Although the government again denied the allegation, it provided an additional piece of evidence that an agent could, and perhaps did, pose as a reporter.

Ultimately, the 1940s-1950s marked the beginning of CIA agents using and impersonating journalists around the world. Because the practice would not be revealed until the 1970s, this era therefore marked the calm before the storm as ensuing decades would not only see the revelations of the CIA’s practices, but also an increase in reported instances of police impersonation of the press, prompting renewed and new concerns.

#### **e. Case Study: CIA Agents Use and Impersonate Journalists**

The beginning of the Cold War in the 1950s would provide the context for the most extensive impersonation of the press by law enforcement in the history of the

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<sup>978</sup> “‘After You,’” *Eugene Guard* (Eugene, OR), Aug. 27, 1957.

<sup>979</sup> Robert Branson, “Cuban Revels Seek U.S. ‘Spy,’” *Lansing State Journal* (Lansing, MI), Nov. 30, 1958.

United States. In 1948, Frank Wisner, who had served during World War II as the head of operations in southeastern Europe for the Office of Strategic Services (OSS), the predecessor to the CIA, was brought into the federal government to plan “black operations” against communist influence.<sup>980</sup> He called his operation the “mighty Wurlitzer,” because it incorporated, and exploited, charitable organizations, labor unions, book publishers, and the press.<sup>981</sup>

In the 1950s, the CIA adopted several of Wisner’s policies, including “us[ing]” and “partner[ing]” with several media organizations, such as *The New York Times* and CBS.<sup>982</sup> Allen Dulles, who became the director of the CIA in 1953, aimed to establish a “recruiting-and-cover capability” within several journalistic institutions.<sup>983</sup> By the 1970s, the CIA worked with more than 800 print, radio, and television organizations and individuals.<sup>984</sup> In most instances, CIA officials dealt personally with a single individual in the top management of news organizations.<sup>985</sup>

There were numerous “uses” of journalists by the CIA, including “to help recruit and handle foreigners as agents, to acquire and evaluate information, and to plant false information with officials of foreign governments,” among other actions.<sup>986</sup> But perhaps

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<sup>980</sup> Herbert N. Foerstel, *From Watergate to Monicagate: Ten Controversies in Modern Journalism and Media* (Santa Barbara, California: Greenwood Publishing Group, 2001).

<sup>981</sup> Ibid.

<sup>982</sup> “Foreign and Military Intelligence” (Washington, D.C.: Select Senate Committee to Study Governmental Operations, April 26, 1976), 179.

<sup>983</sup> Carl Bernstein, “The CIA and the Media,” *Rolling Stone*, Oct. 20, 1977.

<sup>984</sup> Foerstel, *From Watergate to Monicagate*, 70; Bernstein, “The CIA and the Media.”

<sup>985</sup> Bernstein, “The CIA and the Media.”

<sup>986</sup> “Foreign and Military Intelligence,” 192; Foerstel, *From Watergate to Monicagate*, 72. Reporters also often “peddl[ed] ‘black propaganda’ to foreign journalists.” Others were briefed by CIA personnel before trips abroad, debriefed afterward, and used as intermediaries with foreign agents. This “debriefing” procedure included dozens of news organizations. Additionally, the CIA had “carte blanche borrowing privileges” of several news organizations’ photo libraries.

most significantly, reporters and news organizations also provided “journalistic cover” for CIA agents to pose as journalists.<sup>987</sup> Multiple news organizations provided jobs and press credentials to CIA operatives abroad, allowing agents to impersonate members of the press. This impersonation of journalists in the CIA likely began around 1953 when Dulles stipulated that one purpose of using the press was for impersonation because “CIA operatives abroad would be accorded a degree of access and freedom of movement unobtainable under almost any other type of cover.”<sup>988</sup> The CIA even ran a formal training program in the 1950s to teach its agents to be journalists, including how “to make noises like reporters.” Media organizations continued to provide “cover” for agents, who impersonated journalists throughout the 1950s to the 1970s,<sup>989</sup> resulting in “the traditional line separating the American press corps and government [being] often indistinguishable.”<sup>990</sup>

The program of using and impersonating journalists began to slow down in 1973 when then-Director William Colby, who had been “disturbed” by the extensive use of journalists in the 1950s-1960s, made several public disclosures that the CIA had secretly employed American reporters.<sup>991</sup> He also stated that “operational use of fulltime correspondents and other employees of major U.S. news magazines, newspapers, wire services, or television networks was to be avoided.” However, Colby also claimed that

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<sup>987</sup> Bernstein, “The CIA and the Media.”

<sup>988</sup> Ibid.

<sup>989</sup> Upano, Will a history of government using journalists repeat itself under the Department of Homeland Security?,” 10.

<sup>990</sup> Bernstein, “The CIA and the Media.”

<sup>991</sup> “Foreign and Military Intelligence,” 196; “CIA Halting Use of U.S. Reporters As Secret Agents,” *Washington Star*, Feb. 12, 1976.

the use of journalists had been minimal and was not important to the CIA.<sup>992</sup>

Nevertheless, the use of the practice began to decrease in the early 1970s, including because it “was the period of Vietnam War protests, the Pentagon Papers, and Watergate. Investigative reporting was popular, and the CIA was coming under scrutiny.”<sup>993</sup>

In 1976, the Senate Select Committee on Intelligence under Chairman Frank Church outlined how the CIA and FBI regularly used and impersonated journalists.<sup>994</sup> The Church Committee published its final report on April 26, 1976, though it was circumscribed under CIA pressure and did not disclose several “important discoveries.”<sup>995</sup> Nevertheless, the portion of the report discussing CIA use of journalists brought to the public attention the practices by the agency from 1953 through 1973. The final report stated,

Clandestine activities that touch American institutions and individuals have taken many forms and are [a]ffected through a wide variety of means . . . scholars and journalists collect intelligence; journalists devise and place propaganda; United States publications provide cover for CIA agents overseas. . . . More than a dozen United States news organizations and commercial publishing homes formerly provided cover for CIA agents abroad. A few of these organizations were unaware that they provided this cover.<sup>996</sup>

Two months before the Church Committee published its report, on February 11, the CIA announced new guidelines governing its relationship with U.S. media organizations.<sup>997</sup> Director George H. W. Bush stated that the “CIA recognizes the special status afforded [the press] under our Constitution and in order to avoid any appearance of improper use by the Agency, [it] has decided on a revised policy to govern Agency

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<sup>992</sup> Bernstein, “The CIA and the Media.”

<sup>993</sup> Foerstel, *From Watergate to Monicagate*, 65.

<sup>994</sup> “Foreign and Military Intelligence,” 196.

<sup>995</sup> Foerstel, *From Watergate to Monicagate*, 84.

<sup>996</sup> “Foreign and Military Intelligence,” 179.

<sup>997</sup> “Foreign and Military Intelligence,” 195; Foerstel, *From Watergate to Monicagate*, 63-64.

relations with these groups.”<sup>998</sup> According to Bush, the CIA would no longer “enter into any paid or contractual relationship with any full-time or part-time news correspondent accredited by any U.S. news [organization].”<sup>999</sup>

However, the following year, the CIA secretly created a loophole allowing the agency to pose as or use journalists under “extraordinary circumstances” with “specific approval” from the CIA director.<sup>1000</sup> The loophole was not revealed until 1996 when *The Washington Post* reported that an independent task force of the Council on Foreign Relations proposed taking a “fresh look . . . at limits on the use of non-official ‘covers’ for hiding and protecting those involved in clandestine activities.”<sup>1001</sup> But then-CIA Intelligence Director John Deutch told Congress that such a review was not necessary because the CIA “already had the power to use U.S. reporters as spies,” revealing the loophole.<sup>1002</sup> Nevertheless, the revelations did not stop police impersonation of the press, including by the CIA.<sup>1003</sup>

#### **f. Era #5: 1960s-1970s**

The CIA’s actions during the Cold War marked the most extensive impersonation of the press by government or law enforcement in the history of the United States,

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<sup>998</sup> CIA Office of the Director, *Statement*, February 11, 1976.

<sup>999</sup> “CIA Halting Use of U.S. Reporters As Secret Agents.”

<sup>1000</sup> Foerstel, *From Watergate to Monicagate*, 63-64; Walter Pincus, “CIA Official Reveals Agency’s Use Of Journalists in Secret Operations,” *Washington Post*, Feb. 16, 1996; Walter Pincus, “CIA Can Waive Prohibition Against Using U.S. Clergy Abroad For Covert Work,” *Washington Post*, Feb. 22, 1996.

<sup>1001</sup> Kate Houghton, “Subverting Journalism: Reporters and the CIA,” *Committee to Protect Journalists*, 1996, <https://cpj.org/attacks96/sreports/cia.html>.

<sup>1002</sup> *Ibid.*

<sup>1003</sup> See note 2314 below; Intelligence Authorization Act for Fiscal Year 1997, H.R. 3259, 104th Cong. § 309 (1996). As discussed more in the legal analysis, President Bill Clinton signed a bill in 1996 allowing the CIA to use and pose as American journalists under certain circumstances.

blurring the lines between the two parties. The revelations of the actions would fall amidst an era of increasingly adversarial relations between the press and law enforcement, providing the basis for increased journalistic coverage and criticism of the practice, including raising several negative effects.<sup>1004</sup> Significantly, some of the examples below also provide tangible evidence that these effects on the press, police, their relationship, and the public actually happened, going beyond speculation.

The first effect of police impersonation of the press revealed in the 1960s-1970s was the undermining of the credibility of members of the press, meaning the reduction of the public's trust and confidence in journalists, news organizations, and/or the press as a whole. This effect was first seen in a May 27, 1970 article appearing in *The Washington Post*. Columnist William Raspberry reported that at an anti-war demonstration near the U.S. Capitol building, "two men, both in casual dress (slacks and windbreakers) . . . were filming the proceedings with a video tape unit."<sup>1005</sup> Although both men "wore red stenciled badgers reading 'Press,'" a "small identification sticker on the side of their camera read 'U.S. Capitol Police.'" Although both men later admitted to being police officers, they had insisted that they were members of the press. Raspberry wrote that this "far-from-isolated incident . . . threatens the credibility of the press" as that it made the

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<sup>1004</sup> 56 articles were found for the 1960s-1970s, with 40 being qualitatively coded. 72 articles were found for the 1980s-1990s, 39 of which were qualitatively coded. In all, 32 examples of impersonation were found for the 1960s-1970s and 27 were found for the 1980s-1990s. Due to the significant increase in instances of police impersonation of the press in the 1960s-1970s and the 1980s-1990s, the following sections focus primarily on the effects and legal/ethical considerations related to the practice, especially because how the impersonation took place and the purposes remained largely consistent with past eras. The examples provided below are not exhaustive and were chosen out of several more in the sample, but still provide illustrative instances of the different effects and legal/ethical considerations.

<sup>1005</sup> William Raspberry, "Freedom of the Press Endangered by Subpoenas, Police Actions," *Washington Post*, May 27, 1970.

news media the “unwilling agent of the police [by having] the police pretend to be members of the press.”<sup>1006</sup>

Several additional articles during this time period would make a similar argument. Following a report that “[Utah] police agents had posed as reporters for the *Los Angeles Times* in an unsuccessful attempt to arrest a man for refusing to send his children to public schools,” the AP quoted a statement by the Utah chapter of the Society of Professional Journalists (SPJ) and other news organizations.<sup>1007</sup> The statement contended that “[a]ny short-term benefits law enforcement could have gained are lost in the long-range damage to the credibility of journalism[.]” The statement further argued that even if the police officers had been successful in arresting the man, the confidence and trust of the public would have been undermined,<sup>1008</sup> suggesting that the practice was not worth it.

Two cases of impersonation arose in relation to the Democratic National Conventions (DNC) in 1964 and 1968, with both instances leading to claims that such actions undermined the press’ credibility. In 1975, it was uncovered by *The New York Times* that NBC had allegedly granted press credentials to the FBI, allowing agents to “pose as newsmen” during the 1964 convention.<sup>1009</sup> The *Times* reported that “[b]y posing as NBC newsmen, agents of the [FBI] obtained interviews with members of the Mississippi Freedom Democratic Party who were planning to infiltrate the convention hall and claim the seats reserved for the regular Mississippi delegates,” suggesting the

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<sup>1006</sup> Ibid.

<sup>1007</sup> David Briscoe, “Police pose as reporters in attempt to arrest father in truancy case,” *Tampa Bay Times*, Oct. 21, 1978.

<sup>1008</sup> Ibid.

<sup>1009</sup> Les Brown, “NBC Denies A Role in F.B.I. ‘Newsmen,’” *New York Times*, Nov. 23, 1975.

targeting of individuals based on their ideology and race. NBC Chairman Julian Goodman denied the allegation, arguing that it had “never been the policy of NBC to give press credentials to anyone but those working for us. We try to guard zealously the credentials of NBC correspondents – it’s the whole basis for our credibility.”<sup>1010</sup> Whether the accusation against NBC was true or not, the mere suggestion that FBI agents would pose as reporters led to concerns about the undermining of NBC’s reputation.

A similar concern was raised in a June 5, 1972 report by *The Christian Science Monitor*, which alleged that “[t]he Army Security Agency [had] invented an entirely fictitious news agency at the [DNC] in 1968.”<sup>1011</sup> A former military intelligence agent later testified before the Senate judiciary subcommittee that “this phony news agency obtained the only television interview with Abbie Hoffman, the Yippie leader.”<sup>1012</sup> This allegation is particularly noteworthy given the police brutality against reporters during the 1968 convention, prompting over 20 complaints by members of the press.<sup>1013</sup> Editor Erwin D. Canham argued that the “integrity of news personnel will be gravely damaged if these practices continue.”<sup>1014</sup>

Taken together, these examples demonstrate that the undermining of the press’ credibility is significant in that it not only affects the press, but also the public. In order for the press to inform the public and hold government accountable, it requires the trust of those reading, listening to, or watching their coverage. If the public loses even some of

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<sup>1010</sup> Ibid.

<sup>1011</sup> Erwin D. Canham, “The bogus press,” *Christian Science Monitor*, June 5, 1972.

<sup>1012</sup> Ibid.

<sup>1013</sup> See Tiede, “Police and the press: view from squad car.”

<sup>1014</sup> Canham, “The bogus press.”

its trust and confidence in the press due to impersonation by police, it will also lose out on important information. Thus, the purposes and functions of the press aimed at serving the public, as discussed at length in the theoretical framework, become more difficult, if not impossible, due to the blurring lines cause by police impersonation of the press.

Another effect implicating both the press and public is the undermining of reporters' source relationships. On June 6, 1970, the AP reported that the "Grand Rapids Press had filed a formal protest with the Detroit Police Department for permitting a policeman to pose as a photographer for the [newspaper] at a . . . General Motors [Corporation] stockholder meeting in Detroit."<sup>1015</sup> *Grand Rapids Press* editor Werner Veit argued that, "any news source, no matter how proper and innocent, would be reluctant to speak out freely to a news photographer — or reporter — who could be suspected of gathering information solely for the purpose of compiling a police department dossier."<sup>1016</sup> Veit therefore argued that the practice went beyond undermining the press' credibility, but also led news sources to be less likely to talk to the press.

The same year, *The Daily Chronicle* in DeKalb, Illinois included a photograph with a caption alleging that an

undercover agent for a state police agency [had been] spotted by the local news media . . . using WJJO-TV call letters in his videotape equipment to film a march and rally being held by the Student Mobilization Committee.<sup>1017</sup>

The Illinois News Broadcasters Association and Sigma Delta Chi contended that such actions would "seriously impair the relationship of the press with sources[.]"<sup>1018</sup>

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<sup>1015</sup> "Grand Rapids Paper Protests Police Ruse," *Associated Press*, June 6, 1970.

<sup>1016</sup> *Ibid.*

<sup>1017</sup> J.A. Hartenfeld, "Impersonating The Press?," *Daily Chronicle* (De Kalb, IL), Nov. 5, 1970.

<sup>1018</sup> *Ibid.*

In a November 15, 1977 article, the AP explained why sources would become less willing to talk to the press due to impersonation. Following reports that “a state trooper allegedly misidentified himself as a newsman for [the AP]” at a “rally outside the federal prison at Marion” in Illinois, the AP cited “[n]ews organization and free speech advocates [who] argued that law enforcement officials should not pose as reporters because that is likely to result in news sources questioning actual reporters’ identities[.]”<sup>1019</sup> The *Fort Lauderdale News* perhaps put it best on July 5, 1979 when it argued that “[p]otential news sources, uncertain if they are speaking to an objective reporter or a government agent whose goal is prosecution, will refuse to talk with newsmen,” therefore undermining the press’ ability to forge source relationships.<sup>1020</sup>

A third effect of police impersonation of the press, which stemmed from the undermining of the press’ credibility and source relationship is the undermining of journalists’ and news organizations’ ability to gather news. When two law enforcement officers posed as journalists at an anti-war demonstration near the U.S. Capitol building in 1970, *Washington Post* columnist William Raspberry argued that such actions “threaten[] [the press’] freedom to function.”<sup>1021</sup> The AP similarly argued in its November 15, 1977 article that impersonation “inhibit[s the press’] ability to gather news.”<sup>1022</sup> The *Fort Lauderdale News* added on July 5, 1979, “Any time an investigator

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<sup>1019</sup> “Troopers shouldn’t pose as reporters--Thompson,” *Associated Press*, Nov. 15, 1977.

<sup>1020</sup> “State Investigator Was Wrong to Use Deceptive Tactics,” *Fort Lauderdale News*, July 5, 1979. The *Fort Lauderdale News*’ article stemmed from an allegation that “an investigator for the Florida Attorney General’s office . . . allowed persons [at a Directors of the Allied Gasoline Retailers Association of Florida meeting] to assume he was a newsman.”

<sup>1021</sup> Raspberry, “Freedom of the Press Endangered by Subpoenas, Police Actions.”

<sup>1022</sup> “Troopers shouldn’t pose as reporters--Thompson.”

for a government or even a police agency masquerades as a reporter, the ability of all journalists to gather news is eroded.”<sup>1023</sup> Significantly, if the press is unable to fulfill its functions, including “informing the public,” it is “the people [that] suffers”<sup>1024</sup> as they lose sources of information and the ability to hold the government accountable.

Fourth, police impersonation of the press also creates the threat of physical danger for reporters. Several articles included commentary on this concern in the 1960s-1970s, including *The Daily Chronicle* in 1970, which argued that police posing as reporters “endanger[s] the safety of legitimate newsmen trying to cover [news] events.”<sup>1025</sup> However, there were also indications that physical violence actually had been aimed at reporters. Significantly, *Christian Science Monitor* editor Erwin D. Canham reported in his 1972 article about impersonation at the 1968 DNC that across the United States, amidst the tumultuous context of the time, “the militant Left suspect[ed] the press and [had] sometimes attack[ed] news people physically because they [were] believed to be [members of law enforcement].”<sup>1026</sup> As two case studies will further demonstrate below, the threat of physical violence against the press due to police impersonation goes beyond speculation and has, in several instances, actually occurred. Although journalism can often be a dangerous profession, what makes impersonation especially problematic is that reporters do not get to decide whether to place themselves in the dangerous situation or not; the decision is made for them by police using impersonation.

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<sup>1023</sup> “State Investigator Was Wrong to Use Deceptive Tactics.”

<sup>1024</sup> Canham, “The bogus press.”

<sup>1025</sup> Hartenfeld, “Impersonating The Press?.”

<sup>1026</sup> Canham, “The bogus press.”

Another effect discussed for the first time in the 1960s-1970s was the undermining of both parties' independence, a clear demonstration of the blurring lines of the press-police relationship. Following allegations in 1970 that "Governmental investigators [had] pose[d] as reporters" domestically and overseas, Jack Gould, then a reporter at *The New York Times*, wrote in an editorial that such actions constitute "a damnable encroachment on the free press."<sup>1027</sup> Similarly, in 1972, the Louisville *Courier-Journal* reported that at an anti-war rally outside a new federal building, Louisville Police Department detectives Marty Green and Bobby Branham "identified themselves as representatives of newspapers."<sup>1028</sup> One reportedly posed as a photographer while the other took notes. The *Courier-Journal* contended that such actions "constitute a threat to the . . . independence of the press."<sup>1029</sup> Lastly, in a May 26, 1976 op-ed appearing in *The Philadelphia Inquirer*, Knight News Service reporter Jim Dance called the actions of two Tampa officers, who "identified themselves . . . as newspaper reporters," an "unauthorized incursion into [the press'] estate, which is No. 4."<sup>1030</sup>

But despite these concerns, Dance noted that [o]lder hands viewed the development with a benign serenity . . . because they can remember when police reporters hung around police stations instead of sitting in isolation booths at the newspaper. . . . It was hard to tell a reporter from a policeman[.]<sup>1031</sup> Here, Dance indicated that some more seasoned reporters had seemingly viewed impersonation of police as

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<sup>1027</sup> Jack Gould, "Newsmen Are Not FBI Men," *New York Times*, Feb. 15, 1970.

<sup>1028</sup> "WHAS says police posed as newsmen during rally," *Courier Journal*, April 20, 1972.

<sup>1029</sup> *Ibid.*

<sup>1030</sup> Jim Dance, "How dare they imitate reporters?," *Philadelphia Inquirer*, May 26, 1976.

<sup>1031</sup> *Ibid.*

acceptable, reflecting back on an era of greater cooperation between the two parties. This suggests that some observers, at least according to Dance, would have perhaps seen police impersonation of the press as helping the press-police relationship.

However, examples from the 1960s-1970s generally demonstrated that police impersonation of the press had one final negative effect first seen in the 1920s: straining the press-police relationship. This was first evident in that members of the press and media advocacy groups called for explanations or changes following the use of the practice. For example, the instance of impersonation in Detroit in 1970 prompted Veit to call for assurances that the police would not use the practice any further.<sup>1032</sup> Similarly, following the impersonation in DeKalb the same year, the Illinois News Broadcasters Association and Sigma Delta Chi stated that they were “planning to take action to demand that the state not impersonate reporters and photographers,”<sup>1033</sup> suggesting that the practice had strained the press-police relationship.

Examples from this time period suggest that law enforcement departments and agencies took different approaches to handling press complaints about their use of impersonation. For example, on November 15, 1968, the AP reported that at an anti-war protest in Tampa, Florida, “law enforcement men pos[ed] as reporters” by wearing casual dress and identifying themselves as being from a local newspaper.<sup>1034</sup> What demonstrated the potential harm to the press-police relationship was a quote by Tampa Police Chief J.G. Littleton, who said, “You’re either with us or with them” and attempted to order the

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<sup>1032</sup> “Grand Rapids Paper Protests Police Ruse.”

<sup>1033</sup> Hartenfeld, “Impersonating The Press?”

<sup>1034</sup> “Police At Protest Pose As Newsmen,” *Associated Press*, Nov. 15, 1968; “Policemen Pose as Reporters,” *Associated Press*, Nov. 15, 1968.

press to “not expose his officers to demonstrators,”<sup>1035</sup> reflecting a growing contentiousness between the press and police, at least in that context.

Conversely, some agencies and departments changed their policies to purportedly prohibit impersonation following complaints by the news media and press advocates. For example, the AP reported on July 11, 1968 that U.S. Attorney General Ramsey Clark had issued an order “instructing FBI agents not to impersonate reporters during investigations.”<sup>1036</sup> The policy change arose after CBS news bureau chief in Washington, D.C. Bill Small, “complained on behalf of the three major networks,” further suggesting strain on the press-police relationship.<sup>1037</sup> Similar actions were taken by Washington, D.C. police in 1970<sup>1038</sup> and Fond Du Lac, Wisconsin police in 1973.<sup>1039</sup> In other cases, the police would issue an apology to the press for the impersonation, suggesting a recognition of the potential harm it caused to the relationship. For example, in 1977, the “sergeant in charge of the Fort Lauderdale Police Public Information Unit apologized to [UPI] . . . for allowing one of his officers to pose as a UPI reporter.”<sup>1040</sup>

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<sup>1035</sup> Ibid.

<sup>1036</sup> “Clark Order Bans FBI Men Posing as Press,” *Associated Press*, July 11, 1968. Clark wrote in a letter, “Instructions have been issued by the FBI director to all FBI personnel that under no circumstances are they ever to pose as members of the news media in connection with any future investigations.”

<sup>1037</sup> Ibid.

<sup>1038</sup> “Police Acting As Newsmen Ruled Out,” *Washington Post*, July 16, 1970. The *Post* reported that Washington, D.C. police would “no longer pose as newsmen” following criticism that police officer Dixie Gildon had identified herself as a “free lance writer” at a news conference.

<sup>1039</sup> John Sheimo, “State Agent Poses as Reporter,” *Fond Du Lac Commonwealth Reporter* (Fond Du Lac, WI), Aug. 2, 1973. Sheimo reported that as a result of an agent representing himself as a *Commonwealth* reporter, all agents in the division ha[d] been instructed that they will not ‘under any circumstances’ represent themselves as members of the news media while conducting investigations[.]”

<sup>1040</sup> “Officer Poses as Reporter, Police Apologize to UPI,” *United Press International*, March 19, 1977. See also “Trooper Poses As Newsmen In Demonstration,” *United Press International*, Nov. 16, 1977; “Official admits cop posed as newsmen,” *Associated Press*, Nov. 16, 1977.

Thus, in these instances, the police purported to change department policies or apologized for using impersonation of the press. Although such actions and apologies may have been superficial and did not lead to the elimination of the practice, as discussed more below, they still suggest that the press-police relationship was strained to the point that some sort of action or apology was needed. Thus, a significant effect of police impersonation of the press is that it can, and has, not only blurred the lines between the press and police, but also strained their relationship, including in an era when the two parties were already adversarial.

In addition to raising, and in some cases demonstrating, the serious effects of police impersonation of the press, several articles from the 1960s-1970s discussed legal and ethical considerations arising from the practice. First, multiple articles discussed changes to rules, guidelines, and/or policies allowing or prohibiting impersonation of the press. This was evident in the above examples, as well as a January 29, 1970 report by the AP alleging that two U.S. agents had posed a reporters to “infiltrate[] . . . the Saigon press corps” in Vietnam.<sup>1041</sup> Following the discovery of their identities, the agents were withdrawn from the region, and a military official stated that policies regarding the issuance of press credentials would be “reexamined.”<sup>1042</sup>

Observers also raised the legal landscape around police impersonation of the press by noting that there was no law against the practice. In its June 6, 1970 report that a policeman had posed as a photographer for the *Grand Rapids Press* at a stockholder meeting in Detroit, the AP quoted officials who said that impersonation of the press was

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<sup>1041</sup> “2 U.S. Agents In S. Viet Pose As Reporters,” *Associated Press*, Jan. 29, 1970.

<sup>1042</sup> *Ibid.*

“optional” and that agents were allowed to use the practice.<sup>1043</sup> Similarly, a May 12, 1978 opinion piece appearing in the *Tulare Advance-Register* in California noted that “[u]nfortunately, it is not a crime to impersonate a reporter.”<sup>1044</sup>

Conversely, articles from the 1960s-1970s also raised the argument from observers that the press would not or could not impersonate law enforcement, including because it would be illegal for the press to do so, as discussed further in the legal analysis. For example, Raspberry argued in his May 27, 1970 article that “any reporter who posed as a policeman in order to gather information would be summarily tossed into the clink.”<sup>1045</sup> The *Tulare Advance-Register* opinion piece similarly argued that “if a reporter were to attempt a police impersonation, that reporter would be slammed into the pokey with amazing speed. It is a crime in California to impersonate an officer of the law.”<sup>1046</sup> The article further argued that a reporter for the paper “would do such a thing, because it violates our code of ethics. It would be dishonest to pretend to be something we are not.”<sup>1047</sup> This argument would prove significant in instances of press impersonation of police where reporters would argue that if the police were allowed to impersonate journalists, reporters and other members of the media should be able to do the same with police officers and officials.

Ultimately, the 1960s-1970s saw not only a large increase in the instances of police impersonation of the press, but also significantly more attention to the effects of

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<sup>1043</sup> “Grand Rapids Paper Protests Police Ruse.”

<sup>1044</sup> “A need to lie? That’s what Nixon thought,” *Tulare Advance-Register* (Tulare, CA), May 12, 1978.

<sup>1045</sup> Raspberry, “Freedom of the Press Endangered by Subpoenas, Police Actions.”

<sup>1046</sup> “A need to lie? That’s what Nixon thought.”

<sup>1047</sup> Ibid.

the practice not only on the press and police, but also the public. The end of self-censorship by the press, as well as the increasingly adversarial nature of the press-police relationship, during this era, likely contributed to the press not only reporting on the instances of the practice more frequently, but also criticizing its use. The news media highlighted the serious effects arising from police impersonation of the press, including undermining the press' credibility, source relationships, and newsgathering ability, as well as legal and ethical issues. Examples from the 1960s-1970s even provided evidence that effects of police impersonation of the press had actually occurred, namely physical violence aimed at reporters, the undermining of the press' independence, and the straining of the press-police relationship. Future eras would include examples providing evidence that other effects of the practice had also occurred, further demonstrating why police impersonation of the press has been, and continues to be, such a problematic practice.

**g. Era #6: 1980s-1990s**

In the 1980s-1990s, coverage of police impersonation of the press continued to be fairly prevalent, raising similar concerns with the practice seen in the 1960s-1970s. In some cases, such coverage further demonstrated that negative effects went beyond conjecture and had actually taken place, implicating not only both parties and their relationship, but also the public.<sup>1048</sup>

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<sup>1048</sup> Like with the 1960s-1970s, the examples from this era will be broken down by effects and law/ethics subcodes as how the impersonation took place and the purposes remained the same as previous eras. The following section will discuss the first instance of the effects and legal/ethical considerations subcodes if they didn't take place in the 1960s-1970s before focusing on additional representative examples from the acquired sample.

Several examples from the 1980s-1990s renewed concerns about the undermining of the press' credibility, therefore reducing public trust and confidence in the news media. For example, in 1986, *The Los Angeles Times* reported that undercover investigators had used fake NBC credentials that had been obtained in a 1984 forgery case in order to conduct an undercover prostitution investigation.<sup>1049</sup> Tom Capra, the news director at KNBC-TV in Los Angeles, told the *Times* that such actions put the press' "credibility at stake." He added, "We do depend on the public's perception that we are honest, objective news gatherers."<sup>1050</sup>

Concerns about the undermining of the press credibility were also raised in relation to standoff and hostage cases. On July 7, 1980, the AP reported that three Colorado Springs policemen had "posed as a news team 'as a last resort'" to end a standoff with Larry Olsen, who had "threatened to kill himself and any police officer he saw[.]"<sup>1051</sup> After Olsen said he would give up only if he could speak to "the media," the police borrowed a television camera from a local reporter and convinced Olsen to surrender.<sup>1052</sup> Following the episode, George Jeffrey, the general manager of KKTU-TV in Colorado Springs, argued that the impersonation "would damage the credibility of reporters,"<sup>1053</sup> undermining the positive outcome of ending a standoff.

A similar situation arose in February 1992 when police in Tampa requested and borrowed a TV camera from a local station so that a hostage-negotiator could pose as a

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<sup>1049</sup> "NBC Protests Police Use of Fake Press ID," *Los Angeles Times*, March 16, 1986.

<sup>1050</sup> Ibid.

<sup>1051</sup> "TV stations upset after police impersonate media to nab man," *Associated Press*, July 7, 1980.

<sup>1052</sup> "Cops impersonate media to capture armed man," *Associated Press*, July 7, 1980.

<sup>1053</sup> Ibid.

journalist and “cover” the surrender of a gunman, who asked that it be recorded.<sup>1054</sup> A February 6, 1992 opinion piece by the *Tampa Bay Times* contended that police should not take such measures, even in a standoff or hostage case, because “[i]t’s a matter of credibility. . . . Readers and viewers should be able to rely on [the press] to report impartially about police actions, good and bad.”<sup>1055</sup>

The 1980s-1990s also saw instances of police using impersonation of the press to surveil far-right rallies, with each instance raising concerns about the press’ credibility. For example, in November 1986, the *Charlotte Observer* covered a Ku Klux Klan (KKK) parade, in which Charlotte, North Carolina police officer Bud Cesena, in order to surveil the event, wore a yellow badge to identify himself as a reporter, while another officer carried a camera to pose as a photographer.<sup>1056</sup> The *Observer* contended that

[n]ews photographers and reporters have to deal with some of the same people police have to deal with, but in a different context, under different kinds of assumptions. People have a right and a need not to be confused about whether someone is a reporter or a police officer.<sup>1057</sup>

Similar arguments were raised following a 1989 rally in Tampa,<sup>1058</sup> 1989 rallies in California and Washington,<sup>1059</sup> and a 1994 rally in Indiana.<sup>1060</sup>

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<sup>1054</sup> Mike Childs and Joe Foley, “No impersonators, please,” *St. Petersburg Times*, Feb. 9, 1992.

<sup>1055</sup> *Ibid.*

<sup>1056</sup> Tex O’Neill, “Officer’s Disguise Irks Media,” *Charlotte Observer*, Nov. 25, 1986; “Police Shouldn’t Pose As Press,” *Charlotte Observer*, Dec. 1, 1986.

<sup>1057</sup> “Police Shouldn’t Pose As Press.”

<sup>1058</sup> Chuck Murphy, “Police posing as reporters bother media,” *Tampa Bay Times*, May 2, 1989. Among other comments by observers, *St. Petersburg Times* managing editor Mike Foley said, “Credibility, the trust of our readership, is one of the things that we hold most sacred. . . . [P]olice impersonation of legitimate news reporters could harm that.”

<sup>1059</sup> Milton Hollstein, “It’s Dangerous And Dumb For Police To Impersonate Journalists,” *Deseret News* (Salt Lake City, UT), May 15, 1989; “CBS Disturbed By Police ‘Cameramen’ Filming,” *Seattle Times*, May 5, 1989.

<sup>1060</sup> “Mayor: Police Shouldn’t Pose As Press,” *Associated Press*, April 7, 1994. AP Indiana bureau chief Robert Shaw said, “The practice of officers falsely identifying themselves as journalists threatens [public] trust in reporters [and] damage[s] journalists’ credibility[.]”

However, the undermining of the press' credibility was perhaps best seen in the most widely covered case of local police impersonating of press during this time period. On May 17, 1984, *The New York Times* reported that two men wearing T-shirts and windbreakers claiming to be a local television cameraman and interviewer approached six individuals participating in a "smoke in" protest of state drug laws in Morristown, New Jersey.<sup>1061</sup> However, the cameraman was actually a deputy sheriff and the interviewer was an assistant county prosecutor. Although the participants were not smoking an illegal substance, they were charged for use of "look alike" drug, with the footage and interviews obtained by the undercover sheriff and prosecutor used as evidence.<sup>1062</sup> *The New York Times* argued that "confidence [in the press], and the feeling of freedom that goes with it, [wa]s no longer well placed in Morris County."<sup>1063</sup> The *Times* added,

When confidence in the integrity of these professions is shattered, they lose an essential attribute of their value to the community. . . . [T]his trickery can work only as long as people retain confidence in professionals and the institutions they represent. Government at any level has no right to draw on that trust in ways that can only destroy it.<sup>1064</sup>

The *Los Angeles Times* reported on June 1, 1984 that New Jersey Attorney General Irwin I. Kimmelman had admitted in a letter to state prosecutors that "[l]aw enforcement officials who impersonate reporters can breed distrust and undermine confidence in the . . . media."<sup>1065</sup>

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<sup>1061</sup> Jonathan Friendly, "Impersonation of Newsmen Protested," *New York Times*, May 17, 1984; "You're on Police Camera," *New York Times*, May 19, 1984.

<sup>1062</sup> Ibid.

<sup>1063</sup> "You're on Police Camera."

<sup>1064</sup> Ibid.

<sup>1065</sup> "Posing as the Press," *Los Angeles Times*, June 1, 1984.

Several examples from the 1980s-1990s also detailed the ways in which police impersonation of the press can, and did, undermine reporters' source relationships. In the Morristown, New Jersey case, Jeff Fogel, executive director of the American Civil Liberties Union (ACLU) of New Jersey, released a statement arguing that allowing police officers to pose as journalists "'directly violates the public policy' of encouraging exchanges of information by guaranteeing the confidentiality of conversations between priests and penitents, lawyers and clients, doctors and patients and reporters and their sources."<sup>1066</sup> Kimmelman told *The New York Times* that "[p]eople who talk to reporters should have confidence that those they confide in are legitimate newsmen."<sup>1067</sup>

In June 1987, following a report by the *San Diego Union-Tribune* that a police video technician had posed as a journalist in order to film an environmental protest, Lee Brown, president of the San Diego Chapter of Sigma Delta Chi, argued that such actions were "a disservice to [the] community." He added, "I think San Diegans have a right to know if they think they are talking to a journalist that they really are – and not to a cop in disguise."<sup>1068</sup> Two years later, after a police officer posed as a cameraman to cover a protest in Seattle, Harry Fuller, a news director at a local television station, asserted that "[m]ost citizens want to know that they can express themselves and not think they are

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<sup>1066</sup> Friendly, "Impersonation of Newsmen Protested."

<sup>1067</sup> Jonathan Friendly, "Crossing the Border That Divides Police And the Press," *New York Times*, May 27, 1984. See also "New Jersey Journal," *New York Times*, May 27, 1984. Edwin W. Tucker, general manager of the New Jersey Press Association, was quoted as saying that "[impersonation] had undercut a necessary bond of trust between reporters and people being interviewed." John Garbarino, executive editor of the *Teaneck News*, similarly asked, "What's to stop people approached by a reporter from wondering whether they are speaking to an accredited journalist or a police officer posing as one?"

<sup>1068</sup> Homer Clance, "Police pledge no more use of press passes," *San Diego Union-Tribune*, June 25, 1987.

talking to a secret police.”<sup>1069</sup> Thus, if the lines are blurred between the two parties and the public does not know whether they are talking to a reporter or a member of law enforcement, it makes it more challenging for journalists to forge source relationships and be trusted by readers, listeners, or viewers.

Stemming from concerns about the press’ credibility and source relationships was discussions of the undermining of the press’ ability to gather news. In one instance, an FBI agent posed as a journalist in 1991 in order to gather information to be used in staging an immigration raid at an Irish newspaper in New York City.<sup>1070</sup> Although the raid led to one arrest and was praised by FBI officials, it garnered criticism from observers, including Reporters Committee for Freedom of the Press (RCFP) Executive Director Jane Kirtley, who argued that the FBI agent’s actions “undermine[d] the ability of reporters to do their job [by] blur[ring] the line between law-enforcement agencies and the independent press.”<sup>1071</sup>

Another instance prompting such concerns arose in 1992 when an Albuquerque police officer “pos[ed] as a news reporter” in order to arrest a suspected 16-year-old

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<sup>1069</sup> “Other News To Note: Not One Of Us,” *Orlando Sentinel*, April 8, 1989. See also “Cops And Reporters,” *Intelligencer Journal* (Lancaster, PA), April 1, 1996. The *Intelligencer Journal* argued that “hiding behind a press badge is flat out wrong. It compromises [the ability of] legitimate reporters . . . to talk with people on controversial issues.”

<sup>1070</sup> Howard Kurtz, “Nabbed in the Newsroom,” *Washington Post*, Sept. 5, 1991.

<sup>1071</sup> Several additional examples also included commentary on the undermining of the press’ independence. See Friendly, “Crossing the Border That Divides Police And the Press.” Charles W. Bailey, former editor of the *Minneapolis Tribune*, said, “The blurring of old lines and softening of traditional distinctions make it harder for the public to understand the news business.”; “Media Criticize Graffiti Sting,” *Associated Press*, June 11, 1994. Kirtley argued that “[i]t is clearly defined by the Constitution that the press and the police are not the same, and everything that blurs that distinction undermines the Bill of Rights. . . . When the press start being perceived as an arm of the government, then the public will turn on the press[.]”

graffiti artist.<sup>1072</sup> Although the arrest was praised by some observers, William Dixon, an Albuquerque lawyer who represented the *Albuquerque Journal*, said, “It really is a threat to the constitutional role of the press . . . and the press’s ability to report important crime news to the community.”<sup>1073</sup> KOB-TV news director Bob Richardson added in an interview with the *Journal*, “It jeopardizes their ability to do their job[.]”<sup>1074</sup>

Similarly, in September 1998, New York City Police Officer Joseph Locurto held a news conference in his lawyer’s office to apologize for appearing in blackface during a parade and to plead to continue serving as a police officer.<sup>1075</sup> However, Locurto did not realize that among the reporters was a police sergeant posing as a journalist as part of his investigation into Locurto. The sergeant was taking notes, which led to a report filed with the Internal Affairs Bureau. Locurto was summarily fired, leading to a lawsuit for wrongful termination, which ultimately ended with the U.S. Court of Appeals for the Second Circuit ruling against Locurto.<sup>1076</sup> Upon learning that the sergeant had posed as a journalist, New York Civil Liberties Union (NYCLU) director Norman Siegel, who represented Locurto, denounced the actions. “If citizens are now being told that cops will surreptitiously attend press conferences and compile files on them,” he said, “that will

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<sup>1072</sup> Mike Gallagher, “Media See Dangers in Police Posing as Reporters,” *Albuquerque Journal*, Aug. 30, 1992. See also “Media Criticize Graffiti Sting.” Another example of the police using impersonation to target suspected graffiti artists occurred in 1994. According to the *Long Beach Press-Telegram*, “[i]n a two-month operation, San Jose police went undercover as filmmakers and approached ‘tagging’ suspects, convincing them to show off their work for what they thought was a television documentary[.]”

<sup>1073</sup> Gallagher, “Media See Dangers in Police Posing as Reporters.”

<sup>1074</sup> Ibid.

<sup>1075</sup> Michael Cooper, “A Police Sergeant Is Accused Of Impersonating A Reporter,” *New York Times*, Sept. 30, 1998.

<sup>1076</sup> *Locurto v. Giuliani*, 447 F.3d 159 (2nd Cir. 2006).

chill First Amendment activity.”<sup>1077</sup> Siegel added that only specific journalists had been invited to the news conference, not “officers of the New York City Police Department posing as members of the press.”<sup>1078</sup>

Taken together, the above examples demonstrated that police impersonation of the press also implicates the public, including by decreasing public trust and confidence in the news media. Furthermore, if members of the public do not know whether they are talking to the press or law enforcement, they will be less willing to talk to someone identifying as a reporter. Thus, the limiting of the press’ source relationships, combined with undermining the press’ credibility, demonstrate that police impersonation of the press limits journalists’ and news organizations’ ability to gather news and disseminate it to the public, resulting in the public being less informed and less able to hold government accountable. Significantly, an instance from 1986 demonstrates that each of these effects had actually occurred and would likely continue to do so in the future. On March 16, 1986, a woman in Anaheim, California told *The Los Angeles Times* that she had been arrested by a police officer posing as a cameraman for KNBC-TV.<sup>1079</sup> She explained that the impersonation “upset” her and made her less willing to talk to news outlets. Additionally, the article contended that this undermining of the press’ credibility and ability to talk to sources “hurts the press . . . and other institutions in a democracy that depend on an informed public and watchdog press to keep the system functioning effectively.”<sup>1080</sup>

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<sup>1077</sup> Cooper, “A Police Sergeant Is Accused Of Impersonating A Reporter.”

<sup>1078</sup> Ibid.

<sup>1079</sup> “When Police Pose as the Press,” *Los Angeles Times*, March 16, 1986.

<sup>1080</sup> Ibid.

Another effect further illuminated and proven by the examples in the 1980s-1990s was the straining of the press-police relationship, therefore carrying implications for both parties and the public. First, on August 21, 1987, *The Indianapolis Star* reported that “hostage negotiators posed as reporters” in order to “enter the house of an Indianapolis woman who turned away health inspectors and allegedly threatened police with a rifle.<sup>1081</sup> The newspaper acknowledged that the police were “well-intentioned” in posing a reporters and that “[I]etting the woman talk to a real reporter might have slowed the process.” However, the *Star* contended that this alternative likely “would have brought the same solution legitimately and without breaching the faith of . . . the press.” The article continued,

In a society that has freedom of the press at its core, police are not expected to impersonate the press under any circumstances. Impersonating a journalist is the fictional stuff of films or the real stuff of deadly police states. . . . In [the officers’] haste to solve a problem, however, they did a disservice to both [institutions]. . . . [I]t will not happen again if Indianapolis police seek the continued respect of the press.<sup>1082</sup>

Thus, *The Indianapolis Star*’s commentary went so far as to argue that the police had negatively affected the members of the press’ respect for law enforcement, straining the relationship, especially if the practice happened again.

On May 2, 1989, the *Tampa Bay Times*, in reporting on impersonation by police at a white supremacy rally, provided another way in which the press-police relationship could be strained.<sup>1083</sup> The newspaper cited Pete Weitzel, the chairman of the Freedom of Information committee for the Florida Society of Newspaper Editors, who told the paper

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<sup>1081</sup> “Keeping The Faith,” *Indianapolis Star*, Aug. 21, 1987.

<sup>1082</sup> Ibid.

<sup>1083</sup> Murphy, “Police posing as reporters bother media.”

that “journalists who encounter the situation are faced with limited options.” He continued, “If you publicize it, it may embarrass the police, but people out there still don’t know whether they are talking to a reporter or a police officer trying to make a case against them.”<sup>1084</sup> Here, Weitzel asserted that police impersonation of the press can put journalists and news organizations in a difficult position in terms of how to cover such police actions, resulting in the relationship potentially becoming more contentious.

The straining of the press-police relationship was further evidenced in that law enforcement officials sometimes called for or changed department or agency policies, and/or issued apologies, in an attempt to mitigate potential strain placed on the relationship by impersonation of the news media. In the Morristown, New Jersey case, Attorney General Kimmelman urged county prosecutors to avoid having law enforcement officers pose as journalists, contending that there were alternatives that “were equally effective and less intrusive on constitutionally protected press functions.”<sup>1085</sup> In 1999, after an undercover police officer used a fake AP credential to surveil a protest over a Vietnamese store’s display in California, Westminster Police Chief James Cook “issued an apology to the AP and chastised the officer for the act after confirming that the photographer was one of his officers.” Cook also told the AP that he was reviewing policies of the Westminster Police Department to ensure they clearly prohibit officers from impersonating journalists.<sup>1086</sup> Regardless of whether changes were actually made that limited or ended police impersonation of the press, these moves toward change and

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<sup>1084</sup> Ibid.

<sup>1085</sup> “Official Criticizes Posing as Reporter,” *New York Times*, May 18, 1984.

<sup>1086</sup> “Orange County police officer posed as AP photographer to observe demonstration,” *The News Media & The Law* (Spring 1999).

issuing apologies show that police officials recognized the potential negative implications of the practices, including that it could strain their relationship with the press.

Thus, like in the 1960s-1970s, the above examples suggested and demonstrated that police impersonation of the press can blur the lines between the two parties and also make their relationship more contentious as press groups expressed frustration with the practice. This sometimes led law enforcement to apologize or move toward instituting changes in response. Significantly, this suggests that police impersonation of the press negatively affects not only the news media, but also law enforcement and the public.

Finally, examples from the 1980s-1990s further explained and demonstrated why journalists face a greater threat of physical danger as a result of police impersonation of the press. On December 17, 1995, the *Advocate* in Baton Rouge, Louisiana reported that police impersonated a television news crew in order to end a standoff with a man who refused to leave his apartment after being evicted.<sup>1087</sup> The *Advocate* contended that despite being able to end the standoff, the police's actions were deeply problematic because they "sen[t] a signal to any number of ruthless or distraught people with whom reporters may have contact. If dangerous people suspect reporters are merely role-playing cops, reporters' lives are endangered."<sup>1088</sup>

Two years later, in May 1997, a similar situation arose when a Las Vegas television station gave police officers permission to pose as its reporters so that they

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<sup>1087</sup> Milford Fryer, "A risky police tactic," *Advocate* (Baton Rouge, LA), Dec. 17, 1995.

<sup>1088</sup> Ibid. Fryer added, "Unlike cops, journalists aren't armed, they don't arrest . . . people, and they aren't paid or prepared to draw gunfire. All journalists are diminished when fake reporters plant seeds of doubt."

could enter an apartment during a hostage case.<sup>1089</sup> Travis Linn, a broadcast journalism professor at the University of Nevada, Reno, said, “If journalists allow police to identify themselves as [reporters], that puts journalists in danger. The next time, a suspect may have some reason to believe a journalist is actually a police officer or someone else.”<sup>1090</sup>

Each of these examples demonstrate that on the surface, impersonation of the press was used for an important purpose: to end a standoff or hostage case safely. Other cases have shown law enforcement using the practice for investigative purposes, also helping to combat crime and ensure public safety. However, looking deeper, the practice also leads to greater danger, particularly for journalists. If an individual believes a reporter is actually a police officer, they may react with violence, posing physical danger to the journalist and those around them. And due to the often-secretive nature of police impersonation of the press, there is often little the press can do to prevent such violence. As examples in the 1960s-1970s demonstrated and examples in the 2000s-2010s will further demonstrate, such violence has, in fact, occurred.

The 1980s-1990s, in addition to providing further commentary on and evidence of the effects of police impersonation of the press, also provided examples detailing legal and ethical considerations previously raised in the 1960s-1970s. These considerations included discussions of policies, rules, and guidelines regarding the practice,<sup>1091</sup>

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<sup>1089</sup> Natalie Patton, “Television station under fire for role in Henderson standoff,” *Las Vegas Review-Journal*, May 16, 1997; “Stations O.K. reporter impersonation, helicopter use in police,” *Reporters Committee for Freedom of the Press*, June 2, 1997.

<sup>1090</sup> Patton, “Television station under fire for role in Henderson standoff.”

<sup>1091</sup> See notes 1100-1102 above. See also Bill Bryan and Kim Bell, “Not Interested In Protesters, Authorities In Area Say,” *St. Louis Post-Dispatch*, Feb. 13, 1991; Gallagher, “Media See Dangers in Police Posing as Reporters”; “TVA investigator impersonates journalist,” *Reporters Committee for Freedom of the Press*, July 26, 1994.

arguments that there was no law against the practice,<sup>1092</sup> and claims that the press would not or could not impersonate the police.<sup>1093</sup>

However, the era also saw new ways in which legal and ethical considerations were raised by observers, including discussions of different laws around the legality of the practice<sup>1094</sup> and updates on legislation targeting police impersonation of the press.<sup>1095</sup> Additionally, in some cases, police officials argued that law enforcement should have a legal right to impersonate the press. For example, after the *Tampa Bay Times* revealed in 1989 that police had impersonated members of the news media at a KKK rally, police officials and officers said that they would continue to “use any legal means to gather information about white supremacists.”<sup>1096</sup>

Conversely, journalists and press advocates debated whether news organizations or members of the press should aid or allow the police to impersonate reporters or news organizations.<sup>1097</sup> This was perhaps best evident in April 1995 when WAVY-TV in Virginia Beach willingly provided law enforcement a camera in order to pose as reporters

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<sup>1092</sup> See Friendly, “Impersonation of Newsmen Protested”; “New Jersey Journal”; “Official Criticizes Posing as Reporter”; Clance, “Police pledge no more use of press passes”; “Keeping The Faith”; Murphy, “Police posing as reporters bother media.”

<sup>1093</sup> Gallagher, “Media See Dangers”; “TV stations upset after police impersonate media to nab man”; “Cops impersonate media to capture armed man”; “When Police Pose as the Press”; O’Neill, “Officer’s Disguise Irks Media”; “Police Shouldn’t Pose As Press”; “Keeping The Faith.”

<sup>1094</sup> “Media Criticize Graffiti Sting”; Cooper, “A Police Sergeant Is Accused Of Impersonating A Reporter.”

<sup>1095</sup> Friendly, “Crossing the Border That Divides Police And the Press”; “Posing as the Press.”

<sup>1096</sup> Murphy, “Police posing as reporters bother media.” Hernando County Sheriff Tomas A. Mylander was quoted as saying, “[W]e are dealing with very dangerous, very radical right-wing groups here. We’re going to do what’s necessary to find out who these people are and what they’re doing and where they’re going.” He added that there was no law against the practice.

<sup>1097</sup> See TV stations upset after police impersonate media to nab man”; “Cops impersonate media to capture armed man”; “Stations O.K. reporter impersonation, helicopter use in police”; Patton, “Television station under fire for role in Henderson standoff.”

in an attempt to “arrest a youth who had phoned in a bomb threat.”<sup>1098</sup> WAVY news director Gary Stokes said that the station handed over their camera “in the interest of public safety and the safety of our crews.” However, the news organization also conceded some legal and ethical concerns with their decision, including that “as journalists, you try not to become part of a story.”<sup>1099</sup>

Taken together, the examples from the 1980s-1990s provided three implications. First, the era saw a significant number of instances of police impersonation of the press, each of which included ways the impersonation took place — fake credentials, acting like reporters, and identification — and the purposes behind the impersonation — investigations and ending standoff/hostage situations — that can be traced back to the late-19th and early-20th centuries. Second, the examples provided significant commentary on the potential effects caused by the practice. In some instances, negative effects of police impersonation of the press actually occurred, including the undermining of the press’ credibility, source relationships, and ability to gather news, as well as threats to physical safety and straining the press-police relationship. Thus, combined with the examples from the previous two decades, the instances of police impersonation of the press from the 1980s-1990s provide evidence of the practice affecting the press, police, their relationship, and the public. Finally, the examples provided more instances of legal and ethical considerations raised in the 1960s-1970s, as well as new implications, such as whether the press should aid in police impersonation.

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<sup>1098</sup> Barry Flynn, “Police Arrest Teen In Threat,” *Daily Press* (Newport News, VA), April 28, 1995.

<sup>1099</sup> *Ibid.*

#### **h. Era #7: 2000s-2010s**

Following a 40-year period of police impersonation of the press being a more common practice in the United States, the 2000s-2010s saw a decrease in coverage of the practice. However, the era still saw the continuation of trends from different points in the history of the police impersonation of the press, including related to how the impersonation was done, as well as the purposes of the practice. The 2000s-2010s also saw continued concerns over the negative effects and legal/ethical considerations of the practice. In particular, four examples and two case studies further demonstrate the gravity of police impersonation of the press, providing further evidence that the negative concerns raised by observers were not simply speculation, but had actually occurred and would likely continue in the future if not adequately addressed.

The first example arose in June 2000 when several media outlets reported that police in Newark, New Jersey had seized a video camera and credential from a news crew in order to end a hostage situation.<sup>1100</sup> A man had reportedly held his nine-year old son hostage after killing his wife and mother-in-law, and requested an interview with a reporter. Despite the impersonation being used to end the hostage situation, the press detailed several serious potential effects of the practice, including that it would undermine the public's trust in the press.<sup>1101</sup> A June 23, 2000 editorial piece by the *Houston Chronicle* contended that impersonation of the press would “make both

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<sup>1100</sup> “Police impersonate reporters in ploy to end hostage crisis,” *The News Media & The Law* (Summer 2000): 12; “Newark Man Is Charged With Killing Wife and Mother-in-Law and Holding Son, 9, Hostage,” *New York Times*, June 14, 2000; Alan Sepinwall, “Not a TV cameraman, just playing one,” *Star-Ledger* (Newark, NJ), June 14, 2000; “Deception makes officers, reporters less believable,” *Houston Chronicle*, June 23, 2000.

<sup>1101</sup> *Ibid.*

journalists and officers a little less believable,”<sup>1102</sup> therefore arguing that law enforcement can also be negatively affected by the practice. Thus, police impersonation of the press can implicate law enforcement not only by straining the press-police relationship, but also by decreasing public trust in police departments, officials, and officers. The *Chronicle* also argued that the Newark police had “indulg[ed] in actions that can have serious negative effect on reporters’ ability to keep the public informed” and undermine the press’ newsgathering function.<sup>1103</sup>

However, the effect that raised the most concern from observers was the threat of physical danger to reporters as a result of the practice. Jerome Aumente, a professor at Rutgers University, told *The Star-Ledger* in Newark that impersonation

increase[s] the risks they face daily in covering dangerous news stories. . . . It’s tough enough (for a reporter) to cover a bad situation without having a bull’s-eye on your back because the criminals believe you’re not really part of the press but part of the law enforcement.<sup>1104</sup>

Ann Cooper, executive director of the Committee to Protect Journalists (CPJ), said in a statement, “Such actions . . . increase the risks they face daily in covering dangerous news stories.” Cooper also pointed out that the practice does so by blurring the lines and undermining the independence of both parties, writing, “Such actions compromise the perceived independence of all journalists[.]”<sup>1105</sup> Additionally, Newark Mayor Sharpe James later apologized for the confiscation,” demonstrating that the practice had the potential of harming the local government and police’s relationship with the press.<sup>1106</sup>

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<sup>1102</sup> “Deception makes officers, reporters less believable.”

<sup>1103</sup> Ibid.

<sup>1104</sup> “Police impersonate reporters in ploy to end hostage crisis.”

<sup>1105</sup> Ibid.

<sup>1106</sup> “Newark Man Is Charged With Killing Wife and Mother-in-Law and Holding Son, 9, Hostage.”

This example is also significant because it included arguments from experts that the actions of the Newark police were legal, but that the press would not or could not do the same. In an interview with *The Star-Ledger*, Rutgers University Law School Professor Sherry Colb said police would be “justified” in taking the camera if it “would permit them to save the people inside[.]” She continued, “For example, the cops have the right to break down a door if that allows them to arrest somebody, in a case like this, where they have more than probable cause.”<sup>1107</sup> Conversely, the *Houston Chronicle* pointed out that “[j]ournalists put their lives on the line somewhere every day in their efforts to keep the world informed. And they don’t pose as police officers to do it.”<sup>1108</sup>

Another example of police impersonation of the press arose in 2000 during the highly publicized civil trial against Aryan Nation activist Richard Butler, seven undercover federal agents used press credentials and posed as photographers in order to monitor protesters outside the court house.<sup>1109</sup> Capt. Ben Wolfinger, a spokesman for the Kootenai County (Idaho) Sheriff, reportedly granted seven press passes to FBI and Bureau of Alcohol, Tobacco and Firearms agents. *Spokesman-Review* reporter Thomas Clouse ultimately uncovered the plan, including that he saw the alleged photographers requesting money for the photographs, as well as using brand new equipment and fake

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<sup>1107</sup> Sepinwall, “Not a TV cameraman, just playing one.” *See also* “Police impersonate reporters in ploy to end hostage crisis”; Williams reportedly “believed he had no choice in the matter[.] . . . turned over his credentials and camera, and gave the officers a brief tutorial on . . . the equipment.” Network spokesperson Ronnie Weyl added, “Our sense is that they were (acting) under emergent conditions and there was perhaps a reason for their action that was warranted to address the crisis[.]”

<sup>1108</sup> “Deception makes officers, reporters less believable.”

<sup>1109</sup> “Journalists, FBI Have Valid Roles That Are Harmed,” *Sun Sentinel* (Fort Lauderdale, FL), Aug. 10, 1996; “Federal Agents Posed as Photographers to Track Skinheads,” *Associated Press*, Sept. 1, 2000; Thomas Clouse, “Agent Continues Pose Media Credentials Taken From ‘Real Photographer,’” *Idaho Spokesman-Review*, Sept. 1, 2000.

credentials.<sup>1110</sup> Thus, the police in this case used all three ways of impersonating the press uncovered by previous examples.

This example also raised concerns about several negative effects on the press. First, one particular FBI agent wore a media badge identifying him as Mike Gordon, a “real photographer” for the *Spokesman-Review*, who said, “Now all the Aryans will think I am a federal agent,” demonstrating the undermining of the public’s trust. RCFP similarly argued that the impersonation “put [journalists] in danger. . . . The Aryan Nation is not somebody you want to mess with.”<sup>1111</sup> Second, RCFP also asserted that the result of the decrease in public confidence would be that “members of the public [were] less willing to cooperate with the media,” which would jeopardize[] newsgathering,” including related to the trial.<sup>1112</sup> Third, RCFP contended that the impersonation “compromise[d] the independent role of the news media.” Finally, David Handschuh, president of the National Press Photographers Association (NPPA), argued that the impersonation had harmed the press-police relationship and that the press would not use impersonation of the police. “If I was to put on a fake shield and try to gain access to a news event, I would be arrested, convicted and have my real news credentials taken from me,” he said. “They could have easily done their jobs without using fake press credentials. . . . It used to be a standard law enforcement tactic in the 1950s and 60s. It’s a shame we have regressed to prehistoric law enforcement tactics.”<sup>1113</sup>

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<sup>1110</sup> Ibid.

<sup>1111</sup> Ibid.

<sup>1112</sup> “Journalists, FBI Have Valid Roles That Are Harmed.”

<sup>1113</sup> Clouse, “Agent Continues Pose Media Credentials Taken From ‘Real Photographer.’” Similarly, following an accusation that a Washington, D.C. investigator claimed to be a *Washington Times* reporter to obtain information about an official at the Child Support

The most recent instance in which police impersonation of the press was used to end a standoff was in August 2001 after Rodney Collins shot and killed his mother-in-law and son in Nacogdoches County, Texas.<sup>1114</sup> A detective reportedly asked a local reporter for his camera after Collins demanded to meet with a journalist. The reporter willingly complied, raising ethical questions about whether the press should allow such impersonation or not. The officer later apprehended Collins after pretending to be a reporter sent to interview him. Like the previous examples, RCFP's coverage of the incident included discussions of how the practice undermined public trust,<sup>1115</sup> undermined source relationships,<sup>1116</sup> raised concerns over journalists' physical safety,<sup>1117</sup> and blurred the lines of the press-police relationship by undermining the independence of both parties.<sup>1118</sup> The example also included observers calling for the police to change their tactics, suggesting possible straining of the press-police relationship.<sup>1119</sup>

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Enforcement Division. *Washington Times* editor in chief Wesley Purden said, "I'm absolutely appalled and very unhappy about it. . . . We have very strict rules that our reporters cannot assume other identities, and I think it's outrageous."

<sup>1114</sup> Heather Palmer, "Police officer poses as photographer to nab shooting suspect during stand-off," *News Media & The Law* (Fall 2001): 17.

<sup>1115</sup> Ibid. Poynter Institute faculty member Bob Steele argued that journalists' credibility "could be eroded."

<sup>1116</sup> Ibid. Steele also warned "practice of impersonating journalists raises suspicions, particularly among suspects who agree to interviews."

<sup>1117</sup> Ibid. CPJ executive director Ann Cooper contended that impersonation "increase[s] the risks [reporters] face daily in covering dangerous news stories." Steele added that it "can endanger journalists in other situations where there is tension. . . . Someone may believe that a journalist is not really a journalist, thinking instead that is a police officer impersonating a journalist and harm the journalist."

<sup>1118</sup> Ibid. Steele contended that "journalists must operate independently and should not be seen as an arm of law enforcement. . . . [Impersonation] compromise[s] the perceived independence of all journalists."

<sup>1119</sup> Ibid. CPJ wrote in a statement "urge[d] law enforcement agencies to consider carefully that these actions might very well serve to target journalists" and called for "alternative tactics [t] be used that don't place journalists at risk."

What sets this example apart is that a police official indicated that he felt the impersonation actually improved the press-police relationship because both the reporter and police served the community and had gained confidence in the other. Lieutenant Greg Johnson told reporters following the incident, “I think the reporter did a hell of a job. . . . He put his community before anything else. I consider Andrew to be a hero. He really helped us out. This standoff could have ended with more violence but because of him it didn’t have too.”<sup>1120</sup>

However, other observers pushed against this claim and raised concerns with the use of impersonation in the Collins standoff case, including the undermining of reporters’ source relationships,<sup>1121</sup> newsgathering,<sup>1122</sup> and independence.<sup>1123</sup> Observers also raised concerns about the physical safety of journalists, including that the “perception or even

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<sup>1120</sup> Ibid. Alicia Upano, “Will a history of government using journalists repeat itself under the Department of Homeland Security?,” *The News Media & The Law* (Winter 2003): 10, <https://www.rcfp.org/browse-media-law-resources/news-media-law/news-media-and-law-winter-2003/will-history-government-usi>. This line of thinking also stemmed from an allegation that a British photographer actually member of CIA. In discussing journalists’ relationships with law enforcement, former *Washington Post* reporter Scott Armstrong was quoted as saying that there “are nuances to be considered.” He continued, “I think it’s an established principle that journalists talk and exchange information with law enforcement people,” noting that these “very cooperative arrangements” are important sources of information and are a key part of the press-police relationship. Additionally, William Thomas Jr., the former executive editor of the *Oakland Press* in Michigan, defended allowing police to pose as journalists. He was quoted as saying, “We could have launched into a debate over a cop impersonating a reporter. We could have cried foul from afar over the ‘horrifying’ subterfuge being perpetrated on the public. . . . We could have watched as [the elderly widow] was carried away in a body bag. . . . [O]nce theory hits the street, reality sets in. There’s no time to contemplate the fine points.”

<sup>1121</sup> Ibid. Thomas also said, “It is important that even the most sleazy sources in the most desperate situations can trust that journalists are on no other side other than the truth.”

<sup>1122</sup> Ibid. RCFP argued that “[i]n a world in which so much more is uncertain than before September 11, it is vital that journalists be clear about who they are and what they do.”

<sup>1123</sup> Ibid. “Deni Elliot and Paul Martin Lester of The Practical Ethics Center at the University of Montana [previously] wrote a column about the ethical implications that arise when assisting the government conflicts with the ability of journalists to do their job or is likely to harm the profession as a whole.” CPJ’s Washington representative, Frank Smyth, was quoted as saying that journalists must “maintain a strict firewall” between themselves and any government activities.

the rumor that a local journalist works with the CIA would obviously put him or her at considerable risk.”<sup>1124</sup>

The final example found from the 2000s-2010s, which provided evidence that negative effects had actually occurred, was an allegation that a “sheriff’s deputy in North Carolina posed as a *Newsweek* reporter to coax an anonymous source out of a local newspaper journalist.”<sup>1125</sup> The deputy reportedly “got (*Jacksonville*) *Daily News* reporter Lindell Kay to hand over the phone number of a [confidential] source in a high-profile homicide case, leading to criminal charges against an intern in the local district attorney’s office.” Kay explained that the source was okay with her providing his phone number to *Newsweek* because he was used to speaking with national media outlets.<sup>1126</sup> This example therefore represented a final, and important, purpose of police impersonation of the press: obtaining information law enforcement would otherwise be unable to get or receive.

Significantly, the result was that the reporter’s credibility, source relationship, and ability to gather news were all affected in a tangible way. The intern, Robert Sharpe, after being charged with embezzlement and larceny, had “harsh words for *The Daily News* in a statement to WNCT, the local CBS affiliate.”<sup>1127</sup> He said, “I’m supposed to be a confidential source. They screwed me over and offered no help or assistance afterwards. I put my trust in this organization.” Although Sharpe later called the news organization to apologize for the remarks after learning about the impersonation, the case demonstrated

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<sup>1124</sup> Ibid.

<sup>1125</sup> “Deputy poses as *Newsweek* reporter to ID anonymous source,” *Reporters Committee For Freedom of the Press*, Aug. 18, 2008.

<sup>1126</sup> Ibid.

<sup>1127</sup> Ibid.

that his trust had been affected in that he felt he could no longer trust the news organization, or others, to protect his identity.

Also significant, this example provided another tangible way in which the press-police relationship was strained. *Daily News* executive editor Elliot Potter told RCFP that he had called the sheriff's office himself to "express [his] disappointment."<sup>1128</sup> He also said that Kay "[felt] really abused and disrespected," especially because she had "regularly [dealt] with the sheriff's department."<sup>1129</sup> Thus, this example provides further evidence that the effects of police impersonation of the press have occurred and will likely continue to do so.

Ultimately, the 2000s-2010s completed the 131-year history of police impersonation of the press. Like in previous eras, the 2000s-2010s provided a wide array of reasons and ways in which police impersonated the press. However, this era also saw claims by observers that impersonation actually helped the press-police relationship. This demonstrates the problem that on the surface, the practice seems like a good thing because it can help with conducting investigations, ending a standoff or hostage situation, obtaining evidence, and more. But below the surface are significant potential and realized effects. In particular, the 2000s-2010s saw further evidence that the undermining of reporters' credibility, source relationships, newsgathering ability, and independence had all happened and could plausibly happen again, supporting the findings of past eras. Observers during this time period also pointed out that law enforcement and the public could also be negatively affected by police impersonation of the press due to decreased

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<sup>1128</sup> Ibid.

<sup>1129</sup> Ibid.

trust and confidence in both the press and police, as well as the blurring and straining of their relationship. Thus, examples from the 2000s-2010s provided evidence that police impersonation of the press can not only harm the news media, but also law enforcement, the press-police relationship, and the public. As the following case studies from this time period further demonstrate, the effects of police impersonation of the press are not merely speculation, but instead tangible consequences of the practice.

**i. Case Study #1: Physical Danger: Joe Davidson & Daniel Pearl**

Perhaps the most significant effect of police impersonation of the press is the physical danger it can pose for journalists, even if they have nothing to do with the practice. This effect came to fruition in two notable instances, one of which likely cost a reporter his life. These case studies therefore further demonstrate that the effects of impersonation, especially regarding the safety of journalists, are not simply speculation, but an actual threat faced by the press.

First, Joe Davidson, a former columnist for *The Washington Post* and *The Wall Street Journal*, recounted his experience of why police impersonation of the press can be dangerous.<sup>1130</sup> While working on a 1986 article on life under apartheid in South Africa, Davidson was “confronted [by] three young men” from an informal gang, who asked if Davidson was with the CIA. Only after Davidson spoke extensively with the three men were they convinced he was not with the CIA, but was, in fact, a journalist. Davidson wrote that the experience “demonstrated the grave risks that can grow from situations that allow people to confuse . . . law enforcement officials with journalists. Being mistaken

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<sup>1130</sup> Joe Davidson, “FBI impersonation of journalists can be hazardous to their health,” *Washington Post*, Sept. 21, 2016.

for an officer, while not having the same resources for protection — a gun and backup assistance, for example — can be hazardous to a reporter’s life.”<sup>1131</sup>

The second example is Daniel Pearl, a correspondent for the *Wall Street Journal* who was kidnapped and killed by extremists in Pakistan in 2002.<sup>1132</sup> Pearl had been seeking interviews as part of his research linking Pakistani extremists with Richard C. Reid, the man arrested after taking a shoe bomb aboard a flight in 2001. However, Pearl was unaware that the militants he wished to interview thought he worked undercover for the CIA. Phillip Taylor, a McCormick Journalism Fellow at the RCFP, suggested this perception may have been because of “the idea that an agent or law enforcement officer might pose as a reporter.” He added, “For media rights groups, accusations of CIA impersonations strike deep, causing worry that the U.S. government compromises the independence of reporters in gathering intelligence.”<sup>1133</sup> Although not confirmed, the blurring of the lines between the press and law enforcement likely cost Pearl his life. To top it off, militants gave the video of the execution to a federal agent who they thought was a reporter, further demonstrating the gravity of the practice.<sup>1134</sup>

#### **j. Case Study #2: FBI Impersonates AP Reporter and Documentary Filmmakers**

The second case study focuses on two instances in the 2000s-2010s of the FBI impersonating a reporter and documentary filmmakers, further demonstrating several

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<sup>1131</sup> Ibid.

<sup>1132</sup> Phillip Taylor, “Abduction, death of Pearl sparks concern about CIA agents impersonating journalists,” *The News Media & the Law* (2002).

<sup>1133</sup> Ibid. The article cited CPJ spokesperson Abi Wright, who said “It casts all journalists in a suspicious light. . . . When stories emerge of this actually happening, it fuels the suspicions and takes away from the perception that journalists are civilian observers.”

<sup>1134</sup> Ibid.

important implications of police impersonation of the press. The first instance arose in 2007 when Timberline High School near Seattle, Washington received several anonymous bomb threats, prompting daily evacuations of the school.<sup>1135</sup> Local law enforcement, unable to identify the source of the threats, called the cybercrime experts at the FBI's Seattle Division to investigate (Timberline investigation). An FBI special agent summarily contacted the anonymous social media account tied to the threats and identified himself as an AP "Staff Publisher," requesting the social media user's input into a fake AP news story suggesting the user had outsmarted the authorities. Unbeknownst to the user, the fake article contained "Computer and Internet Protocol Address Verifier" (CIPAV) malware, which, once opened, allowed the FBI to track the suspect's location.<sup>1136</sup> Within a few hours, the FBI made an arrest. In October 2014, an American Civil Liberties Union (ACLU) technologist discovered the FBI's impersonation of an AP reporter in documents released earlier in a Freedom of Information Act (FOIA) request by the Electronic Frontier Foundation (EFF).<sup>1137</sup>

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<sup>1135</sup> Rep. Comm. for Freedom of the Press v. Fed. Bureau of Investigation, 877 F.3d 399 (D.C. Cir. 2017). See also Gene Johnson, "FBI says it faked AP story to catch bomb suspect," *Associated Press*, Oct. 28, 2014, <https://perma.cc/ZH7W-XBFS>; Ellen Nakashima and Paul Farhi, "FBI lured suspect with fake Web page, but may have leveraged media credibility," *Washington Post*, Oct. 28, 2014, <https://perma.cc/A5NX-UXE2>; Scott Memmel, "Canadian and U.S. News Organizations Raise Complaints over Law Enforcement Officers Impersonating Journalists," *Silha Bulletin* 21, no. 2 (Winter/Spring 2016): 16-18.

<sup>1136</sup> Complaint, Rep. Comm. for Freedom of the Press v. Fed. Bureau of Investigation, No. 1:15-cv-01392 (D.D.C. filed Aug. 27, 2015), <https://www.rcfp.org/sites/default/files/docs/RCFP-APvFBI-DOJ.pdf>. Letter from Reporters Committee for Freedom of the Press, to Attorney General Eric Holder (Nov. 6, 2014), <https://perma.cc/NEB5-F6LK>. The FBI had sought review from the Office of General Counsel and obtained a Title III warrant from a magistrate judge.

<sup>1137</sup> Filipa Ioannou, "FBI Apprehended Suspect by Pretending to Be the AP," *Slate*, Nov. 7, 2014, <https://slate.com/news-and-politics/2014/11/fbi-impersonates-a-journalist-james-comey-defends-against-ap-new-york-times-criticism.html>.

Meanwhile, in 2014, another instance of the FBI impersonating members of the media came to light. The impersonation arose when supporters of Nevada cattle rancher Cliven Bundy clashed with police after the U.S. Bureau of Land Management sought to enforce court orders requiring Bundy to pay withheld grazing fees for his use of federally-owned land.<sup>1138</sup> Gregory Burleson, one of Bundy's supporters, was sentenced to 68 years in prison for his role in the armed confrontation. During Burleson's trial, FBI Special Agent Charles Johnson testified that FBI agents had posed as documentary filmmakers to lure suspects into speaking with them.<sup>1139</sup> The testimony matched court records showing that FBI agents had impersonated documentary filmmakers, with the DOJ later acknowledging not only that the FBI did so, but also that it can create a chilling effect on sources.<sup>1140</sup> Thus, the FBI's impersonation of the filmmakers, as well as an AP reporter, represent among the most recent instances of police impersonation of the press, bringing attention once again to the serious effects caused by impersonation of the press.

Such effects were perhaps best articulated regarding the Timberline Investigation in a November 2014 letter from RCFP to then-Attorney General Eric Holder and Comey<sup>1141</sup> and an October 2014 letter from AP General Counsel Karen Kaiser to

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<sup>1138</sup> Complaint, Rep. Comm. for Freedom of the Press v. Fed. Bureau of Investigation, No. 1:17-cv-01701 (filed Aug. 21, 2017).

<sup>1139</sup> Ibid. See also Jenny Wilson, "Bundy defendants interviewed in undercover FBI operation," *Las Vegas Review-Journal*, March 22, 2017, <https://perma.cc/WZE8-NK4P>; Andrew Blake, "FBI posed as documentary filmmakers to conduct interviews with Bundy Ranch supporters," *Washington Times*, March 24, 2017, <https://perma.cc/3TK6-8HYY>.

<sup>1140</sup> Trevor Aaronson, "Even the FBI Agrees: When Undercover Agents Pose as Journalists, It Hurts Real Journalists' Work," *Intercept*, Aug. 7, 2018, <https://theintercept.com/2018/08/07/fbi-undercover-journalist-documentary-bundy-longbow-chill/>.

<sup>1141</sup> Letter from Reporters Committee for Freedom of the Press, to Attorney Gen. Eric Holder.

Holder.<sup>1142</sup> RCFP argued in their letter that the FBI’s actions, and police impersonation of the press more broadly, echoed several of the concerns raised by and/or demonstrated by the examples above. RCFP argued that the practice “endangers the media’s credibility and creates the appearance that it is not independent of the government. It undermines media organizations’ ability to independently report on law enforcement.”<sup>1143</sup> Kaiser wrote that although the AP was “sensitive to the demands of law enforcement[,] . . . it is improper and inconsistent with a free press for government . . . to masquerade as . . . [a] news organization.” She further argued that impersonation “compromises [journalists’] ability to gather the news safely and effectively . . . where [their] credibility rests on the basis of [the press] operating freely and independently,” adding that the FBI’s actions “undermined the most fundamental component of a free press – its independence.”<sup>1144</sup>

Regarding the FBI’s creation of a fake documentary company, the potential effects of the impersonation were perhaps best laid out by signed affidavits from two documentary filmmakers. In one affidavit, filmmaker David Byars contended that his work had been affected by the FBI posing as members of “Longbox Productions,” contending that such actions are “troubling and dangerous.”<sup>1145</sup> He continued, “By pretending to be a documentary film crew and creating a fake documentary film

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<sup>1142</sup> Letter from Karen Kaiser, General Counsel Associated Press, to Att’y Gen. Eric Holder (Oct. 30, 2014), [https://corpcommapp.files.wordpress.com/2014/10/letter\\_103014.pdf](https://corpcommapp.files.wordpress.com/2014/10/letter_103014.pdf).

<sup>1143</sup> Letter from Reporters Committee for Freedom of the Press, to Attorney Gen. Eric Holder.

<sup>1144</sup> Letter from Karen Kaiser, General Counsel Associated Press, to Attorney Gen. Eric Holder. Kaiser explained that “[a]ny attempt by the government . . . to falsely label its own messages as coming from the news media serves to undermine the vital distinction between the government and the press in society.”

<sup>1145</sup> Declaration of David G. Byars, Reporters Committee for Freedom of the Press v. Federal Bureau of Investigation, No. 1:17-cv-01701-RC (D.D.C. filed Sept. 14, 2018), [https://www.rcfp.org/wp-content/uploads/imported/fbidocfilm\\_2018-09-14\\_21\\_5\\_byars\\_declaration.pdf](https://www.rcfp.org/wp-content/uploads/imported/fbidocfilm_2018-09-14_21_5_byars_declaration.pdf).

production company in order to convince targets of an investigation to give on-camera interviews, the FBI erodes trust in real documentary filmmakers, like me, and creates a more difficult environment for us to work in.” Byars added that he likely would not have had the cooperation of his sources for an award-winning documentary had the FBI’s actions been revealed earlier. He further argued that some of his sources may have even confronted him with physical violence had they thought he was a federal agent.<sup>1146</sup>

In a separate affidavit, filmmaker Abby Ellis similarly argued that the FBI’s actions put her ability to have “[u]nburdened access to interview subjects is necessary to make powerful, investigative documentary films” at risk.<sup>1147</sup> She continued, “In order to truly get at the heart of a subject for a documentary film, I seek extensive access to my interview subjects, including by spending time with them off-camera.” However, Ellis contended that during the filming of one of her works, the FBI revelations led several of her sources to be distrustful of the media, requiring her to persuade them that she was not working for the government. In some cases, according to Ellis, some individuals refused to speak to her, thinking she was an undercover FBI agent, demonstrating that the effects of undermining her credibility and ability to talk to sources actually happened, implicating her ability to do her job and inform the public. She added that although she was not harmed, she “firmly believe[d] that the FBI’s impersonation of a documentary

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<sup>1146</sup> Ibid.

<sup>1147</sup> Declaration of Abby Ellis, *Reporters Committee for Freedom of the Press v. Federal Bureau of Investigation*, No. 1:17-cv-01701-RC (D.D.C. filed Sept. 14, 2018), [https://www.rcfp.org/wp-content/uploads/imported/fbidocfilm\\_2018-09-14\\_21\\_5\\_byars\\_declaration.pdf](https://www.rcfp.org/wp-content/uploads/imported/fbidocfilm_2018-09-14_21_5_byars_declaration.pdf). See also Jennifer Nelson, “FBI records shed light on the agency’s impersonation of journalists and documentary filmmakers,” *Reporters Committee For Freedom of the Press*, Oct. 5, 2018, <https://www.rcfp.org/browse-media-law-resources/news/fbi-records-records-shed-light-agencys-impersonation-journalists-and>.

film crew could have put [her] in danger and that the FBI's use of that tactic continues to jeopardize my safety, and the safety of other, real investigative filmmakers."<sup>1148</sup>

Taken together, the reactions by the press to the FBI's uses of impersonation raised arguments and concerns that can be traced back several decades, demonstrating that because police impersonation of the press has continued, so too have its negative effects. Significantly, the two case studies from the 2000s-2010s provided further evidence that such effects have actually happened, especially implicating the news media, but also law enforcement, the press-police relationship, and the public in recent years.

#### **k. Conclusion**

Beginning with an example from 1889 and continuing through two case studies in the 21st century, this content analysis took the important step of conducting a more thorough and complete history of police impersonation of the press than had ever been done, finding 91 distinct examples spanning the 131-year period. Although not exhaustive, national, regional, and local examples from across different eras were used to construct a timeline of the practice. In so doing, this study raised several important implications, including first that police impersonation of the press is not as rare a practice as some observers have argued.<sup>1149</sup> Instead, it has been used by federal, state, and local police around the United States for 131 years.

Second, in creating this timeline, this study presented how several aspects of the practice changed or remained the same over time, including how impersonation was accomplished, the purposes and effects of the practice, and legal and ethical

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<sup>1148</sup> Ibid.

<sup>1149</sup> See e.g. Shafer, "Stop or I'll write! Why cops shouldn't fake being reporters."

considerations. Regarding how the practice was accomplished by law enforcement, the ways in which officials and officers did so have remained largely the same since the late-19th and early-20th centuries, with police using fake credentials, acting like reporters, and identifying themselves as journalists. In terms of the purposes of the practice, these were once again established early on and largely remained the same. Although the most common purpose of police impersonation of the press was for investigative or surveillance purposes, police also used the practice to end standoffs and hostage situations or for non-traditional law enforcement purposes. Additionally, some limited circumstances saw the police use impersonation to obtain information from the press to which they would otherwise not have access, such as the name of a confidential source.

Third, the examples provided a number of ways in which legal and ethical implications were raised by police impersonation of the press. These discussions demonstrated not only the complexity of the legal landscape around the practice, but also that the law is far from settled in this area and is closely tied to the negative consequences faced by the press and public, necessitating further research in the legal analysis.

Finally, although the first instances of police impersonation of the press occurred in the late-19th century, it would take over 70 years for press coverage of the practice to fully raise or demonstrate effects of the practice. In the 1930s, press associations began to recognize the problematic nature of the practice and called on law enforcement to provide explanations for why it was used. With the large increase in examples in the 1960s-1990s came significant commentary and evidence of several negative effects of police impersonation of the press, especially on the news media, including undermining the press' credibility, source relationships, newsgathering ability, safety, and independence.

However, police impersonation of the press also raises potential negative effects on law enforcement, the press-police relationship, and the public. In terms of the police, the practice can undermine trust in departments, officials, and officers, including those involved in the impersonation. In terms of the press-police relationship, the above examples demonstrated that police impersonation of the press blurs the lines between the two parties in that one party poses as the other for their own gain, though often without that institution's knowledge and not necessarily in the best interest of the public. This can result in the straining of the press-police relationship as news organizations push back against the practice, leading to different responses by law enforcement. Lastly, each of the negative effects stemming from police impersonation of the press implicate members of the public because they rely on the news media for information and holding the government accountable. The public also relies on the law enforcement and the press-police relation to function in a way that best benefits and serves society, which is undermined by police impersonation of the press.

A key problem is that on the surface, the purposes for law enforcement behind police impersonation of the press, especially related to public safety like conducting investigations, ending standoff or hostage situations, obtaining information, and more are important and beneficial. But it is because the practice seems to be a good thing for helping the police that impersonation is especially problematic because the negative effects can, and have been, cast aside or not discussed at all, including for much of the history of the practice prior to the 1960s. This demonstrates the danger of the blurring of lines between the press and police. When one party uses or impersonates the other for its own gain, whether the other party was a willing actor or not, the potential benefits to that

institution are most readily apparent and easily communicated, while the negative effects are hidden, missed, or ignored, leading to negative effects on the press, police, their relationship, and the public.

Only by ensuring the independence of both parties can this blurring be avoided, ensuring that despite the potential benefits of impersonation, the negative effects are more easily seen and, ideally, avoided completely. Put simply, it is necessary to recognize the purposes of the practice for law enforcement, but also to argue for alternatives that carry fewer negative effects, as well as legal and ethical concerns. The content analysis, therefore, provides the first round of evidence to call for the end of police impersonation of the press, as discussed more in Chapter 6.

## **2. Press Impersonation of Police**

Beginning with a single sentence written by the *Pittsburgh Post-Gazette* in 1877, press impersonation of police has remained a part of the relationship between the news media and law enforcement for 143 years, raising important implications for both parties, their relationship, and the American public. The following sections provide the most extensive history of the practice to date, detailing the different ways in which press impersonation of police occurred, though often for similar purposes, including newsgathering. But in other cases, reporters used the practice to aid the police, blurring the lines between the two parties and bringing their independence into question. Significantly, press impersonation of police also raised several additional negative effects, including 1) journalists being the target of investigations and arrests, sometimes leading to jail time and/or fines, 2) the undermining of public trust and confidence in both the press and police, and 3) the blurring and straining of the press-police relationship.

Ultimately, although press impersonation of police provides a means for the press to conduct undercover reporting, the negative effects of the practice demonstrate its problematic nature and how it undermines the press' and police's ability to properly benefit and serve the public.

**a. Era #1: 1870s-1890s**

On March 30, 1877, under the headline "Brevities," the *Pittsburgh Post-Gazette* published a single sentence stating that a "City Hall clerk and a reporter impersonated police officers, Wednesday evening."<sup>1150</sup> Although no further details were given, this instance of press impersonation of police provides starting point for the 143-year history of the practice.

Nearly 20 years later, in 1896, *The Indianapolis News* covered the sensational murder trial of Alonzo Walling, who was accused of assisting in the murder of Pearl Bryan, a 22-year-old pregnant woman.<sup>1151</sup> *The Indianapolis News* reported on June 8 that following reporter Edward Anthony's testimony, an attorney for Walling accused the journalist of having "impersonated a police officer, and exercised the same influence over Walling as an actual officer, Walling being ignorant of the impersonation."<sup>1152</sup> A judge summarily threw out Anthony's testimony, according to *The Indianapolis News*, therefore "taking away the most damaging evidence against Walling that [had] yet been produced."<sup>1153</sup> Besides demonstrating that reporters posing as law enforcement can be traced back to the 1890s, *The Indianapolis News's* coverage also provided the first

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<sup>1150</sup> "Brevities," *Pittsburgh Post-Gazette*, March 30, 1877.

<sup>1151</sup> "Much Evidence Excluded," *Indianapolis News*, June 8, 1896.

<sup>1152</sup> Ibid.

<sup>1153</sup> Ibid. Nevertheless, in 1897, Walling was convicted and hung for the murder.

instance of legal action stemming from the practice. Although there is no indication that Anthony was charged or arrested for the impersonation, the accusation alone led to the throwing out of his testimony, suggesting that the practice, even in the 19th century, was not taken lightly.

**b. Era #2: 1900s-1910s**

The 1900s-1910s would see coverage of three separate instances of press impersonation of police, including in 1901 when litigation once again brought the practice to the forefront. On June 21, *The San Francisco Call* reported that during the trial of several “charity swindlers,” a defense attorney accused a newspaper reporter of having “impersonated a detective officer.”<sup>1154</sup> However, it turned out that a police official had “asked the reporter to pose as an officer and search the room of [one of the defendants] for evidence,” to which the reporter refused.<sup>1155</sup> Although the accusation ended up being untrue, it demonstrated that although press impersonation of police remained possible during the time period, it was also frowned upon, like in 1896. Significantly, this example also suggests the possibility that a journalist would impersonate a police officer in order to aid law enforcement in some way. This purpose, although rarely documented in the history of press impersonation of police,<sup>1156</sup> presents one way in which the practice can blur the lines between the two parties. Examples below show that it was not uncommon for the police to aid the press in conducting the

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<sup>1154</sup> “Judge Fritz Denounces Methods of Professional Charity Workers in Deciding Conspiracy Charge,” *San Francisco Call*, June 21, 1901.

<sup>1155</sup> Ibid.

<sup>1156</sup> Because of the reaction in the legal setting to press impersonation of police, it is possible that this purpose was more common, but was hidden by the press and/or police.

impersonation of an officer or official, similarly blurring the lines between the parties. Nevertheless, whether the police are willing or unwilling participants in the impersonation, the use of the practice by the media undermines the independence of both parties and complicates the nature of their relationship.

The 1911 trial of Rev. Clarency V. T. Richardson for murder provided the backdrop for another accusation of press impersonation of police in connection to a trial.<sup>1157</sup> In this case, *The Journal and Tribune* in Knoxville, Tennessee reported on October 22 that “Chief Inspector John Dugau [had] declared that when his inspectors went to the pastor’s rooms, they found everything in a state of chaos, the result of a general ransacking which occurred prior to the police visit.” The newspaper reported that although it was “not known who was responsible for this,” it indicated that “it was given out that a newspaper reporter impersonated an officer and gained entrance to the apartment.”<sup>1158</sup> Like with earlier examples, *The Journal and Tribune* article represented an accusation, in this case against an unknown reporter, who may have entered the room for more nefarious purposes such as to steal items or destroy the defendant’s property. But more likely is that the reporter did so for newsgathering purposes as it was not uncommon from yellow journalists to go to crime scenes and act like detectives.<sup>1159</sup> Although not certain, this case could represent such an instance, suggesting the second, and most common, purpose behind press impersonation of police: reporting and

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<sup>1157</sup> “Accused Minister Will Have Able Counsel,” *Journal and Tribune* (Knoxville, TN), Oct. 22, 1911.

<sup>1158</sup> *Ibid.*

<sup>1159</sup> See notes 263-277 above.

newsgathering, which included acquiring information for a story, gaining access to a location, and/or interviewing a source.

A July 11, 1916 article by *The Tulsa Democrat* provides an example of one way in which reporters were able to impersonate the police.<sup>1160</sup> The newspaper reported that “[two reporters were suspected] of using [Chief Ed L.] Lucas’ phone [and] us[ing] the chief’s name” to call “the editor of a certain weekly magazine published in Tulsa[.]” In this case, the reporter(s) allegedly impersonated a member of the police force, in this case the chief, by identifying themselves as such, representing one of five ways in which the press would impersonate law enforcement.<sup>1161</sup>

This example also suggested that police did not condone reporters impersonating members of law enforcement. According to Lucas, the editor was told to “come at once to the chief’s office” where Lucas “[l]ean[ed] across his desk, glasses hazardly balanced on the tip of his nose, [and] said: ‘I took it up with Commissioner Funk this morning and he said to conduct a serious investigation into the matter.’ . . . ‘I think I know [who it was,] but I must investigate further. . . . It’s a serious offense.’”<sup>1162</sup> Thus, Lucas demonstrated that at least some police officials or officers did not condone press impersonation of police.

Significantly, this example also demonstrated an important effect of press impersonation of police: law enforcement targeting journalists who use the practice. In this case and others below, police officials or officers would target journalists who used

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<sup>1160</sup> “Who Said He Was Chief Lucas? A Reporter? Nevah! But Chief Says It Is Very S-E-R-I-O-U-S, Too,” *Tulsa Democrat*, July 11, 1916.

<sup>1161</sup> *Ibid.*

<sup>1162</sup> *Ibid.*

impersonation with investigations and, in some cases, legal action. Beginning with a case in 1928, this targeting of the press for impersonation would escalate to arrests, charges, and, in some cases, court rulings or jury verdicts imposing fines and/or jail time. But even in instances where an arrest was not made, an investigation alone is problematic as it represents a way in which the police target the press, often making the relationship more contentious.

### **c. Era #3: 1920s-1930s**

The 1920s-1930s would mark the 20-year period with the most examples of press impersonation of police, including two sensational examples of reporters impersonating police to gather news. On March 4, 1922, *The New York Age* reported on the “[p]resumptuous, dangerous and dastardly’ action[s]” of “employees of William Randolph Hearst, editor of the *Los Angeles Examiner* and of the *New York American*,” as characterized by Los Angeles County District Attorney Thomas Lee Woolwine.<sup>1163</sup> Woolwine accused two *American* reporters of going to the home of Henry Peavey, a Black man accused of killing motion picture director William Dean Taylor, for whom he worked as a servant. The men allegedly “represent[ed] themselves to be officers from New York” and then “took [Peavey] away in an automobile and attempted to bully and terrorize him by confronting him with a ‘ghost [of Woolwine].’ They [also] held him prisoner for nearly twelve hours in the office of [the *Examiner*].” Peavey testified during the trial that he told the men, “I am not doing any talking to newspaper reporters,” to which one of them replied “Newspaper reporters? We are not newspaper reporters, we

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<sup>1163</sup> “Hearst Men in Los Angeles Attempt to Bulldoze Peavey,” *New York Age*, March 4, 1922.

are officers from New York, and we have authority to come down here and get you and have you go over your statements, and we want you to go down to the Examiner officer and answer one question.”<sup>1164</sup>

Although a sensational example by contemporary standards, this instance provides important insight into press impersonation of police in two ways. First, the example provided another instance of journalists identifying themselves verbally as officers in order to impersonate members of law enforcement. Second, the article represented an instance where reporters used the practice to get a story, in this case a confession by Peavey. Certainly, other more nefarious purposes may also have been possible because, as the headline stated, the “Hearst Men” had “attempt[ed] to Bulldoze Peavey.”<sup>1165</sup> However, the reporters’ actions were not uncommon during this time period,<sup>1166</sup> and were perhaps part of “muscle” journalism.<sup>1167</sup> Thus, it is possible, if not likely, that the actions of the “Hearst Men” were used by other reporters during this time period, though they were not always caught or perhaps did not always admit to such in their reporting.

A similarly sensational example arose nearly a decade later when, on October 30, 1931, *The Brooklyn Daily Eagle* reported on a case of “Overzealous News Sleuthing.”<sup>1168</sup>

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<sup>1164</sup> Ibid.

<sup>1165</sup> Ibid.

<sup>1166</sup> See notes 263-277 above.

<sup>1167</sup> Murray, *The Madhouse on Madison Street*, 205, 210; see note 276 above. Murray wrote that in the 1920s, editor and newsman Frank Carson “invented what came to be known as ‘muscle’ journalism. It meant a reporter might tap wires, burglarize homes, represent himself as a policeman, do whatever was required to get the facts.”<sup>1167</sup> Carson and other reporters were known to have desk drawers full of fake official forms, such as subpoenas and warrants, as well as fake badges, including of detectives, police, sheriffs, and federal agents.

<sup>1168</sup> “Overzealous News Sleuthing Causes Detention of Pair,” *Brooklyn Daily Eagle*, Oct. 30, 1931.

According to the newspaper, “Arthur O’Sullivan, reporter for the Daily News, and Harold McKinley, proprietor of an Oyster Bay hotel” had allegedly visited the home of Amos Dickerson and asked to speak with his son, Conrad. Dickerson told the paper that he complied because the two men had “pos[ed] as representatives of the district attorney’s office and [police officers].” The two men then allegedly “took Conrad off in an automobile and while driving to Flushing questioned and threatened him. In Flushing, according to Dickerson, the party entered a house and continued the questioning there.”<sup>1169</sup> Thus, this example from 1931 demonstrates another instance of journalists acting “overzealous[ly],” but still for the purpose of obtaining information.

Two instances of press impersonation of police in 1927 would provide less-sensational examples of a reporter using the practice for reporting purposes. On January 26, 1927, the *Miami Daily News-Record* and other newspapers reported that a Tulsa, Oklahoma reporter had “sought to obtain ‘inside information’ regarding charges against . . . four men accused of protecting criminals by representing himself as . . . an ‘investigator’ out of the United States marshal’s office at Tulsa.”<sup>1170</sup> The same year, significant media coverage was dedicated to the separation lawsuit between millionaire Edward W. Browning and his bride, “Peaches” Browning.<sup>1171</sup> According to a February 13, 1927 INS report appearing in the Minneapolis *Sunday Tribune*, “John E. Mack, chief counsel for Edward Browning, filed a counter affidavit” in which he declared that the

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<sup>1169</sup> Ibid.

<sup>1170</sup> “Reporter Poses as U.S. Agent to Get Story,” *Miami Daily News-Record* (Miami, OK), Jan. 26, 1927.

<sup>1171</sup> “Peaches’ Counsel Charges ‘Buying’ of Two Witnesses,” *International News Service*, Feb. 13, 1927.

subject matter of Peaches' affidavits was "printed in the New York tabloid" and had been obtained "under duress by newspaper reporters posing as police officers."<sup>1172</sup>

However, two reports by *The New York Times* on September 21 and 27, 1928 mark among the most important moments in the history of press impersonation by police.<sup>1173</sup> The *Times* reported that "Robert Barber, a reporter for The Daily News, was arrested . . . for impersonating a police officer." According to the *Times*, the "complaint against Barber grew out of the investigation of the murder of State Trooper Carl Wilder on Greenwood Lake Road[.]. . . State Troopers asserted that Barber posed as a member of the New York City Homicide Squad and used information thus obtained in a news story." The *Times* further reported that "[a]fter a consultation with a member of the Attorney General's office, [Barber] was remanded in the custody of his attorney . . . [and] was charged with violation of Section 931 of the Penal Code."<sup>1174</sup> Six days later, the *Times* reported that "Justice of the Peace Elijah Pringle . . . fined [Barber] \$50 and then suspended sentence on [the] charge of impersonating an officer."<sup>1175</sup> Thus, Barber, like other reporters before him, was attempting to get additional information for a news story. However, in this case, the police went beyond investigating a reporter. Barber was not only arrested and charged for the impersonation, but was also found guilty, demonstrating not only the perceived severity of the crime, but also the significant consequences faced by a reporter, including in New York where the practice was illegal under state law.<sup>1176</sup>

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<sup>1172</sup> Ibid.

<sup>1173</sup> "Reporter is Arrested," *New York Times*, Sept. 21, 1928;

<sup>1174</sup> Ibid.

<sup>1175</sup> "Reporter Fined at Tuxedo," *New York Times*, Sept. 26, 1928.

<sup>1176</sup> The legal analysis will more fully discuss federal and state statutes prohibiting impersonation of police.

But adding to the complicated nature of this case was that it was, allegedly, a mistake on the part of the police, suggesting another way impersonation can take place. Frank Dolan, the night city editor of *The Daily News*, told the *Times* that “Barber was the victim of a misunderstanding.”<sup>1177</sup> Dolan added that “Barber had gone to Tuxedo and presented himself to the troopers . . . and had been mistaken by them for a detective who was expected from the Homicide Squad.” According to Dolan, Barber at no point “attempt[ed] to impersonate an officer.”<sup>1178</sup> Whether or not this was true, it suggests that members of the press may not intend to impersonate a police officer, but can still be perceived to have done so.

The final example found from the 1920s-1930s demonstrated a third way in which the press impersonated the police: by acting like a member of law enforcement. On September 9, 1930, *The Washington Post* reported that a “reporter had gone into the governor’s quarters in the Roosevelt Hotel just ahead of a [U.S.] deputy marshal, who had a subpoena for the governor’s appearance in Federal court in connection with the disappearance of [two men.]”<sup>1179</sup> The governor, after being punched by the reporter for allegedly calling the journalist a “vile name,” later “threatened to have the reporter arrested for impersonating an officer” because he had thought the reporter was also a U.S. marshal based on his actions and walking in with a real agent.<sup>1180</sup>

Ultimately, the 1920s-1930s not only marked the 20-year period with the most examples of press impersonation of police, but also demonstrated several ways in which

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<sup>1177</sup> “Reporter is Arrested.”

<sup>1178</sup> Ibid.

<sup>1179</sup> “Reporter Punches Governor on Nose,” *Washington Post*, Sept. 9, 1930.

<sup>1180</sup> Ibid.

the impersonation took place and how far reporters would go to get a story. Perhaps most importantly, this era also demonstrated the consequences faced by at least one reporter for impersonating the police, even in an instance where it was allegedly law enforcement's mistake. The following years would see fewer examples of the practice, but would continue to demonstrate the trends coming out of the era of the Great Depression and build up to WWII.

**d. Era #4 & Era #5: 1940s-1950s and 1960s-1970s**

The 40-year time period from the 1940s to the 1970s saw very few documented examples of press impersonation of police. This suggests that either the practice became less common at the time, especially in the 1960s-1970s as the press-police relationship became more adversarial, or that journalists did not write about the practice as they had in the past. However, there are some clues that suggest reasons for why more examples were not found during this time period and how the instances that do exist reflect the changing nature of the press-police relationship.<sup>1181</sup>

Regarding the 1940s-1950s, on April 30, 1956, the AP provided evidence that press impersonation of police may not have been common during this time period when it reported an instance where a particularly enterprising reporter used impersonation of the police to “get his ‘big story.’”<sup>1182</sup> According to the AP, sports writer Dan Cook, along with San Antonio, Texas boxing promoter Jimmy Parks, “went to the homes [of the

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<sup>1181</sup> It is important to acknowledge for this era the possibility that additional examples may not have been found due to limitations that come from database searches, such as missing keywords, missing sources that may have included examples, and more. However, the clues discussed below provide at least plausible reasons for why the practice may have been uncommon or not written about during this time period and more generally.

<sup>1182</sup> “300,000 Burglary Revealed,” *Associated Press*, April 30, 1956.

alleged robbers of \$300,000 in Houston] posing as police officers.” Cook said he and Parks “roughed up the pair in order to find out where [they] had hidden the money.” Officers later raided the homes and recovered \$95,000 tied to the robbery, acknowledging the efforts of Cook, who was initially charged with robbery until the police ultimately believed his story.<sup>1183</sup> Thus, Cook largely aimed to impersonate the police in order to get a news story, though it also ended up helping law enforcement track down part of the stolen money, demonstrating the blurring of lines between the parties as their goals and actions began to overlap.

Significantly, this example provided a clue as to why impersonation of police may not have been particularly common during this time period. Because Cook allegedly went to great lengths to pull off the practice, and did so in order to “get his ‘big story,’” it suggests that it was not a common practice and was something to be done by a particularly enterprising reporter under certain circumstances. Furthermore, Cook faced charges stemming from his use of impersonation, suggesting that other reporters likely would have also faced liability for impersonation of police. Thus, in a time period marked by generally greater partnerships between the press and police,<sup>1184</sup> there may have been little incentive for reporters to take risks like Cook, instead relying on their greater access to police locations and sources.

However, there are some indications that the practice may have been used to at least some degree in the 1940s-1950s. On October 3, 1990, the AP published a story about the history of the City News Bureau (CNB) in Chicago at which novelist Kurt

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<sup>1183</sup> Ibid.

<sup>1184</sup> See notes 411-418 above.

Vonnegut worked following WWII.<sup>1185</sup> The story detailed how Vonnegut “recalled trudging from police station to police station, witnessing ‘poor people in trouble’ and the ‘drumhead justice of police court.’” AP reporter Sarah Nordgren wrote that “in [Vonnegut’s] day . . . it was not uncommon for reporters to impersonate police officers or fire marshals in the quest for a good story – practices that are forbidden now.”<sup>1186</sup> In addition to suggesting that the practice of press impersonation of police took place in the 1940s-1950s, this statement also demonstrates that the main purpose of doing so was to get a story.

But this raises the question: if impersonation was “not uncommon,”<sup>1187</sup> why are there so few documented examples from this time period? On April 15, 2002, *Chicago Tribune* correspondent Ellen Warren provided a clue in an article coinciding with the tearing down of the original police headquarters in Chicago.<sup>1188</sup> Throughout the piece, Warren discussed the different practices by members of the press who would spend significant time in police headquarters and working with officers and officials. At one point, Warren discussed how reporters in the 1940s-1950s, during an era of a “chummy relations[hip]” between the press and police, “didn’t just ride shotgun with police to the scene of the crime. They carried guns and stars and interrogated prisoners.” Besides connecting press impersonation of police with media ride-alongs, Warren asserted that the police allowed, or even encouraged, impersonation. She indicated that reporters may

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<sup>1185</sup> Sarah Nordgren, “CNB tells staff: if your mother says she loves you, check it out,” *Associated Press*, Oct. 3, 1990.

<sup>1186</sup> *Ibid.*

<sup>1187</sup> *Ibid.*

<sup>1188</sup> Warren, “The scene of the crimes.”

have even handled crime prevention and other law enforcement purposes with the full knowledge of the police. The article therefore not only showed significant blurring of the lines between the two institutions, but also a reason why the practice may have been happening in the 1940s-1950s despite the absence of written accounts. Based on Warren's reporting, the "chummy relations" of the press and police in the 1940s-1950s perhaps led to some departments allowing impersonation, making it less critical to report on the practice. Put simply, the practice may have been more accepted at the time, decreasing the need or reasons for the press to report on it.

Regarding the 1960s-1970s, as the press-police relationship became more adversarial, there are three clues as to why press impersonation of police may have become uncommon or increasingly avoided, in addition to also being missing from written accounts. First, Warren's article provided evidence as to why press impersonation of police may have been particularly less common in the 1960s-1970s. She wrote that, at least in Chicago, the "chummy relationship between police and press . . . was [frayed] after police bashed reporters' heads during the Democratic [National Convention] in Chicago in 1968."<sup>1189</sup> She wrote that one result was that it became less common for reporters to work with the police, a decrease in cooperation that would have likely meant the return of law enforcement investigating instances of police impersonation by the press, necessitating that reporters either end or hide the practice.

In one instance, a journalist talked about still using impersonation of police as a newsgathering tactic in the 1960s-1970s, but that he elected to do so in a covert way. In

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<sup>1189</sup> Ibid.

an October 8, 1979 interview with *The Los Angeles Times*, *Philadelphia Inquirer* executive editor Gene Roberts said that he could

remember using a variety of misleading tactics when he covered civil rights in the South for *The New York Times* in the late 1950s and 1960s. Often, he deliberately stuffed a thick notebook in the inside breast pocket of his jacket, knowing that the resultant bulge clearly resembled those made by the shoulder holsters worn by FBI agents. “FBI agents were the only people who walked around those Southern towns in the summer with coats and ties and bulges like that,” Roberts sa[id]. “People thought I was an FBI agent, too, and I was able to move around some pretty hostile crowds more easily than I could have as a reporter.”<sup>1190</sup>

Although it represents the experience of only one journalist, Roberts’ discussion suggested that reporters may have used impersonation of law enforcement in more surreptitious ways at the time, including for newsgathering, and that such instances did not warrant any coverage.

Second, *Los Angeles Times* reporter David Shaw provided commentary about press impersonation of police in the 1960s-1970s that suggested another effect of the practice: the undermining of the press’ and police’s credibility.<sup>1191</sup> According to Shaw, several editors “were bothered” by ethical and practical concerns with the practice, including “deception, misrepresentation, falsification and possible invasion of privacy,” each of which would undermine the public’s confidence not only in the press, but also the police, which would be implicated by the impersonation. Shaw added that “[s]ome editors think such behavior may help create — or, at least, contribute to — the very sort of behavior the reporter is trying to expose.”<sup>1192</sup>

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<sup>1190</sup> David Shaw, “How ethical for newsman to masquerade for story?,” *Los Angeles Times*, Oct. 8, 1979.

<sup>1191</sup> Ibid.

<sup>1192</sup> Ibid. Shaw cited one editor, who said, “You can make your story a self-fulfilling prophecy. . . . It’s deception, pure and simple.”

Thus, a significant consequence of press impersonation of police is the undermining of public trust and confidence in both institutions. As discussed regarding police impersonation of the press, and as an example from 1999 will further demonstrate below, the public questioning whether they are talking to the press or the police is a significant concern arising from the blurred lines between the two parties, therefore undermining their goals, purposes, functions, and actions, only further implicating the public. It is therefore possible that reporters and editors during the 1960s-1970s may have been increasingly aware of these concerns more so than in the past,<sup>1193</sup> therefore leading them to use the practice less, more covertly, or not at all. At the very least, it is possible that even if the practice was still being used, reporters and editors elected to exclude it from their coverage.

Finally, on August 30, 1975, writer David Ellis wrote an opinion piece for the *Tulare Advance-Register* in California discussing the different “rights” of the press and police. At one point, he wrote that “a reporter cannot impersonate a police officer in order to gain a story, [but] there is no law against a police officer impersonating a reporter to gain an arrest.”<sup>1194</sup> Like several articles suggested regarding police impersonation of the press, although it is illegal for a reporter to impersonate law enforcement, the opposite is not against the law. As discussed further in the legal analysis, the fact alone that it was

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<sup>1193</sup> Ibid. Shaw contended that “[b]ecause journalists are so determined these days to expose the deceptions and misrepresentations of others – in government, big business and elsewhere – there is now widespread disagreement among reporters and editors over just when (and if) they can indulge in such activities themselves. In past generations, such ethical concerns were far less prevalent. Many reporters routinely posed as police . . . to get a story.”

<sup>1194</sup> David Ellis, “The difference is in the badge one wears,” *Tulare Advance-Register* (Tulare, CA), Aug. 30, 1975.

illegal to impersonate the police may have been enough to deter most reporters from the practice, especially given the adversarial press-police relationship at the time.

Ultimately, the content analysis did not uncover many examples of press impersonation of police in the 1940s-1970s. However, potential clues provided reasons why this may have been the case. During the 1940s-1950s, the partnerships between the press and police may have made the practice more acceptable than it had been in the past, giving news organizations less reason to cover instances of the practice as it may not have been as newsworthy. During the 1960s-1970s, the increasingly adversarial relationship may have led to the opposite trend in which the practice became increasingly risky or ethically problematic for reporters, as well as less accepted by the police. The result was, perhaps, an overall decrease in the practice at the time, at least overtly. Instead, as one example suggested, reporters may have been more secretive about using the practice, or may not have used it at all. Nevertheless, this era still provided valuable evidence as to how press impersonation of police can, and did, blur the lines between the two parties, as well as raise important implications for the public.

**e. Era #6: 1980s-1990s**

The 20-year period of the 1980s-1990s would see a resurgence in examples of press impersonation of police, though it remained uncommon as in past eras. The most widely covered instance of the practice, perhaps in its entire history, arose on January 4, 1983 when *Potomac News* bureau chief Dave Roman visited the Mecklenberg Detention Center in Virginia to interview death row prisoner John LeVasseur, who was convicted of

the 1982 slaying of a Woodbridge woman.<sup>1195</sup> Roman alleged that William Britton, the former superintendent of the Prince William-Manassas Regional Jail, provided him with a “fake badge and told him he was sworn in for one day as a sheriff’s sergeant.”<sup>1196</sup>

This highly-publicized example is significant for three reasons. First, it provided two additional ways in which a reporter could impersonate the police: using a fake badge and through assistance by police. Importantly, it is the second way that is especially problematic because it undermines the independence of both parties, therefore blurring the lines between the two as their purposes and functions overlap in problematic ways.

Second, Roman, Britton, and another jail official were later arrested in connection to the impersonation. On April 9, 1983, *The Washington Post* reported that a Virginia state judge convicted Roman of impersonating an officer, a misdemeanor under state law, imposing a \$500 fine and a six-month suspended jail sentence.<sup>1197</sup> An appellate court later increased the fine, after which Roman elected to pay \$1,000 and begin serving the jail sentence,<sup>1198</sup> marking the most serious punishment levied against a journalist for impersonating the police of all the acquired examples. The two jail officials had also been charged with forging an official document, but were not prosecuted,<sup>1199</sup> nevertheless suggesting another legal angle that could have been taken against Roman.<sup>1200</sup>

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<sup>1195</sup> John Burgess, “Newsman Guilty of Posing as Officer To Gain Entry to Prison in Virginia,” *Washington Post*, April 9, 1983; “Reporter Is Set To Go to Jail for Impersonation,” *Associated Press*, Sept. 9, 1983; Beth Waters, “The Saga of A Reporter Behind a Badge,” *Washington Post*, April 20, 1983; Beth Waters, “Prince William Jail Chief Resigns After His Arrest,” *Washington Post*, Feb. 6, 1983.

<sup>1196</sup> Burgess, “Newsman Guilty of Posing as Officer To Gain Entry to Prison in Virginia.”

<sup>1197</sup> Waters, “Prince William Jail Chief Resigns After His Arrest.”

<sup>1198</sup> “Reporter Is Set To Go to Jail for Impersonation.”

<sup>1199</sup> *Ibid.*

<sup>1200</sup> See Connie Piloto, “Broward Photographer Charged With Impersonating an Officer,” *Miami Herald*, March 14, 1992. This article described an instance where a freelance photographer was

Finally, during a court hearing, Roman explained some of the balancing of factors that reporters face when considering whether to impersonate a police officer. He claimed that “Britton swore me in as a sergeant for the day and that’s what I believed I was.”<sup>1201</sup> Roman later reportedly had “misgivings” and sought legal advice as to whether he had done anything wrong.<sup>1202</sup> Roman also argued that had he “asked [prison officials] ahead of time for an interview, the inmate would not have agreed.”<sup>1203</sup>

Two years later, David Corcoran, a journalist at *The Record* in New Jersey, and later an editor at *The New York Times*, wrote in a March 7, 1985 opinion piece that

[a] friend of [his] from another newspaper ha[d] just been through a two-year court battle, at great emotional and financial cost, to prove that she hadn’t committed that very offense [of impersonating law enforcement] in the course of interviewing the family of a murder victim.<sup>1204</sup>

Although no further details more provided, this example nevertheless demonstrated that court action can, and has been, taken against journalists alleged to have impersonated a police officer.

During this time period, reporters were also the subject of law enforcement investigations amidst allegations of impersonating the police. For example, on April 14, 1991, the AP reported that Albuquerque television reporter Bryan Glazer of Channel 13-

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arrested for impersonating police. In addition to dressing like an officer, the man used red flashing lights and red, white and yellow lights, which was, and remains, illegal, therefore also raising additional legal considerations addressed in the legal analysis.

<sup>1201</sup> Burgess, “Newsman Guilty of Posing as Officer To Gain Entry to Prison in Virginia.”

<sup>1202</sup> Waters, “The Saga of A Reporter Behind a Badge.”

<sup>1203</sup> Ibid. Roman added, “Basically, I was convicted of trusting a law enforcement official. . . I thought this was the way I was going to get the story. . . I concede that I made a mistake, and I definitely learned a lesson: to question authority. I certainly feel like I’ve made a mistake, but I feel like I’ve paid for it, too.”

<sup>1204</sup> David Corcoran, “Reporters’ gleaming image tarnishes with time,” *Record* (Hackensack, NJ), March 7, 1985.

KGGM was “being investigated for allegedly impersonating a police officer to get the address of a security guard who fatally shot a robber.”<sup>1205</sup> According to the AP, Adobe Security Concepts provided the security guard’s “home address and phone number to a man who telephoned and identified himself as an Albuquerque Police Detective” conducting an investigation of the guard. Glazer denied the report, contending that he had identified himself as being from Channel 13.<sup>1206</sup> If it turned out to be a false allegation, the example would demonstrate how the police could make a mistake that would implicate a reporter and lead to an investigation, even if, like in this case, they were gathering news. If the allegation turned out to be true, it would provide an instance of a reporter identifying himself as a police officer in order to gain more information, though still leading to the same consequence of facing an investigation and potential legal action.

On June 23, 1999, *The Palm Beach Post* further showed the range of ways in which press impersonation of police can take place and also demonstrated that three negative effects of the practice had actually occurred.<sup>1207</sup> The newspaper reported that “a Channel 5 reporter impersonated a police officer, with the help of a real police officer, and then unknowingly knocked on the door of a real newspaper reporter.”<sup>1208</sup> The reporter had been working with police on a report and decided to “impersonate[] a police officer, with the help of a real police officer[.]”<sup>1209</sup> Reporter Derrol Nail, accompanied by a cameraman and police officer Allison Fraser, knocked on the door of Ava Van de

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<sup>1205</sup> “Police suspect TV reporter impersonated an officer,” *Associated Press*, April 14, 1991.

<sup>1206</sup> *Ibid.*

<sup>1207</sup> Rob Hayes, “Real Reporter Trips Up TV’s Fake Detective,” *Palm Beach Post*, June 23, 1999; Bob Betcher, “Reporter Impersonates Officer,” *Jupiter Courier*, June 27, 1999.

<sup>1208</sup> *Ibid.*

<sup>1209</sup> Hayes, “Real Reporter Trips Up TV’s Fake Detective.”

Water, a real estate reporter and columnist for *The Palm Beach Post*, and identified himself as a detective.<sup>1210</sup> Van de Water alleged that Nail also wore a fake police badge and asked if he could enter her home, which she allowed. Nail summarily identified himself as a reporter, prompting Van de Water to call the police because she “kn[e]w it’s against the law to impersonate a police officer.”<sup>1211</sup>

The first negative effect of the impersonation that tangibly occurred was the undermining of the press’ and police’s credibility. Van de Water told *The Palm Beach Post* that she did not know whether Fraser was a real officer or also a reporter, stating, “Her badge sa[id] Allison Fraser. Is she a legitimate cop or an imposter, too?”<sup>1212</sup> In that moment, Van de Water did not know whether she could trust Fraser, even though she was, in fact, a real police officer. This suggests that press impersonation of police can undermine the press’ and police’s relationship with the public, further limiting how both parties can benefit and serve society. Additionally, although it did not occur here, it is possible that a member of the public could target a journalist with violence if they thought they were instead speaking with a police officer or federal agent, much like was seen with police impersonation of the press. In any event, this example suggested that the public’s trust and confidence could also be decreased in other cases of impersonation, as had been argued by observers in the 1960s-1970s.

The second effect was the undermining of the independence of both the press and police. *The Jupiter Courier* quoted Dena Peterson, a police spokesperson, who said, “We

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<sup>1210</sup> Betcher, “Reporter Impersonates Officer.”

<sup>1211</sup> Hayes, “Real Reporter Trips Up TV’s Fake Detective.”

<sup>1212</sup> Ibid.

were assisting the media in educating the public.”<sup>1213</sup> *The Palm Beach Post* added, “The incident highlights the ticklish dilemma both journalists and law enforcement agencies face in trying to cooperate for the common good yet still maintain a professional distance.”<sup>1214</sup> Thus, when one institution aims to help the other conduct impersonation and/or seeks to benefit from the other party doing so, it only further blurs the lines of the press-police relationship as one or both parties work toward the purposes and functions of the other without accomplishing at least some of their own, therefore failing once again to serve the public.

The final effect demonstrated by this instance of press impersonation of police was the straining of the press-police relationship as the news organization that used the practice expressed regret for doing so and reprimanded those involved. Bob Jordan, general manager of the NBC affiliate, said in a statement, “We’re embarrassed. . . . This is a regrettable episode. What we did was poor judgment, and I don’t believe a reporter should ever have to misrepresent themselves to get a story.” According to *The Palm Beach Post*, Nail and assistant news director Chris Ford were both reprimanded for their involvement in the impersonation.<sup>1215</sup> By taking these actions Jordan and the news organization demonstrated that press impersonation of police had strained the press’ relationship with the police to the point that action was required to repair the relationship. Connected with the two other effects stemming from this case of impersonation, these actions also served to repair the press’ relationship with the public. Taken together, these

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<sup>1213</sup> Betcher, “Reporter Impersonates Officer.”

<sup>1214</sup> Hayes, “Real Reporter Trips Up TV’s Fake Detective.”

<sup>1215</sup> *Ibid.*

three effects demonstrate that press impersonation of police, like police impersonation of the press, can not only affect both parties, but also their relationship and the public, raising negative implications for each.

Ultimately, press impersonation of the police during the 1980s-1990s, especially in comparison to police impersonation of the press, remained an uncommon practice, including because it was against the law across the United States.<sup>1216</sup> Nevertheless, this 20-year period presented old and new ways of journalists impersonating the police, as well as purposes and effects of the practice, demonstrating once more how press impersonation of police can blur the lines of the press-police relationship and lead to several effects that go beyond conjecture and actually occurred, highlighting the implications of the practice on the press, police, their relationship, and the public.

**f. Era #7: 2000s-2010s**

The 2000s-2010s saw another decrease in instances of press impersonation of police with the content analysis revealing only two allegations of the practice taking place. First, on September 17, 2001, the *Akron Beacon Journal* reported that the site of the September 11 terrorist attacks had “become a magnet for ghoulish mischief and deceit by people posing as investigators, fundraisers and volunteers.”<sup>1217</sup> One such accusation was against an unknown television reporter for impersonating a Bureau of Alcohol, Tobacco and Firearms agent. New York Police Department (NYPD) Commissioner Bernard Kerik told the *Journal* that he was “so fed up with unauthorized forays into

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<sup>1216</sup> See Shirley Ragsdale, “Journalists don’t pretend to be police,” *Journal and Courier* (Lafayette, IN), July 14, 1995.

<sup>1217</sup> “Round the Nation: National Tragedy Followed by Scams,” *Akron Beacon Journal*, Sept. 17, 2001.

lower Manhattan that he cautioned New Yorkers, ‘If you’re not here as a worker at ground zero, you will be arrested for trespassing,’”<sup>1218</sup> demonstrating another form of legal action that can be taken against a journalist impersonating the police.

Second, on January 16, 2004, the *Inland Valley Daily Bulletin* in Ontario, California reported an accusation that “a reporter for a weekly section of the *Los Angeles Times* impersonated a police officer.”<sup>1219</sup> The reporter, who worked for the *Rancho Cucamonga Voice*, had allegedly called the San Bernardino County Coroner’s Office and identified himself as “a member of a law enforcement agency” in order to obtain information on the cause of death of a teenager who was fatally shot by a security guard. Although the San Bernardino Sheriff’s Department announced that it would not investigate the accusation, this instance demonstrated that a reporter, by identifying himself as a police officer, sought to gather news, continuing the practice first seen over a century earlier.

#### **g. Conclusions**

From the first instance found of press impersonation of police in 1877 through the examples in the 2000s, the timeline of press impersonation of police demonstrates that the practice can be traced back over 143 years, covering a wide-range of political, economic, social, and technological contexts. In all, 20 examples were found for the history of the practice, more than has been compiled by any other study, providing the most complete history of press impersonation of police to date.

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<sup>1218</sup> Ibid.

<sup>1219</sup> “Matter closed to reporter, officer claim,” *Inland Valley Daily Bulletin* (Ontario, CA), Jan. 16, 2004.

However, the content analysis uncovered significantly fewer examples of the practice than police impersonation of the press. One possible reason is that the practice simply did not happen often, perhaps because even in the late-19th and early-20th centuries, the practice was frowned upon, illegal, and/or grounds for other actions or punishment, such as dismissal of testimony in court. In ensuing decades, this became clearer as investigations, arrests, charges, and punishments for reporters impersonating police increasingly occurred. In the 1960s-1970s, the practice was also increasingly hazardous as the press-police relationship became more adversarial, suggesting that the police would no longer allow the practice or look the other way. Conversely, it was more common to see police impersonation of the press, largely because it was not illegal for the police to do so and, for many years, the negative effects were not discussed.

A second explanation is that impersonating the police was not necessary for many reporters because, especially prior to the 1960s-1970s, the press and police had a more amicable relationship, therefore providing journalists with significant access to the police. In such cases, the press would not have needed to rely on a practice that could bring consequences like investigations, arrests, fines, or jail/prison sentences.

A final explanation is that the press may not have written extensively about instances of journalists impersonating police. Because of the greater partnerships between the press and law enforcement prior to the 1960s-1970s, the police may have allowed or even encouraged reporters to impersonate officers and help with their goals and purposes. In such instances, the press may not have written about the practice as it would not have been particularly newsworthy. Also possible was that reporters did not write about the practice because they could potentially face investigations, arrests, and other

consequences for doing so, especially as the press-police relationship became more adversarial in the 1960s-1970s. Even if rival news organizations considered reporting it, they may have refrained lest their rival publish something about them.

Nevertheless, the existing examples of the practice demonstrate that since the late-19th century, there have been several ways in which reporters have impersonated the police, which evolved over time. They include: 1) the use of fake police badges, 2) a mistake by law enforcement, 3) reporters acting like and identifying themselves as police officers or officials, and 4) the police aiding the press in using impersonation. Conversely, the purposes of press impersonation of police have largely remained the same since the 19th century, with the most common being reporting and newsgathering.

Significantly, the examples detailed several effects, most of which spanned several decades. Dating back to the late-19th and early-20th centuries, reporters were the subject of investigations following allegations of impersonating the police. In 1928, the targeting of the press for the practice went a step further and resulted in the arrest and filing of charges against a journalist, who was also given a suspended jail sentence and was required to pay a fine.<sup>1220</sup> Ensuing years would see additional journalists face arrests and legal action for impersonating the police. In such cases, if a reporter is sentenced to prison time or has their resources depleted due to paying a fine, the result is that they are unable or less able to do their job serving the public. Even in instances where journalists only face investigations, the result is still the same that it can limit their ability to accomplish their purposes and functions. Thus, although press impersonation of police is

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<sup>1220</sup> “Reporter is Arrested”; “Reporter Fined at Tuxedo.”

a form of undercover reporting, also raises important questions about the utility and necessity of its use given the possible and realized consequences it raises for journalists and news organizations.

Press impersonation of police also affects law enforcement and the press-police relationship in that it blurs the lines between both institutions by undermining their independence. This was especially the case in instances where police helped the press conduct impersonation, or where the press did so to help law enforcement in different ways. In such cases, the press and police aimed to accomplish the goals and actions of the other party, undermining their independence and ensuring that they were not fully accomplishing their own purposes and functions, including those meant to serve and benefit the public.

Another effect on law enforcement and the press-police relationship, which stemmed from the blurring of lines between the press and police, is the straining of their relationship. Like with police impersonation of the press that prompted criticism from the news media and advocacy organizations, press impersonation of police can lead police to respond negatively to the use of the practice, necessitating actions by news organizations to apologize for doing so and/or reprimand those involved. In such cases, both the press and police are negatively affected as greater contentiousness makes it harder for both parties to interact in a way that allows for the accomplishing of their goals, purposes, functions, and actions.

Lastly, press impersonation of police also implicates the public in two ways. The first is that the practice, by blurring the lines of the press-police relationship and, at times, making it more contentious, results in both parties failing to fully accomplish their

purposes and functions, including those meant to serve the public. The second way is that press impersonation of police can undermine public confidence in whether the individual they are talking to is a police officer or a reporter, straining both the press' and police's relationship with the public. This reflects a similar concern with police impersonation of the press where the practice could lead members of the public to place less trust in a reporter if they have concerns that they may be a law enforcement officer or agent. The result in the case of police impersonation of the press was the inhibiting of the press' ability to gather news and forge source relationships, as well as threatening journalists' safety. It is possible that these concerns could also arise from press impersonation of police, such as if a reporter is sentenced to prison time and is unable to do their job serving the public, or faces physical violence because someone thinks they are a police officer or federal agent. In any event, the result is that the public does not fully benefit from both institutions accomplishing their important goals, purposes, functions, and actions.

It is because of the negative effects of press impersonation of police that the legal analysis will fully examine the law around the practice, including federal and state statutes that prohibit impersonation of police. The legal analysis, combined with the findings of the content analysis, will therefore further demonstrate the problematic nature of press impersonation of police and how the law has begun to address it, though requiring further action by the press. Thus, the findings of the content analysis and legal analysis will demonstrate that action needs to be taken regarding press impersonation of police, like police impersonation of the press, to mitigate the negative effects arising from the practice.

## II. Media Ride-Alongs

In 1881, the first police vehicle<sup>1221</sup> in U.S. history was introduced in Chicago.<sup>1222</sup> The new horse-drawn patrol wagon meant that for the first time, police officials and officers could ride in a vehicle designated for law enforcement use to the scene of a crime or disturbance.<sup>1223</sup> Less than two years later, perhaps the first documented media ride-along<sup>1224</sup> took place when a *Chicago Times* reporter recounted his night spent on the wagon.<sup>1225</sup> For the next 137 years, as police vehicles changed and evolved, members of the press, and the media more generally,<sup>1226</sup> would continue accompanying police on their patrol wagons, automobiles, and cars. Over that time period, 1) how media ride-alongs took place, 2) the purposes of the practice, 3) the effects of the practice, 4) legal considerations, and 5) discussions of race and class would all remain largely consistent, despite changes to police vehicles, as well as developments like the creation of formal ride-along programs in the 1960s, the rise of reality television programming centering on ride-alongs beginning in 1989, and the Supreme Court's ruling in *Wilson v. Layne* (1999).<sup>1227</sup>

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<sup>1221</sup> "Vehicle" includes different iterations of police modes of transportation that have evolved over time, including horse-drawn, electric, and steam patrol wagons, as well as gas-powered automobiles and cars.

<sup>1222</sup> "A Model Patrol Wagon," *Chicago Tribune*, Oct. 26, 1881.

<sup>1223</sup> *Ibid.*

<sup>1224</sup> Although the term "ride-along" was not used until 1964, the following sections use this terminology prior to that year in order to communicate an instance of a reporter riding with law enforcement officials or officers on a police vehicle.

<sup>1225</sup> "The Patrol Wagon. An Institution of Modern Police Systems. A Night on 'The Red Wagon,'" *The Republic* (Columbus, IN), June 20, 1883.

<sup>1226</sup> Part II primarily focuses on ride-alongs by the traditional media, especially when discussing the blurring lines of the press-police relationship, holding police accountable, informing the public, and more. However, the media more generally, such as television film crews, also raise additional considerations, which are noted and discussed below where relevant.

<sup>1227</sup> *Wilson v. Layne*, 526 U.S. 603 (1999).

As the following sections will demonstrate, these five themes demonstrated some benefits of media ride-alongs, including allowing the news media to inform its readers, listeners, and/or viewers about police and current events. In some limited cases, the press was able to hold the police accountable. Additionally, media ride-alongs allowed the press and police, to some degree, to improve their relationship with each other and the American public.

However, media ride-alongs, throughout their history, have also raised deep concerns, including blurring the lines between the press and police. Furthermore, because the news media needed to reciprocate for the access and source contacts offered by police, journalists often portrayed the police in a positive or, at the very least, neutral light.<sup>1228</sup> Adding to this was that media ride-alongs generally provided the point of view of police officials or officers, who may have even acted a certain way knowing the press was present in order to ensure positive or neutral coverage. The result was that media ride-alongs often were, and continue to be, an ineffective means for the press to fully inform its audience and provide a complete and accurate picture of law enforcement, as well as adequately hold the police accountable. Other negative effects included threats to the press' and police's safety, the undermining of public trust and confidence in both parties, and litigation stemming from a media ride-along. Taken together, these negative

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<sup>1228</sup> By “positive” coverage, this study means that which improves law enforcement’s image, such as reporters praising the police in some way. “Neutral” reporting means that the coverage simply detailed what took place. In some cases, it may explain something positive done by the police, while at other times may have shown a mistake or a failure, but with no criticism or commentary on top of the basic reporting. Finally, “negative” coverage means that the press criticized the police or otherwise targeted a controversial topic or one portraying police in a way that would not be viewed as positive by the public.

effects demonstrate the problematic nature of media ride-alongs and how it can undermine the goals, purposes, functions, and actions of both parties, inhibiting their ability to benefit and serve the public. Thus, media ride-alongs not only negatively affect the press, police, and their relationship, but also the public.

Part II of the content analysis details the history of media ride-alongs by building a timeline starting with the first example in 1883 and continuing through the present, therefore providing the first and most thorough history of media ride-alongs to date. Part II also identifies and analyzes key aspects of media ride-alongs, revealing the benefits and limitations of the practice, which, like impersonation, blurs the lines between the press and police and leads to implications for both parties and the public.

#### **A. Search Procedures and Sample**

The sample for Part II was acquired largely through the same steps as Part I, including compiling examples from 1) ProQuest, 2) Access World News, and 3) newspapers.com.<sup>1229</sup>

Initial searches of ProQuest used combinations of keywords for members of the press and media (i.e. “journalist,” “reporter,” “newsman,” “filmmaker,” and “camera crew”), police (i.e. “law enforcement,” “officer,” “cop,” “agent,” and “police”), and verbs like “ride,” “join,” “follow,” and “accompany.” However, such searches netted thousands of results, making it challenging to identify relevant articles. But in conducting these searches, a pattern was identified that in each article containing an example of a media

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<sup>1229</sup> Regarding existing literature, only two relevant examples were identified through the very limited existing scholarship on the history of media ride-alongs, which were two court cases that will be discussed more fully in the legal analysis.

ride-along, the police vehicle was named in some way, including “patrol wagon,” “paddy wagon,” “police auto,” “police automobile,” “police car,” “squad car,” “patrol car,” “prowl car,” “police wagon,” “police cruiser,” “police carriage,” and “police vehicle.” Therefore, keywords for the press and media were combined with these ways of referring to police vehicles, resulting in a boolean search.<sup>1230</sup> Using the preliminary step of the coding procedure detailed below, 45 articles were identified from the 537 results,<sup>1231</sup> providing the foundation for the sample (Appx. B, Tables 4.2 & 4.3).

To augment the sample from the 1980s-present, as well as through more regional and local newspapers, the same search was conducted in Access World News. Because the search terms, even in the boolean search, needed to be quite broad in order to find as many relevant articles as possible, the search netted 30,429 results. Using the preliminary step of the coding procedure, 137 articles were identified from the first 1,000 results. From these 137, the author selected 35 articles from the 1980s-1990s and 39 articles from the 2000s-2010s (Appx. B, Table 4.1). Although additional examples existed beyond the 74 compiled articles in the thousands of results, especially because the practice remains common across the United States, the acquired sample provided a meaningful number of examples from the 1980s through the present in regional and local newspapers.

Similarly, newspapers.com was used to provide more examples from regional and local newspapers for the 1880s through the 1970s. Like with the other databases, the

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<sup>1230</sup> ((journalist OR reporter OR newsm?n OR newswom?n OR newscaster OR filmmaker OR “camera crew” OR cameram?n OR camerawom?n OR cameraperson) NEAR/10 (“patrol wagon” OR “paddy wagon” OR “police auto\*” OR “police car” OR “squad car” OR “patrol car” OR “prowl car” OR “police wagon” OR “police cruiser” OR “police vehicle” OR “police carriage”))

<sup>1231</sup> There are likely several reasons ProQuest delivered fewer results than the other databases, namely that it includes fewer newspapers and is better equipped for boolean searches.

search terms needed to be quite broad in order to find as many relevant articles as possible. Additionally, newspapers.com did not support advanced search syntax. As a result, this study used a targeted search once again, using different combinations of terms for referring to members of the press and media with different ways of identifying police vehicles, netting, in most cases, less than 1,000 results per search. By applying the preliminary step of the coding procedure, the author found between 10-20 articles for each 20-year period starting with the 1880s through the 1970s. In total, 66 articles were compiled from newspapers.com (Appx. B, Table 4.1). Although not exhaustive because every possible combination of possible keywords and verb tenses could not be used, the search nevertheless provided representative examples in order to get at general trends from each time period, complementing those found in ProQuest and Access World News.

Combining the articles compiled from each database, 17 were included in the sample from the 1880s-1890s, 19 from the 1900s-1910s, 14 from the 1920s-1930s, 22 from the 1940s-1950s, 32 from the 1960s-1970s, 41 from the 1980s-1990s, and 40 from the 2000s-2010s. In total, the sample included 185 articles pertaining to media ride-alongs from a nearly 137-year period and covering a variety of locations around the United States (Appx. B, Table 4.1).

## **B. Coding Procedure**

Before starting the two main rounds of coding, a preliminary coding step was used to eliminate results that were: 1) reviews, advertisements, or tables of contents, 2) international stories, 3) duplicates, 4) articles where it was clear from initial reading and/or description that the discussion of ride-alongs did not include the press, or was otherwise not relevant, and 5) articles pertaining to new ride-along programs in the

1960s-1970s as they did not provide examples of media ride-alongs.<sup>1232</sup> If an article fell under one of these categories, it was not included in the sample.

The first round of coding identified necessary information about each article, including the assigned article ID, year of publication, the source of the article, the headline, and the parties involved in the media ride-along. However, the primary purpose of the first round of coding was to quantitatively code (1 = Yes, No = 0) for whether the article was relevant or was a duplicate, and whether it should be qualitatively coded, meaning it needed to include discussions of at least one of the following: 1) how the media ride-along took place, 2) the purposes of the practice, 3) the effects of the practice, 4) legal and/or ethical considerations, and 5) discussions of race and/or class. Taken together, the codes for the first round of coding included:

- Code #1: Article ID
- Code #2: Year of the article or source
- Code #3: Publication in which the article appears
- Code #4: Is the article relevant? Yes = 1 No = 0
- Code #5: Is the article a duplicate (meaning the article is an exact copy of another, not that it gets at the same example as another story)? Yes = 1 No = 0
- Code #6: Does the article provide at least one example (meaning it is not purely commentary or opinion)? Yes = 1 No = 0
- Code #7: Does the article discuss a fictional example (TV show, movie scene, etc.)? Yes = 1 No = 0
- Code #8: Headline
- Code #9: The parties involved in the media ride-along
- Code #10: Any discussion of how the press rode-along with police (ex. rode in the patrol wagon)? Yes = 1 No = 0
- Code #11: Any discussion of the purpose(s) of the practice (either apparent in the example or discussed in commentary within the article)? Yes = 1 No = 0
- Code #12: Any discussion of the effect(s) of the practice (either apparent in the example or discussed in commentary within the article)? Yes = 1 No = 0

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<sup>1232</sup> These articles were retained for the context section below. Conversely, articles that focused on reality television shows based on ride-alongs, as well as articles discussing *Wilson v. Layne*, were included so long as they raised a particular example, such as a ride-along for “COPS” or the facts of the case.

- Code #13: Any discussion of legal and/or ethical considerations (either apparent in the example or discussed in commentary within the article)? Yes = 1 No = 0
- Code #14: Any discussion of race/class (either apparent in the example or discussed in commentary within the article)? Yes = 1 No = 0

If the article 1) was not relevant, 2) was a duplicate, 3) did not provide an example or instance of a media ride-along, 4) was regarding a hypothetical or fictional case, and/or 5) did not include any of Codes #10-14, it was not included in the next round of coding.

The second round of coding used qualitative procedures, including descriptive, thematic, and/or in-vivo subcodes for Codes #10-14.<sup>1233</sup> These subcodes were determined through an inductive coding process during the quantitative round of coding and were compiled through a formal codebook.<sup>1234</sup> Like with impersonation, this study used an excel spreadsheet to code the data and allow for better filtering/sorting of results based on the subcodes that were developed and used as the basis of the following findings/results section.<sup>1235</sup> Once again, the quantitative round of coding was used primarily to determine whether an article should be qualitatively coded, as well as determine the subcodes used during the second round of coding, which produced the findings and results below.

Out of the 180 articles in the sample, 148 were qualitatively coded (Appx. B, Table 4.2).<sup>1236</sup> A total of 146 distinct examples were found, providing the basis for the most extensive content analysis and history of the practice to date (Appx. B, Table 4.3).

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<sup>1233</sup> See Saldaña, *The Coding Manual for Qualitative Researchers*.

<sup>1234</sup> The codebook included the following columns: 1) Code Theme/Topic/Area (Codes #10-14), 2) Fragmented Codes/Subcodes, 3) Description, 4) Inclusion Criteria, 5) Exclusion Criteria, 6) Examples, and 7) Type of Coding (i.e. descriptive, thematic, and/or in-vivo).

<sup>1235</sup> The spreadsheet had the following columns for each of Codes #10-14: 1) How / Purpose / Effect / Law & Ethics / Race & Class Subcode #1, 2) Relevant Text, 3) Subcode #2, 4) Relevant Text, etc. If a subcode did not apply to a particular article, it was marked “no.”

<sup>1236</sup> This included 13 from the 1880s-1890s, 16 from the 1900s-1910s, 13 from the 1920s-1930s, 15 from the 1940s-1950s, 21 from the 1960s-1970s, 37 from the 1980s-1990s, and 37 from the 2000s-2010s.

### C. Findings and Analysis

Since the introduction of the first horse-drawn patrol wagon in 1881, police vehicles have undergone significant changes. However, one thing has remained consistent: members of the press and media riding along with police in these vehicles. Furthermore, despite the changes to police vehicles and other developments described below, several key aspects of media ride-alongs remained largely unchanged since the late-19th and early-20th centuries. More specifically, 1) how media ride-alongs took place, 2) the purposes of the practice, 3) the effects of the practice, 4) legal considerations, and 5) discussions of race and class, all remained largely consistent,<sup>1237</sup> meaning the codes were found early in the history of media ride-alongs (i.e. 1880s-1910s) and then to varying degrees throughout the following decades.

However, what also remained consistent was that the benefits of the practice — 1) improving the press-police relationship, 2) the press informing the public, therefore building trust with the community and potentially gaining or retaining readers or viewers, and 3) limited instances of accountability of the police, which demonstrate that such reporting is possible through media ride-alongs — were undermined by problems and concerns arising from the practice. More specifically, because the press had to reciprocate in some way for the access provided by police officers and officials to their vehicles, the result was blurred lines between the two parties as their goals, purposes, functions, and actions became more intertwined. The result was that the press was often unable to 1) obtain and provide to the public a full and accurate picture of law enforcement in a given

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<sup>1237</sup> Limited exceptions where a purpose or effect did not arise until later will be explained below.

community and 2) hold the police accountable, suggesting the ineffectiveness of media ride-alongs. In addition to these concerns, several other negative effects — physical danger, undermining public trust, and legal action — also stemmed from the practice, further outweighing the benefits.

The following sections first provide context for media ride-alongs, namely detailing major changes to police vehicles from the 1880s into the mid-19th century, as well as additional key developments, including the rise of formal ride-along programs in the 1960s-1970s, the rise of ride-along-based reality television starting with “COPS” in 1989, and the Supreme Court’s ruling in the most significant case arising from the practice: *Wilson v. Layne* (1999).<sup>1238</sup> Second, the following sections detail how media ride-alongs took place over the course of the 137-year history of the practice and across the United States, as well as the purposes and effects of the practice, which also implicated law, race, and class.<sup>1239</sup> In so doing, these sections demonstrate how each of these themes, when put together, demonstrate the problematic aspects of media ride-alongs, though with some positive effects providing hope in the utility of the practice.

### **1. Context: Key Moments in the Evolution of Media Ride-Alongs**

Unlike impersonation, media ride-alongs represent a practice that relies in large part on law enforcement technology, namely police vehicles, as well as the cooperation of police in most instances. It is also a practice seen in popular culture and debated by the

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<sup>1238</sup> *Wilson v. Layne*, 526 U.S. 603 (1999).

<sup>1239</sup> As noted above, the following sections primarily focus on ride-alongs by the traditional media, especially when discussing the blurring lines of the press-police relationship, holding police accountable, informing the public, and more. However, members of the media more generally, such as television film crews, also raise additional considerations, which are also noted and discussed below where relevant.

Supreme Court. The history of the practice is, therefore, incomplete without noting important contextual developments in the history of media ride-alongs, including: 1) key moments in the evolution of police vehicles, 2) the development of formal ride-along programs and reality television in the second half of the 20th century, and 3) *Wilson v. Layne* (1999).<sup>1240</sup>

On October 26, 1881, the *Chicago Tribune* reported that several Chicago officials, including the Chief of the Chicago Police Department, “witnessed an exhibition of a new fire and police patrol wagon,” which had been built in Cincinnati, Ohio the previous year.<sup>1241</sup> Although Chicago already had fire patrol wagons, the *Tribune* proclaimed that “[t]his is the first wagon built” that was intended for the police, and was “a model in its way,”<sup>1242</sup> making Chicago the first U.S. city to have a police vehicle of any kind. The wagon, which was put into service sometime between November 1880 and July 1881,<sup>1243</sup> was drawn by two horses and contained a box for passengers, heavy springs, and wheels, with side-railings made of brass.<sup>1244</sup> Two lanterns were fixed to the front of the wagon, which could be taken off and used by police officers.<sup>1245</sup>

Two months earlier, on August 23, 1881, the *St. Louis Post-Dispatch* quoted St. Louis Chief of Police Ferdinand B. Kennett, who “[took] up the story of his travels [to

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<sup>1240</sup> The following section relies largely on articles found in the content analysis, though also includes existing literature in order to fully detail these key moments.

<sup>1241</sup> “A Model Patrol Wagon.”

<sup>1242</sup> *Ibid.*

<sup>1243</sup> “Criminal Record: Nuggets from the Police Courts and Stations,” *Chicago Tribune*, Nov. 24, 1880; “Chicago Police Department,” *Chicagology*, accessed April 30, 2020, <https://chicagology.com/chicagopolice/>.

<sup>1244</sup> “A Model Patrol Wagon.”

<sup>1245</sup> *Ibid.*

Chicago] at the request of a POST-DISPATCH reporter.”<sup>1246</sup> Kennett confirmed that the patrol wagon operation in Chicago was “recently inaugurated” and “was the best thing in the way of police innovation” he saw during his trip.<sup>1247</sup> According to Kennett, Chicago had already ordered “a complement [of wagons] for every station-house.”<sup>1248</sup> He further explained how the wagon worked, including that the horses were “kept in stalls as fire-engine horses and [were] hitched up at the signal, much of the time-saving apparatus employed at the engine-houses being in use for the police patrol.”<sup>1249</sup> Kennett added that three officers would accompany the wagon, which would “astonish you to see” and that there was “hardly any limit to the benefits derived from the patrol wagon.” Thus, 1881 marked the first police vehicle in the United States, a horse-drawn carriage meant to carry officers to the scene of a disturbance, and then bring them and any prisoners back to the station.<sup>1250</sup> Although it is not clear whether a reporter rode in the new wagon immediately upon its arrival, it is possible that such a practice took place as newspapers were already covering its introduction.

Less than two years later, however, a newspaper report detailed perhaps the first documented media ride-along in U.S. history. On June 20, 1883, *The Republic* in Columbus, Indiana, as well as multiple other small-town papers who received the story by telegraph, carried a report by a *Chicago Times* reporter, who recounted his night spent on “The Red Wagon.”<sup>1251</sup> The story provides the account of the reporter, who “stationed

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<sup>1246</sup> “An Observant Chief: The Patrol Wagons,” *St. Louis Post-Dispatch*, Aug. 23, 1881.

<sup>1247</sup> *Ibid.*

<sup>1248</sup> *Ibid.*; “Chicago Police Department.”

<sup>1249</sup> “An Observant Chief.”

<sup>1250</sup> *Ibid.*

<sup>1251</sup> “The Patrol Wagon.”

himself in the patrol barn . . . waiting for something to turn up.” Shortly thereafter, the ride-along began:

The wait was not a long one, for in a few moments a reverie was interrupted by the ‘b-r-r-r-r-r-r-r-r-r,’ of the electric annunciator. . . . By an ingenious electric appliance, when the alarm-bell was rung, the doors of the horses’ stalls were thrown open, and the intelligent animals were in a second at their places by the harness. . . . All of this was done in about two seconds. . . . Down Harrison street goes the big wagon.<sup>1252</sup>

The wagon proceeded to pick up an “old, drunk woman,” who had been involved in a fight with two or three other women. The wagon also took the reporter to a fire to assist in carrying injured individuals to safety. The reporter called his experience riding the patrol wagon “a strange experience,” suggesting the novelty of the practice for reporters and himself, but also praised the ability to see the “Laddies and Their Work.”<sup>1253</sup>

It was not until the turn of the century that the United States would see the introduction of horseless patrol wagons. In a July 8, 1899 story appearing in multiple small-town newspapers, including *The Scranton Republican* in Pennsylvania, it was reported that Akron, Ohio “[had] the first automobile to be put to use as a police patrol wagon.”<sup>1254</sup> On January 6, 1900, *The Akron Beacon Journal* reported that Akron’s “new automobile, the first horseless patrol wagon ever made, [was] now completed and is ready for use.”<sup>1255</sup> The story called the wagon “a remarkable vehicle” and explained that it was “propelled by electricity,” an idea conceived by City Commissioner A.T. Paige who “became convinced that an automobile patrol wagon would be a good thing for

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<sup>1252</sup> Ibid.

<sup>1253</sup> Ibid.

<sup>1254</sup> “Automobile Police Patrol,” *Scranton Republican*, (Scranton, PA), July 8, 1899.

<sup>1255</sup> Paul Clinton, “History of America’s First Motorized Patrol Vehicle,” *Police Magazine*, May 18, 2010, <http://www.policemag.com/blog/vehicles/story/2010/05/story-of-the-first-modern-patrol-car.aspx>; “First In the World. . . Akron’s Automobile Patrol Wagon Is About Ready for Use,” *Akron Beacon Journal* (Akron, OH), Jan. 6, 1900.

Akron and would be a paying investment.”<sup>1256</sup> *The Star Press* in Muncie, Indiana called the vehicle “the first of its kind in the world” and explained that it had a top speed of 20 miles per hour.<sup>1257</sup> Today, it is commonly cited as the first police car in existence.<sup>1258</sup>

It is not entirely clear whether journalists rode on the wagon in the form of a ride-along; however, *The Akron Beacon Journal*’s January 20 report indicated that it was possible.<sup>1259</sup> The story explained that “Cleveland officials were given seats in the auto[, including] Chief of Police Harrison, [and] Commissioners McMillen and Paige.” The article added that “a few others accompanied the Cleveland officials,” which may have included a reporter. This is further made possible in that the story not only described the route the wagon took, and a small accident, but also the reactions of the riders inside. This suggests that a journalist may have been present to record the events.<sup>1260</sup> Within five years, several large and cities had adopted motorized patrol vehicles.<sup>1261</sup>

The first reference found to police “automobiles” or “cars,” which ran on gasoline as opposed to electricity and steam, was in a May 8, 1905 story by the *St. Louis Post-Dispatch*.<sup>1262</sup> The story detailed a police chase in which “12-horse power [police]

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<sup>1256</sup> “First In the World.”

<sup>1257</sup> “Automobile Police Patrol,” *Star Press* (Muncie, Indiana), Jan. 14, 1900.

<sup>1258</sup> Clinton, “History of America’s First Motorized Patrol Vehicle”; David Goran, “First police car ever used was in Akron, OH, in 1899 – The car’s first assignment was to pick up a drunk man,” *Vintage News*, Feb. 6, 2016.

<sup>1259</sup> “That Balking Auto,” *Akron Beacon Journal*, Jan. 20, 1900.

<sup>1260</sup> *Ibid.* For example, the story states that when “[t]he old horse wogan [sic] was seen in the distance . . . the people in the automobile began to laugh.”

<sup>1261</sup> Ivana Andonovska, “The first police car was bought in Akron, Ohio in 1899; its first assignment was to pick up a drunk man,” *Vintage News*, Dec. 4, 2017, <https://www.thevintagenews.com/2017/12/04/first-police-car/>. *See also* “Police To Use Automobiles,” *Evening Times* (Washington, D.C.), Sept. 13, 1899; “Go Without Horses,” *Iola Register* (Iola, KS), Nov. 10, 1899; “Afraid To Risk Men In Sewer,” *Chicago Tribune*, Oct. 1, 1901; “Auto-Patrol Wagon,” *Eau Claire Leader* (Eau Claire, WI), Aug. 1, 1901.

<sup>1262</sup> “Police Auto Beaten In Thrilling Race,” *St. Louis Post-Dispatch*, May 8, 1905.

automobile, which couldn't go faster than 25 miles an hour to save its gasoline existence, . . . made a desperate effort to overhaul and board a 30-horse power car that could travel 40 miles in 60 minutes without an extra chug."<sup>1263</sup> Although it is possible that reporters were present in the vehicle during this or similar chases, the first recorded instance found of a reporter riding a police automobile in the United States was on April 26, 1907 when *The Indianapolis News* referred to the Indianapolis Police Department's new police vehicle as an "automobile" and a "car."<sup>1264</sup> The story added that "[w]hen the big police automobile was taken out for its initial trial spin . . . Chief Metzger invited five newspaper reporters to accompany him."<sup>1265</sup>

By the 1930s, police cars became common, particularly Ford's Model 18 introduced in 1932.<sup>1266</sup> In the 1950s, several car manufacturers, including Ford, Chevrolet, and Dodge, began offering custom-built police cars, which included flashing lights, improved radios, and more, to police departments.<sup>1267</sup> Innovations in police vehicles, including sedans, SUVs, and SWAT automobiles, as well as the equipment within them, have continued to evolve ever since.

The next foundational moment in the history of media ride-alongs came in 1964 with the first formal/official ride-along program in the United States, also marking the first use of the terminology "ride-along."<sup>1268</sup> On December 10, 1964, Chicago Police

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<sup>1263</sup> Ibid.

<sup>1264</sup> "Police Automobile Balks: Reporters and Chief Walk on Car's Trial Trip," *Indianapolis News*, April 26, 1907.

<sup>1265</sup> Ibid.

<sup>1266</sup> Andonovska, "The first police car was bought in Akron, Ohio in 1899."

<sup>1267</sup> Ibid.; Ian Wright, "History Of American Police Cars," *CarBuzz*, Oct. 7, 2019, <https://carbuzz.com/features/history-of-american-police-cars>.

<sup>1268</sup> "ride-along," *Oxford English Dictionary*.

Superintendent O. W. Wilson announced the creation of the program.<sup>1269</sup> The *Chicago Tribune* reported the following day that “prominent and influential citizens [were] invited to ride in squad cars and view the day-to-day tasks of the beat patrolman.”<sup>1270</sup> Wilson was quoted as saying, “It is hoped that public officials, lawyers, and businessmen may gain new insight into the problems of policing our city and develop a better understanding of what constitutes probable cause for arrest and search.”<sup>1271</sup>

As similar programs spread around the country in ensuing years, they moved from targeting prominent citizens and city leaders to adults more generally.<sup>1272</sup> In 1966, a program was created to allow Chicago-Kent College of Law students to “study the work of the police from the vantage point of a squad car in a ‘Ride Along[?]’ program.”<sup>1273</sup> Significantly, the early ride-along programs also targeted youth, especially minorities in troubled areas. *The New York Times* reported on August 18, 1968 that the “Teenage Ride-Along Program,” a countrywide project aimed at improving “young people’s understanding of, and respect for, police operations,” had been established.<sup>1274</sup> The same year, several cities in California also targeted youth to participate in ride-alongs.<sup>1275</sup> The program was developed in 1968 and, due to high praise, was continued the next year and throughout the 1970s, with similar iterations appearing across the United States.<sup>1276</sup>

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<sup>1269</sup> Ibid.; “Citizens Ride Squad Cars,” *Chicago Tribune*, Dec. 11, 1964.

<sup>1270</sup> “Citizens Ride Squad Cars.”

<sup>1271</sup> Ibid.

<sup>1272</sup> “Skokie May Let Citizens Ride Along with Police,” *Chicago Tribune*, Sept. 17, 1967.

<sup>1273</sup> “Law Students to Ride Along With Police,” *Chicago Daily Defender*, April 19, 1966.

<sup>1274</sup> Nancy J. Adler, “Youths On Coast Study The Police: Los Angeles Project Seeks Support for the Law,” *New York Times*, Aug. 18, 1968.

<sup>1275</sup> Don Snyder, “Ride Gives Student New View of Police,” *Los Angeles Times*, July 23, 1968.

<sup>1276</sup> Ibid. See also “Police ‘Ride-Along’ Plan for Teen-Agers Will Be Repeated,” *Los Angeles Times* June 25, 1969; “Ride Along Program for Teens Started,” *Los Angeles Times*, July 20, 1969; “Police Program Lauded: Police ‘Ride Along’ Clicks With Youths,” *Los Angeles Times*,

However, it was not only prominent citizens, public officials, and youth participating in ride-alongs; reporters continued to accompany police officers and officers after the creation of the formal programs. In fact, about a month after Chicago's program was created, in January 1965, *Chicago Tribune* reporter Ronald Koziol "spent a working day . . . with a homicide detective [14-year veteran John Loftus] to learn something of the experiences of these men."<sup>1277</sup>

The next innovation related to media ride-alongs came in 1989 with the introduction of the television show "COPS."<sup>1278</sup> As discussed above, the show followed a "ride-along style," in which camera crews would ride with police in order to purportedly show law enforcement conducting their normal functions of arrests, searches and seizures, traffic stops, and other interactions with members of the public.<sup>1279</sup> In the years since the creation of COPS, similar television shows have followed, including "The First 48" and "Live PD," among several others. In addition to raising renewed legal concerns,<sup>1280</sup> the shows also introduced new purposes and effects of media ride-alongs, which were coded in the content analysis and are detailed below.

Finally, the Supreme Court ruled in *Wilson v. Layne* (1999) that the presence of a *Washington Post* reporter and photographer during the execution of arrest warrants in the

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Sept. 21, 1969; Laura A. Kiernan, "Shootout-chase ends police 'ride-along,'" *Washington Post*, Feb. 20, 1975.

<sup>1277</sup> Ronald Koziol, "Reporter Gets Closer View of Cop's World: He Rides Along Thru a Long Night's Work," *Chicago Tribune*, Jan. 31, 1965.

<sup>1278</sup> See Markin, "An 'Unholy Alliance,'" 33.

<sup>1279</sup> Ibid.

<sup>1280</sup> The legal analysis provides greater detail about the legal issues raised by ride-along reality television shows.

Wilson family's home violated their Fourth Amendment rights.<sup>1281</sup> The Court found that unless the press aids the police in the execution of arrest or search warrants, or obtains consent to enter the private property, the press cannot enter a private residence as part of a ride-along.<sup>1282</sup> As discussed more below, the Court's ruling prompted concern from the press and police that it would mark the end of media ride-alongs or, at the very least, would prevent reporters or camera crews from detailing a significant amount of police duties.<sup>1283</sup> However, the following sections will demonstrate that despite these concerns and some initial changes by police, the practice of media ride-alongs did, in fact, survive the Supreme Court ruling.

## **2. Key Aspects of Media Ride-Alongs and their Implications**

Media ride-alongs not only survived after *Wilson v. Layne* (1999), but also remained largely unchanged following the ruling, a trend dating back to the 1880s-1890s. More specifically, over the 137-year history of media ride-alongs, key aspects of the practice, including 1) how media ride-alongs took place, 2) the purposes of the practice, 3) the effects of the practice, 4) legal considerations, and 5) discussions of race and class, were found throughout the history of media ride-alongs. Each of these themes builds on the others to tell the history of media ride-alongs and how it has remained a problematic practice.

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<sup>1281</sup> *Wilson*, 526 U.S. at 626. See also notes 19-25 above.

<sup>1282</sup> *Id.*

<sup>1283</sup> See Sara Hammond, "Court ride-along ruling draws media," *Arizona Daily Star*, May 25, 1999; Jim Adams, "Twin Cities police say they'll still let journalists ride along, observe from afar," *Star Tribune*, May 25, 1999; "Justices curtail police observers," *Sun* (Baltimore, MD), May 25, 1999; Warren Richey, "Reporting on a raid: Permission slips now required," *Christian Science Monitor*, May 26, 1999.

First, in almost all instances where a reporter rode-along with law enforcement, the police allowed the journalist to do, such as through an invitation or granting permission under department policies. This meant that police provided access to journalists and members of the media, suggesting that those riding along would need to reciprocate in some way or lose that access, as well as access to information and sources.

Second, two of the main purposes of media ride-alongs, combined with two effects of the practice, provide evidence that this was, in fact, the case. More specifically, the most common form of reporting stemming from media ride-alongs was coverage of law enforcement, such as their actions, technology, and reforms. Such reporting often praised, and therefore included more positive coverage, of law enforcement, while examples of the press criticizing the police or holding law enforcement officials and officers accountable were far less common. The second most common form of coverage stemming from a media ride-along was reporting on a news story. Although such coverage did not contain praise to the extent as reporting on the police, it still often depicted the police, at worst, in a neutral light, meaning it discussed police actions without providing a critical view of what took place.

Taken together, such coverage suggested not only that the press reciprocated for the access to police vehicles, but also that media ride-alongs were often not an effective means of obtaining and providing a complete view of law enforcement to inform the public and hold the police accountable. The press' inability to perform two of its key functions by instead providing a more positive image of law enforcement and aiding their community relations in return for access, demonstrates the blurring lines between the two parties' goals, purposes, functions and actions. Additional purposes —aiding police and

providing entertainment — and additional effects — physical danger, undermining public trust, and legal action — only further problematized media ride-alongs and blurred the lines between the press and police. Although some articles demonstrated possible benefits of media ride-alongs — 1) improving the press-police relationship, 2) the press informing the American public, therefore building trust with the community and potentially gaining or retaining readers or viewers, and 3) the possibility of holding the police accountable — these benefits were undermined by the concerns associated with the practice, which implicated the press, police, their relationship, and the public.

Due to the consistency of most aspects of media ride-alongs beginning with the 1880s-1890s, the following sections first discuss how the practice took place before turning to its purposes and effects, incorporating legal considerations and discussions of race and class where applicable. Examples from across the 137-year history of media ride-alongs and from across the United States illustrate how these five themes have appeared at different historical moments and locations, demonstrating several implications, including the blurring lines of the press-police relationship caused by media ride-alongs and the problematic nature of the practice.

#### **a. How Media Ride-Along Took Place**

One aspect of media ride-alongs that every example has in common is that member(s) of the press or media rode in or on a police vehicle with officials and/or officers for some purpose. In most cases, the reporter or media member was able to do so because they were allowed access to the vehicle by law enforcement. In such cases, coverage of the ride-along may have explicitly stated that this was the case, such as explaining that a reporter obtained permission or was invited to participate. Alternatively,

articles often implied that the reporter was allowed to be in the police vehicle because there was no indication of an argument or efforts by the police to prevent it. Conversely, in rare cases, journalists rode on a police vehicle without obtaining permission from the police to do so, such as by hopping onto the back of a patrol wagon without the police knowing or gaining access despite department policies, rules, or guidelines against the practice. Nevertheless, because the police generally allowed journalists access to their vehicles when a ride-along took place, reporters likely needed to reciprocate in some way to maintain that access, raising important implications.

The first documented instance of a journalist having permission to ride on a patrol wagon came in 1883 with perhaps the first documented media ride-along in the United States.<sup>1284</sup> As discussed above, a *Chicago Times* reporter rode along with police in order to detail the new patrol wagons in Chicago, the first police vehicles in the United States. Although it was not stated whether the reporter requested permission to ride with the police, there was no indication of any resistance by law enforcement officials or officers. In fact, the end of the article described the reporter watching the sunrise with the officers, to which one responded “Yes, it’s a daisy.”<sup>1285</sup>

Law enforcement allowing journalists to ride on police vehicles became more common around the turn of the 20th century as patrol wagons spread across the country. In an October 15, 1952 opinion piece for the *Detroit Free Press*, Malcolm W. Bingay recounted the history of the “Black Maria,” the Detroit Police Department’s patrol wagon

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<sup>1284</sup> “The Patrol Wagon.”

<sup>1285</sup> *Ibid.*

in the first half of the 20th century.<sup>1286</sup> Bingay explained that “[i]n the days before the automobile” it was not uncommon, “[w]hen an alarm of fire or disaster sounded in the press room” for “journalists to rush downstairs to the paddy-wagon station and grab . . . seats . . . with the cops.”<sup>1287</sup> This suggests that it was an accepted practice at the time.

Several examples from the 1880s-1890s support this conclusion. For example, on May 4, 1889, the *Lincoln Journal Star* reported that several city officials, including “Mayor Graham . . . [and] Chief Newbury,” along with “a NEWS reporter,” had “chartered the patrol wagon, and . . . proceeding on a tour of investigation” related to a report from several eyewitnesses that a church, which was being moved using cedar blocks, had “begun to break the concrete over the gas and sewer trenches.”<sup>1288</sup>

One year later, a law enforcement official formally invited a reporter to ride on the patrol wagon. On November 30, 1890, the *San Francisco Chronicle* reported that San Francisco Chief of Police Patrick Crowley asked a *Chronicle* reporter, “Would you like to try a trip [on the patrol wagon]?”<sup>1289</sup> The article explained that

[a]lmost before the words had left the chief’s lips the reporter found himself deposited in the [patrol] wagon, the horses were whipped up and in a jiffy the team was rattling down Kearny street toward the Folsom-street station. Chief Crowley was used to it, but the reporter required a minute or two to recover his equilibrium and his breath.<sup>1290</sup>

In this case, there was an explicit invitation by a police official for a reporter to join him on a patrol wagon, suggesting that in some cases, the police not only allowed reporters to ride with them, but also encouraged it.

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<sup>1286</sup> Malcolm W. Bingay, “Good Morning,” *Detroit Free Press*, Oct. 15, 1952.

<sup>1287</sup> *Ibid.*

<sup>1288</sup> “The Cedar Block Pavement,” *Lincoln Journal Star* (Lincoln, NE), May 4, 1889.

<sup>1289</sup> “Police Alarm Signals,” *San Francisco Chronicle*, Nov. 30, 1890.

<sup>1290</sup> *Ibid.*

Such invitations would continue throughout the history of media ride-alongs, including in 1907 when “Chief Metzger invited five newspaper reporters to accompany him,” on the Indianapolis Police Department’s new police “automobile.”<sup>1291</sup> Another example was detailed by the *Intelligencer Journal* in Lancaster, Pennsylvania, which recounted a story from 1938 in which “[t]he officer whose job it was to roll out the ‘Maria’” asked a group of reporters, “Want to go along?”<sup>1292</sup> The article explained that “[n]othing could have stopped [the reporters] and there was no question whatsoever when the man . . . told [them] to ‘hop in the back.’ Away [they] went, siren roaring, toward the fire.”<sup>1293</sup> Several additional examples were found in ensuing decades, including on November 2, 1992 when *Knoxville News Sentinel* business writer Laura Simmons wrote that the Knoxville, Tennessee Police Department encouraged reporters and citizens to “sign-up” to participate in ride-alongs.<sup>1294</sup>

In some cases, permission to ride with police came in different ways. A unique case arose on December 31, 1925 and January 1, 1926 when a “reporter for the Evening News [in Kenosha, Wisconsin experienced being] a member of the Kenosha police department from 8:00 o’clock New Year’s Eve until the first 5:00 o’clock in 1926.”<sup>1295</sup> In this case, the reporter was actually “sworn in as a member of the force.”<sup>1296</sup>

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<sup>1291</sup> “Police Automobile Balks.”

<sup>1292</sup> Harold J. Eager, “Reporter Rode In ‘Maria’ On Its First Call,” *Intelligencer Journal* (Lancaster, PA), Nov. 24, 1954.

<sup>1293</sup> *Ibid.* For a similar invitation, see “Reporter ‘Taken for a Ride,’” *Arlington Heights Herald* (Arlington, Illinois), June 27, 1952.

<sup>1294</sup> Laura Simmons, “On the Roads With the Law,” *Knoxville News-Sentinel*, Nov. 2, 1992.

<sup>1295</sup> “Reporter on Police Force,” *Kenosha Evening News* (Kenosha, WI), Jan. 2, 1926.

<sup>1296</sup> *Ibid.*

Another example was detailed in a January 16, 1948 piece for *The Star Press* in Muncie Indiana by columnist Richard “Dick” Greene.<sup>1297</sup> He recounted the story of Jack Ferris, *The Star*’s managing editor at that time, who in the 1910s “not only had the experience of riding in th[e] old ‘Black Maria,’ but he drove the wagon on occasion. He remembers in particular a time when he took the wagon on a trip to the southwestern part of town.” Although not common, the fact that Ferris drove the patrol wagon on occasion shows the agency and access given to reporters at least at that time period, going a step even beyond giving permission to ride along.

On the other hand, in some cases, reporters would ask permission before riding with police. One such case was detailed by *The Rock Island Argus* on July 18, 1946.<sup>1298</sup> The article explained that a reporter for the newspaper had “recently joined company with Patrolmen Kenneth C. Reem and Harley A. Overdier,” but only after “permission to take the ride was asked.”<sup>1299</sup> Reporters requesting permission to join police was likely more common than was found in the examples given that it occurred behind the scenes and likely was not worth including in the final reporting. But even if reporters needed to request permission to accompany police, media ride-alongs remained common, including in the 1940s when *Minneapolis Sunday Tribune* staff writer Dan Brennan wrote on March 14, 1948, “Sooner or later a night side police reporter succumbs to the favorite sport ascribed to police reporters by the movies. He goes for a Saturday night ride with

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<sup>1297</sup> Dick Greene, “Seen and Heard in Our Neighborhood,” *Star Press* (Muncie, IN), Jan. 16, 1948.

<sup>1298</sup> Richard S. Moody, “Crime Fails to Rear Its Ugly Head as Newsman Ride All Night in Police Car,” *Rock Island Argus* (Rock Island, IL), July 18, 1946.

<sup>1299</sup> *Ibid.*

the detectives on the homicide squad.”<sup>1300</sup> Whether requesting permission was required or not, it demonstrates another way in which the police allowed reporters to participate in ride-alongs at different periods in U.S. history.

Following the creation of formal programs in the 1960s, police continued to invite or otherwise allow reporters to ride along as the practice gradually became more common throughout the United States. For example, on October 22, 1967, *Chicago Tribune* reporter Ann Plunkett sought to “have an opportunity to watch [the police] in action.”<sup>1301</sup> She wrote that she “had that chance” to do so because of a “unique program called ‘Ride Along.’”<sup>1302</sup> Similarly, a June 4, 1989 story by the *Orange County Register* quoted an unnamed reporter who praised an Irvine, California police officer for being “very helpful in allowing me to ride along on his Friday night shift”<sup>1303</sup> as part of the department’s formal ride-along program.

However, some departments may have been less inclined to allow ride-alongs during the 1960s-1970s given the adversarial nature of the press-police relationship. This would account for lower number of examples found of media ride-alongs during this time compared to the 1980s through the present, despite the creation of formal programs. But the fact that there were still multiple examples of the practice taking place, especially in

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<sup>1300</sup> Dan Brennan, “Reporter Shares Chase: Squad Car Combs Dark City for Crime,” *Minneapolis Sunday Tribune*, March 14, 1948. See also Tait Cummins, “Voice From The Air Directs Police Radio Squad Cars to All Sections Of City On Great Variety Of Calls,” *Cedar Rapids Gazette*, Feb. 4, 1934.

<sup>1301</sup> Ann Plunkett, “‘Ride Along’ with Police Gives Insight,” *Chicago Tribune*, Oct. 22, 1967.

<sup>1302</sup> Ibid. See also Bernard Judge, “VASCAR Is Effective: New Timer Nips Speeders,” *Chicago Tribune*, Sept. 18, 1966. This article demonstrates that ride-alongs continued to occur outside the formal programs as well, among several other examples.

<sup>1303</sup> Pat Riley, “Officer, reporter stress different aspects of Irvine teens,” *Orange County Register* (Santa Ana, CA), June 4, 1989.

cities like Chicago that saw greater strain between the press and police following the 1968 DNC, is significant. The access provided to reporters to be able to ride along with police represented perhaps a rare instance of police doing so during this time period, raising questions about the motivations for doing so.

In recent years, media ride-alongs remained a common practice across the United States as the following sections will further demonstrate. However, an example from 2018 further demonstrated the possibility of a *quid pro quod* arrangement between the press and police stemming from the practice. On April 8, 2018, *Longview (Texas) News-Journal* staff writer Megan Hix wrote about her ride-along with Corporal Josh Tubb, Gregg County Sheriff's Office's public information officer. In addition to providing another instance of a reporter having permission to participate in the ride-along, this example raised the concern about what was being accomplished if Hix was riding with a public information officer rather than a traditional officer.

Throughout the history of media ride-alongs, there were some limited instances where a journalist did not receive permission to ride in the police vehicle, but did so anyway. For example, on May 2, 1905, *The Charlotte Observer* in North Carolina reported that the previous day, one of its reporters "saw the police wagon starting out with three coppers, the driver, and little Peter Black. The little boy was perched on the driver's seat. It looked like such an important occasion that the reporter ran and swung up behind."<sup>1304</sup> What separates this example from those discussed above is that the reporter did not request permission to jump on the wagon, meaning the police may not have

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<sup>1304</sup> "Outing with the Coppers," *Charlotte Observer* (Charlotte, NC), May 2, 1905.

known he was there. Although this may have been an accepted practice at the time, the reporter may not have been allowed to ride the wagon under different circumstances.

An example in which it was more explicit that reporters were not allowed to ride on police automobiles came in 1938 when *The Evening News* in Harrisburg, Pennsylvania reported that during a city council meeting, “Patrolman Roy M. Keller, substitute patrol wagon driver, . . . admitted he . . . took a civilian, a newspaper reporter, along on the patrol wagon in violation of department orders[.]”<sup>1305</sup> Although the reporter had been given permission by the substitute driver, it was in violation of department policy, meaning other officials or officers would not have done the same. In at least two other instances, police officials had changed department policies to prohibit the practice, including in Minneapolis in 1894<sup>1306</sup> and Salt Lake City in 1912,<sup>1307</sup> among other likely cases,<sup>1308</sup> drawing protest from reporters who argued that the practice was generally accepted across the country.

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<sup>1305</sup> “Chief Defends Action Of Men In Cell Death Of Dougherty,” *Evening News* (Harrisburg, PA), Nov. 14, 1938.

<sup>1306</sup> “The Strike Affects Reporters,” *Minneapolis Tribune*, July 24, 1894. The *Minneapolis Tribune* reported that “Chief Taylor [had ordered that] wagon men . . . not to allow any reporters in the wagon until things have quieted down” following reports that a patrol wagon had struck a pedestrian. The order prompted protests by reporters, who argued that they “d[id] not see why they should be denied the privilege.”

<sup>1307</sup> “Reporters Barred From Police Autos,” *Salt Lake Herald-Republican*, Aug. 6, 1912. The *Salt Lake Herald-Republican* explained that “[b]y an edict of the chief of police, issued yesterday, no reporter on any newspaper in the city will be allowed on the police wagons hereafter.” The chief reportedly said that he had been “contemplate[ing the move] for a long time.” According to the *Herald-Republican*, the chief was asked “But have the reporters done no service to the police in the past?” When he responded that there was not “room” for reporters, it “pointed out that there was generally plenty of room, especially in the big wagon.” The newspaper further reported that it “was also pointed out that such a ruling has never been made against newspaper men in nearly all the big cities.”

<sup>1308</sup> “The Strike Affects Reporters.” See also W. W. H., “Whisperings of the Wind,” *Semi-Weekly Spokesman-Review* (Spokane, Washington), Feb. 13, 1938. The article noted that some police chiefs in the 1930s “frowned upon” the practice of reporters answering calls with the patrol

In most of the above examples, among several others, police officials, officers, and public information officers not only allowed reporters to accompany them, but often encouraged it. Put simply, when media ride-alongs did take place, it was because the police allowed it and granted access to their police vehicles. This suggests that the police got something out of the practice, namely as some articles argued, improved community relations with the public. Most commonly, observers argued that media ride-alongs did so by portraying law enforcement in a more positive light and allowing the public to better understand law enforcement. The desired result, as part of community policing,<sup>1309</sup> was for the public to have more respect for and/or to cooperate with police. For example, when *Chicago Tribune* reporter Ann Plunket wrote about her experience with Chicago's "ride-along program" in 1967, she quoted Sergeant James White, who "said the program would encourage respect for and cooperation with the police."<sup>1310</sup> Similar arguments were also made in connection with ride-along programs in 1998,<sup>1311</sup> 2002,<sup>1312</sup> 2010,<sup>1313</sup>

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wagon and that some officials "prohibited" the practice. A limitation worth noting here is that the keyword searches used in the newspaper databases may not have been best suited to uncover additional instances where media ride-alongs were denied. However, in most articles, minus the few discussed above, there was no indication that it was normal or common for reporters to be denied the right to ride with police.

<sup>1309</sup> See note 740 above.

<sup>1310</sup> Plunkett, "Riding with Police Gives Insight." Plunkett noted that "[Sergeant James] White said the [ride-along] program would encourage respect for and cooperation with the police."

<sup>1311</sup> LeFevre, "Through different eyes." LeFevre wrote, "The program's goal is to teach participants about the role police play in the community by presenting them with some typical law enforcement scenarios."

<sup>1312</sup> Melissa Grace, "Through officers' eyes – Civilians ride along on patrol," *New York Daily News*, Dec. 1, 2002. Grace noted that the ride-along program was "aimed at encouraging a dialogue between cops and the community they serve."

<sup>1313</sup> Adam Greenberg, "Reporter rides with police," *Clifton Journal* (Clifton, NJ), Oct. 1, 2010. The article read, "Chief Gary Giardina encourages people to take advantage of the ride-along program . . . to see 'the responsibilities we have . . . and how hard we're working.'"

and 2017.<sup>1314</sup> Significantly, in order to benefit in this way, police officials and officers, whether they explicitly stated so or not, likely expected something in return for providing access to the press, namely positive coverage. The police may have even acted differently knowing the press or media were present to further ensure such coverage.

The theoretical framework and literature review support this conclusion in two ways. First, the press, especially in the first half of the 20th century, had a “perpetual pragmatic concern over access” and did not want to “break the gentlemen’s agreement about what can and cannot be reported.”<sup>1315</sup> Amidst significant partnerships between the press and police, journalists would seek to gain, and keep, access to police departments, crime scenes, and other locations, including police vehicles.<sup>1316</sup> In seeking to retain this access, the press also aimed to ensure that it did not lose valuable source relationships with law enforcement officials and officers. With perhaps the exception of the 1960s-1970s to some degree, given the more adversarial relations between the press and police, journalists have generally sought to maintain access to police information, sources, locations, and vehicles, likely taking different actions to do so.

Second, the theoretical framework suggested that there are many instances where the press and police are able to cooperatively co-exist,<sup>1317</sup> meaning they act independently and do not interfere with the goals, purposes, functions, or actions of the

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<sup>1314</sup> Jackson, “Going on a ride along.” Jackson wrote, “In this day and age, . . . outreach is critical.”

<sup>1315</sup> Daly, *Covering America*, 270; Mott, *American Journalism*, 763; Pressman, *On Press*, 8.

<sup>1316</sup> Richard Weinblatt, “How history makes the future of police media relations clearer”; Amber Brozek, “Relations between media and law enforcement have changed since 1959”; Aucoin, *The Evolution of American Investigative Journalism*, 44-47; Lovell, *Good Cop / Bad Cop*, 134-35; Ellen Warren, “The scene of the crimes.”

<sup>1317</sup> See notes 108-109 above.

other. In some instances, the two parties may work together, but are able to maintain their independence and accomplish their autonomous purposes and functions. However, because of the *quid pro quo* arrangement around media ride-alongs, the practice represents a case of the two parties going beyond working together and instead blurring the lines of their relationship as their purposes and functions overlap in ways that make one or both unable to adequately fulfill their goals and actions.

The give-and-take nature of the police providing access through media ride-alongs was perhaps best articulated by the *Daily News of Los Angeles* writer Jim Benson when he contended on May 7, 1989 that media ride-alongs cause “a predicament that journalists covering the police beat — or any beat, for that matter — have grappled with for years.”<sup>1318</sup> He explained that the dilemma is that the press and members of the media “are with the cops every day,” meaning that journalists and others “not only start sharing their sympathies but . . . are pressured to write the story a certain way because you have to be back the next day with these same people.” Benson added, “The relationship can be awfully difficult to repair once a valued source gets burned.”<sup>1319</sup>

The following section, by detailing the most common purpose for journalists to go on a media ride-along and contrasting two key effects of the practice, provides further evidence that the press, in order to retain access to media ride-alongs and source

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<sup>1318</sup> Jim Benson, “Prime Time Is Crime Time: Are Reporters In Squad Cars Taking Viewers For A Ride?,” *Daily News of Los Angeles*, May 7, 1989.

<sup>1319</sup> Ibid. See also Harold L. Cross, *The People’s Right to Know: Legal Access to Public Records and Proceedings* (Morning Heights, New York: Columbia University Press, 1953), 95. In his seminal 1953 work, Cross explained that police officials “desire . . . favorable publicity . . . and dislike unfavorable publicity,” which can result in decreased access for the press to police records and information.

relationships with the police, did, in fact, shape their coverage to be more positive toward law enforcement. More specifically, it was common across the 137-year history of media ride-alongs for the press to not only cover the police due to the access they were given, but to do so by portraying the police in a positive or, at the very least, neutral light.

#### **b. Main Purposes and Two Key Effects of Media Ride-Alongs**

Having established that law enforcement officials and officers generally allowed reporters to accompany them on police vehicles, often to benefit from improved community relations, the following section provides further evidence that members of the press took certain actions to ensure that they would retain the access and source relationships afforded by media ride-alongs, resulting in blurred lines between the press and police. To do so, the following section turns the two most common of four reasons why journalists participated in media ride-alongs, including to cover: 1) police actions, strategies, reforms, and technology and 2) news stories. To determine whether such coverage cast police in a positive and/or negative light, the sample was coded for instances of reporters praising the police in their reporting after a ride-along, which would portray police in a positive light.<sup>1320</sup> The articles were also coded for moments where the press criticized the police or otherwise reported on a topic portraying police in a negative light. What the results demonstrated was that the press praising the police, or

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<sup>1320</sup> This study did not code for “positive coverage” as it was simply too subjective and would have required getting into the mind of a journalist. For example, there were numerous instances where a reporter detailed a successful traffic stop by the police. Is that positive coverage? Or simply the reporter detailing what they saw? Instead, the articles were coded for praise, which is, in some sense, the ultimate form of positive coverage as it provided flattery of the police. Certainly, the articles not containing praise may have included positive coverage or, at the very least, were neutral, which still portrays the police as doing their jobs and protecting the community, among other functions and actions.

at the very least providing neutral coverage, was significantly more common than criticism. This suggests that media ride-alongs did not allow the press to fully inform the public about law enforcement or hold police accountable, demonstrating the blurring of the press-police relationship and problematizing the practice. Examples from different time periods and locations around the country demonstrate that these problems have existed since the final decades of the 19th century and have largely undermined the potential benefits of media ride-alongs.

### **i. Description of Codes**

The most common reason journalists have historically accompanied police on a ride-along is to obtain information about and cover the police in some way, with law enforcement being the sole or most important focus of the story. This was apparent in three ways. First, the reporter used the practice to detail and “get a sense of” police activities within a community over a given time period, such as during a particular shift. Subsequent reporting therefore often detailed the journalist’s experiences on the ride-along. Second, the press covered police by reporting on 1) police reforms, 2) changes to police functions, strategies, actions, and 3) a new police vehicle or law enforcement technology. Finally, in some cases, the reporting focused on providing information about the officer(s) and/or official(s) who conducted the ride-along. In each case, the reporter used what they learned, saw, or experienced to report on law enforcement.

Although less common than covering the police, another purpose of media ride-alongs found throughout the 137-year history of the practice was reporters using the practice to get to and cover a news story. More specifically, reporters used a ride-along to 1) get to the scene of a particular news story or event in which the police would be

involved, such as a murder, robbery, etc., and 2) obtain information on and cover a news story/investigation that went beyond focusing solely on the police. In these instances, the press focused on what happened at the crime scene, emergency areas, on the roads, etc., rather than focusing only on the police. Nevertheless, even in such cases, the police were still part of the story and were often depicted accomplishing important functions benefitting the public.

However, as demonstrated below two effects of media ride-alongs, when compared to each other, undermine the benefits of such coverage by the press. More specifically, journalists would, at times, praise the police in their reporting stemming from the ride-along, such as thanking the police for the experience or stating that it changed their perspective of what police face on a daily basis. In some cases, the article may have included praise of a new police vehicle, technology, etc. The result was that such reporting cast police departments, officials, and officers in a positive light. Significantly, except for a few limited exceptions, moments where the press praised the police appeared in instances where reporters recounted their experiences riding with police. Demonstrating the importance of this conclusion is that over one third of the articles in which the press covered the police following a ride-along contained praise of law enforcement.

Conversely, only three articles that were coded as covering the police contained some form of criticism or critical reporting of law enforcement. More broadly, only eight articles of the 148 that were qualitatively coded contained some form of critical coverage. To fall under this code, the article needed to include an instance where the article criticized law enforcement in some way. The article may have also targeted a

controversial or otherwise more negative topic connected to law enforcement, such as pointing out police misconduct or poor relations with minority communities.<sup>1321</sup> In more rare instances, some articles even explained, whether by the writer or through a quote, that the press-police relationship was harmed or could have been harmed due to media ride-along(s) or actions by the police related to the practice. By pointing out these concerns or criticizing law enforcement, the press took at least the first step in holding police accountable in connection to media ride-alongs, though such instances were outnumbered by reporting that praised the police. Thus, the following sections argue that the potential benefits associated with media-ride alongs are undermined by press coverage that portrays police in an overly positive, or neutral, light.

## **ii. Examples of Journalists Covering Police Through Media Ride-Alongs**

The purpose of covering the police was first apparent in the *Chicago Times* reporter's experience riding Chicago's new patrol wagons in 1883.<sup>1322</sup> As the article stated, the reporter was "detailed to write up the patrol-wagon system" and "very faithfully accomplished his assignment." Additionally, the reporter covered the different actions by the police on the patrol wagon, such as dealing with "drunk and disorderlies" and a fire.<sup>1323</sup> The focus of the story was therefore not only to cover the new patrol wagons, but also the actions of the police once aboard the wagon in the city, with the ride-along being used to obtain such information.

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<sup>1321</sup> This is different from reporting that simply notes that the police had failed to do something. For example, explaining that the police failed to locate a stolen car is not critical of the police unless there is an indication that this is a consistent problem, was due to larger police error, etc.

<sup>1322</sup> "The Patrol Wagon."

<sup>1323</sup> Ibid.

The *Chicago Times* reporter's experience was not an isolated incident. Within three years after Chief Kennett visited Chicago and marveled at its patrol wagon, St. Louis had purchased its own.<sup>1324</sup> On July 26, 1884, the *St. Louis Post-Dispatch* detailed a reporter's "Night Spent With the Patrol Wagon." The night began slowly, as

a sleepy stillness reigned throughout the [Central District Station], only broken now and then by the clatter of Night-watchman McLean's steps in the iron stairs and landings. "This is a quiet night," said old Officer Billy Sims to a POST-DISPATCH reporter, who was assigned to spend the night at the station. "You won't see much here that will be of any interest. You had better go out with the patrol boys to-night."<sup>1325</sup>

However, moments later, a "gong" rang and the officers scrambled to prepare the wagon. The *Post-Dispatch* reporter provided his account of the preparations of the wagon and his ride with the officers to the scene of the disturbance:

One of the officers ran to the telephone while the other assisted the driver. The stall chains dropped and the horses, released from their hitching straps, galloped from the stalls to the wagon. The last click of the snaps announced the team hitched as the officer and reporter mounted the steps and the wagon pulled out. . . . A ride in the cooling night air may be enjoyable, but a midnight gallop with the . . . police . . . is absolutely exhilarating.<sup>1326</sup>

Thus, the reporter detailed his experiences riding the wagon, while also explaining the process of how it worked. In this account, and in the report by the *Chicago Times* reporter, the purpose of riding the wagon was to provide details about the new patrol wagons, as well as to describe their experience on board, both having received permission, or even an invitation to do so. Furthermore, the reporters, riding with the police to calls, provided readers with a glimpse into law enforcement operations in Chicago and St. Louis.

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<sup>1324</sup> "On The Hoodlum. A Night Spent With the Patrol Wagon Officers in Central District," *St. Louis Post-Dispatch*, July 26, 1884.

<sup>1325</sup> Ibid.

<sup>1326</sup> Ibid.

In ensuing decades, reporters would continue to use media ride-alongs to cover law enforcement, with the most common form of doing so being a description of the reporter's experiences aboard the police vehicle, such as overnight or over the course of a shift. This was first seen on November 30, 1890 when the *San Francisco Chronicle* reported on the city's "new police alarm system."<sup>1327</sup> As discussed above, Chief Patrick Crowley invited a *Chronicle* reporter to join him on a patrol wagon, allowing the reporter to detail the new alarm system, which included signal boxes around San Francisco, and the new patrol wagons.<sup>1328</sup> The majority of the article then detailed the reporter's experiences riding with the Crowley.

Significantly, this article marked the first instance found where the reporter included praise for the police in their reporting following the ride-along. In this case, the reporter wrote extensively on the success of the new alarm system, even though it had only been tested. The story read in part,

But its working has already given the assurance of complete success. To grasp the full significance of the change it is only necessary to recognize that the city's toughs, sneak thieves, burglars, and intellectual criminals, who keep pace with the times, can cope with any legal power, but electricity beats them. If the average burglar or sneak thief was half as sure of conviction as he now is of detection, three-fourths of the gangs now infesting the central streets . . . would go out of business[.]. . . Examination of the experiment

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<sup>1327</sup> "Police Alarm Signals."

<sup>1328</sup> Ibid. See "A Day With The Patrol," *San Francisco Examiner*, March 15, 1891. A similar example arose one year later, also in San Francisco. On March 15, 1891, *The San Francisco Examiner* reported on elements of "An 'Examiner' Reporter's Twenty-Four Hours' Experience on the Box Seat of the City's Chariot" were detailed, ranging from detaining a drunken individual accused of picking pockets to talking with a truck driver charged with reckless driving. See also "A Night on the Box with the Patrol Driver," *Evening Star* (Washington, D.C.), Jan 3, 1909. Similarly, on January 3, 1909, the *Evening Star* in Washington, D.C. published an article titled "A Night on the Box with the Patrol Driver." In addition to cover the different overnight activities of the patrol wagon, its driver, and the policeman riding in the back, the reporter also provided significant discussion of how the wagon was prepared by the driver for each shift, including feeding the horses and connecting them to the wagon, which then sped to the scene of a drunken individual to be transported to the station house.

station at Seventeenth street showed that the intelligent forces set to work to cope with thievery and ruthenium are equal to all the demands[.]<sup>1329</sup>

Here, the positive coverage affording to the police is clear in that the reporter contended that it had already allowed the police to better cope with criminal activity in the city, something the reporter had witnessed during the ride-along.

Another good example of a journalist riding with the police to learn more about what they do and summarily praising law enforcement came on March 7, 1917 when a reporter for the *Des Moines Evening Tribune* recounted his experiences “in a police automobile equipped to run down traffic law violators.”<sup>1330</sup> In the story, *Des Moines Evening Tribune* reporter W.D. Harrison described the vehicle and his experiences, which provided “[e]nough thrills . . . to last through the season,” as well as providing his readers a glimpse into the “dangerous” police activity of chasing down violators of the speed limit. Towards the end of the story, Harrison argued that despite their public perception, “[a] traffic man is not necessarily a bully; he may be a gentleman.” Harrison wrote that “[Detective] Hollibaugh is,” explaining that “not one row did he get into during the entire afternoon’s hunt.”<sup>1331</sup> Thus, rather than praising the police automobile or alarm system, Harrison praised the detective with whom he had accompanied in chasing speeders traffic violators, providing a positive view of that officer and law enforcement.

A similar example occurred when, as discussed above, a reporter for the *Evening News* in Kenosha, Wisconsin was sworn in as a member of the Kenosha police

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<sup>1329</sup> “Police Alarm Signals.”

<sup>1330</sup> “Evening Tribune Reporter Spends Afternoon in Police Car Chasing the Automobile Speeder,” *Des Moines Evening Tribune* (Des Moines, IA), March 7, 1917.

<sup>1331</sup> *Ibid.*

department on New Year's Eve and New Year's Day in 1925/1926.<sup>1332</sup> According to a January 2, 1926 report by the *Evening News*, the "instructions for the reporter divided his time into three distinct beats," including "for . . . three [hours] he was to work with the patrol wagon on its calls[.]"<sup>1333</sup> The first call came in when "[s]omeone reported seeing a man peering into windows in a home on the border of Lincoln park. The wagon, with Officer Fenske at the wheel and the reporter at his side, shot out to the scene at a speed of 65 miles per hour on a stretch." Towards the end of the story, the unnamed reporter told the newspaper staff that "he enjoyed his night's work immensely." The reporter added that he had "made up his mind that there is only one thing better than being a news reporter, and that is being a police officer,"<sup>1334</sup> once again praising the police and casting them, and their profession, in a positive light.

Similarly, on February 4, 1934, reporter Tait Cummins of *The Gazette* in Cedar Rapids, Iowa, wrote that he sat in the rear seat of the patrol car, "comfortably stowed away to learn just what squad car policemen [in the community] do to earn their

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<sup>1332</sup> "Reporter on Police Force." See also Charlie Granger, "Halloween Quiet, But There Was No Rest for the Coppers," *Minneapolis Star*, Nov. 1, 1935. This article provided another instance of a reporter joining the police for a shift on a holiday. On November 1, 1935, *Minneapolis Star* reporter Charlie Granger similarly recounted his experiences on "Squad Car 61" on Halloween night, explaining that it was a quiet evening, but that the police had been called to a report of "young boys" messing with a fire hydrant. See also John Ford, "Ride-Along more than reporter bargained," *Neosho Daily News* (Neosho, MO), March 11, 2001. This article provided a third instance, in which *Neosho (Missouri) Daily News* associate editor John Ford rode along with police on Valentine's night in order "to see first-hand how law enforcement is done." Ford praised the police for the experience, calling the forensics unit in particular "a well-oiled, perfectly timed machine[.]. . . The process is fascinating." Ford added, "Doing the ride-along gave me yet another opportunity to see officers as people. Some are serious, some are funny. They're as different in personalities are reporters, or plumbers, or business owners, or what have you. They have a tough job. I don't think I could do it day in, day out."

<sup>1333</sup> "Reporter on Police Force."

<sup>1334</sup> *Ibid.*

money.”<sup>1335</sup> He explained that the best way to record “the experiences of the evening” was to join “[t]wo uniformed policemen . . . on their customary assignment—that of ‘shooting’ any and all trouble which might develop in their district from 4 p.m. until midnight.” Like previous examples, the primary purpose of the ride-along was to detail what the police officers accomplished on an average shift. Additionally, the subsequent story included praise for the police officers. Cummins wrote that the officers “stood out” because “[t]he men in squad cars have a man-sized job [in the community].”<sup>1336</sup>

Reporters detailing the experiences they had during ride-alongs would continue in the 1960s-1970s,<sup>1337</sup> some of which including praise for particular officers or law enforcement more generally. In fact, during this time period, some reporters praised police even amidst public criticism and concerns. For example, on May 20, 1972, *New York Amsterdam News* reporter Lee Cook detailed his “night in a patrol car,” in which he

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<sup>1335</sup> “Voice From The Air Directs Police Radio Squad Cars To All Sections Of City On Great Variety Of Calls.”

<sup>1336</sup> Ibid. See also Jack Martin, “A Tour With Prowl Car: Reporter Does Night Beat with Policemen,” *Arlington Heights Herald* (Arlington Heights, IL), Aug. 6, 1959. The article provided a similar example of praising the police in a community. It read in part, “[W]hen a blue squad car rolled out of the Arlington Heights village hall parking lot Friday evening, a third passenger, a reporter, was sitting in the back seat wondering how exciting the ‘night beat’ really was. . . . It was a few minutes until midnight, and the 4-12 shift came to an end. . . . No murders, counterfeiting, or other such TV dramatics, but a tired reporter couldn’t help thinking that some 20,000 villagers are getting their tax money’s worth.”; “Reporter ‘Taken for a Ride.’” Another example was detailed on June 27, 1952 by the *Arlington Heights Herald* in Illinois. The article explained that a reporter was “Taken for a Ride” in a local sheriff’s police car after Sheriff John Babb had “offered to allow any Chicago newspaper reporter to ride with his officers to see how the department works.” The paper took the invitation and assigned reporter Pat Englehart “to ride in a squad car during one complete eight-hour shift.” Following his ride-along, Englehart praised the police, writing “When you’re talking about ‘do-nothing’ cops you can forget Sheriff Babb’s county highway police.” They work hard at doing ‘nothing.’ . . . They did little that the public would notice but managed to keep busy while riding 117 miles.”

<sup>1337</sup> See John Davies, “Reporter Cruises with Police; Tells Squad Car View of Cicero,” *Chicago Tribune*, Feb. 16, 1969; Casey Banas, “Fillmore Is Prime Battleground for Chicago’s Police,” *Chicago Tribune*, Oct. 2, 1969; John Nunes, “Police show runs quietly in city,” *Times-Advocate* (Escondido, CA), Aug. 6, 1978.

joined the “integrated police team of Willie Williams and Roy Peron.”<sup>1338</sup> Cook wrote that he was “struck by [patrolman Walter] Williams’ adept handling of the youth: it is an act which seems alien in the prevailing community atmosphere of hostility and suspicion toward police.” In this way, Cook was praising the work of Williams in the community. However, he also went a step further and included commentary by several police officers that the “problems of the police image in the community [were] distorted.” According to Cook, officers asserted “that the majority of community residents supported the police,” and added that the inner city was “frightening” on a Saturday night. Thus, Cook not only praised Williams, but also provided the police’s point of view on a controversial topic without noting public criticism of the police. Although this may have been a reflection of the time period, the result was still a one-sided view of law enforcement.<sup>1339</sup>

Such praise or, at the very least, defense of the police by reporters amidst controversy in a community was apparent in more recent reporting as well. On August 13, 2016, *Issaquah & Sammamish Reporter* journalist Nicole Jennings detailed her “first Issaquah[, Washington] police ride-along experience,” which she wrote gave her “a glimpse of the daily life of a law enforcement officer, and the challenges that those charged with ensuring the community’s safety face routinely.”<sup>1340</sup> Jennings quoted Officer Chase Goddard, who contended that people “sometimes criticize [officer’s] decisions later.” Jennings then wrote that she agreed with Goddard that “it is much easier

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<sup>1338</sup> Lee Cook, “A night in a patrol car: Quiet, stark, tense!,” *New York Amsterdam News*, May 20, 1972.

<sup>1339</sup> Ibid. See also Edward Moran, “An Arrest That Could’ve Been Trouble,” *Philadelphia Daily News*, April 25, 1986.

<sup>1340</sup> Nicole Jennings, “Police ride-along – the true meaning of police work,” *Issaquah & Sammamish Reporter*, Aug. 13, 2016.

for a person on the outside to make judgments in hindsight than for the officer at the time who is alone, under pressure and facing a threat.” She added, “Personally, I don’t think I could keep calm enough to make a rational decision if a criminal was possibly about to hurt me, and I applaud police for having the ability to do this regularly.” Here, Jennings not only agreed with a police officer that the public often jumped to conclusions when controversy arose, but also asserting that she would be unable to make the decisions the police do. Jennings went so far as to write that she had “a newfound respect for law enforcement, and [was] beyond grateful that there are people who are willing to make putting their lives on the line a career so that the rest of us can sleep soundly at night.”<sup>1341</sup>

A similar example arose one year later, when reporter Cindy Jackson of the *News Leader* in Fernandina Beach, Florida participated in a ride-along with Nassau County Sheriff’s Deputy Ryan Goethe in order to better understand why police officers are “willing to put himself or herself in harms’ way day after day.”<sup>1342</sup> In writing about her experiences, Jackson wrote that she “walked away with even more respect for law enforcement officers.” However, she also went a step further and argued that

[i]n today’s world, with some law enforcement officers criticized for using too much force or being overly aggressive in certain situations, my experience was with deputies who are community members like all of us and truly committed to protecting and serving all the citizens of Nassau County.<sup>1343</sup>

This is significant in that although Jackson’s reporting may have been accurate, she still pushed against concerns raised by the public about police use of force and brutality by

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<sup>1341</sup> Ibid.

<sup>1342</sup> Cindy Jackson, “Going on a ride along,” *News Leader* (Fernandina Beach, FL), Dec. 20, 2017.

<sup>1343</sup> Ibid.

highlighting her own ride-along experience on a single evening. Concerns arise in her case and others when the alternative view of law enforcement is not fully flushed out or is too quickly dismissed based on a single ride-along. This raises the questions about whether media ride-alongs are an effective means at getting the complete picture of law enforcement in a community, especially when concerns are raised by the public.

Journalists reporting on their ride-along experiences were commonplace in the later part of the 20th century and early-21st century.<sup>1344</sup> An article from 2015 perhaps best illustrates what journalists aimed to accomplish by riding along with police and subsequently reporting on what took place. On May 26, 2015, *The News-Gazette* in Champaign-Urbana, Illinois provided an account of what reporter Jonathan Hettinger had experienced during the “first five hours of a 12-hour night shift doing a ‘ride-along’ with an Urbana police officer.”<sup>1345</sup> The story provided a detailed account of what took place down to the minute, such as Officer Cortez Gardner, at 7:37 p.m. “stop[ping] at Hamilton on the Park, a public-housing development in his beat,” where the officer “g[ot] out and ask[ed] some kids on the playground if they want[ed] a sticker.” The story explained that Hettinger was able to be so precise because the newspaper “had him keep a running diary,”<sup>1346</sup> providing a perfect analogy for how reporters covered the police through

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<sup>1344</sup> See e.g. Gordon Hickey, “‘An Average Night’ On The City Beat,” *Richmond Times-Dispatch*, Aug. 20, 1987; “Gunshot interrupts TV interview,” *Associated Press*, Oct. 15, 1989; Simmons, “On The Roads With The Law”; Sue Fishkoff, “All’s Quiet On The Western Front – A Coast Weekly Ride Along in Downtown Monterey,” *Monterey County Weekly*, March 26, 1998; “On patrol, from ‘man down’ to teen woes, Squad car ride gives slice of life and police work in Easthampton,” *Daily Hampshire Gazette*, Sept. 21, 2005; Laura Weiss, “Citizen’s Police Academy,” *Westport News* (Westport, CT), Nov. 4, 2016; Mark Holan, “Brooklyn police bicycle unit is a powerful force on two wheels,” *Plain Dealer* (Cleveland, OH), July 19, 2013.

<sup>1345</sup> Jonathan Hettinger, “Riding shotgun,” *News Gazette* (Champaign-Urbana, IL), May 26, 2015.

<sup>1346</sup> *Ibid.*

media ride-alongs.<sup>1347</sup> Although not always as precise as Hettinger, the journalists in the above examples in many ways provided a “running diary” of what took place when they accompanied the police. In some cases, reporters then praised or thanked the police based on these experiences.

Like in past eras, reporting on police often included explicit praise for the police.<sup>1348</sup> Significantly, it even became increasingly common for reporters in their coverage of a ride-along to explicitly thank the police officers and departments involved.<sup>1349</sup> One such example is a January 28, 2013 article by *Richmond (Kentucky)*

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<sup>1347</sup> See also Haley Viccaro, “Ride-along offers glimpse at life on patrol,” *Daily Gazette* (Schenectady, NY), July 14, 2015.

<sup>1348</sup> See Jared DuBach, “Serve, protect: Reporter takes ride along with Elko police,” *Elko Daily Free Press* (Elko, NV), Feb. 6, 2009. *Elko (Nevada) Daily Free Press* staff writer Jared DuBach rode along with officer Joel Fairfield in order to “learn[] what it’s like on a regular day for an officer” patrolling for DUIs. After detailing his experiences riding with Fairfield, DuBach wrote, “A seasoned law enforcement officer such as Fairfield looks at the most routine calls and stops as mundane. But someone like me who grew up watching cop movies and TV shows has assumed an even greater respect for our boys in grey, and can’t wait for the next opportunity to ride shotgun,” once again praising a particular officer and the police more generally. See also “24 Hours on Patrol,” *Post Register* (Idaho Falls, ID), May 2, 1999. The article read, “The city’s patrol officers go into the dark places you would not and confront people you would avoid.”; Tara Pugh, “In Parkesburg, police work is serious business,” *Parkesburg Post Ledger* (Quarryville, PA), Sept. 6, 2007. Pugh wrote, “Being that I would like to be a police and crime beat reporter one day in the near future, I learned a lot from Sheller and Murtagh about the way the system works.”; “Ride with Policeman,” *Anniston Star* (Anniston, AL), Feb. 18, 1996. The unnamed reporter who wrote that article explained that “[i]ust one shift, I had observed enough of the way this 30-year-old police officer went about his job to freshen my respect for the people we trust to protect our community.”; Gina Covelli, “Citizen Covelli: Ride-along contradicts police career thoughts,” *Star* (Sun Prairie, WI), Oct. 22, 2009. Covelli wrote, “‘I’ll tell you, I definitely have a different perspective when it comes to reading police beats in the paper. There’s a little voice that just reminds me that there are people behind the words I’m reading. There’s more to the story on both sides, and I will always be asking myself about the human and emotional aspects missing from the newspaper print. I also know for a fact that I do not have the emotional control it takes to be a police officer.’”

<sup>1349</sup> Kevin T. Baldwin, “Going along for a ride – Reporter experiences night shift at Police Department,” *Worcester Telegram & Gazette* (Worcester, MA), March 13, 2008. Baldwin, wrote “I thanked [the officer] for the opportunity and as I walked back to my car I wondered if tonight was a ‘quiet night,’ what must these officers contend with during a busy night?”; Bill Fonda, “The things you see in a police car,” *Marshfield Mariner* (Marshfield, MA), Feb. 10, 2010.

*Register* reporter Sarah Hogsed, who wrote, “I would like to thank Officer Lay for putting up with all my questions. Besides the points outlined in this column, the most valuable part of the ride-along was getting to know [Lay] as an individual.”<sup>1350</sup>

However, as alluded to above, members of the media would cover police in additional ways besides recounting their experiences accompanying police. One such way was detailing new police vehicles, reforms, and technology. This was the case in the *Chicago Times* reporter’s ride-along in 1883<sup>1351</sup> and the *St. Louis Post-Dispatch* reporter’s ride-along in 1884<sup>1352</sup> in which they both detailed new patrol wagons in their respective cities. This was also the case in April 1895 when a *Chicago Daily Tribune* reporter spent “One Day’s Ride in a Chicago Patrol Wagon” in order to describe how the system worked, including how calls were received through call boxes around the city, how patrol wagons were divided amongst teams of officers, and how the wagons responded to different calls.<sup>1353</sup> The story also detailed what took place as the patrol wagons made their rounds, dealing with public drunkenness, transporting prisoners from court to detective headquarters, and more. Significantly, the April 24, 1895 *Chicago Daily Tribune* story also included praise, calling the patrol wagon “such a preeminently useful vehicle.”<sup>1354</sup>

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Similar to Baldwin, Fonda wrote, “Thanks to everyone who helped out, and to the MDA and Longhorn staff for their hospitality.”; Raquel Royers, “The adventures of a police ride along in Anderson,” *Anderson Valley Post* (Anderson, CA), July 31, 2012. Royers wrote, “Thank you, Anderson Police Department and an extra special thank you to Officer Lingenfelter for taking me along for the ride.”

<sup>1350</sup> Sarah Hogsed, “Even routine traffic stops can hold hazards for police – Reporter gets new perspective from ride-along,” *Richmond Register* (Richmond, KY), Jan. 28, 2013.

<sup>1351</sup> “The Patrol Wagon.”

<sup>1352</sup> “On The Hoodlum.”

<sup>1353</sup> “One Day’s Ride In A Chicago Patrol Wagon,” *Chicago Daily Tribune*, April 24, 1895.

<sup>1354</sup> *Ibid.*

Such reporting would continue throughout the history of media ride-alongs, including on February 12, 1962 when the *Chicago Tribune* reported on “[r]eforms of the [Chicago] police department by Supt. Orlando W. Wilson,” contending that they “resulted in radical changes in facilities and procedures for fighting crime” after “a reporter accompanied policemen on their assignments to observe how the innovations are functioning.”<sup>1355</sup> Less than a month later, on March 5, 1962, the *Chicago Tribune* reported on a new police task force that went undercover to catch a variety of criminals, with one officer posing as “a drunk stagger[ing] down 16th street.”<sup>1356</sup> Additionally, in two separate reports, one in 1966 and the other in 1970, the *Chicago Tribune* reported on the introduction of visual average speed computer and recorder (VASCAR) units in police cars, which were implemented to replace radar as a more effective and accurate way of measuring the speed of motorists.<sup>1357</sup> In each of the above stories, the *Chicago Tribune* focused on reforms, technology, and other changes made to the Chicago Police Department, highlighting them as beneficial changes, even in a divisive era between the two parties.<sup>1358</sup>

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<sup>1355</sup> Ronald Koziol, “Tribune Reporter Rides Police Car with a Finger Print Expert: How Cops Try to Solve Store Burglaries,” *Chicago Daily Tribune*, Feb. 12, 1962.

<sup>1356</sup> Robert Wiedrich, “Policemen on New Task Force Play Tag with Death,” *Chicago Tribune*, March 5, 1962.

<sup>1357</sup> Judge, “VASCAR Is Effective.”; Ronald Yates, “VASCAR Computes a Net for Speeders,” *Chicago Tribune*, Dec. 20, 1970. See also Hal Foust, “Indiana Using Airplanes to Nab Speeders,” *Chicago Daily Tribune*, April 15, 1967.

<sup>1358</sup> The *Chicago Tribune* was not the only news outlet to do such reporting from the 1960s-1970s through the present. See Anne Kolb, “Ride Is Free, But Who Wants It? Sheriff’s ‘Cab Service’ Popular,” *Fort Lauderdale News*, March 18, 1958; “A night in the life of the Beloit police,” *Beloit Daily News* (Beloit, WI), Feb. 20, 2007; “Ride-along shows officers are kept busy,” *Pueblo Chieftain* (Pueblo, CO), Aug. 10, 2013; Craig Cheatham, “Exclusive: News 4 police ride-along turns chaotic after officers open fire,” *CBS 4 KMOV* (St. Louis, MO), Aug. 8, 2013; Rashad Milligan, “A ride-along with Deputy Pounds on the DCSO’s high-crime unit,” *Times-Georgian* (Carrollton, GA), Oct. 13, 2017.

Finally, reporters, in covering the police through media ride-alongs, would also detail different information about the police officers with whom they accompanied. For example, in 1976, *Minneapolis Star* staff writer Dean Fosdick reported on the city's "first all-female patrol team," providing details about the backgrounds of the two officers before joining the police force.<sup>1359</sup> The same year, *Wisconsin State Journal* reporter Anita Clark rode-along with Madison, Wisconsin police officers Tony Jarona and John Baier, detailing their backgrounds and why each decided to become police officers, as well as how they approach policing in the community.<sup>1360</sup> Lastly, in an October 3, 2008 piece for the *Watertown TAB & Press* in Massachusetts, reporter Steve Bagley decided to take "a ride in a Watertown Police cruiser."<sup>1361</sup> He wrote that he "wasn't in trouble," but instead "was curious [and] . . . wanted to find out why people become police officers." Bagley then detailed his conversations with Officer John Bartolomucci, "a lifelong Watertown resident who wanted to be a police officer as long as he could remember."<sup>1362</sup>

An important example arose on May 25, 1998 when *Herald-Citizen* in Cookeville, Tennessee reporter Tracey LeFevre "spen[t] two nights riding along with police" in order to see the "city from a different viewpoint," focusing on what Officers Jason Campbell and Jeff Johnson did and experienced in an average shift.<sup>1363</sup>

Significantly, in her reporting following the ride-along, LeFevre praised the officers and

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<sup>1359</sup> Dean Fosdick, "Police try 1st all-female patrol team," *Minneapolis Star*, Aug. 16, 1976.

<sup>1360</sup> Anita Clark, "Ride-along tastes patrol work," *Wisconsin State Journal*, Nov. 28, 1976.

<sup>1361</sup> Steve Bagley, "One night on the beat with Officer Bartolomucci," *Watertown TAB & Press* (Watertown, MA), Oct. 3, 2008.

<sup>1362</sup> *Ibid.*

<sup>1363</sup> Tracey LeFevre, "Through different eyes," *Herald-Citizen* (Cookeville, TN), May 25, 1998. See also Ari Kramer, "Photog Swept Up in Shooting Aftermath," *Post Tribune*, Oct. 25, 1998; Marcela Rojas, "Walking in a cop's shoes," *Orange County Register*, Sept. 24, 1998.

the department based on her experiences, writing, “So next time I see a Cookeville police officer patrolling the streets, I’ll think about what a difficult job it can be.”<sup>1364</sup>

As the above examples demonstrated, several journalists have published human-interest stories geared at detailing “what life is really like for an officer” after riding along with the police, as well as reporting on law enforcement technology, vehicles, officers, and more. But as the examples also demonstrated, such reporting often contained praise of law enforcement, providing positive coverage of the police.

### **iii. Examples of Journalists Covering News Stories Through Media Ride-Alongs**

The first instance found of a reporter accompanying the patrol wagon to get to a news story occurred in 1885. The *Minneapolis Tribune* reported on June 22 that a “telephone message came to the city hall stating that a man had suicided in Diman’s lodging house[.]”<sup>1365</sup> The article explained that the “patrol wagon, with Officer Fitzgibbon and a Tribune reporter, was sent to the place designated, where the self-murderer was found stretched on a cot in a small dark room, with a 44-caliber bulldog revolver still clasped in his right hand, while blood was oozing from a small hole in his left breast.”<sup>1366</sup> In this case, the reporter had been stationed at the police department waiting for a call to include in the next edition of the paper, using a ride in the patrol wagon to get to the story and obtain information.

A similar case unfolded in 1896 when the “mysterious disappearance of County Treasurer Maxey M. Cobb” in Nebraska was investigated by the police.<sup>1367</sup> The

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<sup>1364</sup> Ibid.

<sup>1365</sup> “The State Capital,” *Minneapolis Tribune*, June 22, 1885.

<sup>1366</sup> Ibid.

<sup>1367</sup> “Searching For The Cause of Death,” *Lincoln Journal Star* (Lincoln, NE), April 3, 1896.

politician's body had been "found at a point about a half mile due west of the penitentiary," prompting a "telephone message[, which] was received from the officers at the penitentiary that a corpse had been discovered."<sup>1368</sup> According to a April 3, 1896 report by the *Lincoln Journal Star*, "the news spread like wildfire," prompting "Chief of Police Melick, Officer Langdon, Sergeant Nightengale, Patrol Driver Russell and a News reporter [to go to the scene in the] patrol wagon." For the police, it was to handle the body and resolve the case; for the reporter, it was to get a big story for the next edition of the newspaper.<sup>1369</sup>

This was also be the case on March 13, 1893 when the *Times-Democrat* in New Orleans, Louisiana reported that "[w]ith the prospects of a murder, the police, reporters, the patrol wagon, with a sergeant and a couple of men, drove rapidly to the scene" after individuals in a neighborhood reported "[s]hots fired rapidly, one after another."<sup>1370</sup> Once again, reporters rode with police to the scene of a case of public interest, in this case a potential murder.<sup>1371</sup> A reporter did the same in 1905 when he, unbeknownst to the police, "ran and swung up behind" a patrol wagon after seeing "little Peter Black" with three officers and the patrol wagon driver in the front seat.<sup>1372</sup> The reporter did so because "[i]t looked like such an important occasion" and he thought that "[s]urely it was a case

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<sup>1368</sup> Ibid.

<sup>1369</sup> Ibid. *See also* "The Cedar Block Pavement."

<sup>1370</sup> "A Shooting Affray: James Murphy Fired Three Shots at George Riecke on Claiborne Street," *Times-Democrat* (New Orleans, LA), March 13, 1893.

<sup>1371</sup> Ibid.

<sup>1372</sup> "Outing With The Coppers." For additional examples from the 1910s, *see* Britt Craig, "A Dead Hero Is the Poorest Sort of a Husband; Boots Rogers, Hero Extraordinary, Learns Lesson," *Atlanta Constitution*, Nov. 9, 1913; "Speeding Law Far Reaching," *Los Angeles Times*, June 19, 1917.

of wife beating on infanticide.”<sup>1373</sup> Because of the resurgence of crime news by yellow journalists during this time period,<sup>1374</sup> it is not surprising that reporters sought sensational news stories and used media ride-alongs to do so.

Although such reporting became less sensational in future decades, the practice still remained common for another century. This was evidenced on September 24, 1922 when *The Wichita Beacon* ran a piece detailing how reporters ought to seek out stories.<sup>1375</sup> The article contended that a journalist “must be willing to go any place if necessary. He must get there without delay.” For example, in the case of a reported murder, the police reporter would “make[] the call with the police car” in order to conduct an investigation “insofar as he does not hinder the officers, in inspecting the body, in looking around the house, in learning all he can.”<sup>1376</sup> Thus, the article indicated that in the early 1920s, it was at least desirable for a reporter to ride with police to a crime scene in order to report on the crime and conduct their own investigation.

Although not a murder case, reporters did just that following reports of motorists being threatened at gunpoint near Indianapolis.<sup>1377</sup> On July 17, 1928, *The Indianapolis News* reported that “Captain Walter Claffey, night captain at police headquarters, [had] received word shortly after 3 a.m. that a band of bandits had been holding up motorists in the vicinity of Anderson and that it was thought the bandits’ cars were heading toward Indianapolis.” Upon receiving word of the reports, newspaper reporters, “seated in the

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<sup>1373</sup> “Outing With The Coppers.”

<sup>1374</sup> See note 261 above.

<sup>1375</sup> “The Romance of a News Story – The Story of ‘Eddie Adams’ Extra,” *Wichita Beacon*, Sept. 24, 1922.

<sup>1376</sup> Ibid.

<sup>1377</sup> “Police Bull,” *Indianapolis News*, July 17, 1928.

auxiliary seats of the police car,” went to the scene to interview motorists and investigate what had taken place. At least one arrest was later made in the case, which raised concerns of suspected gang activity in the area.<sup>1378</sup>

Although reporters covering news stories through media ride-alongs would continue in the 1930s,<sup>1379</sup> there was a significant decrease in instances in the 1940s-1950s when the practice was used more for covering police actions, technology, and more. However, the 1960s-1970s would a resurgence in the purpose, such as in June 1969 when a *Chicago Tribune* reporter and photographer “rode around with . . . the police gang intelligence unit to try to get a little insight into [the] very complex problem” of gang activity in Englewood.<sup>1380</sup> On December 30, 1976, the *Los Angeles Times* reported that NBC was “preempting an entire evening of money-making entertainment programs . . . to let its news department examine a national or international issue in depth,” in this case, “Violence in America.”<sup>1381</sup> One portion of the programming had been “filmed by an NBC camera crew that rode in a police car for a night” in order to gain more insight for the reasons and consequences of violence in inner cities.

What became more common in recent decades was reporters initially intending to cover police activity before focusing instead on a significant news story that had unfolded

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<sup>1378</sup> Ibid.

<sup>1379</sup> See e.g. “How Michigan Police Trapped Parolee Slayer: Reporter, in Car, Tells of Radio Orders,” *Chicago Tribune*, Jan. 22, 1937.

<sup>1380</sup> Joseph Boyce, “Gang Leaders Explain Their War on S. Side,” *Chicago Tribune*, June 1, 1969. The *Chicago Tribune* added that even though the reporter and photographer rode with Sergeant William Cravens in an unmarked police car, the gang members, mostly teenagers, immediately recognized them as police officers and “complained that a certain team of uniformed policemen had been ‘harassing’ them[.]”

<sup>1381</sup> Lee Margulies, “‘Violence in America’ Real Blood, Not Catsup,” *Los Angeles Times*, Dec. 30, 1976.

during the ride-along. This is perhaps best evident in a case where a reporter, during a ride-along, witnessed a disgruntled man shoot a police officer. On April 17, 1991, the AP picked up a story by *Jonesboro Sun* reporter Stan Mitchell, who was riding in the patrol car with Pocahontas, Kansas Patrolman Scott Bennett when the officer was fatally shot when responding to a disturbance with a man who he had arrested for a DWI two weeks earlier.<sup>1382</sup> The man, Dwight Sullinger, had reportedly assaulted his wife. Upon the police arriving at the scene, Sullinger reportedly “came out of the house and stepped off the small front porch . . . holding a shotgun beside his hip.” The AP report continued, “When [Sullinger] got about 15 or 20 feet from [Bennett, who was better known as “Scotty,”] he said, ‘Scotty you deserve this.’ [Then,] Boom. He shot him.” Sullinger then took his own life, only adding to the major story that had developed.<sup>1383</sup>

Another theme that became more common in the 1980s through the present was reporters joining police in their vehicles in order to investigate and report on traffic problems, such as problems with speeding by motorists. These examples would illustrate particularly well that although media ride-alongs were often meant for reporters to cover issues impacting their community, they also would cover the police at least to some degree. The first documented instance found by the content analysis actually came in 1936. On January 15, *The Washington Post* ran the fifth part of a series seeking to determine “the reason why” behind traffic violations in Washington, D.C.<sup>1384</sup> An editor’s

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<sup>1382</sup> “Arkansas Reporter Witnesses Shooting Death of Patrolman,” *Associated Press*, April 17, 1991.

<sup>1383</sup> Ibid.

<sup>1384</sup> Howard Wentworth, “Post’s Cruising Reporter Given Thrill in Chase,” *Washington Post*, Jan. 15, 1936.

note explained that “[i]n an effort to determine the answer to Washington’s present traffic problem, with its mounting toll of accidents, *The Post* has assigned a reporter [to accompany] . . . an official of the Police Traffic Division . . . in a police car.” The author of the story, reporter Howard F. Wentworth, added that “[t]hrills—the kind that make your hair bristle—topped our cruising quest for ‘the reason why’ yesterday.” Certainly, the police were part of the focus of the story; however, the ride-along was used primarily to investigate a societal problem, in this case, traffic violations in the nation’s capital.

Such reporting on traffic problems during media ride-alongs would remain common in ensuing decades, such as in 1988 when a “photographer and reporter [from Richmond, Virginia rode with a police officer] in an unmarked state police Thunderbird.”<sup>1385</sup> The purpose behind the ride-along was for the reporter and photographer “to see whether Virginia’s new 65-mph speed limit . . . [was] being observed.”<sup>1386</sup> The *Richmond Times-Dispatch* reported on July 11, 1988 that “[d]uring a three-hour ride . . . the trooper cited two drivers for speeding and another driver for using a radar detector.” Thus, the police, although not the main focus of the reporting, still played a part in the story in dealing with traffic violators.

This was also the case on February 16, 2005 when the *Daily Gazette* in Schenectady, New York reported that the “state Vehicle and Traffic Law was amended to require motorists to drive ‘at an appropriate reduced speed when approaching and passing authorized emergency vehicles . . . parked on a highway during an emergency

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<sup>1385</sup> Jim Mason, “Chase Is Accelerated In Ticketing Speeders,” *Richmond Times-Dispatch*, July 11, 1988. See also e.g. Stephen C. Fehr, “Sometimes, A Shoulder To Drive On,” *Washington Post*, June 21, 1993.

<sup>1386</sup> Mason, “Chase Is Accelerated In Ticketing Speeders.”

situation.”<sup>1387</sup> In order to “demonstrate how bad the problem is and how dangerous it is for state police,” reporters were invited to observe for themselves drivers illegally passing emergency vehicles and subsequently inform the public.<sup>1388</sup> However, the reporting also focused on the dangers posed to law enforcement, perhaps because it was the police who invited the reporters to come along in the first place and expected such dangers to be part of their coverage.

Thus, although this case and others above did not include explicit praise of police like in stories focusing on law enforcement, they still generally cast the police in, at worst, a neutral light. In these cases where the press covered a news story, the police were still a significant part of the coverage, with the reporting generally covering their actions and what was accomplished. Although not a problem on the surface level, such reporting, without a critical lens of whether these actions were in the best interest of the public, suggests that coverage stemming media ride-alongs may not provide a complete picture of law enforcement or what took place at a scene in most cases. As discussed below, this further undermines the potential benefits of media ride-alongs and raises important concerns that need to be addressed.

#### **iv. Negative Effects Undermine Potential Benefits**

Although coverage of police and news stories through media ride-alongs can lead to some potential benefits for the press and public, they are undermined by the concerns raised if such coverage does not provide adequate or necessary critical coverage of law

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<sup>1387</sup> Jill Bryce, “Troopers target aggressive drivers,” *Daily Gazette* (Schenectady, NY), Feb. 16, 2005.

<sup>1388</sup> *Ibid.*

enforcement. Put differently, three benefits — 1) improving the press-police relationship, 2) the press informing the public, therefore building trust with the community and potentially gaining or retaining readers or viewers, and 3) limited instances of accountability of the police, which suggest that such reporting is possible through media ride-alongs — although found at different moments in the history of media ride-alongs, are undermined if the practice does not provide the press with an effective means of *fully* informing the public and *consistently* holding police accountable. The following section first outlines these benefits of reporters using media ride-alongs to cover police and news stories before turning to how they are undermined by negative effects of the practice.

The first benefit suggested by examples of journalists using media ride-alongs to cover the police or news stories is that it can potentially improve the press-police relationship. On January 28, 2013, *Richmond Register* reporter Sarah Hogsed wrote,

Journalists and police officers are never going to be best friends. That natural friction comes with the territory of being a crime and courts reporter. . . . However, we strive for a relationship of respect and understanding, and part of that for reporters is learning what police work actually entails. It's one thing to read police reports, day in and day out, but to actually see what it's like on the streets is a whole different reality.<sup>1389</sup>

Thus, Hogsed argued that media ride-alongs could improve the press-police relationship by giving both parties insight into the other, though especially by allowing the press to see what the police deal with on a daily basis.

In 1989, *The Daily News of Los Angeles*, in discussing “shows like ‘Unsolved Mysteries,’ ‘America's Most Wanted’ and ‘Cops,’” went so far as to argue that they led to “a new spirit of cooperation in the air.”<sup>1390</sup> The article continued, “So far, both sides

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<sup>1389</sup> Hogsed, “Even routine traffic stops can hold hazards for police.”

<sup>1390</sup> Benson, “Prime Time Is Crime Time.”

appear to be benefiting from this new alliance. Television wins by attracting respectable ratings for the programs, while the police gain a measure of respect [from the public due to the positive coverage] and — perhaps more important — wanted criminals.”<sup>1391</sup>

Second, another potential benefit of media ride-alongs was the ability for reporters to use the access to police vehicles to inform the public about things they would not otherwise see. For example, reporters could detail the activities of police that may not otherwise be apparent to members of the public. Alternatively, reporters could use media ride-alongs to get to the scene of events of public interest. In either case, the press would not only fulfill at least part of its purpose of informing the public, but also be able to improve its relationship with members of the community and, potentially, hold the police accountable, as discussed below. Certainly, reporters would also be able to retain current readers and gain new ones through such reporting as well.

Several examples provided commentary supporting these conclusions. For example, in a May 25, 1999 report by *The Arizona Daily Star*, reporter Sara Hammond quoted Forrest Carr, news director at KGUN, Channel 9 in Tucson, Arizona, who that “[i]t’s appropriate for the media to work closely with police to see what they do,” contending that it “serves the public interest.”<sup>1392</sup> He therefore argued that media ride-alongs allow the press to be better able “to do our jobs and serve the public.” Without the

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<sup>1391</sup> Ibid.. The article also quoted Kevin Wendle, executive vice president of the Fox Entertainment Group, who said, “The reason the police are so happy with the program is that it portrays them in a very honest way. . . . There has been no sugar coating. There are times when the cops get tough with these suspects right there in front of you,” therefore improving their public image and, potentially, gaining respect from members of their community.

<sup>1392</sup> Hammond, “Court ride-along ruling draws media concern.”

practice, Carr added, the public would be “less . . . able to govern itself through the free flow of information and ideas.”<sup>1393</sup> Similarly, on May 25, 1999, Minneapolis *Star Tribune* staff writer Jim Adams quoted Bernie Grace of KARE-TV, Minneapolis’ NBC affiliate, who said that media ride-alongs are important because they allow “the public [to] see for themselves what happened,” leading to greater trust in the coverage.<sup>1394</sup>

Several examples demonstrated that reporters did, in fact, cover the police in order to inform their readers about the goals, purposes, and actions they would otherwise not be able to see. On April 28, 1949, *Chicago Daily Tribune* reporter John McCutcheon, Jr. detailed what he experienced after joining an “E. Chicago [Ave.] uniformed squad on the 8 a.m. to 4 p.m. shift one day” the week earlier.<sup>1395</sup> McCutcheon’s reporting not only provided an additional example of a reporter joining police in order to detail the “variety of experiences” of police officers in an average shift,<sup>1396</sup> it also explained that, at least in Chicago, “an average citizen . . . would never be permitted to ride in a squad car (except for a one way trip which anyone can arrange easily).”<sup>1397</sup> This suggests that it was a privilege for journalists to ride along with police during this time period in Chicago, demonstrating the strong partnerships between the press and police in the 1940s-1950s, as well as that police were providing reporters with access not available to the public.<sup>1398</sup>

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<sup>1393</sup> Ibid.

<sup>1394</sup> Adams, “Twin Cities police say they’ll still let journalists ride along, observe from afar.”

<sup>1395</sup> John McCutcheon, Jr., “District Police Kept on the Go By Varied Tasks,” *Chicago Daily Tribune*, April 28, 1949.

<sup>1396</sup> Ibid. See also Moody, “Crime Fails to Rear Its Ugly Head as Newsman Rides All Night in Police Car.” Like McCutcheon, *Rock Island Argus* reporter Richard S. Moody in 1946 rode along with local police in Illinois in order to “observe closely routine police work.”

<sup>1397</sup> Ibid.

<sup>1398</sup> Put differently, in exchange for access to the police vehicle and the places it went, reporters would cover what took place, informing the public about what police did on an average shift, a view they would otherwise not be able to receive. Certainly, there is at least some

Similarly, in the case discussed above of Sheriff John Babb offering Chicago reporters the opportunity to ride with Chicago Police officers in 1952, *Arlington Heights Herald* Reporter Pat Englehart explained that during an eight-hour shift, he “rode the squadrol with Deputies Joe Lewis and Frank Matz.”<sup>1399</sup> He concluded that the officers “did little that the public would notice but managed to keep busy while riding 117 miles.” Like McCutcheon, Englehart aimed to detail police activities often not seen or made available to the public. However, he then went a step further and praised the police, stating, “When you’re talking about ‘do-nothing’ cops you can forget Sheriff Babb’s county highway police. They work hard at doing ‘nothing.’”<sup>1400</sup>

A similar observation was also made by *Chicago Tribune* reporter Ann Plunkett following her ride-along with police in 1967.<sup>1401</sup> She wrote that although “many persons know that a policeman’s job involves everything from issuing a traffic ticket to apprehending a bank robber, few ever have an opportunity to watch these men in action.”<sup>1402</sup> Thus, even during an era of more adversarial relations between the press and police, at least one reporter aimed to detail what officers faced on an average shift, a view otherwise not available to the public.

A final example arose on July 8, 1978 when *Muscatine (Iowa) Journal* staff writer Helen Weiershauser detailed her “[e]xperiences . . . in a squad car,” including what she

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newsworthiness in such reporting, even if only for a human-interest story; however, such reporting also demonstrates a potential way in which reporters repaid the police for the access they were provided.

<sup>1399</sup> “Reporter ‘Taken for a Ride.’”

<sup>1400</sup> Ibid.

<sup>1401</sup> Plunkett, “Riding with Police Gives Insight.”

<sup>1402</sup> Ibid.

“heard and saw.”<sup>1403</sup> Following the experience, Weiershauser praised the police, arguing that “[a]ll 29 members of the Muscatine police force are working for the citizens of Muscatine. They are enforcing the law, keeping the peace and endeavoring to keep the city safe.”<sup>1404</sup> She added that the

policeman may not appear to be an important part of life to the average citizen. But in a time of crisis that person in uniform could make the difference between tragedy and joy, health and disability, life and death. What is a policeman? He’s a man who does his best working for you.<sup>1405</sup>

In this sense, Weiershauser was almost advocating on behalf of the police, aiming to change the public’s perception of law enforcement, at least in the local community, by highlighting the ways that the police were, in fact, “an important part of life.”<sup>1406</sup>

The press also reported on a variety of newsworthy events through media ride-alongs that provided the public with unique insight. Such topics and events included murders,<sup>1407</sup> the shooting of a police officer,<sup>1408</sup> gang activity,<sup>1409</sup> strikes and protests,<sup>1410</sup> traffic problems,<sup>1411</sup> and more.<sup>1412</sup> Thus, by participating in a media ride-along, journalists gained access to stories they may not otherwise have been able to cover, or at

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<sup>1403</sup> Helen Weiershauser, “Experiences of 3 hours in a squad car,” *Muscatine Journal* (Muscatine, IA), July 8, 1978. See also Greenberg, “Reporter rides with police.” Greenberg wrote, “Not many people get to see what police life is like on the other side of the badge, so here was my opportunity.”

<sup>1404</sup> Weiershauser, “Experiences of 3 hours in a squad car.”

<sup>1405</sup> Ibid.

<sup>1406</sup> Ibid.

<sup>1407</sup> See notes 1365-1374 above.

<sup>1408</sup> “Arkansas Reporter Witnesses Shooting Death of Patrolman.”

<sup>1409</sup> Boyce, “Gang Leaders Explain Their War on S. Side.”

<sup>1410</sup> “Gathering Strike News: Reporters Were Exposed to Peril Wherever They Went,” *New York Times*, March 17, 1895; “The Strike Affects Reporters.”

<sup>1411</sup> See notes 1384-1388 above.

<sup>1412</sup> See e.g. Riley, “Officer, reporter stress different aspects of Irvine teens”; Matt Coughlin, “To serve and protect in a small community,” *Reporter* (Lansdale, PA), Oct. 8, 2003; Sarah Tully, “Man throwing rocks is shot by deputy,” *Arizona Daily Star*, Dec. 9, 1994; “Gunshot interrupts TV interview”; “A Dead Hero Is the Poorest Sort of a Husband.”

least not in the same way. The result was, therefore, the informing of the public about newsworthy events and issues.

Finally, although rare, some examples were found of the press holding the police accountable through media ride-alongs, including three instances where reporters rode along with police in order to specifically cover law enforcement. The first example was detailed on April 26, 1907 by *The Indianapolis News*, which reported that “Chief Metzger invited five newspaper reporters to accompany him,” on the new police vehicle in the city.<sup>1413</sup> Where the article became more critical was its description of the vehicle’s failure to make it up “the Michigan hill northwest of Crown Hill.” The article explained that “[h]ere the machine stopped and while the drizzling rain pattered down on the shivering occupants ‘Billy’ Rugenstein, the chauffeur, worked with the mechanism.” Even when “the auto” made it over the hill, it only made it half way back before it “again stopped and in spite of all kinds of coaxing, it would not run forward.”<sup>1414</sup> Due to the vehicle’s failure, and the likely embarrassment it caused for the police, “Chief Metzger ‘squared himself’ by ‘throwing’ a chicken dinner.”<sup>1415</sup> Although far from scathing criticism, the article reported on a failure of a police vehicle, informing the public about the problems and casting the police in a less-than-favorable light.

The limitations of police vehicles were also pointed out by the *St. Louis Post-Dispatch* a few months earlier on January 7, 1907.<sup>1416</sup> The article contended that “[m]ore speedy police automobiles [were needed to address] the dangers of automobile

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<sup>1413</sup> “Police Automobile Balks.”

<sup>1414</sup> Ibid.

<sup>1415</sup> Ibid.

<sup>1416</sup> “Police Autos Are Too Slow To Serve End,” *St. Louis Post-Dispatch*, Jan. 7, 1907.

scorching,” meaning motorists who violated speed limits. The article cited “automobile policeman” William Stinger, who argued that “if the Police Department had machines as fast as the fastest there would be fewer attempts of scorchers to escape and that wen such attempts were made the chase would not be so long[.]”<sup>1417</sup> Like the other example, the article did not represent a serious critique of the police, but still pointed out the force’s limitations, portraying law enforcement in a more negative light than examples containing praise or, at the very least, neutral reporting.

A final example of critical reporting within coverage of police following a media ride-along came in 1969.<sup>1418</sup> On October 5, the *Chicago Tribune* reported on the rise of new “aggressive patrols” used in the “Crime War” in Chicago. The article, and the changes by the police, were in response to the Kerner Report in 1968.<sup>1419</sup> Reporter Casey Banas concluded that “[l]eft in doubt was whether the task force methods did any good or [had instead] violated citizens’ rights.” He also cited one officer who “suggested that ‘some people have to suffer’ in the fight against crime.”<sup>1420</sup> Although Banas did not elaborate on how the new methods potentially violated citizens’ rights or made members of the public “suffer,” his inclusion of those statements represented a departure from the articles praising the police. Instead, the article reflected the growing tensions between the two parties at the time and provided readers with reasons to, at the very least, be skeptical of the new methods and the police more generally in their efforts to combat growing crime.

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<sup>1417</sup> Ibid.

<sup>1418</sup> Casey Banas, “‘Aggressive’ Patrols Used in Crime War,” *Chicago Tribune*, Oct. 5, 1969.

<sup>1419</sup> Ibid. *See also* note 719 above.

<sup>1420</sup> Ibid.

Beyond these cases where journalists used media ride-alongs to report on police, only a few additional examples of critical reporting were found that were tied to other purposes of ride-alongs. Such reporting was perhaps best evident in the articles discussed above that detailed how police officials had prohibited ride-alongs by reporters, including in Minneapolis in 1894,<sup>1421</sup> Salt Lake City in 1912,<sup>1422</sup> and Harrisburg, Pennsylvania in 1938.<sup>1423</sup> What makes these examples significant is they demonstrate the contentiousness caused by a police official denying reporters access to a police vehicle, especially after it was “[h]eretofore [allowed] when a call was sent in for the patrol wagon [for] a reporter from each paper [to] pile[] in to go to the scene of the arrest.”<sup>1424</sup> Not only did this result in critical coverage by newspapers following the order, but also the potential straining of the press-police relationship in the city at that time. Similarly, such straining of the relationship was also possible, if not likely, in other instances where the press criticized the police following a media ride-along. Such instances may have been the reason officials prohibited ride-alongs, providing a compelling reason why the press so rarely criticized law enforcement after having been granted access to police vehicles.

Another example of accountability arose in 1938 when *The Evening News* in Harrisburg, Pennsylvania reported that Chief of Police George J. Shoemaker had conceded that his force was “undermanned” during a hearing investigating why a dying man was taken to prison rather than the hospital, ultimately leading to his death.<sup>1425</sup>

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<sup>1421</sup> “The Strike Affects Reporters.”

<sup>1422</sup> “Reporters Barred From Police Autos.”

<sup>1423</sup> “Chief Defends Action Of Men In Cell Death Of Dougherty.”

<sup>1424</sup> “The Strike Affects Reporters.”

<sup>1425</sup> “Chief Defends Action Of Men In Cell Death Of Dougherty.”

Though again far from scathing, the newspaper at least provided some of Shoemaker's testimony to show the limitations of his department.

Thirty years later, in a September 28, 1968 article, Newspaper Enterprise Association (NEA) correspondent Tom Tiede detailed the police brutality at the 1968 DNC, which led to injuries to media members and members of the public.<sup>1426</sup> Tiede used the ride-along to cover the aftermath of the event, using details of the police brutality to push against the arguments made by the officers in the vehicle, who claimed that the 22 lawsuits filed by media representatives were based on "debatable" charges.<sup>1427</sup>

But perhaps the best example of accountability stemming from a media ride-along came early in the history of the practice. On February 9, 1901, the *San Francisco Chronicle* published a story titled "All This in Face of the Police Denials."<sup>1428</sup> The article began by explaining that three witnesses had told police that "a Chinese keeper of a lottery den . . . [claimed] that he had bribed Captain George Wittman of the San Francisco Police. Upon hearing the allegation, Wittman "in tragic tones, declared that he would go get his trusty sledge, break in the door of the place and bring forth the concealed Pagan 'on his own responsibility.'" Several reporters summarily "scrambled into a patrol wagon with Wittman and his sledge." However, when Wittman arrived at the scene and broke down the door, "[t]he place was empty." The story called the events a "futile raid" and a "fiasco."<sup>1429</sup> A story by the *San Francisco Call* explained that

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<sup>1426</sup> Tiede, "The cop's plea."

<sup>1427</sup> Ibid.

<sup>1428</sup> "All This in Face of the Police Denials," *San Francisco Chronicle*, Feb. 9, 1901.

<sup>1429</sup> Ibid.

everyone, including the reporters “rushed in, looking for the game that was not there.”<sup>1430</sup> Although they did not write explicit criticism of Wittman, the reporters rode in the patrol wagon to cover the story, and summarily reported about the failed raid, providing at least some accountability of the police official.<sup>1431</sup>

The final examples found by the content analysis of the press providing critical coverage of police arose in limited instances where reporters used a ride-along to focus on and investigate issues related to race and class.<sup>1432</sup> For example, on May 18, 1979, the *Minneapolis Star* published a piece covering whether a police officer accused of racist and discriminatory actions was the “norm or a ‘bad apple.’”<sup>1433</sup> Although the story explained that during a ride-along “two Minneapolis Star reporters saw little evidence of tension,” it went further than others by detailing multiple concerns about police raised by the Black community in Minneapolis. The story explained that there had been several

racial incidents in Minneapolis in recent weeks. In one of the most significant incidents, a white, off-duty officer who [was drinking at the time] pulled his revolver during an argument with black patrons of a bar was shot to death by the bar’s bouncer, a black. In

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<sup>1430</sup> “Wittman Pleads For His Reputation And Makes A Futile Effort To Capture A Chinese Accuser,” *San Francisco Call* (San Francisco, CA), Feb. 9, 1901.

<sup>1431</sup> See also “Wittman Now To Be Heard,” *San Francisco Chronicle*, March 10, 1905; “Wittman Legally Dismissed,” *Los Angeles Herald* (Los Angeles, LA), Oct. 1, 1905. Five years later, Wittman was fired from the San Francisco Police, amid allegations that the police had not adequately “suppress[ed] gambling in Chinatown,” among other claims. It is not clear if the reporting on the failed raid contributed to the firing, but, at the very least, reporters provided accountability of Wittman.

<sup>1432</sup> See e.g. “The Patrol Wagon.” The article read, “A sorry-looking bundle of rags and filth was helped into the wagon. She was old, drunk, vile and disgusting—one of humanity’s outcasts—but she was a woman.”; Guy Halverson, “Racing to the rescue: Reporter rides night patrol car with Chicago police,” *Christian Science Monitor*, July 31, 1968. The article read, “We were patrolling once again . . . the territory of the city’s 19th Police District, a residential area [with] diversity of social, ethnic, and racial types—Negroes and whites, Indians and Mexicans, middle class working families, drab transient hotels, small shops.”; “Greenwood Suit Postponed After Law ‘Assurances,’” *Atlanta Daily World*, April 5, 1963.

<sup>1433</sup> David Peterson and Joe Logan, “Racist Cop: The norm or ‘bad apple?’,” *Minneapolis Star*, May 18, 1979.

another, a black youth involved in a high-speed chase was shot in the thigh by white police while being arrested.<sup>1434</sup>

Additionally, the story noted that “[a]nyone who has spent much time in the squad rooms of the police department knows that bigoted attitudes—racial slurs and jokes, derogatory comments—are prevalent.” The story went on to provide examples of such comments, as well as how police viewed racist attitudes and actions differently from minority communities.<sup>1435</sup>

Another example was provided by *The Dallas Morning News* on May 17, 1988. The newspaper reported that Channel 8 reporter Scott Pelley and photographer John Gudjohnsen had “spent four weeks on squad car patrol to capture what they hope is the essence of police work in a city of strong pro and con opinions about cop conduct, including depicting the day-to-day dangers of the job.”<sup>1436</sup> *The Dallas Morning News* noted that Pelley’s and Gudjohnsen’s latest piece “focuse[d] on black officers whom Pelley says often are accused of racial discrimination when arresting a fellow black.” Thus, Pelley and Gudjohnsen used a media ride-along to investigate an issue that was likely to portray police, at least to some degree, in a negative light by showing the “con opinions about cop conduct,”<sup>1437</sup> including from the Black community.

Unlike cases that to at least some degree dismissed the concerns raised by the public,<sup>1438</sup> the reporting by *The Minneapolis Star* and Channel 8 in Dallas aimed to, at the very least, dedicate time and coverage to key issues without dismissing it after a single

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<sup>1434</sup> Ibid.

<sup>1435</sup> Ibid.

<sup>1436</sup> Ed Bark, “Channel 8 Does Bang-Up Job On ‘Blues,’” *Dallas Morning News*, May 17, 1988.

<sup>1437</sup> Ibid.

<sup>1438</sup> See e.g. Cook, “A night in a patrol car: Quiet, stark, tense!”

ride-along. Combined with the other examples of the press criticizing the police following media ride-alongs, there is at least some evidence of the possibility that media ride-alongs can be used by the press as part of their watchdog role.

Taken together, examples of media ride-alongs purporting to improve the police's and the press' relationship with each other and the public, as well as the examples of accountability, show that media ride-alongs can, potentially, carry important benefits. However, these possible benefits are undermined due to the negative effects caused by the press covering police through media ride-alongs in several ways.

First, such benefits turn into problems when media ride-alongs go beyond strengthening the press-police relationship and instead blur the lines between the two parties as one or both cannot fully perform their key purposes and functions, but instead must cater more towards those of the other party. More specifically, because the press needed to reciprocate for the access provided by police to their vehicles, a large portion of the articles aimed at covering the police provided praise of law enforcement. Such coverage therefore provided an improved public relations image, of sorts, for law enforcement, suggesting that the press was aiding the police in accomplishing one of its goals, community relations, therefore providing a clear way in which media ride-alongs blurred the press-police relationship.

Similarly, although press coverage of news stories through media ride-alongs did not have as many instances of praise as coverage of police, such reporting nevertheless still carried potential negative effects, further undermining the benefits of media ride-alongs. On one hand, reporters using media ride-alongs to cover events and information of public interest can allow the press to better inform the public and perhaps provide

some accountability of law enforcement. But on the other hand, if such reporting cast the police only in a neutral light, it could still benefit law enforcement's reputation by providing the public a view of police actions, but without a critical lens to examine whether they are best serving their community. The same would be the case if a journalist failed to or chose not to report mistakes or wrongdoing by police in order to keep their access. Thus, although critical reporting is not needed in all cases, its general absence, including when reporters covered major crimes and other news stories, raises questions about the effectiveness of media ride-alongs.

Second, the potential benefits of media ride-alongs were further undermined in that the press' coverage, because it often praised the police or cast officials and officers in a neutral light, may not have provided a complete view of law enforcement. Put differently, although covering the police through media ride-alongs may provide readers with insight they would not otherwise have, such coverage becomes problematic if it is overly positive to the point that important details are missing. The result of such coverage is, therefore, the potential that the press is not *providing* the public a full or accurate view of law enforcement, including because media ride-alongs generally provide the point of view of the police. Also significant, because the police may have acted differently due to the press' presence, journalists and the media more generally may not have *received* an accurate view of policing. Either way, if the press is unable to properly inform its audience about law enforcement, it cannot achieve one of its key purposes, therefore suggesting the ineffectiveness of media ride-alongs.

Finally, although some examples were found of the press holding law enforcement accountable, these instances were rare and outnumbered by cases where

reporters praised police after a media ride-along. Out of 91 articles in which the purpose of media ride-alongs was for journalists to cover the police, only three contained critical coverage of law enforcement or addressed controversial or otherwise negative topics. Overall, fewer than 10 articles in the entire sample contained a form of accountability of the police. Looking at the targeting and addressing of issues of race and socioeconomic status in particular, only two articles in the acquired sample truly took on these topics. The media may have avoided the issues in order to maintain cooperative co-existence and access to police vehicles. Police may also have aimed to avoid targeting individuals during a media ride-along in a way that would have raised concerns related to racism, classism, discrimination, and more, especially when the press or television crews were present. But whatever the reason, when members of the press participated in a ride-along, they largely failed to or were unable to hold the police accountable. The inability of the press to do its important functions, combined with the press' providing the police with almost entirely positive or neutral coverage, reveal the blurred lines of the press-police relationship as the goals, purposes, functions, and actions of the two parties begin to merge in problematic ways.

Ultimately, over the course of the 137-year history of media ride-alongs, reporters and members of the media were generally invited or given permission to ride along with police, suggesting that law enforcement, by granting access and information to the press, likely expected something in return. As *Daily News of Los Angeles* writer Jim Benson wrote on May 7, 1989, when reporters rely on the access provided by police on a daily basis, they are “pressured to write the story a certain way because you have to be back the

next day with these same people.”<sup>1439</sup> The purpose of such ride-alongs provided evidence that this was the case as reporters most commonly covered the police or news stories by riding along.

On the surface level, this was a good thing. Reporters informing their audiences about the daily activities of the police and newsworthy events are important functions of the news media and potentially helped improve the press’ relationship with their community and gain new readers. However, what made this problematic was that the instances of praise made the reporting begin to read more like a PR-message. Furthermore, whereas there were a significant number of instances where the press praised police and therefore often cast law enforcement in a positive light, few examples included some form of critical coverage aimed at holding law enforcement accountable. At worst, the press provided neutral coverage of police, which still largely would improve their public image with critical reporting on whether it was warranted. Although this meant the press could keep its access, the result was that journalists failed to accomplish their watchdog role and adequately inform the public, demonstrating the implications of blurred lines of the press-police relationship.

Certainly, not all instances needed to provide critical coverage of police. It is also possible that journalists provided critical reporting in other ways. But looking specifically at media ride-alongs, the problem is that critical or negative coverage was almost completely missing following the use of the practice, suggesting that it is not an effective means of reporters fulfilling their important functions, at least not without losing future

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<sup>1439</sup> Benson, “Prime Time Is Crime Time.”

access to police vehicles, locations, sources, and information. This ineffectiveness, combined with additional concerns and problems arising from other purposes, effects, and legal implications stemming from the practice, suggests that media ride-alongs can, and have, done more harm than good.

### **c. Additional Purposes, Effects, and Legal Implications Further Problematize Media Ride-Alongs**

The common practice of police allowing members of the press and media access to their police vehicles suggested that law enforcement may have required something of the journalists and camera crews in return, raising concerns that the practice blurs the lines of the press-police relationship and is an ineffective means of the press fully informing the public and holding the police accountable. However, the concerns do not stop there. Two additional purposes of media ride-alongs — 1) aiding police with law enforcement purposes and 2) providing entertainment — and three additional effects — 1) physical danger, 2) undermining public trust, and 3) legal action — raise further problems and concerns with media ride-alongs, once again undermining the benefits of the practice and suggesting it can do more harm than good.

### **i. Additional Purposes**

Reporters using media ride-alongs to cover the police and news stories represent the two most common purposes of the practice dating back to the early 1880s. However, another purpose found throughout the history of the practice — aiding police with law enforcement purposes — and another purpose that did not appear until the 1980s — providing entertainment — further demonstrate how media ride-alongs blur the lines of the press-police relationship and undermine the potential benefits of the practice.

A problematic purpose of media ride-alongs dating back to at least 1895 is the press using the practice to aid the police with different law enforcement purposes, marking the third purpose of media ride-alongs. This purpose was much less common than the first two, but was particularly problematic in that journalists would use a media ride-along, whether on their own accord or after police prompting, to help law enforcement in some way. The result was clear cases of blurring the lines between the two parties, often prompting concerns from observers.

On October 6, 1895, *The Saint Paul Globe* in Minnesota detailed the gathering of a mob as the patrol wagon was dropping off prisoners at the police station.<sup>1440</sup> The mob reportedly “gave a yell and made for the [policemen.]” The police captain recounted the events, explaining that

[a reporter] helped us (the police) out. He had tried to get into the patrol wagon with me, but he was such a little fellow his jump fell short and he missed it, so when the horses ran away, back he jumped to the steps of the station house and into it and pulled the call for help, and stationed himself outside the door . . . picking out a man now and then with his gun as cool as you please.<sup>1441</sup>

The reporter, who had been riding with police prior to the forming of the mob, failed to get back into the vehicle, but instead shot at the violent protesters seeking to attack a group of officers. The captain said that this was another case when a reporter “helped [him] out in a tight place.”<sup>1442</sup>

In some instances, reporters ended up aiding police on a ride-along, though this may not have been their main reason for accompanying officials or officers. However,

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<sup>1440</sup> “Gotham Stations,” *St. Paul Globe* (St. Paul, MN), Oct. 6, 1895.

<sup>1441</sup> *Ibid.*

<sup>1442</sup> *Ibid.*

the police may have granted the press access in these cases so that reporters would aid them in different ways, suggesting it may have been an underlying purpose after all. For example, on August 6, 1912, *The Salt Lake Herald-Republican* noted that a reporter “traveling with the police wagon . . . assisted [a] wounded young man while the wagon was stalled with two punctures.”<sup>1443</sup> Here, the reporter may not have solely intended to help the police while riding on the patrol wagon; however, that quickly became his purpose as the officers focused on other tasks.

Similarly, on January 2, 1926, the *Kenosha Evening News* in Wisconsin explained that a reporter “helped the [police] officers . . . scour the entire neighborhood for ten minutes” in search of a “Peeping Tom,” who had been reported to the police.<sup>1444</sup> Like in the previous example, the reporter may not have intended to aid the police during his ride-along. However, it is possible that this was one of the reasons the police allowed him to come along, a means of repaying their offering him access. In fact, in 1938, a member of the police force in Harrisburg, Pennsylvania explicitly said that one reason he allowed a reporter to join him on the patrol wagon, even despite it being against department policy, was to “[take] ‘him along to help; we were short-handed.’”<sup>1445</sup>

But perhaps the best example of the press aiding police came in 2004 when a situation arose in which it became clear that a local news organization in Corpus Christi, Texas had agreed to work with the police in making arrests tied to prostitution. On December 23, 2004, the *Corpus Christi Caller-Times* explained that reporter Venessa

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<sup>1443</sup> “Reporters Barred From Police Autos.”

<sup>1444</sup> “Reporter on Police Force.”

<sup>1445</sup> “Chief Defends Action Of Men In Cell Death Of Dougherty.”

Santos-Garza had, during a ride-along, posed as a prostitute, which “led to [several] arrests.”<sup>1446</sup> In this instance, the entire purpose of the reporter riding along was to be part of a sting. *Caller-Times* Editor Libby Averyt later apologized for the decision, calling it a “mistake.” She added, “Having a reporter become involved in law enforcement activities was a mistake and will not happen again.”<sup>1447</sup>

Ultimately, although rare, instances of the press riding-along with police to aid in law enforcement purposes provided further evidence of the press potentially taking different actions in return for being provided access to police vehicles. Additionally, the above examples demonstrated that the press aiding police on a ride-along blurs the lines of the press-police relationship as both parties lose their independence as one institution performs the purposes and functions of the other. As the *Corpus Christi Caller-Times* contended, it is necessary for the press, in order “to maintain [its] watchdog role, . . . not [to] get involved in law enforcement activities[.]”<sup>1448</sup> Thus, instances of reporters aiding police while on a ride-along further raises concerns about its effectiveness and the blurring of the press-police relationship.

One final purpose of media ride-alongs did not appear until late in the history of the practice, but still further demonstrates the problematic nature of ride-alongs. In some instances, the purpose of members of the media participating in a ride-along was for the production of an article or television show meant to entertain the public, rather than

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<sup>1446</sup> “First prostitution sting nets four arrests – Reporter’s involvement a mistake, editor says,” *Corpus Christi Caller-Times*, Dec. 23, 2004.

<sup>1447</sup> *Ibid.*

<sup>1448</sup> *Ibid.*

obtain information about the police or for a news story. In such instances, part of the motivation was also to make money by gaining viewers.

Media ride-alongs being used for entertainment purposes primarily arose in articles detailing the practice conducted with film crews, such as for “COPS” or other reality television programs. A May 7, 1989 article by the *Daily News of Los Angeles* argued that reality ride-along television shows cared most that “the shows sold,” focusing less on how the police were depicted or any elements of newsworthiness.<sup>1449</sup> Three years later, on August 14, 1992, the *Philadelphia Daily News* explicitly stated that “COPS” was meant to be “Saturday-night entertainment” by “serv[ing] up real-life mayhem.”<sup>1450</sup> Similarly, on July 25, 1998, the *Virginian-Pilot* quoted Murray Jordan, one of the producers of “COPS,” who explained, “We live in a voyeuristic society. . . . We are not the media. . . . We are in the entertainment business.”<sup>1451</sup> The article further argued that “‘COPS’ is not journalism. It’s entertainment. The people who oversee the show’s production don’t pretend it is anything else.”<sup>1452</sup>

Nevertheless, the show, and the purpose of entertainment and profit behind it, represents a key facet of media ride-alongs. Each of the above articles discussed different ways in which television crews followed police in their communities, but emphasized that the true purpose behind doing so was entertainment. On the surface level, the intentions behind shows like “COPS” appear to be different from that of journalists, and

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<sup>1449</sup> Benson, “Prime Time Is Crime Time.”

<sup>1450</sup> Francesca Chapman, “Keeping The Focus On Philly’s Finest ‘Cops’ Gets In the Back Seat,” *Philadelphia Daily News*, Aug. 14, 1992.

<sup>1451</sup> Mike Mather, “Cops in Hampton Roads Popular TV Show Is Hitting The Streets With Area Police, Capturing The Good, The Bad And The Ugly On Tape,” *Virginian-Pilot*, July 25, 1998.

<sup>1452</sup> *Ibid.*

to some degree they are. However, providing entertainment carries the same concern as traditional reporters praising the police in their reporting: providing positive or neutral coverage of law enforcement.<sup>1453</sup> Certainly, there have been moments on shows like COPS where the police are depicted in a negative light,<sup>1454</sup> however, these moments are outweighed by more positive coverage of police, whether by journalists or members of the media, likely in order to retain access to ride-alongs. Thus, not only does press coverage of police and news stories lead to more positive or neutral coverage, but so too does entertainment programming produced by the media, especially due to the lack of critical coverage or depictions of police. Thus, the result once again is that the public does not receive a full picture of law enforcement.

Taken together, the purposes of aiding police and providing entertainment further problematize media ride-alongs and shows how it blurs the lines of the press-police relationship. When the practice was used by reporters to aid the police, it only further blurred the lines between the two parties as the press not only largely failed to accomplish its watchdog role, but also fulfilled law enforcement purposes instead. Similarly, in instances where members of the media obtained footage for reality television programming, the focus remained largely on the police, providing only positive or, at worst, neutral coverage. Thus, it is not only journalists that failed to provide critical coverage of police, but also members of the media. Taken together, these two purposes therefore demonstrate once again the blurred lines between the press and police arising from media ride-alongs and the ineffectiveness of the practice.

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<sup>1453</sup> Benson, "Prime Time Is Crime Time."

<sup>1454</sup> See e.g. Mather, "Cops in Hampton Roads."

## ii. Additional Effects and Legal Implications

Although already significant, the ineffectiveness of media ride-alongs, as well as the blurring of the press-police relationship, are compounded by additional negative effects of the practice, including 1) physical danger posed to the press and police, 2) the undermining of public trust and confidence in both parties, and potential legal action targeting both institutions.

One significant effect of media ride-alongs was, and is, the threat to members of the press's, media's, and police's physical safety during a ride-along, especially if officers become the target of violence or are part of a confrontation. Certainly, reporters and police officers may be the target of violence outside media ride-alongs; however, the risk is generally higher for reporters during the practice. The risk may also be higher for the police as the presence of the press or media can increase the unpredictability of those with which officers interact.

Journalists and police facing danger during a media ride-along can be dated back to two instances in 1895. On March 17, 1895, *The New York Times* reported on a trolley railroad strike in Brooklyn, which led reporters from various newspapers to go to the scene in order to ensure that the "reading public was kept fully informed" about the strike and "the perils to which new motormen, conductors, the police, and the militia were subjected."<sup>1455</sup> The article explained that reporters, who at times rode to and from the strike in police wagons in order to gain access, explained that they faced "risks . . . in gathering the news the general public knew nothing." Certainly, newsgathering during

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<sup>1455</sup> "Gathering Strike News."

this time period, as noted by the *Times* was “a particularly hazardous business.”<sup>1456</sup>

However, what made this instance even more dangerous for reporters was being close to other potential targets of violence: the police and militia.

Seven months later, on October 6, *The Saint Paul Globe*, as discussed above, detailed a volatile situation in which a mob had gathered as the patrol wagon was dropping off prisoners at the police station.<sup>1457</sup> Although the reporter “missed”<sup>1458</sup> the patrol wagon when attempting to jump on, he was still subjected to danger for even trying to ride along as he was left to fend off the mob without police assistance.

Although the reporters described in these two cases from 1895 were likely to face violence without accompanying police on a patrol wagon, they likely faced the potential for even greater danger by seemingly aligning themselves with the police. What these examples also revealed was that there were no special precautions taken to protect members of the press who accompanied police on patrol wagons. As *The New York Times* noted, a “newspaper reporter learns, after a few days of such adventure, how to prepare for them, and how best to avoid dangerous consequences.”<sup>1459</sup>

The lack of precautions was apparent in January 1909 when a reporter for the *Evening Star* in Washington, D.C. spent a night on the patrol wagon.<sup>1460</sup> Having asked for permission to ride on the wagon, the reporter was told by patrol driver, “I have no objection to your going. . . . But I can’t guarantee you safety any more than I can an

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<sup>1456</sup> Ibid.

<sup>1457</sup> “Gotham Stations.”

<sup>1458</sup> Ibid.

<sup>1459</sup> “Gathering Strike News.”

<sup>1460</sup> “A Night on the Box with the Patrol Driver.”

interesting time.”<sup>1461</sup> A lack of precautions was also apparent in 1917 when a reporter “spent an afternoon . . . in a police automobile equipped to run down traffic law violators.”<sup>1462</sup> In reporting his experiences, *Des Moines Tribune* reporter W.D. Harrison wrote that there was “enough danger in chasing the speeder to make it a fascinating game.”<sup>1463</sup> In some cases, the lack of precautions and proper safety procedures led to serious accidents involving the police vehicle, including in 1918,<sup>1464</sup> 1921,<sup>1465</sup> and 1928<sup>1466</sup> when reporters and police officers riding together in the vehicle at the time of the crash were either seriously injured or killed.

It was not until the 1960s-1970s with the creation of formal ride-along programs that police began taking at least some precautions when members of the press or the public participated in a ride-along. This was perhaps best evident on August 6, 1978 when the *Times-Advocate* in Escondido, California quoted Chief Jim Cannole, who explained that “[i]f an officer is ordered to respond to a potentially dangerous situation and happens to have a rider with him, he will drop that person off immediately.”<sup>1467</sup> The article added that officer Leonard Geise would often “allow[] riders to get out of his patrol car when he interviews motorists and others, but said he will order a ride to stay inside the squad car if he thinks it is a touchy situation.”<sup>1468</sup>

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<sup>1461</sup> Ibid.

<sup>1462</sup> “Evening Tribune Reporter Spends Afternoon in Police Car.”

<sup>1463</sup> Ibid. Harrison added, “Besides the danger of the machine itself, there are a thousand others. A daredevil tearing down Grand avenue, knowing that he is followed, dives for hiding in the downtown traffic. The cop follows, skidding sideways to dodge a pedestrian[.]”

<sup>1464</sup> “Detectives Have Narrow Escape,” *Butte Miner* (Butte, MT), Dec. 25, 1918.

<sup>1465</sup> “One Killed and 13 Injured in Denver Wrecks,” *Arizona Republic*, April 3, 1921.

<sup>1466</sup> “Condition of Two Remains Serious,” *Indianapolis News*, March 27, 1928; “Seven Are Hurt in Auto Crash,” *International News Service*, March 27, 1928.

<sup>1467</sup> “Police show runs quietly in city.”

<sup>1468</sup> Ibid.

However, despite these precautions, the dangers to those riding along were still present as police could, and would, encounter situations that seemed benign on the surface, but became volatile without any warning. This was apparent in 1969 when a reporter rode along with police to investigate gang violence in Chicago.<sup>1469</sup> *Chicago Tribune* reporter Joseph Boyce reported at the end of his June 1, 1969 article recounting his experiences that at one point, two suspected gang members “walked over to the squad car.” Joyce explained that “[o]ne was angry” and called him an “uncle Tom,” accusing him “of a ‘double cross’ by not printing facts.” The angry individual also turned to one of the officers and reportedly said, “Why should I talk to you. You’re . . . my worst enemy.”<sup>1470</sup> Although the men would walk away, this example demonstrates how potential danger can arise without warning and that a reporter can become a target.

Given such dangers, even greater precautions have been taken in more recent years, ranging from requiring ride-along participants to “stay in the car when the officer asks you to”<sup>1471</sup> to wearing bulletproof vests<sup>1472</sup> to hiding under the dashboard “if things got hairy.”<sup>1473</sup> Nevertheless, dangers remained for reporters riding along with police, such as in the case of *Issaquah & Sammamish Reporter* journalist Nicole Jennings, who, during her first ride-along, experienced how a scene could change rapidly. She wrote,

Though this did not seem to be a dangerous crime scene, there was a moment when I felt afraid. Sitting in the locked police car (for my own protection), I observed two of the suspects standing around talking, when all at once, one of them met my gaze and began

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<sup>1469</sup> Boyce, “Gang Leaders Explain Their War on S. Side.”

<sup>1470</sup> Ibid.

<sup>1471</sup> Ford, “Ride-Along more than reporter bargained”; Greenberg, “Reporter rides with police”; Jennings, “Police ride-along.”

<sup>1472</sup> Greenberg, “Reporter rides with police.”

<sup>1473</sup> Hogsed, “Even routine traffic stops can hold hazards for police”; Colin Murphy, “WPD ride-along – WDN reporter experiences a day on patrol,” *Weatherford Daily News* (Weatherford, OK), June 24, 2015.

walking in the direction towards me. Even though I was secure in the police car, I tensed up — would the man try to break into the car and harm me? It seemed unlikely, but then you can't predict what a potentially unstable criminal might do.<sup>1474</sup>

Although the man ultimately did not approach the vehicle, Jennings' description of the scene demonstrates the heightened danger faced by journalists on ride-alongs.

Several additional themes would develop throughout the history of media ride-alongs demonstrating the significant danger they can pose not only for journalists, but also the police. First, there were multiple examples of reporters being caught in the crossfire between police and criminals in a shootout. On November 9, 1913, *The Atlanta Constitution* reported that after a call was made to the police reporting a robbery at a local store, "Officer Rogers offered to carry the reserve men out in the chief's car, which stood outside at the curb. Three motorcycle men, a captain and a police reporter for a morning newspaper jumped in."<sup>1475</sup> As the group approached the scene, Rogers cut the engine and light and "coasted down the slope." But as he did so, "two men—lookouts stationed at the corner—opened fire. Policeman Anderson, who sat on the front seat, was first to return shots. Captain Mayo and Policeman Watson . . . also opened up." Although the reporter was carrying a revolver, it failed to fire, leaving "the only logical thing he could expect to do under the circumstances[:] climbing over the back of the [automobile]."<sup>1476</sup> Even in a case where a reporter had his own gun, he was still caught in the crossfire between police and robbers, posing significant danger he may not otherwise have faced.

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<sup>1474</sup> Ibid.

<sup>1475</sup> "A Dead Hero Is the Poorest Sort of a Husband."

<sup>1476</sup> Ibid.

A similar scene unfolded in July 1928. In this case, a reporter joined police on a call of “bandits . . . holding up motorists in the vicinity of Anderson[, Indiana.]”<sup>1477</sup> Upon arriving at the scene, one bandit “swung about in the driver’s seat [of the car the police had forcefully pulled over] and opened fire, the bullets from a heavy caliber revolver passing between the heads of newspaper reporters seated in the auxiliary seats of the police car.” The reporters were therefore caught in the middle of the “thrilling revolver and machine gun fight [between a gang and] police emergency squad,” leading to the death of at least one bandit.<sup>1478</sup>

Several decades later, in 1989, two journalists on a media ride-along were nearly shot once again. According to the AP on October 15, 1989, while riding along with police to record “a story about Los Angeles gangs exporting members to Utah,” a television news crew from Salt Lake City “had to hit the dirt after someone took a pot shot at a police officer” with whom they were riding.<sup>1479</sup> The AP reported that camera operator Dennis Kurumada of KTVX-Channel 4 in Salt Lake City “was grabbed by one officer while another grabbed [reporter Sheila Hamilton] and pulled her from the patrol car she was seated in.” Sergeant Paul Hernandez told the AP that Hamilton was “in the killing zone or the danger zone. . . . She was in the line of fire.” Although Hamilton only “suffered a cut hand in the shooting and was treated at the scene,” the events demonstrated how quickly and without warning a ride-along can become dangerous.<sup>1480</sup>

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<sup>1477</sup> “Police Bull.”

<sup>1478</sup> Ibid.

<sup>1479</sup> “Gunshot interrupts TV interview.”

<sup>1480</sup> Ibid. *See also* Banas, “Fillmore Is Prime Battleground for Chicago’s Police.” Banas explained that in one case, the “rear door of the squad car [was] stuck.” Although seemingly just inconvenient, Patrolman Tyrone Foster explained that it was actually dangerous as the reporter

But in some cases, the result was worse than a cut hand. On July 25, 1998, *The Virginian-Pilot* ran a story about the recent filming of “COPS” in the state.<sup>1481</sup> The story recounted that in Chesapeake, an officer had “accidentally shot a ‘COPS’ cameraman,” with the “blast pepper[ing] the photographer’s shins with birdshot while the camera was rolling.”<sup>1482</sup> The cameraman survived, but the situation only further illuminated the myriad of possible dangers posed to media members on ride-alongs. The case also demonstrated that when an individual, whether a police officer or a member of the public, is being recorded or otherwise observed by a television crew or members of the press, they may act differently than they otherwise would, potentially leading to more aggressiveness, violence, or, as in this case, mistakes.

In fact, reporters on ride-alongs even witnessed police being shot and, in some cases, killed. On April 17, 1991, the AP detailed reporter Stan Mitchell’s experience of “riding in the patrol car with Pocahontas Patrolman Scott Bennett when the officer was fatally shot while answering a call.”<sup>1483</sup> As discussed above, Bennett was shot and killed when responding to a domestic violence call. According to the AP, Mitchell witnessed the entire event, and had “got[ten] down in the back of the car and tried to get to the radio microphone.” Mitchell explained that he thought the man was going to shoot him and the other officer as well,<sup>1484</sup> demonstrating how dangerous the scene had become.

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and photographer “might have to get out of the car in a hurry. . . . The car may come under fire, or bricks may be thrown at it.” Patrolman Gerald Gregg added that it was possible that “someone might shoot a policeman without any notice.”

<sup>1481</sup> Mather, “Cops in Hampton Roads.”

<sup>1482</sup> Ibid.

<sup>1483</sup> “Arkansas Reporter Witnesses Shooting Death of Patrolman.”

<sup>1484</sup> Ibid.

Four years later, on November 24, 1995, *The Tampa Tribune* recalled an instance where “COPS” had joined police in Tampa, Florida on their patrols the previous March.<sup>1485</sup> In one case, the camera crew watched and recorded as “officers Kevin Howell and Mike Vigil were gunned down while chasing armed robbery suspects.”<sup>1486</sup> Both survived, but the scene still showed once more the dangers of not only being a police officer, but also being a television crew alongside those officers. Although not the case here, it is possible that individuals targeted by the police could respond differently when they realize they are being recorded or observed, such as potentially becoming more violent or aggressive as a result. Thus, the presence of the press or media only further raises dangers faced by the police as well.

Ultimately, reporters face heightened danger on media ride-alongs primarily because the police face significant threats even on an average shift. As *Chicago Tribune* reporter Robert Wiedrich wrote on March 5, 1962,

[Policeman Sergis] Joseph has come close to death. He will again before the shift is thru. He and the 11 other members of the [new] squad flirt with violence every night. There have been injuries, but no one has been killed. To watch the unit work, to spend a few nights with the policemen on their patrols, is an experience in courage.<sup>1487</sup>

And when reporters join officers like Joseph, they too face these dangers and, as Wiedrich wrote, need to show great “courage” in order to ride in police vehicles.<sup>1488</sup> As

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<sup>1485</sup> Walk Belcher, “‘Cops’ finds its niche, cruises to success,” *Tampa Tribune*, Nov. 24, 1995.

<sup>1486</sup> Ibid.

<sup>1487</sup> Wiedrich, “Policemen on New Task Force Play Tag with Death.”

<sup>1488</sup> Ibid. See Tully, “Man throwing rocks is shot by deputy.” The article explained that a reporter and photographer were present in the police car when a sheriff’s deputy shot a man in the torso after the man threw rocks at him and the vehicle. See also Baldwin, “Going along for a ride.” The article asserted that “[e]very time police officers get into their cars and go out on patrols, there are no guarantees all could make it through alive to the end of their shift.” The story quoted one officer, who said, “Each day we put ourselves at great personal risk for the safety of others. . . . Why? Because it’s what we do. It’s our job.”

*The Pueblo Chieftain* in Colorado bluntly put it on June 29, 1997, one only needs to “look at the plaques on the wall at the jail of . . . officers who died in the line of duty, to know that things can go wrong and officers — or citizens along for the ride — can die.”<sup>1489</sup> Certainly, reporters face dangers even when they are not accompanying law enforcement officers or officials in their police vehicles. However, when journalists participate in ride-alongs, they face a heightened risk of being exposed to violence, shootings, and more. Significantly, media ride-alongs can also make it more dangerous for the police in that bringing reporters or camera crews with them on calls can potentially make a scene more dangerous depending on the reaction of the individuals being recorded or observed.

Another effect problematizing media ride-alongs is decreased public trust and confidence in the press and police. This was most commonly seen when it was revealed that the press participated in the ride-along in order to help the police. In other cases, members of the public would question why journalists were in a police vehicle, thinking that they may have been arrested or were working with law enforcement. Although not found in many articles, this effect still spans the history of media ride-alongs and further demonstrates how the practice blurs the lines of the press-police relationship.

On November 30, 1890, Chief of Police Patrick Crowley invited a *San Francisco Chronicle* reporter to join him on one of the new patrol wagons in the city.<sup>1490</sup> The *Chronicle* reporter, in recounting his experiences on the wagon, noted that he “caught audible speculations from the pedestrians . . . as to the exact nature of the crime he (the

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<sup>1489</sup> “Drug raid can start your heart pumping,” *Pueblo Chieftain* (Pueblo, CO), June 29, 1997.

<sup>1490</sup> “Police Alarm Signals.”

reporter) had committed to earn a seat in the patrol wagon in such distinguished but suggestive companionship.” In one case, a member of the public said, “Poor fellow, he’s going up for seven years sure.”<sup>1491</sup> Although it is not clear whether the sight of the reporter in the patrol wagon decreased his credibility, it is possible that some members of the public would be less willing to trust a reporter after seeing them in a police vehicle.

In fact, less than one year later, a similar set of circumstances prompted the *San Francisco Examiner* to raise concerns about the credibility of the reporter. On March 15, 1891, the newspaper reported that one of its reporters had spent 24 hours with the patrol wagon, during which “[p]eople glanced at the wagon and pitied the reporter as they drove by, and his friends pretended not to notice him.”<sup>1492</sup> The article contended that although “[p]opular pity was on his side,” so too was “popular contempt” because it was “bad” for a reporter “to be seen in a patrol wagon.”<sup>1493</sup> The article did not explain further why this was the case, but nevertheless indicated that it was potentially because it would negatively affect the reporter’s credibility.

It was not until 1963 that another example appeared in which public trust in the press was potentially decreased due to a media ride-along.<sup>1494</sup> In an interview with the *Atlanta Daily World* on April 5, 1963, a Black marcher in Greenwood, Mississippi named “Gregory” argued that police had increasingly encouraged the “picture-taking” of black marchers, calling it “a new form of ‘police harassment and intimidation.’”<sup>1495</sup> According

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<sup>1491</sup> Ibid.

<sup>1492</sup> “A Day With The Patrol.”

<sup>1493</sup> Ibid.

<sup>1494</sup> “Greenwood Suit Postponed After Law ‘Assurances.’”

<sup>1495</sup> Ibid. It is not clear whether the photographer was from the local media or the police force. However, it still suggests the possibility of reporters helping police surveil Black marchers.

to the *Atlanta Daily World*, on one occasion, a “police car rolled alongside and a photographer stepped out,” prompting the marchers to not only head back to the Negro voter registration headquarters,” but also question the motivations of the police and photographer for doing so.<sup>1496</sup>

Although articles indicating that media ride-alongs decreased public trust in the press and police were rare, this potential effect is still worth noting as it demonstrates an additional way in which media ride-alongs blur the lines of the press-police relationship and can have real negative effects not only on both parties, but also the public. Put simply, if a member of the public views a reporter working or riding with a police officer, that individual may be less likely to talk to the reporter in the future, potentially undermining the ability of the reporter to achieve their purposes and functions and properly serve the public. Similarly, decreased public trust in the police can undermine their community-based efforts, especially in minority communities.

A final effect that, although not common, was still found throughout the 137-year history of media ride-alongs was legal action stemming from the practice. In some cases, journalists were named parties in litigation stemming from what occurred during a ride-along, such as invasion of privacy or the police vehicle striking a pedestrian. Members of the police force involved in ride-alongs were, in some cases, also subject to legal action. However, the code was most frequently seen in discussions of *Wilson v. Layne* (1999).

The first instance found of members of the press and police facing legal action stemming from a ride-along came in 1917 when F.A. Scott and Horace Karr, reporters for

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<sup>1496</sup> Ibid.

The Times-Mirror Company and the Herald Publishing Company, respectively, “accompanied [E. P. Bradley, then the police chauffeur,] in the police car to the home of Mrs. Francis Harrison, who was slain.”<sup>1497</sup> But on the way, John T. Jordan, a mail carrier, “was struck and injured by the police car,” according to the *Los Angeles Times* on June 19, 1917. Jordan summarily brought a \$25,000 damage lawsuit against Bradley, as well as Scott, Karr, and the companies for which they worked as reporters. Judge Charles Wellborn ruled in favor of Jordan, finding that a “police or fireman chauffeur has no more right to exceed the speed laws than a private driver.” Wellborn dismissed the charges against the newspaper companies, finding that they “were not responsible for Mr. Scott and Mr. Karr, reporters, engaging the police car to go on this trip.” The *Times* noted that Scott and Karr were later “exonerated.”<sup>1498</sup> Nevertheless, the lawsuit and subsequent ruling provided an example of a media ride-along leading to legal action implicating both the press and police.

A similar set of circumstances arose in 1938 when the Harrisburg, Pennsylvania City Council investigated why the police took a man to jail instead of the hospital, leading to his death.<sup>1499</sup> The City Council primarily targeted Patrolman Roy M. Keller, the driver of the patrol wagon, who had allowed a journalist to join him even though it was against department policies. Although the reporter was not investigated by the City Council,<sup>1500</sup> the proceedings represented another circumstance of actions taken to address what had taken place during a media ride-along.

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<sup>1497</sup> “Speeding Law Far Reaching.”

<sup>1498</sup> Ibid.

<sup>1499</sup> “Chief Defends Action Of Men In Cell Death Of Dougherty.”

<sup>1500</sup> Ibid.

The majority of instances where legal action was discussed in relation to media ride-alongs was in articles covering *Wilson v. Layne*.<sup>1501</sup> The articles primarily focused on invasion of privacy and violations of the Fourth Amendment arising from media ride-alongs. Additionally, the articles detailed concerns raised by observers following the announcement of the decision.<sup>1502</sup>

Ultimately, two additional purposes of media ride-alongs — 1) aiding police and 2) providing entertainment — provided further evidence of the *quid pro quo* relationship between the press and police stemming from the practice, as well as raising questions about its effectiveness. Three additional negative effects of the practice— 1) physical danger, 2) undermining public trust, and 3) legal action — provided additional concerns, implicating the press, police, their relationship, and the public. Together, these purposes and effects further demonstrated the problematic nature of media-ride alongs.

### **3. Conclusions**

The literature review revealed that there was little, if any, research on the history of media ride-alongs, especially that looked at 1) how the practice took place, 2) the purposes of the practice, 3) the effects of the practice, 4) legal implications, and 5) discussions of race and class. This study therefore took the important step of conducting the most thorough and complete history of media ride-alongs to date. Although not an exhaustive sample, newspaper articles were used from national, regional, and local newspapers, spanning 137 years and providing several key implications of the practice.

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<sup>1501</sup> *Wilson v. Layne*, 526 U.S. 603 (1999). Some additional articles focused on *Berger v. Hanlon*, 129 F.3d 505 (9th Cir. 1997); *Berger v. Hanlon*, 188 F.3d 1155 (9th Cir. 1999).

<sup>1502</sup> See note 1283 above.

First, media ride-alongs have existed since the first horse-drawn patrol wagons were introduced in the early 1880s, with the first example being found in 1883. In the ensuing 137 years, the practice was fairly common, with between 11-17 examples being found in each of the 20-year periods starting with the 1880s through the 1950s. More instances of media ride-alongs were found in the 1960s-1970s with the establishment of formal programs, and then especially in the 1980s through the present as the practice became even more common (Appx. B, Table 4.1).

Second, media ride-alongs in many respects have remained consistent since the first example in 1883. In almost all cases, reporters obtained permission or were invited to ride along on the police vehicle, though examples do exist of reporters gaining access without explicit permission. The two main purposes of reporters participating in media ride-alongs — covering the police or a news story — each existed since the late-19th and early-20th centuries, as did the less common purpose of aiding police. The final purpose, providing entertainment, developed later. The effects, as well as implications of law, race, and class, were also largely found throughout the history of media ride-alongs, though some were more common than others.

Finally, these themes — 1) how media ride-alongs took place, 2) the purposes of the practice, 3) the effects of the practice, 4) legal implications, and 5) discussions of race and class — built on each other to show the problematic nature of media ride-alongs. In examining how the practice took place since the 1880s, it became clear that in most cases, the police had granted the press and media access to their vehicles, sometimes inviting or encouraging reporters or camera crews to do so. This suggested that the police likely required, whether explicitly or not, something in return for providing such access.

The purposes of media ride-alongs, though particularly journalists using the practice in order to cover the police or a news story, illustrated that in exchange for this access and source relationships, the press often praised the police, which was much more common than critical reporting. At the very least, much of the reporting was neutral, which still illuminated police activities in a community without providing a critical lens.

On the surface level, the press using media ride-alongs to cover the police or a news story appears to be a good thing. And to some degree, it is. The press, by gaining access to police vehicles, was able to cover the police and news events in a way that otherwise may not have been possible. The press was therefore able to inform its readers and attract more viewership through entertaining, human-interest stories. Other potential benefits of media ride-alongs included improving the press's relationship with the public and police, as well as providing at least some accountability for law enforcement. However, looking deeper, this arrangement was problematic in that it blurred the lines of the press-police relationship, raising concerns about the effectiveness of the practice.

Media ride-alongs blur the lines of the press-police relationship in that the press often provided the police favorable or, at worst, neutral coverage in order to retain access to media ride-alongs, resulting in the news media's goals and purposes becoming more closely aligned with those of law enforcement. More specifically, such praise and positive coverage of policing helped improve the police's community relations. In fact, some reporters even helped the police accomplish their functions and actions, including searching for a suspect, tending to an injured man, and helping disperse a violent mob. The result was the blurring of lines between the two parties as their goals began to overlap in problematic ways.

What makes this particularly problematic is that reporter's and their coverage not only benefited law enforcement, but also frequently failed to provide critical coverage of police, leading to two key concerns about the effectiveness of media ride-alongs. First, the lack of critical coverage portraying the police in a more negative light suggests that media ride-alongs do not allow the press, or the media, to receive and/or provide their readers a complete picture of law enforcement, therefore not fully informing the public. Second, and connected to this concern, the lack of critical reporting compared to positive or neutral coverage also suggests that reporters did not or could not use media ride-alongs to hold law enforcement accountable.

If the press focused on covering the police and news stories, but not, for example, police brutality and misconduct, the press was likely not providing a complete picture of law enforcement, especially because media ride-alongs generally provide the point of view of law enforcement. And if the police acted differently because of the press' or media's presence, reporters or television crews were not receiving or witnessing an accurate view of law enforcement. The moment the press or media left, an entirely different view may have appeared. Reporting on what happened during a ride-along certainly provides insight into the everyday functions of the police. But if such coverage does not or cannot account for negative things that occur during or outside a media ride-along, such as police misconduct, the public is not getting a complete view of law enforcement, which is, therefore, not held accountable.

This is not to say that every media ride-along needs to result in critical coverage. It can be important and beneficial to show police activity in a community, whether something bad happened or not; it is part of the two institutions cooperatively co-

existing.<sup>1503</sup> Additionally, there are certainly instances where detailing police actions can be newsworthy, such as the dangers faced by the police<sup>1504</sup> or if such actions had direct effects on the public. However, the almost complete absence of critical coverage suggests that even when a more negative view of police is needed and is, perhaps, witnessed on a ride-along, reporters may not be able to cover it or may choose not to risk straining the press-police relationship, therefore losing access to police vehicles, locations, information, and sources. The result is that media ride-alongs do not provide the press with an effective means of fully informing the public and holding police accountable, at least without separate actions by journalists outlined and discussed in Chapter 6.

But further problematizing media ride-alongs are additional negative effects — physical danger, undermining public trust, and legal action — raised by the practice, each of which have implications for both parties, their relationship, and the public. In particular, threats to the safety of journalists and police officers place their lives in danger in ways that may not exist or be as significant had the media ride-along not taken place. The threat of litigation also carries significant implications for both parties by making it more challenging for both to accomplish their important purposes and functions. This inability by the press and police to achieve their goals and actions, combined with the undermining of public trust and confidence in both parties, directly implicates the public, which relies on the news media and law enforcement in society.

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<sup>1503</sup> See Hogsed, “Even routine traffic stops can hold hazards for police.” The article read, “Journalists and police officers are never going to be best friends. . . . However, we strive for a relationship of respect and understanding, and part of that for reporters is learning what police work actually entails. It’s one thing to read police reports. . . . but to actually see what it’s like on the streets is a whole different reality.”

<sup>1504</sup> See e.g. “Arkansas Reporter Witnesses Shooting Death of Patrolman.”

Ultimately, media ride-alongs in recent years have been as common and popular as at any point in the history of the practice. However, although media ride-alongs can be beneficial to both the press and police, the *quid pro quod* arrangement tied to the practice blurs the lines between the two parties, leading to the press being largely unable to fulfill two of its main purposes: 1) obtaining and providing a complete and accurate view of law enforcement and 2) holding the police accountable. Conversely, the press helped the police accomplish some of its purposes and functions, such as community relations or others that arose during a ride-along. The result is that media ride-alongs, at least historically, have been largely ineffective because they blur the lines between the press and police. Combined with other negative effects of the practice, the concerns arising from media ride-alongs necessitate that action be taken related to the practice, as discussed in Chapter 6.

### **III. Conclusions about the History of Blurring the Lines of the Press-Police Relationship**

Dating back to the 1870s-1880s, police impersonation of the press, press impersonation of the police, and media ride-alongs represent long-established practices in the United States. Through an acquired sample of 432 articles, with 298 being qualitatively coding from a variety of time periods and locations, this study provided the most extensive history of these practices to date, providing not only a timeline of each, but also detailing key aspects, including 1) how the practice took place, 2) the purposes of the practice, 3) the effects of the practice, 4) legal and ethical implications, and 5) discussions of race and class.

Significantly, negative effects of all three practices were uncovered stemming from the blurring lines of the press-police relationship. These concerns, ranging from the physical safety of reporters and the police, to the undermining of public trust, to the straining of the press-police relationship, demonstrated that some action related to police impersonation of the press, press impersonation of the police, and media ride-alongs needs to occur. In the following chapter, the legal implications of police impersonation of the press, press impersonation of the police, and media ride-alongs, as well as other aspects of the press-police relationship, will be covered in more detail, further investigating the implications of each on the press, police, their relationship, and the public. In so doing, this study will further analyze what the history and law of the press-police relationship tells us about its present and future, and what needs to be done to ensure both parties are benefiting the public to the greatest extent possible.

## **Chapter 5: Legal Analysis of the Relationship Between the Press and Police**

The law around the press-police relationship is complex and continuously evolving, shaping the goals, purposes, functions, and actions of the news media and law enforcement. The legal landscape, therefore, reveals important insights about both parties and their relationship, including how it can be cooperative co-existence in some cases, while contentious or blurred in others. When combined with relevant examples, the legal landscape also reveals important effects not only on the press and police, but also the American public. Additionally, the legal analysis clarifies — for members of the press, law enforcement, and public — the legal considerations, including constitutional, statutory, and common law, as well as federal, state, and local law enforcement policies, rules, and guidelines, of the different interactions between the press and police, informing the present and future of their relationship.

The legal analysis is broken down into two parts that map onto the four interactions between the press and police. Part I focuses on the legal landscape of the first three interactions: press coverage of police; press investigations of police; and law enforcement arrests, searches and seizures, subpoenas, and surveillance of the press. Part II builds off the legal considerations raised in Part I by focusing on the law regarding blurring the lines of the press-police relationship, namely police impersonation of the press, press impersonation of police, and media ride-alongs. Part II presents the evolving legal landscape around these practices, as well as relevant examples that build on the effects found in the content analysis. In so doing, this chapter provides the most comprehensive legal analysis of the press-police relationship to date.

## **I. Background / Contextual Information**

The interactions that lead the press-police relationship to be cooperative co-existence or contentious may not be as problematic as when the lines are blurred between the two parties. However, they still raise important legal considerations that, when combined with historical and contemporary examples, demonstrate the implications of the legal landscape on the press, police, their relationship, and the public. Part I discusses and analyzes the legal considerations related to the first three interactions between the press and police. It is broken down into two sections: 1) Section I focuses on press coverage and investigations of police and 2) Section II focuses on the law enforcement arrests, searches and seizures, subpoenas, and surveillance of the news media. In so doing, Part I provides important background and contextual information that informs the legal landscape of the interactions blurring the lines between the press and police.

### **A. Interactions #1 & #2: Press Coverage of Police and Investigations of Police**

The first two interactions between the press and police — press coverage and investigations of police departments, officials, officers, and activities — raise similar legal considerations, including related to 1) press independence from government, 2) newsgathering, 3) publication and broadcasting, and 4) editorial control. Each of these areas demonstrates that although the press' ability to cover and investigate the police does not receive absolute protection under the First Amendment and other areas of U.S. law, the legal landscape still largely protects the press from government and police intrusion and interference. This allows the news media to inform the American public and

hold law enforcement accountable. Relevant examples,<sup>1505</sup> combined with legal landscape, reveal several positive and negative effects of press coverage and investigations of police on both parties and the public. They also demonstrate and explain how the press-police relationship can at times be cooperative co-existence, while at other times more contentious.

## 1. Independence from Government Intrusion

Perhaps most significantly, the Supreme Court, building on the values of the Founding Fathers,<sup>1506</sup> has emphasized that freedom of the press is inextricably tied to the press' independence from government. The Court held in *Roth v. United States* (1957) that the

freedoms of speech and press have contributed greatly to the development and well-being of our free society and are indispensable to its continued growth. Ceaseless vigilance is the watchword to prevent their erosion. . . . The door barring federal and state intrusion . . . cannot be left ajar; it must be kept tightly closed and opened only the slightest crack necessary to prevent encroachment upon more important interests.<sup>1507</sup>

In his concurring opinion in *New York Times v. United States* (1971), Justice Hugo Black perhaps put it best when he eloquently wrote that the First Amendment was drafted to “abolish” the government’s “power to censor the press . . . so that the press would remain forever free to censure the Government [and] . . . inform the people.”<sup>1508</sup>

## 2. Newsgathering

The U.S. Supreme Court has not definitively ruled that the press' newsgathering function is protected by the First Amendment, though it and lower courts have indicated

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<sup>1505</sup> The examples are not meant to be exhaustive, but instead illustrate key aspects of the legal landscape.

<sup>1506</sup> See notes 49-53 above.

<sup>1507</sup> *Roth v. United States*, 354 U.S. 476, 488 (1957).

<sup>1508</sup> *New York Times v. United States*, 403 U.S. 713, 717 (1971) (Black, J. concurring).

that this may be the case. Additionally, courts have provided mixed rulings in other areas regarding the press' ability to gather news, including related to 1) recording police officers in the course of their official duties in public places, 2) a reporter's privilege against being compelled to disclose confidential sources and information, and 3) press access to public, restricted, and private places, as well as to government data, records, and information. In some cases, courts have sided with the press, while at other times favored other interests, including those of law enforcement. Further complicating the legal landscape is statutory and common law, which are also discussed below.

#### **a. First Amendment Protection for Newsgathering**

In *Branzburg v. Hayes* (1972), the Supreme Court suggested that there is, or should be, First Amendment protection for newsgathering, holding that “news gathering is not without its First Amendment protections.”<sup>1509</sup> The Court added, “Nor is it suggested that news gathering does not qualify for First Amendment protection; without some protection for seeking out the news, freedom of the press could be eviscerated.”<sup>1510</sup> In his dissent in *Houchins v. KQED* (1978), Justice John Paul Stevens argued that “information gathering is entitled to some measure of constitutional protection.”<sup>1511</sup> He wrote that the First Amendment protects “not only the dissemination but also the receipt of information.”<sup>1512</sup> Justice Stevens added, “It is not sufficient . . . that the channels of communication be free of governmental restraints. Without some protection for the acquisition of information about the operation of public institutions . . . by the public[,]”

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<sup>1509</sup> *Branzburg*, 408 U.S. at 707.

<sup>1510</sup> *Id.* at 681.

<sup>1511</sup> *Houchins v. KQED*, 438 U.S. 1, 32 (1978) (Stevens, J. dissenting).

<sup>1512</sup> *Id.* at 30.

the process of self-governance contemplated by the Framers would be stripped of its substance.”<sup>1513</sup>

Lower courts have also indicated that there is at least some First Amendment protection for newsgathering. In *ACLU v. Alvarez* (2012), the U.S. Court of Appeals for the Seventh Circuit held that “the First Amendment provides at least some degree of protection for gathering news and information.”<sup>1514</sup> Similarly, Fourth Circuit Judge J. Harvie Wilkinson III wrote in a concurring opinion in *In re Shain* (1992) that “[i]t is true that there are First Amendment interests in newsgathering.”<sup>1515</sup> The Wisconsin Supreme Court found in *City of Oak Creek v. King* (1989) that there is an “undoubted right to gather news from any source by means within the law.”<sup>1516</sup>

However, the Supreme Court’s claims of a First Amendment right for newsgathering are generally “empty rhetoric”<sup>1517</sup> as the Court has long held that the press generally does not receive special privileges not available to the general public. In *Pennkamp v. Florida* (1946), the Court held that the “purpose of the Constitution was not to erect the press into a privileged institution but to protect all persons in their right to print what they will as well as to utter it.”<sup>1518</sup> In *Cohen v. Cowles Media Co.* (1991), the

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<sup>1513</sup> *Houchins*, 438 U.S. at 32 (Justice Stevens cited Justice William Brennan’s concurring opinion in *Lamont v. Postmaster General*, 381 U.S. 301 (1965): “The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace of ideas that had only sellers and no buyers.” Stevens added, “It would be an even more barren market-place that had willing buyers and sellers and no meaningful information to exchange.”).

<sup>1514</sup> *ACLU of Illinois v. Alvarez*, 679 F.3d 583, 595, 597 (7th Cir. 2012).

<sup>1515</sup> *In re Shain*, 978 F.2d 850, 855 (4th Cir. 1992) (Wilkinson J., concurring).

<sup>1516</sup> *City of Oak Creek v. King*, 148 Wis.2d 532 (Wis. 1989).

<sup>1517</sup> Erwin Chemerinsky, “Protect the Press: A First Amendment Standard for Safeguarding Aggressive Newsgathering,” *University of Richmond Law Review* 33 (2000): 1145-65.

<sup>1518</sup> *Pennkamp v. Florida*, 328 U.S. 331, 364 (1946).

Court held that “[g]enerally applicable laws do not offend the First Amendment simply because their enforcement against the press has incidental effects on its ability to gather and report the news.”<sup>1519</sup> As the literature review demonstrated, members of the press have been arrested for a variety of reasons under federal and state statutes, including in the course of their reporting duties.<sup>1520</sup> Furthermore, the Court has held that, under the First Amendment, the press does not enjoy a special privilege to avoid grand jury subpoenas<sup>1521</sup> and newsroom searches.<sup>1522</sup> As discussed more below, federal and state courts have also generally ruled that the press does not have a special right of access to locations<sup>1523</sup> and information,<sup>1524</sup> nor special protection from charges of invasion of privacy, trespassing, wiretapping, and more.<sup>1525</sup>

A good illustration of the limitations of newsgathering, especially when weighed against law enforcement interests, is *United States v. Matthews* (2000), in which the Fourth Circuit held that the First Amendment did not provide a defense for freelance journalist Larry Matthews, who claimed to be investigating the distribution of child pornography online when he was arrested and charged by the FBI for trafficking such content.<sup>1526</sup> The court reasoned that “the Supreme Court has consistently upheld

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<sup>1519</sup> *Cohen v. Cowles Media Co.*, 501 U.S. 663, 669 (1991) (The Court held that the First Amendment did not bar the press being sued for promissory estoppel after two newspaper editors decided to break a verbal contract ensuring confidentiality to Republican campaign associate Dan Cohen, who approached several media outlets with allegations that the Minnesota Democratic-Farmer-Labor Party gubernatorial candidate was previously convicted for shoplifting.).

<sup>1520</sup> See notes 882-899 above.

<sup>1521</sup> *Branzburg*, 408 U.S. at 665.

<sup>1522</sup> *Zurcher v. Stanford Daily*, 436 U.S. 547 (1978).

<sup>1523</sup> See notes 1587-1593 below.

<sup>1524</sup> See notes 1703-1721 below.

<sup>1525</sup> See notes 1634-1647, 1653-1681 below.

<sup>1526</sup> *United States v. Matthews*, 209 F.3d 338, 350 (4th Cir. 2000).

restrictions on First Amendment freedoms to combat the ‘extraordinary problem’ of child pornography.”<sup>1527</sup>

The Fourth Circuit affirmed the ruling of U.S. District Court for the District of Maryland Judge Alexander Williams, Jr., who explained that Matthews was subject to the same laws of general applicability as the public<sup>1528</sup> and that newsgathering is not absolutely protected by the First Amendment.<sup>1529</sup> Williams further held that Matthews had not adequately explained how his receiving and disseminating of child pornography helped uncover malfeasance by federal agents or whether the government was doing enough to curtail such material.<sup>1530</sup> Williams wrote that although he was “hesitant to give news gathering tips,” he concluded that “other, legal avenues of investigation [were] available,” including 1) studying the number of prosecutions or examining public records from such cases, 2) interviewing sources, such as victims of child pornography or those convicted for the transportation of such materials, and 3) “examin[ing] reports to public interest groups that track . . . child pornography distribution.”

Significantly, Williams weighed the law enforcement interest in protecting children from exploitation over the press’ newsgathering function. He found that “Supreme Court precedent demonstrates that the Court must balance the competing

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<sup>1527</sup> *Id.* at 342 (citing *Osborne v. Ohio*, 495 U.S. 103 (1990); *New York v. Ferber*, 458 U.S. 747 (1982)).

<sup>1528</sup> *United States v. Matthews*, 11 F.Supp.2d 656, 661 (D.Md.1998) (citing *Cohen*, 501 U.S. at 669–70).

<sup>1529</sup> *Id.* at 662. Williams added, “Most relevant to this case, the First Amendment’s protection of news gathering activity does not guarantee the press special access to information not available to the general public, nor does it grant the press a right to travel to restricted locations in the search for news.” *Id.* (citing *Branzburg*, 408 U.S. at 684; *Zemel*, 381 U.S. at 16–17).

<sup>1530</sup> *Id.* at 663.

interests involved in this particular case.”<sup>1531</sup> Williams cited *Branzburg* as an example, explaining that the Court “examined both the expected burden on news gathering and the important role of the grand jury in effective law enforcement, and concluded that the public’s interest in law enforcement was sufficient to override the burden imposed.”<sup>1532</sup> Williams ultimately held that the press’ interests in investigations and newsgathering “is insignificant compared to the government’s interest in preventing the exploitation of children,” especially when a journalist violates the law.<sup>1533</sup> He added that the “magnitude of the government’s interest in this case is truly striking” when balanced against other press interests, such as a “reporter’s foreign travel.”<sup>1534</sup>

Another case illustrating that journalists receive no greater protection from laws of general applicability than the public is *Clift v. Narragansett Television LP* (1996), in which the Rhode Island Supreme Court reinstated portions of a lawsuit brought by a woman claiming that a television reporter’s actions led to her husband’s suicide.<sup>1535</sup> The case arose in May 1993 when Bruce E. Clift called his wife, Judith A. Clift (Clift), that he was going to commit suicide.<sup>1536</sup> Police summarily arrived at the family home, where a Rhode Island State Police officer trained to deal with hostage situations telephoned Bruce to dissuade him from committing suicide. A number of news outlets arrived and reported from the scene, including a reporter from Channel 12, a local television station. The

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<sup>1531</sup> *Matthews*, 11 F.Supp.2d at 662.

<sup>1532</sup> *Id.* (citing *Branzburg*, 408 U.S. at 690–91, 695).

<sup>1533</sup> *Id.* at 663.

<sup>1534</sup> *Id.* at 664 (citing *Zemel*, 381 U.S. at 14–17).

<sup>1535</sup> *Clift v. Narragansett Television LP*, 688 A.2d 805 (R.I. 1996). *See also* “Court reinstates negligence suit over suicide call,” *Reporters Committee for Freedom of the Press*, Jan. 27, 1997, <https://www.rcfp.org/court-reinstates-negligence-suit-over-suicide-call/>.

<sup>1536</sup> *Clift*, 688 A.2d at 806.

reporter called the Clift home and spoke with Bruce, who agreed to a recorded telephone interview. The conversation was played during the 6 p.m. newscast. Three minutes later, Bruce committed suicide after reportedly watching the newscast on multiple television sets in his home.<sup>1537</sup> In a February 1994 complaint, which was amended on March 1, Clift alleged nine causes of actions, including “negligence,” “willful, wanton misconduct,” “intentional tort of trespass,” “right of privacy,” “negligent infliction of emotional distress,” “intentional infliction of emotional distress,” “violation of wrongful death statutes,” “loss of consortium,” and “loss of companionship.”<sup>1538</sup>

Regarding the negligence claim, the Rhode Island Supreme Court “believe[d] that notwithstanding First Amendment constitutional protections, everyone, including the press, should be answerable for unprivileged negligent actions that proximately result in suicide.”<sup>1539</sup> The Court reasoned that in the present case, “[t]here were facts alleged in the medical affidavit of Dr. Cath, the plaintiffs’ medical expert, that suggest that the decedent’s suicide resulted from an uncontrollable impulse that was brought about by a delirium or insanity caused by Narragansett’s negligence.” The Court therefore ruled that the “affidavit presented an issue of material fact earmarked for the trial jury to decide” and reinstated the negligence, wrongful death, loss of consortium, and loss of companionship claims.<sup>1540</sup>

However, the Court determined that Clift had not stated “a viable claim for the intentional infliction of emotional distress,” therefore affirming the dismissal of the claim

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<sup>1537</sup> *Id.* at 807.

<sup>1538</sup> *Id.*

<sup>1539</sup> *Id.* at 811.

<sup>1540</sup> *Id.* at 812.

by the trial judge.<sup>1541</sup> The Court also found that “[i]n respect to the invasion of privacy claim asserted on behalf of the decedent, we conclude that that claim is without merit since the right to privacy dies with the person.”<sup>1542</sup> The Court further held that “[a]s pertains to the invasion of privacy claim asserted by the Clift family, we conclude that the one telephone call by the reporter did not invade any area of the family’s seclusion that could reasonably have been expected to remain private.” The Court added, “Certainly no one can question the newsworthiness of the sad but public incident. Only one telephone call during that publicity-charged incident was made by the reporter, and that single telephone call was insufficient to sustain an invasion of privacy claim.”<sup>1543</sup>

#### **b. First Amendment Right to Record Police**

Nevertheless, court precedent and statutory law have provided protection in other areas that promote the press’ ability to gather news. In particular, an important part of the press’ ability to cover and investigate police is the First Amendment right to record police officers in the course of their duties in public places,<sup>1544</sup> as ruled by several federal circuit courts. The first such ruling was by the Eleventh Circuit in 2000, in which it held that the “First Amendment protects the right to gather information about what public officials do

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<sup>1541</sup> *Id.* at 813.

<sup>1542</sup> *Id.* at 814.

<sup>1543</sup> *Id.*

<sup>1544</sup> Jacqueline G. Waldman, “Prior Restraint and the Police: The First Amendment Right to Disseminate Recordings of Police Behavior,” *University of Illinois Law Review* (2014): 311-46. Waldman argued that police confiscating recording devices and/or destroying files is a form of prior restraint. *See also* Lauren Campbell, “Is It a Prior Restraint for Police to Delete Video of Their Conduct?,” *Digital Media Law Project*, April 19, 2012; Laura Danielson, “Camera Shy and Unaccountable: The Constitutional, Statutory, and Democratic Ramifications of Police Seizing and Deleting Photos and Video Taken in Public,” *Michigan State University College of Law* (2013): 1-37.

on public property, and specifically, a right to record matters of public interest.”<sup>1545</sup> In 2011, the First Circuit held that recording public officials engaged in their duties in a public space “is a basic and well-established liberty safeguarded by the First Amendment.”<sup>1546</sup> However, the court also held, significantly, that the First Amendment does not apply if the bystander directly interferes with law enforcement activity,<sup>1547</sup> which is also prohibited by state laws.<sup>1548</sup> In 2012, the Seventh Circuit enjoined an Illinois eavesdropping law because it “likely violate[d] the First Amendment” by prohibiting people from making audio recordings of the police in public.<sup>1549</sup> The following year, the Ninth Circuit recognized a First Amendment right to photograph police,<sup>1550</sup> citing its ruling in *Fordyce v. Seattle* (1995), which found that “a genuine issue of material fact exist[ed] regarding whether [the plaintiff] was assaulted and battered by a Seattle police officer . . . to prevent or dissuade him from exercising his First Amendment right to film matters of public interest.”<sup>1551</sup> Finally, in 2017, the Fifth

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<sup>1545</sup> *Smith v. Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000).

<sup>1546</sup> *Glik v. Cunniffe*, 655 F.3d 78, 84 (1st Cir. 2011).

<sup>1547</sup> *Id.*

<sup>1548</sup> Al Tompkins, “What to Do When Police Tell You to Stop Taking Photos, Video,” *Poynter*, June 9, 2010, <https://www.poynter.org/reporting-editing/2010/what-to-do-when-police-tell-you-to-stop-taking-photos-video/>. In an interview with *Poynter*, media attorney Robb Harvey contended that journalists cannot interfere with police activity because “[e]very state . . . has some statute on the books making it a crime to interfere with or obstruct official police business.”

<sup>1549</sup> *ACLU of Illinois*, 679 F.3d at 583.

<sup>1550</sup> *Adkins v. Limtiaco*, 537 Fed.Appx. 721, 722 (9th Cir. 2013).

<sup>1551</sup> *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995). *See also* *Askins v. U.S. Dept. of Homeland Security*, 899 F.3d 1035 (9th Cir. 2018) (holding that the right to record police extends to border agents); Scott Memmel, “Crossing Constitutional Boundaries: Searches and Seizures of Journalists’ and Other Travelers’ Electronic Devices at U.S. Borders,” *Communications Law & Policy* 24, no. 3 (2020): 25-75; Scott Memmel, “Ninth Circuit Ruling and Federal Lawsuit Target U.S. Customs and Border Protection for First and Fourth Amendment Violations,” *Silha Bulletin* 24, no. 1 (Fall 2018): 47-50.

Circuit ruled that “the principles underlying the First Amendment support the particular right to film the police,” though the right is not absolute.<sup>1552</sup>

The most recent ruling came in 2017 when the Third Circuit also held that bystanders have a First Amendment right to record on-duty police officers in public places.<sup>1553</sup> The case arose when Amanda Geraci, a member of a police watchdog group, recorded several officers arresting a protestor during a 2012 demonstration in Philadelphia, doing so without interfering in the police activity. An officer “abruptly pushed Geraci and pinned her against a pillar,” prevented her from recording the arrest. In September 2013, Temple University student Richard Fields, the other party in the litigation, was on a public sidewalk when he photographed several police officers break up a house party before he was ordered to leave. When Fields refused, an officer detained him, confiscating and searching Fields’ iPhone.<sup>1554</sup>

The Third Circuit ultimately held that Geraci and Fields had engaged in expressive conduct, meaning they intended to use the photos “to criticize the police or otherwise comment on officers’ actions.”<sup>1555</sup> The court also ruled that the First Amendment “protects the public’s right of access to information about their officials’ public activities. . . . Access to information regarding public police activity is particularly important because it leads to citizen discourse on public issues[.]”<sup>1556</sup> However, the court

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<sup>1552</sup> *Turner v. Driver*, 848 F.3d 678 (5th Cir. 2017).

<sup>1553</sup> *Fields v. Philadelphia*, 862 F.3d 353 (3rd Cir. 2017). *See* Scott Memmel, “Third Circuit Declares a First Amendment Right to Record On-Duty Police Officers,” *Silva Bulletin* 22, no. 3 (Summer 2017): 50-52.

<sup>1554</sup> *Fields*, 862 F.3d at 356.

<sup>1555</sup> *Id.* at 358.

<sup>1556</sup> *Id.* at 358–59 (citing *Brown v. Entm’t Merchants Ass’n*, 564 U.S. 786, 790 (2011) (finding that the First Amendment protects photos, videos, and recordings)).

noted that “[i]f a person’s recording interferes with police activity, that activity might not be protected,” such as recording a police conversation with a confidential informant, which “may interfere with an investigation and put a life at stake.”<sup>1557</sup>

### **c. Reporter’s Privilege**

Another area of law implicating newsgathering is the reporter’s privilege protecting journalists from compelled disclosure of confidential sources and information.<sup>1558</sup> *Branzburg* brought the privilege to national attention, but established that it is not absolute under the First Amendment. The majority opinion, written by Justice Byron White, ruled against the press, though in a limited decision focused only on journalists appearing before a grand jury to reveal confidential sources.<sup>1559</sup> White held that because citizens are not constitutionally immune from testifying before a grand jury under a subpoena, the same standard applies to the press.<sup>1560</sup>

However, the majority did not prevent states from drafting their own statutes, writing, “There is also merit in leaving state legislatures free, within First Amendment limits, to fashion their own standards in light of the conditions and problems with respect to the relations between law enforcement officials and press in their own areas.”<sup>1561</sup> Forty-nine states currently recognize at least a qualified constitutional, statutory, or

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<sup>1557</sup> *Id.* at 360.

<sup>1558</sup> “Sources and Subpoenas (Reporter’s Privilege),” *Reporters Committee for Freedom of the Press*, accessed Nov. 12, 2018, <https://www.rcfp.org/digital-journalists-legal-guide/sources-and-subpoenas-reporters-privilege>.

<sup>1559</sup> *Branzburg*, 408 U.S. at 709 (“The sole issue before us is the obligation of reporters to respond to grand jury subpoenas as other citizens do, and to answer questions relevant to an investigation into the commission of crime.”). See Memmel, “Defending the Press: The Shield that Sets Minnesota Apart,” 4-5.

<sup>1560</sup> *Id.* at 682.

<sup>1561</sup> *Id.* at 706.

common law privilege.<sup>1562</sup> For example, Nevada provides absolute protection for a “reporter, former reporter or editorial employee of any newspaper, periodical or press association or employee of any radio or television station” to avoid being

required to disclose any published or unpublished information obtained or prepared by such person in such person’s professional capacity in gathering, receiving or processing information for communication to the public, or the source of any information procured or obtained by such person, in any legal proceedings, trial or investigation.<sup>1563</sup>

Conversely, the Minnesota Free Flow of Information Act, despite three strong elements of the statute<sup>1564</sup> — its purpose statement,<sup>1565</sup> broad definition of journalists,<sup>1566</sup> and protections for confidential *and* nonconfidential information<sup>1567</sup> — provides only a qualified privilege as it contains a three-part test in which a court determines whether the journalist must disclose source information,<sup>1568</sup> as well as a defamation exception.<sup>1569</sup>

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<sup>1562</sup> John O. Omachonu and Deborah Fisher, “Reporter’s Privilege,” *First Amendment Encyclopedia*, 2018, <https://www.mtsu.edu/first-amendment/article/1146/reporter-s-privilege>.

<sup>1563</sup> Nev. Rev. Stat. § 49275 (2019).

<sup>1564</sup> See Memmel, “Defending the Press: The Shield that Sets Minnesota Apart,” 8-11.

<sup>1565</sup> Minnesota Free Flow of Information Act, Minn. Stat. § 595.022 (2019) (“In order to protect the public interest and the free flow of information, the news media should have . . . a substantial privilege not to reveal sources of information or to disclose unpublished information. . . . [F]reedom of press requires protection of the confidential relationship between the news gatherer and the source of information. The purpose of this act is to insure and perpetuate [this protection], consistent with the public interest[.]”).

<sup>1566</sup> *Id.* § 595.023 (“No person . . . directly engaged in the gathering, procuring, compiling, editing, or publishing of information for the purpose of transmission, dissemination or publication to the public. . .”).

<sup>1567</sup> *Id.* § 595.023 (“ . . . to disclose in any proceeding the person or means from or through which information was obtained, or to disclose any unpublished information procured by him in the course of his work or any of his notes, memoranda, recording tapes, film or other reportorial data which would tend to identify the person or means through which the information was obtained.”).

<sup>1568</sup> *Id.* § 595.024 (“(1) that there is probable cause to believe that the source has information clearly relevant to a specific violation of the law other than a misdemeanor, (2) that the information cannot be obtained by any alternative means or remedy less destructive of First Amendment rights, and (3) that there is a compelling and overriding interest requiring the disclosure of the information where the disclosure is necessary to prevent injustice.”).

<sup>1569</sup> *Id.* § 595.025 (“(1) the person seeking disclosure demonstrates that the identity of the source will lead to relevant evidence on the issue of actual malice. . . (2) there is probable cause to believe that the source has information clearly relevant to the issue of defamation. . . [and] (3) the

All federal circuit courts, as well as some state appellate courts, have recognized at least a qualified reporter's privilege, with some basing the privilege in the First Amendment, while others rely on state laws.<sup>1570</sup> In 1981, the D.C. Circuit emphasized the importance of recognizing at least some level of First Amendment protection for journalists to avoid disclosure of their sources and information.<sup>1571</sup> The court held that "[c]ompelling a reporter to disclose the identity of a confidential source raises obvious First Amendment problems. The First Amendment guarantees a free press primarily because of the important role it can play as 'a vital source of public information'"<sup>1572</sup> The D.C. Circuit added,

Without an unfettered press, citizens would be far less able to make informed political, social, and economic choices. But the press' function as a vital source of information is weakened whenever [the ability] to gather news is impaired. Compelling a reporter to disclose the identity of a source may significantly interfere with this . . . ability; journalists frequently depend on informants to gather news, and confidentiality is often essential to establishing a relationship[.]<sup>1573</sup>

Thus, although the reporter's privilege is far from absolute, the protections that do exist promote and protect the press' ability to gather news, including related to police.

#### **d. Press and Media Access**

A key part of the press' ability to cover and investigate police is gaining access to locations where law enforcement is active, including public, restricted, or private spaces,

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information cannot be obtained by any alternative means or remedy less destructive of First Amendment rights.”).

<sup>1570</sup> “Absolute or qualified privilege,” *Reporters Committee for Freedom of the Press*, accessed Feb. 21, 2020, <https://www.rcfp.org/privilege-sections/b-absolute-or-qualified-privilege/>; Carter, Dee, and Zuckman, *Mass Communication Law in a Nutshell*, 541-42.

<sup>1571</sup> *Zerilli v. Smith*, 656 F.2d 705, 711 (D.C. Cir. 1981).

<sup>1572</sup> *Id.* (citing *Grosjean v. American Press Co.*, 297 U.S. 233, 250 (1936)).

<sup>1573</sup> *Id.* See also *Riley v. City of Chester*, 612 F.2d 708, 714 (3rd Cir. 1979); *Carey v. Hume*, 492 F.2d 631, 636 (D.C. Cir.); *Baker v. F & F Investment*, 470 F.2d 778, 782 (2nd Cir. 1972).

ranging from a public park to a crime scene to a private home. The press may also need access to police data, records, and information, raising further constitutional, statutory, and common law considerations.

### **i. Public Spaces**

The First Amendment provides the press and public the right not only to be in public spaces, but also to record from such locations.<sup>1574</sup> In cases where the government attempts to limit expression on government property, the “public forum doctrine” is employed to determine “whether groups should have access to engage in expressive activities on such property.”<sup>1575</sup> In *Hague v. Committee for Industrial Organization* (1939), the Supreme Court articulated this principle for perhaps the first time, holding that “streets and parks . . . have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens.”<sup>1576</sup>

In *Perry Education Association v. Perry Local Educators’ Association* (1983), the Supreme Court created three categories of public forums, including 1) traditional public

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<sup>1574</sup> See notes 1544-1557 above. See also “Know Your Rights: What to do if you are Detained for Taking Photographs,” *American Civil Liberties Union*, accessed Feb. 19, 2020, <https://www.aclu.org/issues/free-speech/photographers-rights>. The ACLU explained that “[t]aking photographs and video of things that are plainly visible in public spaces is a constitutional right—and that includes . . . police and . . . government officials carrying out their duties. Unfortunately, law enforcement officers have been known to ask people to stop taking photographs of public places. Those who fail to comply have sometimes been harassed, detained, and arrested. . . . The right of citizens to record the police is a critical check and balance.”

<sup>1575</sup> David L. Hudson, Jr., “Public Forum Doctrine,” *First Amendment Encyclopedia*, Jan. 8, 2020, <https://www.mtsu.edu/first-amendment/article/824/public-forum-doctrine>.

<sup>1576</sup> *Ibid*; *Hague v. Committee for Industrial Organization*, 307 U.S. 496, 515 (1939).

forums, 2) limited or designated public forums, and 3) nonpublic forums.<sup>1577</sup> In a traditional public forum, such as a sidewalk, street, park, or town square, the government's ability to regulate speech is "sharply circumscribed" and is subject to strict scrutiny.<sup>1578</sup> A designated public forum is one in which a government body designates a space for expressive activities, such as a classroom at a public university. In such forums, content-based restrictions on expression are also subject to strict scrutiny. Finally, nonpublic forums are spaces that are "not by tradition or designation a forum for public communication," including airport terminals and polling places.<sup>1579</sup> Although the public forum doctrine is most commonly raised regarding free speech issues, it illustrates the greater First Amendment protection afforded in public spaces, including for members of the press.

However, the only area where the Court has recognized a First Amendment right of access to government proceedings is at criminal trials. In *Richmond Newspapers, Inc. v. Virginia* (1980), the Court held that "the right to attend criminal trials is implicit in the guarantees of the First Amendment; without the freedom to attend such trials, which people have exercised for centuries, important aspects of freedom of speech and 'of the press could be eviscerated.'"<sup>1580</sup> Thus, the Court held that the right of access to criminal

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<sup>1577</sup> *Perry Education Association v. Perry Local Educators' Association*, 460 U.S. 37, 46–49 (1983).

<sup>1578</sup> *Id.* at 45. Strict scrutiny requires that the government show a compelling interest in its regulation of speech, which must be narrowly tailored to achieve that interest.

<sup>1579</sup> *Id.* at 46. Such forums are subject to greater government regulation, with government reserving a space "for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view."

<sup>1580</sup> *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 (1980) (citing *Branzburg*, 408 U.S. at 681).

trials applies to both the press and public.<sup>1581</sup> Justice Stevens wrote in a concurring opinion that “for the first time, the Court unequivocally h[eld] that an arbitrary interference with access to important information is an abridgment of the . . . First Amendment.”<sup>1582</sup> Furthermore, the Supreme Court has protected journalists’ ability to cover events and information tied to a trial in addition to having access, including in *Nebraska Press Association v. Stuart* (1976), when the Court held that trial judges cannot gag the press unless they meet a three-part test.<sup>1583</sup>

## ii. Restricted Spaces or Locations with a Qualified Right to Access

However, government bodies can restrict press and public access to certain locations, namely through “time, place, and manner restrictions.”<sup>1584</sup> In *Ward v. Rock Against Racism* (1989), the Supreme Court held that such restrictions must satisfy a three-part test: the regulation must be 1) content-neutral, 2) narrowly tailored to serve a significant governmental interest, and 3) allow for alternative channels for communication or access.<sup>1585</sup> In terms of the press-police relationship, law enforcement

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<sup>1581</sup> Chemerinsky, “Protect the Press,” 1151. Chemerinsky noted that the public has an equal right of access. *See also* *Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501 (1984) (*Press Enterprise I*); *Press-Enterprise Co. v. Superior Court of California*, 478 U.S. 1, 13–14 (1986) (*Press Enterprise II*). *But see* *Sheppard v. Maxwell*, 384 U.S. 333 (1965); *Gannett Co. v. DePasquale*, 443 U.S. 368 (1979).

<sup>1582</sup> *Id.* at 582. He added, “Until today the Court has accorded virtually absolute protection to the dissemination of information or ideas, but never before has it squarely held that the acquisition of newsworthy matter is entitled to any constitutional protection whatsoever. . . . I agree that the First Amendment protects the public and the press from abridgment of their rights of access to information about the operation of their government.”

<sup>1583</sup> *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539 (1976). *See also* *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 37 (1984).

<sup>1584</sup> Kevin Francis O’Neill, “Time, Place and Manner Restrictions,” *First Amendment Encyclopedia*, accessed Feb. 19, 2020, <https://www.mtsu.edu/first-amendment/article/1023/time-place-and-manner>.

<sup>1585</sup> *Ward v. Rock Against Racism*, 491 U.S. 781 (1989).

interests for restricting access to certain locations include “preventing obstruction of a police action or investigation; maintaining safety; preserving evidence integrity, and protecting privacy.”<sup>1586</sup>

The Supreme Court has generally held that the press does not enjoy a special right of access to restricted locations. In *Branzburg*, the Court found that journalists “have no constitutional right of access to the scenes of crime or disaster when the general public is excluded.”<sup>1587</sup> In *Zemel v. Rusk* (1965), the Court similarly held that “[t]he right to speak and publish does not carry with it the unrestrained right to gather information.”<sup>1588</sup> In *Cohen*, the Court ruled that “[t]he press may not with impunity break and enter an office or dwelling to gather news.”<sup>1589</sup> Lastly, the Court has held that journalists enjoy only a qualified right of access to some locations where police may be present, such as prisons or jails.<sup>1590</sup>

Additionally, the Ninth Circuit held in *Chavez v. City of Oakland* (2011) that journalists have “no constitutional right of access to the scenes of crime or disaster when the general public is excluded.”<sup>1591</sup> In *Mazzetti v. United States* (1975) and *New Jersey v. Lashinsky* (1979), the Tenth Circuit and the New Jersey Supreme Court, respectively, sided against journalists because they had violated police orders and potentially interfered

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<sup>1586</sup> Michael Roffe, “Journalist Access,” *Freedom Forum Institute*, May 25, 2004, <https://www.freedomforuminstitute.org/first-amendment-center/topics/freedom-of-the-press/journalist-access/>.

<sup>1587</sup> *Branzburg*, 408 U.S. 665 at 684–85.

<sup>1588</sup> *Zemel v. Rusk*, 381 U.S. 1, 16–17 (1965).

<sup>1589</sup> *Cohen*, 501 U.S. at 669.

<sup>1590</sup> See *Houchins v. KQED*, 438 U.S. 1 (1978) (plurality opinion); *Pell v. Procunier*, 417 U.S. 817 (1974); *Saxbe v. Washington Post Co.*, 417 U.S. 843 (1974).

<sup>1591</sup> *Chavez v. City of Oakland*, 414 Fed.Appx. 939 (9th Cir. 2011).

in law enforcement functions.<sup>1592</sup> Thus, although existing case law “protect[s] press access from unreasonable restriction,”<sup>1593</sup> the Supreme Court and lower courts have not recognized “that the news media have any constitutional guarantee of access to any particular scene,” especially when the press interferes with the police.<sup>1594</sup>

However, some courts have held that journalists have a First Amendment right to cover news at crime, accident, or disaster scenes, so long as they do not interfere with law enforcement activities. For example, the First Circuit ruled in *Westinghouse Broadcasting Corporation v. National Transportation Safety Board* (1982) that police’s limiting access to a plane-crash site to only one hour impinged on “the constitutional right of the [press] to obtain news.”<sup>1595</sup> The California Court of Appeals similarly held in *Leiserson v. City of San Diego* (1986) that “[m]embers of the news media must be afforded special access to disaster sites in order [to] properly perform their function of informing the public.”<sup>1596</sup>

In *Connell v. Town of Hudson* (1990), the District of New Hampshire acknowledged that the “[g]eneral principles governing the relation between the media’s First Amendment right to gather news and government’s power to regulate require a balancing of the two interests involved.”<sup>1597</sup> In support of a First Amendment right of access to restricted locations, Chief Judge Shane Devine cited Justice Potter Stewart’s

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<sup>1592</sup> *Mazzetti v. United States*, 518 F.2d 781 (10th Cir. 1975); *New Jersey v. Lashinsky*, 81 N.J. 1 (1979).

<sup>1593</sup> “What Rights Do Journalists Have at Accident or Disaster Scenes?,” *Freedom Forum Institute*, accessed Feb. 19, 2020, <https://www.freedomforuminstitute.org/about/faq/what-rights-do-journalists-have-at-accident-or-disaster-scenes/>.

<sup>1594</sup> See *Mazzetti*, 518 F.2d at 781; *Lashinsky*, 81 N.J. at 1; *Connell*, 733 F.Supp. at 466, 470; *Fields*, 862 F.3d at 360; *Turner*, 848 F.3d at 678; *Glik*, 655 F.3d at 84.

<sup>1595</sup> *Westinghouse Broadcasting Corp. v. Nat’l Transp. Safety Board*, 670 F.2d 4 (1st Cir. 1982).

<sup>1596</sup> *Leiserson v. City of San Diego*, 184 Cal.App.3d 41, 51 (Cal. Ct. App. 1986).

<sup>1597</sup> *Connell v. Town of Hudson*, 733 F.Supp. 465, 468 (D.N.H. 1990).

dissenting opinion in *Branzburg*, in which he argued that a “right to gather news, of *some dimension*, must exist.”<sup>1598</sup> Devine concluded that the restrictions placed on *Hudson News* freelance reporter David Connell, who had attempted to photograph a car accident before being told to leave, were not justified. Devine reasoned that Connell “followed all instructions reasonably designed to prevent interference with police and emergency activities.”<sup>1599</sup> He cited *Gazette Publishing Co. v. Cox* (1967), in which the Southern District of Indiana held that journalists “‘have a constitutional right not to be interfered with’ by the police so long as they ‘do not unreasonably obstruct or interfere with . . . official investigations of physical evidence or gain access to any place from which the general public is prohibited for essential safety purposes.’”<sup>1600</sup>

At least three states laws grant the press a qualified right of access to emergency and disaster scenes. In California, Cal. Penal Code § 409.5 provides that “[w]henver a menace to the public health or safety is created by a calamity,” law enforcement may “close the area where the menace exists for the duration thereof . . . to any and all persons not authorized . . . to enter or remain within the enclosed area.”<sup>1601</sup> However, the statute provides that “[n]othing in this section shall prevent a duly authorized representative of any news service, newspaper, or radio or television station or network from entering the areas closed pursuant to this section.”<sup>1602</sup> Ohio<sup>1603</sup> and Alaska have similar provisions.<sup>1604</sup>

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<sup>1598</sup> *Id.* (citing *Branzburg*, 408 U.S. at 728 (1972) (Stewart, J., dissenting)) (emphasis in original).

<sup>1599</sup> *Id.* at 470.

<sup>1600</sup> *Id.* (citing *Gazette Publishing Co. v. Cox*, Cause No. IP 65-C-528 (S.D. Ind. 1967)).

<sup>1601</sup> Cal. Penal Code § 409.5(a) (2004).

<sup>1602</sup> *Id.* at § 409.5(d).

<sup>1603</sup> Ohio Rev. Code Ann. § 2917.13(B) (2004).

<sup>1604</sup> Alaska Stat. § 26.23.200(2) (2004).

The most common way for the press to gain access to restricted areas is through press passes, otherwise known as hard passes, press ID badges, or media credentials. Where police departments have implemented press-pass systems, officials and officers may not “decide arbitrarily who will receive passes and who will not.”<sup>1605</sup> If a department denies a press pass, it must provide reasons for doing so and a chance to appeal.” Furthermore, press-pass systems must be based on “narrow and specific standards which advance a compelling state interest.”<sup>1606</sup>

Law enforcement officials or officers may also be present at public meetings, raising additional legal considerations regarding press access. At the federal level, the Government in the Sunshine Act was passed in 1976 to require that federal agencies with multiple members conduct their business meetings in public.<sup>1607</sup> The Act states that “every portion of every meeting shall be open to public observation”<sup>1608</sup> and that agencies need to “provide ample space, sufficient visibility, and adequate acoustics for persons in

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<sup>1605</sup> Lucy A. Dalglish, *The First Amendment Handbook*, ed. Gregg P. Leslie (Arlington, Virginia: Reporters Committee for Freedom of the Press, 2011), 62. Dalglish cited *Sherrill v. Knight*, 596 F.2d 124, 129 (D.C. Cir. 1977), in which the D.C. Circuit held that the Secret Service was required to “(1) formulate ‘narrow and specific’ standards by which applications [for press credentials] are to be judged and (2) institute certain procedures to be followed in their handling.” See also David Anderson, *Freedom of the Press*, 482, 510. Anderson wrote that journalists have an affirmative right to a press pass and that the government cannot deny a request based on content of journalist’s speech. He further wrote that “[i]f the First Amendment gives the right for a reporter to have a press pass, then (1) anyone denied a pass has a constitutional claim AND (2) it makes it more difficult and costly for other government entities to give special treatment because they must consider what is the press and whether there is a compelling reason.”

<sup>1606</sup> Roffe, “Journalist Access” (citing *Quad-City Community News Serv. v. Jebens*, 334 F.Supp. 8 (S.D. Iowa 1971); *Consumers Union of U.S. v. Periodical Correspondents’ Ass’n*, 515 F.2d 1341 (D.C. Cir. 1975) (holding that “[media credential] rules must . . . be so fashioned that due process is provided prior to exclusion, with opportunity for adequate impartial review.”)

<sup>1607</sup> Government in Sunshine Act, 29 CFR § 1612.1 *et seq.* (1976).

<sup>1608</sup> 29 CFR § 1612.3(a).

attendance at the meeting.”<sup>1609</sup> Although observers may “take still photographs and use portable sound recorders which do not require electrical outlets,”<sup>1610</sup> any attempts at “participation or disruptive conduct . . . shall be cause for removal of persons so engaged.”<sup>1611</sup> If a meeting is closed under one of the Act’s exemptions,<sup>1612</sup> an agency must provide the minutes of the meeting or a “complete electronic recording adequate to record fully the proceedings of each meeting closed to the public observation.”<sup>1613</sup>

The Federal Advisory Committee Act (FACA), passed in 1972, governs how federal advisory committees operate, including open meeting requirements.<sup>1614</sup> In terms of legislative bodies, the U.S. House of Representatives has generally been open to the public since the First Congress, whereas the U.S. Senate was closed until 1794.<sup>1615</sup> Although both houses may close with a majority vote, such instances are rare.<sup>1616</sup>

At the state level, all 50 states and the District of Columbia have passed open-meetings laws.<sup>1617</sup> However, these laws vary in their detail, scope, and enforcement. What they have in common, however, is that public bodies must hold meetings where a quorum of members are present in public, though with certain exceptions.<sup>1618</sup>

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<sup>1609</sup> *Id.* § 1612.3(c).

<sup>1610</sup> *Id.* § 1612.3(d).

<sup>1611</sup> *Id.* § 1612.3(a).

<sup>1612</sup> *Id.* § 1612.4.

<sup>1613</sup> *Id.* § 1612.10(a)(3).

<sup>1614</sup> Pub. L. 92-463, 86 Stat. 770 (1972).

<sup>1615</sup> Christopher M. Davis, “Secret Sessions of the House and Senate: Authority, Confidentiality, and Frequency,” *Congressional Research Service*, Dec. 30, 2014.

<sup>1616</sup> *Ibid.*

<sup>1617</sup> Bill F. Chamberlin, et al., “Searching For Patterns in the Laws Governing Access to Records and Meetings in the Fifty States by Using Multiple Research Tools,” *University of Florida Journal of Law & Public Policy* 18 (2007): 415-46; Douglas E. Lee, “Open Meetings,” *Freedom Forum Institute*, Sept. 13, 2002, <https://www.freedomforuminstitute.org/first-amendment-center/topics/freedom-of-the-press/freedom-of-information-overview/open-meetings/>.

<sup>1618</sup> *Ibid.*

### iii. Private Property and Privacy Considerations

Further complicating the legal landscape around press coverage and investigations of police are considerations of whether journalists may enter private property or places with heightened privacy interests. A seminal moment in U.S. privacy law came in 1890 when lawyers Samuel Warren and Louis Brandeis published “The Right to Privacy” in the *Harvard Law Review*.<sup>1619</sup> The essay, which is generally credited as the first to advocate for recognition of a legal right to privacy in the United States, called for individuals to “have full protection in person and in property,” calling it “a principle as old as the common law; but it [is] necessary from time to time to define anew the exact nature and extent of such protection.” The article added that the law should “the individual from invasion either by the too enterprising press, the photographer, or the possessor of any other modern device for recording or reproducing scenes or sounds.”<sup>1620</sup>

Although Fourth Amendment cases become more relevant when the police arrest, search, subpoena, or surveil journalists, *Katz v. United States* (1967) has implications for press coverage and investigations of police in that it established the principle of a “reasonable expectation of privacy.”<sup>1621</sup> The case arose when Federal Bureau of Investigation (FBI) agents attached an eavesdropping device to the outside of a public phone booth used by Charles Katz, who was suspected of transmitting gambling information over the phone to clients in other states. Based on recordings of his calls,

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<sup>1619</sup> Samuel D. Warren and Louis D. Brandeis, “The Right to Privacy,” *Harvard Law Review* 4, no. 5 (Dec. 15, 1890): 193-220.

<sup>1620</sup> Warren and Brandeis, 195. The article continued, “Instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life[.]”

<sup>1621</sup> *Katz v. United States*, 389 U.S. 347 (1967).

Katz was convicted of illegal transmission of wagering information.<sup>1622</sup> On appeal, Katz contended that the recordings could not be used as evidence because the use of the eavesdropping device violated his Fourth Amendment rights.<sup>1623</sup>

The Supreme Court ultimately sided with Katz, ruling that he was entitled to Fourth Amendment protection for his conversations because the “[g]overnment’s eavesdropping activities violated the privacy upon which [Katz] justifiably relied while using the telephone booth.”<sup>1624</sup> In a concurring opinion, Justice Marshall Harlan found that “an enclosed telephone booth is an area where, like a home, . . . a person has a constitutionally protected *reasonable expectation of privacy*.”<sup>1625</sup> He further wrote that “electronic as well as physical intrusion into a place that is in this sense private may constitute a violation of the Fourth Amendment[.]”<sup>1626</sup>

Most relevant to questions of press access to private property are two invasion of privacy torts — 1) intrusion upon seclusion, 2) publication of private facts — and federal and state criminal trespass laws. Intrusion provides that any individual “who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or [their] private affairs or concerns, is subject to liability to the other for invasion of [their] privacy, if the intrusion would be highly offensive to a reasonable person.”<sup>1627</sup>

Publication of private facts provides that those “who give[] publicity to a matter

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<sup>1622</sup> *Id.* at 348.

<sup>1623</sup> *Id.*

<sup>1624</sup> *Id.* at 353.

<sup>1625</sup> *Id.* at 360 (Harlan, J. concurring) (citing *Weeks v. United States*, 232 U.S. 383 (1961); *Hester v. United States*, 265 U.S. 57 (1924)) (emphasis added).

<sup>1626</sup> *Id.*

<sup>1627</sup> Restatement of the Law, Second, Torts, § 652B (1977).

concerning the private life of another is subject to liability . . . for invasion of his privacy, if the matter publicized is of a kind that (a) would be highly offensive to a reasonable person, and (b) is not of legitimate concern to the public.”<sup>1628</sup>

At the federal level, 25 CFR § 11.411 provides that an individual commits criminal trespass “if, knowing that he or she is not licensed or privileged to do so, he or she enters or surreptitiously remains in any building or occupied structure.”<sup>1629</sup> Under this subsection, the offense is a petty misdemeanor unless it is committed at night, which is a misdemeanor.<sup>1630</sup> An individual also commits criminal trespass

if . . . he or she enters or remains in any place as to which notice against trespass is given by: (1) Actual communication to the actor; or (2) Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or (3) Fencing or other enclosure manifestly designed to exclude intruders.<sup>1631</sup>

Under this subsection, the offense is a petty misdemeanor “if the offender defies an order to leave personally communicated to him or her by the owner of the premises or other authorized person. Otherwise it is a violation.”<sup>1632</sup> At the state level, criminal trespass statutes generally have similar provisions to the federal statute, though the punishment for such offenses vary.<sup>1633</sup>

Federal courts have addressed the legal issues balancing newsgathering with invasion of privacy and trespass. A seminal case is the Ninth Circuit’s ruling in *Dietemann v. Time* (1971), which arose in 1963 when *Life* magazine published an article

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<sup>1628</sup> *Id.* § 652D. As the following section will explain, “newsworthiness” is a defense for this tort.

<sup>1629</sup> 25 CFR § 11.411(a) (2020).

<sup>1630</sup> *Id.*

<sup>1631</sup> *Id.* § 11.411(b).

<sup>1632</sup> *Id.*

<sup>1633</sup> Mark Theoharis, “Trespassing Penalties,” *Criminal Defense Lawyer*, accessed April 8, 2020, <https://www.criminaldefenselawyer.com/crime-penalties/federal/Tresspassing.htm>. See e.g. Minn. Stat. § 609.605 (2020).

detailing how A.A. Dietemann, a disabled veteran, “was engaged in the practice of healing with clay, minerals, and herbs—as practiced, simple quackery.”<sup>1634</sup> The article included two photographs of Dietemann, each of which were taken with hidden cameras by *Life* reporter Jackie Metcalf and photographer William Ray, who went to the plaintiff’s home. Dietemann allowed the journalists to enter his house after they claimed they were “sent . . . by a friend, a Mr. Johnson.”<sup>1635</sup> Metcalf and Ray also recorded and transmitted their conversations with Dietemann using a radio transmitter in Metcalf’s purse to a car parked nearby.<sup>1636</sup>

Most noteworthy about the Ninth Circuit’s ruling was that it held that the First Amendment “is not a license to trespass, steal, or intrude by electronic means into home or office.”<sup>1637</sup> The court added that it “does not become such a license simply because the person subjected to the intrusion is reasonably suspected of committing a crime.” The Ninth Circuit therefore rejected the defendant’s argument that the “publication of news, however tortiously gathered, insulates defendant from liability[.]”<sup>1638</sup>

Similarly, in *Food Lion, Inc. v. Capital Cities/ABC, Inc.* (1999), the Fourth Circuit held that reporters gaining access to private facilities under false pretenses for newsgathering purposes are not protected by the First Amendment and may be liable for claims including criminal trespass.<sup>1639</sup> In this case, ABC News producers Lynne Dale and Susan Barnett obtained jobs at Food Lion grocery stores by submitting applications with

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<sup>1634</sup> Dietemann v. Time, Inc., 449 F.2d 245 (9th Cir. 1971).

<sup>1635</sup> *Id.* at 246.

<sup>1636</sup> *Id.*

<sup>1637</sup> *Id.* at 249.

<sup>1638</sup> *Id.*

<sup>1639</sup> Food Lion v. Capital Cities/ABC, 194 F.3d 505 (4th Cir. 1999).

false references, fake educational and employment experiences, and omitting their employment with ABC.<sup>1640</sup> The network later broadcasted a report on “PrimeTime Live” detailing how Food Lion meat department employees used unsafe, unhealthy, or otherwise illegal practices. The report used footage gathered by Dale and Barnett using hidden cameras in the meat cutting room, the deli counter, the employee break room, and a manager’s office.<sup>1641</sup> The Fourth Circuit ultimately rejected the plaintiffs’ fraud claim, finding that Food Lion had not suffered any injury due to the producers’ misrepresentations.<sup>1642</sup> However, the court upheld the \$2 award for breach of loyalty and trespass, reasoning that journalists are subject to laws of general applicability, even when they were conducting newsgathering on a story of public interest.<sup>1643</sup>

Another case balancing press rights and trespass is *United States v. Maldonado-Norat* (2000), which arose when a group of reporters “knowingly and unlawfully [entered] the Camp Garcia Naval Installation at Vieques, Puerto Rico in violation of 18 U.S.C. § 1382,”<sup>1644</sup> which prohibits individuals from entering “any military, naval, or Coast Guard reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation.”<sup>1645</sup> The District of Puerto Rico held that the First Amendment “neither immunizes trespassers nor creates any special status for reporters who violate penal statutes.”<sup>1646</sup> Chief Judge Héctor Laffitte wrote that although he was

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<sup>1640</sup> *Id.* at 510.

<sup>1641</sup> *Id.* at 510–11.

<sup>1642</sup> *Id.* at 520.

<sup>1643</sup> *Id.* at 520–21 (citing *Cohen*, 501 U.S. at 663).

<sup>1644</sup> *United States v. Maldonado-Norat*, 122 F. Supp. 2d 264 (D.P.R. 2000).

<sup>1645</sup> 18 U.S.C. § 1382 (1994).

<sup>1646</sup> *Maldonado-Norat*, 122 F. Supp. 2d at 265.

“sympathetic to Defendants’ unassailable premise that ‘a truly free press’ is essential to the preservation of a just and free society, . . . this premise only carries Defendants so far.” He reasoned that “the foundational principle of freedom of the press does not support . . . freedom of the press to violate the law.”<sup>1647</sup>

Conversely, in *Desnick v. American Broadcasting Companies, Inc.* (1995), the Seventh Circuit rejected a trespass claim after ABC reporters with hidden cameras posed as patients at the offices of the Desnick Eye Center.<sup>1648</sup> Although Dr. James Desnick permitted ABC to “videotape the . . . main premises in Chicago, to film a cataract operation ‘live,’ and to interview doctors, technicians, and patients,” ABC also “[u]nbeknownst to Desnick, . . . dispatched persons equipped with concealed cameras to offices . . . in Wisconsin and Indiana.”<sup>1649</sup> After ABC reporters videotaped eye examinations, the network aired a report highly critical of the Desnick Eye Center.<sup>1650</sup>

The Seventh Circuit held that the reporters had not committed trespass because although they “gained entry into the plaintiffs’ premises by misrepresenting their purposes (more precisely by a misleading omission to disclose those purposes),” the entry into the businesses were “not invasive in the sense of infringing the kind of interest of the plaintiffs that the law of trespass protects; it was not an interference with the ownership or possession of land.”<sup>1651</sup> For the same reasons, the court also “dispose[d] of two other

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<sup>1647</sup> *Id.*

<sup>1648</sup> *Desnick v. Am. Broadcasting Co., Inc.*, 44 F.3d 1345, 1347 (7th Cir. 1995).

<sup>1649</sup> *Id.* at 1348.

<sup>1650</sup> *Id.*

<sup>1651</sup> *Id.* at 1353. The court further reasoned that “[n]o embarrassingly intimate details of anybody’s life were publicized. . . . There was no eavesdropping on a private conversation; the testers recorded their own conversations with the Desnick Eye Center’s physicians. There was no violation of the doctor-patient privilege. There was no theft, or intent to steal, trade secrets; no

claims—infringement of the right of privacy, and illegal wiretapping.”<sup>1652</sup> However, the court did not rule on whether the First Amendment provided protection from claims of trespass, invasion of privacy, and wiretapping.

State courts have also ruled in cases pitting newsgathering against invasion of privacy and trespass, among other claims. Three key cases out of California addressed the intrusion and publication of private facts torts in relation to press coverage, including of police activities. First, *Shulman v. Group W. Productions, Inc.* (1998) arose following a car accident in June 1990 in which Ruth and Wayne Shulman, mother and son, were injured.<sup>1653</sup> A rescue helicopter was dispatched to the scene with the pilot, nurse Laura Carnahan, a medic, and Joel Cooke, a video camera operator employed by defendants Group W Productions, Inc., and 4MN Productions, on board. Cooke filmed what took place in the helicopter and “roamed the accident scene, videotaping the rescue” for the entertainment program *On Scene: Emergency Response*.<sup>1654</sup> In the show, Ruth was shown several times, “either by brief shots of a limb or her torso, or with her features blocked by others or obscured by an oxygen mask.” Carnahan, while tending to Ruth in the helicopter, spoke into a radio microphone, transmitted some of Ruth’s vital signs and updates about her condition, though never saying her last name.<sup>1655</sup> Ruth did not consent

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disruption of decorum, of peace and quiet; no noisy or distracting demonstrations. Had the testers been undercover FBI agents, there would have been no violation of the Fourth Amendment, because there would have been no invasion of a legally protected interest in property or privacy.” *Id.* (citing *United States v. White*, 401 U.S. 745 (1971); *Lewis v. United States*, 385 U.S. 206, 211 (1966); *Forster v. County of Santa Barbara*, 896 F.2d 1146, 1148–49 (9th Cir. 1990); *Northside Realty Associates, Inc. v. United States*, 605 F.2d 1348, 1355 (5th Cir. 1979)).

<sup>1652</sup> *Id.*

<sup>1653</sup> *Shulman v. Group W Productions, Inc.*, 955 P.2d 469, 475 (Cal. 1998).

<sup>1654</sup> *Id.*

<sup>1655</sup> *Id.*

to being filmed. She and her son later sued for intrusion and the public disclosure of private facts.<sup>1656</sup>

The California Supreme Court ruled against Ruth and Wayne on the public disclosure claim, finding that the recording was of a newsworthy event and “of legitimate public interest.”<sup>1657</sup> More specifically, the Court found that “the subject matter of the broadcast as a whole,” as well as “Ruth’s appearance and words as she was extricated from the overturned car, placed in the helicopter and transported to the hospital” were “of legitimate public concern.”<sup>1658</sup> The Court explained that the newsworthiness defense was necessary to avoid “the danger of interference with constitutionally protected press freedom.”<sup>1659</sup>

Regarding the intrusion claim, the Court held that “Cooke’s mere presence at the accident scene and filming of the events occurring there cannot be deemed either a physical or sensory intrusion on plaintiffs’ seclusion. Plaintiffs had no right of ownership or possession of the property where the rescue took place, nor any actual control of the premises.”<sup>1660</sup> However, the Court found two aspects of the footage problematic, namely the filming of Ruth in the helicopter and recording of her conversations with Carnahan.

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<sup>1656</sup> *Id.* at 476.

<sup>1657</sup> *Id.* at 479.

<sup>1658</sup> *Id.* at 488. The court added that the “challenged material was thus substantially relevant to the newsworthy subject matter of the broadcast and did not constitute a ‘morbid and sensational prying into private lives for its own sake.’ Nor can we say the broadcast material was so lurid and sensational in emotional tone, or so intensely personal in content, as to make its intrusiveness disproportionate to its relevance. Under these circumstances, the material was . . . of legitimate public concern. . . . It is difficult to see how the subject broadcast could have been edited to avoid completely any possible identification without severely undercutting its legitimate descriptive and narrative impact.” *Id.* at 488–89.

<sup>1659</sup> *Id.* at 479.

<sup>1660</sup> *Id.* at 490.

First, the Court found that “[a]lthough the attendance of reporters and photographers at the scene of an accident is to be expected, we are aware of no law or custom permitting the press to ride in ambulances or enter hospital rooms during treatment without the patient’s consent.”<sup>1661</sup> Second, the Court held that Cooke violated Ruth’s privacy by “placing a microphone on Carnahan’s person, amplifying and recording what she said and heard,” including “conversations the parties could reasonably have expected to be private.”<sup>1662</sup> The Court further held that the “mere fact the intruder was in pursuit of a ‘story’ does not . . . generally justify an otherwise offensive intrusion; offensiveness depends as well on the particular method of investigation used.”<sup>1663</sup> Ultimately, the California Supreme Court held that although the government “may not intrude into the proper sphere of the news media to dictate what they should publish and broadcast,” the press may not “play tyrant to the people by unlawfully spying on them in the name of newsgathering.”<sup>1664</sup> Thus, the decision demonstrates that the press’ newsgathering function can be weighed less favorably against privacy claims, at least in California.

One year later, the California high court was tasked in *Sanders v. ABC* (1999) with determining whether ABC reporter Stacy Lescht violated the state’s intrusion tort by obtaining employment at a “telepsychic” company and recording conversations in the private office.<sup>1665</sup> Lescht had a small video camera hidden in her hat while working in Psychic Marketing Group’s (PMG) Los Angeles office, videotaping conversations with

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<sup>1661</sup> *Id.*

<sup>1662</sup> *Id.* at 491. The Court added that a “reasonable jury could find highly offensive the placement of a microphone on a medical rescuer[.]”

<sup>1663</sup> *Id.*

<sup>1664</sup> *Id.* at 497.

<sup>1665</sup> *Sanders v. ABC*, 978 P.2d 69 (Cal. 1999).

several coworkers, including plaintiff Mark Sanders.<sup>1666</sup> Lescht testified that while sitting at her cubicle, she could easily overhear conversations in other parts of the office.<sup>1667</sup>

The California Supreme Court held that

[i]n an office or other workplace to which the general public does not have unfettered access, employees may enjoy a limited, but legitimate, expectation that their conversations and other interactions will not be secretly videotaped by undercover television reporters, even though those conversations may not have been completely private from the participants' coworkers.<sup>1668</sup>

Thus, the California high court once again limited the press' ability to gather news on privacy grounds.

Finally, in 2010, the California Court of Appeals ruled in *Catsouras v. California Highway Patrol* (2010) that California Highway Patrol officer Aaron Reich failed to prove that emailing the photographs of a car accident victim was covered by the First Amendment.<sup>1669</sup> The case arose after 18-year-old Nikki Catsouras died in a high-speed car crash after losing control of the vehicle. Reich and another officer emailed “nine gruesome death images [taken at the accident scene] to their friends and family members on Halloween—for pure shock value.”<sup>1670</sup> The photos then “spread across the Internet like a malignant firestorm, popping up in thousands of Web sites.”<sup>1671</sup>

The Court ultimately held that the officers “undertook to perform an investigation and to collect evidence. It was not in furtherance of the investigation, the preservation of

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<sup>1666</sup> *Id.* at 70.

<sup>1667</sup> *Id.*

<sup>1668</sup> *Id.* at 69. The Court further held that “the possibility of being overheard by coworkers does not, as a matter of law, render unreasonable an employee’s expectation that his or her interactions within a nonpublic workplace will not be videotaped in secret by a journalist.” *Id.* at 77.

<sup>1669</sup> *Catsouras v. California Highway Pat.*, 181 Cal.App.4th 856 (Cal. Ct. App. 2010).

<sup>1670</sup> *Id.* at 863.

<sup>1671</sup> *Id.*

evidence, or any other law enforcement purpose, to deliberately make a mutilated corpse the subject of lurid gossip.”<sup>1672</sup> Although it was a police officer, rather than a member of the press, that was found to have violated the privacy of an accident victim, the case represents another instance in which privacy interests are weighed more heavily than the ability to communicate information, in this case to members of the public via email.

State courts in Arizona and Oklahoma grappled with the First Amendment implications of newsgathering in relation to criminal trespass. In *Arizona v. Wells* (2004), the Superior Court of Arizona held that the “First Amendment protection against government interference of the press is not a license to trespass.”<sup>1673</sup> The court reasoned that when *East Valley Tribune* reporter Byron Wells entered the fenced residential yard of former police officer Daniel Lovelace, despite there being a “No Trespassing” sign,<sup>1674</sup> he knew he had “no constitutional right to freedom of movement as a reporter on that private property.”<sup>1675</sup> The court added that although “a free press is essential to a free and just society, the First Amendment neither immunizes trespassers nor creates any special exemption for reporters who violate criminal statutes of general applicability to all members of the public.” The court continued, “[A] general trespass statute may be constitutionally applied, even to those who are members of the press, so long as [it] is

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<sup>1672</sup> *Id.* at 864. The Court further held that “family members have a common law privacy right in the death images of a decedent, subject to certain limitations.”

<sup>1673</sup> *Arizona v. Wells*, No. LC2003000566001DT, 2004 WL 1925617 (Ariz. Super. 2004) (citing *Belluomo v. KAKE TV & Radio, Inc.*, 3 Kan.App.2d 461, 470–71 (Ariz.App. 1979); *Dietemann*, 449 F.2d at 249).

<sup>1674</sup> *Id.* at \*1. Wells was investigating an alleged shooting involving Lovelace.

<sup>1675</sup> *Id.* (citing *Connecticut v. Steinmann*, 569 A.2d 557, 560 (Conn.App. 1990) (holding that the First Amendment does not provide freedom of movement when defendant knowingly trespassed on church property)).

applied without discrimination and is not used to purposefully suppress First Amendment guarantees.”<sup>1676</sup>

In *Stahl v. Oklahoma* (1983), the Oklahoma Court of Appeals similarly ruled that the First Amendment does not “shield newsmen from state criminal prosecution in their news gathering function.”<sup>1677</sup> The court held that the First Amendment “does not shield newsmen from liability for torts and crimes committed in the course of news-gathering,”<sup>1678</sup> echoing *Dietemann*. The court added that the First Amendment “does not guarantee the press a constitutional right of special access not available to the public generally.”<sup>1679</sup>

Significantly, the Oklahoma Court of Appeals also ruled that the First Amendment “does not guarantee access to property simply because it is owned or

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<sup>1676</sup> *Id.* at \*5 (citing *Gibbons v. Texas*, 775 S.W.2d 790, 794 (Tex.App. 1989) (holding that a criminal trespass statute was constitutionally applied when Gibbons trespassed on church property while engaging in activities against church policy)).

<sup>1677</sup> *Stahl v. Oklahoma*, 665 P.2d 839, 840 (Okla.App. 1983) (citing 21 O.S.1971, § 1835 (1983)). The case arose when nine newspaper reporters climbed through a hole in a fence around Black Fox Station, a 2,206 acre tract of land in Oklahoma owned by the Public Service Company of Oklahoma (PSO). They did so in order to cover a protest and despite “signs posted on the fence and loudspeaker warnings,” as well as the PSO “announc[ing its] intention to have such persons arrested.” The court noted that the PSO had “valid considerations” for prohibiting press and public access, including “the need to avoid harm to visitors due to ditches and holes on the property and the roads,” “the danger posed by heavy equipment utilized in construction activity,” and “the need to avoid vandalism to the site and . . . heavy equipment[.]”

<sup>1678</sup> *Id.* at 841. (citing *Galella v. Onassis*, 487 F.2d 986 (2nd Cir. 1973); *Anderson v. WROC-TV*, 441 N.Y.S.2d 220 (1981); *Prahl v. Brosamle*, 98 Wis.2d 130 (Wis. Ct. App. 1980)).

<sup>1679</sup> *Id.* at 842. (citing *Branzburg*, 408 U.S. at 684–85). Conversely, in a dissenting opinion, Judge Thomas Brett “weighed the value of the asserted First Amendment rights against the objective of the government conduct that limited the right.” He argued that because of the “deliberate attempt to limit press access based on . . . disapproval of the message the media would convey to the public and [the] use of the criminal trespass statute to accomplish their goal,” he “would hold the State has not presented a legitimate interest for their inhibiting actions. I would not permit our criminal trespass statute to be used illegitimately and in this manner in order to prevent the public from knowing what their government is doing on quasi-public property. It is inconceivable to me that a contrary conclusion could be sanctioned in our democratic society.” *Id.* at 845–46, 849 (Brett, J. dissenting).

controlled by the government,”<sup>1680</sup> citing *JB Pictures, Inc. v. Department of Defense* (1996), in which the D.C. Circuit reaffirmed that “First Amendment rights to ‘freedom of speech, [and] of the press do not create any *per se* right of access to government property or activities simply because such access might lead to more thorough or better reporting.”<sup>1681</sup> Thus, the D.C. Circuit and Oklahoma Court of Appeals clarified that the press also does not receive special access to government property and activities.

Taken together, federal and state courts, with the exception of the Seventh Circuit in *Desnick*, have generally held that the press does not receive special protection from lawsuits for invasion of privacy and trespass, among other claims. In these cases, other interests, such as related to privacy, were weighed over the press’ ability to gather news.

Significantly, the press may even be singled out under certain legislation that favors privacy over newsgathering interests. In 1998, the California legislature enacted the Anti-Paparazzi Act, which provided that

[a] person is liable for physical invasion of privacy when the defendant knowingly enters onto the land of another without permission . . . in order to physically invade the privacy of the plaintiff with the intent to capture any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a personal or familial activity and the physical invasion occurs . . . is offensive to a reasonable person.<sup>1682</sup>

The law was amended in 2010 to “curb the reckless and dangerous lengths that the paparazzi will sometimes go in order to capture the image of celebrities.”<sup>1683</sup>

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<sup>1680</sup> *Id.* (citing *Greer v. Spock*, 424 U.S. 828 (1976); *Adderley v. Florida*, 385 U.S. 39 (1966); *U.S. Postal Service v. Council of Greenburgh Civic Associations*, 453 U.S. 114, 129–30 (1981)).

<sup>1681</sup> *Id.* at 266 (citing *JB Pictures, Inc. v. Dept. of Defense*, 86 F.3d 236, 238 (D.C. Cir. 1996)).

<sup>1682</sup> Cal. Civ. Code § 170.8 (West 2015). *See also* Matthew Lee, “Strict Liability and the Anti-Paparazzi Act: The Best Solution to Protect Children of Celebrities,” *Hastings Law Journal* 66, no. 1 (June 2015): 6-27.

<sup>1683</sup> “UPDATED: California Court of Appeals Upholds Constitutionality of Anti-Paparazzi Law,” *Fashion Law*, Nov. 19, 2015, <https://www.thefashionlaw.com/california-court-of-appeals-upholds-constitutionality-of-anti-paparazzi-law/#>.

In 2015, the Second District Court of Appeal in Los Angeles held that the statute did not violate the First Amendment guarantee of freedom of the press, holding that “[i]t is a law of general application that does not target speech or single out the press for special treatment and is neither vague nor overbroad.”<sup>1684</sup> The ruling came despite arguments by several news outlets and observers that the law creates penalties for news gathering and thereby, puts “unconstitutional limits on the press.”<sup>1685</sup> Although there were at least two efforts at the federal level to pass anti-paparazzi legislation in 1997 following the death of England’s Princess Diana in a car crash, the bills did not make it out of committee.<sup>1686</sup>

One final area of law implicating press coverage and investigations of police is federal and state wiretap laws. The Electronic Communications Privacy Act provides criminal liability for “any person who . . . intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication.”<sup>1687</sup> The law also prohibits individuals from using “any electronic, mechanical, or other device to intercept any oral communication” under

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<sup>1684</sup> Raef v. Super. Ct. of Los Angeles Cty., 240 Cal.App.4th 1112, 1119 (2015).

<sup>1685</sup> “UPDATED: California Court of Appeals Upholds Constitutionality of Anti-Paparazzi Law.” Attorney Mark Kressel argued that the law was unconstitutional because it imposed criminal penalties against journalists solely for First Amendment activity. He added in a statement, “The court of appeals opinion created a dangerous template for upholding laws that targeted journalists or others engaged in speech activity with enhanced criminal penalties just for committing minor infractions.” See also Christina M. Locke, “Does Anti-Paparazzi Mean Anti-Press?: First Amendment Implications of Privacy Legislation for the Newsroom,” *Seton Hall Journal of Sports & Entertainment* 20 (2010): 247; Christina M. Locke and Kara Carnley Murrhee, “Is Driving with the Intent to Gather News A Crime?: The Chilling Effects of California’s Anti-Paparazzi Legislation,” *Loyola of Los Angeles Entertainment Law Review* 31, no. 1 (2011): 83.

<sup>1686</sup> David L. Hudson, Jr., “Paparazzi,” *First Amendment Encyclopedia*, accessed June 9, 2020, <https://www.mtsu.edu/first-amendment/article/1249/paparazzi>.

<sup>1687</sup> Electronic Communications Act, 18 U.S.C. § 2511(1)(a) (1986).

certain conditions, including when a device transmits communications by radio or “otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication,” among other circumstances.<sup>1688</sup> Individuals are also prohibited from disclosing the contents of messages obtained through such actions.<sup>1689</sup>

Several different types of state laws can be applicable, either directly or indirectly, to press coverage and investigations of police.<sup>1690</sup> First, each state requires either one-party consent, two-party consent, or all-party consent to record a conversation.<sup>1691</sup> Thirty-eight states and the District of Columbia have one-party consent statutes, allowing individuals to record conversations in which they participate without informing the other members that they are doing so.<sup>1692</sup> Twelve states have all-party consent statutes, which generally require the consent of all members of a conversation.<sup>1693</sup> However, some states have exceptions for police,<sup>1694</sup> including Florida, which allows one-party consent “if an investigative or law enforcement officer intercepts a communication while a party to the communication, or when the purpose of interception is to obtain evidence of a criminal act.”<sup>1695</sup> Additionally, some states have exceptions for recording in public places.<sup>1696</sup>

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<sup>1688</sup> *Id.* § 2511(1)(b).

<sup>1689</sup> *Id.* § 2511(1)(d).

<sup>1690</sup> See Memmel, *Police Body Cameras*, 60.

<sup>1691</sup> “State-by-State Recording Laws,” *MSI Detective Services*, accessed Feb. 19, 2020, <http://www.detectiveservices.com/2012/02/state-by-state-recording-laws/>; Nancy G. La Vigne, et al., “Police Body-Worn Camera Legislation Tracker,” *Urban Institute*, January 2017, <http://apps-staging.urban.org/features/body-camera-update/>; Lindsay Miller, Jessica Toliver, and Police Executive Research Forum, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned* (Washington D.C.: Office of Community Oriented Policing Services, 2014).

<sup>1692</sup> “State-by-State Recording Laws.”

<sup>1693</sup> La Vigne, et al., “Police Body-Worn Camera Legislation Tracker.”

<sup>1694</sup> Miller, Toliver, and PERF, *Implementing a Body-Worn Camera Program*, 17.

<sup>1695</sup> Fla. Stat. § 934.03(2)(a)3(c) (2016); La Vigne, et al., “Police Body-Worn Camera Legislation Tracker.” See also e.g. Ga. Code Ann. § 2402(c) (2017).

<sup>1696</sup> Tompkins, “What to Do When Police Tell You to Stop Taking Photos, Video.”

Second, 30 states prohibit audio recording in certain situations, such as when an individual or group is unaware of being recorded.<sup>1697</sup> For example, Colorado prohibits eavesdropping, intentionally recording, or overhearing a conversation by an individual who is not visibly present.<sup>1698</sup> In all but nine states, audio recording of an individual is restricted when they have a reasonable expectation of privacy.<sup>1699</sup> However, some states allow, or at least do not prohibit, video recordings of an individual without their consent so long as there is no audio recording.<sup>1700</sup> As discussed above, the First Amendment provides protection for recording police in public places duties.<sup>1701</sup>

Ultimately, court precedent and statutory law tying privacy to press coverage and investigations of police place limitations on certain tactics, including recording in a place where an individual has a reasonable expectation of privacy, misrepresenting oneself for newsgathering purposes, trespassing, wiretapping, and more. The prohibition or the risk of using such tactics therefore limits how the press can gather news related to police. Nevertheless, the legal landscape revealed that the press does retain the ability to gather news in other ways, including access to public and, to some degree, restricted areas.

#### **iv. Access to Law Enforcement Data, Records, and Information**

Press access also includes obtaining law enforcement data, records, and information. As James Madison wrote in 1822, “Nothing could be more irrational than to

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<sup>1697</sup> La Vigne, et al., “Police Body-Worn Camera Legislation Tracker.”

<sup>1698</sup> Del. Code Ann. § 2402(c) (2017).

<sup>1699</sup> Michael D. White, *Police Officer Body-Worn Cameras: Assessing the Evidence* (Washington, DC: Office of Community Oriented Policing Services, 2014), 27; “A Primer on Body-Worn Cameras for Law Enforcement,” *U.S. Department of Justice Office of Justice Programs National Institute for Justice*, September 2012.

<sup>1700</sup> La Vigne, et al., “Police Body-Worn Camera Legislation Tracker.”

<sup>1701</sup> See notes 1544-1557 above.

give the people power, and to withhold from them information without which power is abused.”<sup>1702</sup> The legal landscape consists of 1) court rulings stating that the First Amendment does not provide the press a special right of access to government information, 2) two particular rulings discussing the intersection of the First Amendment and law enforcement records, 3) the Freedom of Information Act (FOIA) and state laws, 4) common law protections, and 5) other possible sources of law enforcement information if/when records are unavailable, incomplete, or not released.

The Supreme Court and some federal circuits have held that the First Amendment does not afford the press special access to information. In *Branzburg*, the Court held that “the First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally,” citing *Zemel*, in which the Court held that “[t]he right to speak and publish does not carry with it the unrestrained right to gather information.”<sup>1703</sup> In *Pell v. Procunier* (1974), the Court similarly ruled that the First Amendment “bar[s] government from interfering . . . with a free press[, but] does not, . . . require government to accord the press special access to information.”<sup>1704</sup> In *Houchins*, the Court ruled that the “public’s interest in knowing about its government is protected by the guarantee of a Free Press, but the protection is indirect. The Constitution itself is neither a Freedom of Information Act nor an Official Secrets Act.”<sup>1705</sup> Federal courts have reached similar rulings, including the Sixth Circuit in *Putnam Pit, Inc. v. City*

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<sup>1702</sup> Jim Rutenberg, “Independent Press Is Under Siege as Freedom Rings,” *New York Times*, July 2, 2017, <https://www.nytimes.com/2017/07/02/business/media/independent-press-is-under-siege-as-freedom-rings.html>.

<sup>1703</sup> *Branzburg*, 408 U.S. at 684 (citing *Zemel*, 381 U.S. at 16–17).

<sup>1704</sup> *Pell*, 417 U.S. at 819.

<sup>1705</sup> *Houchins*, 438 U.S. at 14.

of *Cookeville, Tennessee* (2000), in which the court held that a city government’s refusal to give a journalist access to the city’s parking ticket records in electronic form did not violate the First Amendment.<sup>1706</sup>

Two rulings, one by the Supreme Court and one by the Seventh Circuit, directly addressed the First Amendment and disclosure of law enforcement records. *Los Angeles Police Department v. United Reporting Publishing Corporation* (1999) arose when California “amended Cal. Govt. Code Ann. § 6254(f)(3) to require that a person requesting an arrestee’s address declare that the request is being made for one of five prescribed purposes and that the address will not be used directly or indirectly to sell a product or service.”<sup>1707</sup> United Reporting Publishing had previously provided “names and addresses of recently arrested individuals to its customers,” which included attorneys, insurance companies, and others. It received the information from state and local law enforcement agencies until the law was passed, prompting the company to file a complaint arguing that the amendment violated the First Amendment.<sup>1708</sup>

The Supreme Court held that the government may selectively grant access to public record information, reasoning that the Los Angeles Police Department (LAPD) was “correct that § 6254(f)(3) is not an abridgment of anyone’s right to engage in speech, but simply a law regulating access to information in the government’s hands.”<sup>1709</sup> The Court found that “this [was] not a case in which the government [prohibited] a speaker

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<sup>1706</sup> *Putnam Pit, Inc. v. City of Cookeville, Tenn.*, 221 F.3d 834 (6th Cir. 2000). *See also Chavez*, 414 Fed.Appx. at 939.

<sup>1707</sup> *Los Angeles Police Dept. v. United Reporting Pub. Corp.*, 528 U.S. 32 (1999).

<sup>1708</sup> *Id.*

<sup>1709</sup> *Id.* at 41.

from conveying information that the[y] already possess[.]. The California statute . . . merely requires respondent to qualify under the statute if it wishes to obtain arrestees' addresses[.]”<sup>1710</sup> The Court added, “California could decide not to give out arrestee information at all without violating the First Amendment.”<sup>1711</sup>

*Dahlstrom v. Sun Times Media, LLC* (2015) arose after a group of five police officers filed a lawsuit against Sun-Times Media, alleging that the company had violated the Driver’s Privacy Protection Act (DPPA) by “obtaining each officer’s birth date, height, weight, hair color, and eye color from the Illinois Secretary of State’s motor vehicle records, and publishing that information in a newspaper article that criticized a homicide investigation lineup in which the officers participated.”<sup>1712</sup> The Sun-Times moved to dismiss the complaint, arguing in part that “the statute’s prohibition on acquiring and disclosing personal information from driving records violates the First Amendment’s guarantees of free speech and freedom of the press.”<sup>1713</sup>

The Seventh Circuit held that the Sun-Times possessed “no constitutional right either to obtain the officers’ personal information from government records or to subsequently publish that unlawfully obtained information.”<sup>1714</sup> Regarding the prohibition on obtaining personal information, the court concluded that the defendant had

not alleged a cognizable First Amendment injury with respect to the DPPA’s prohibition on obtaining information from driving records—a limitation only on access to information. . . . Numerous federal statutes, including . . . the Privacy Act of 1974, 5 U.S.C. § 552a, limit public access to sensitive information, and the constitutionality of those limitations is widely accepted.<sup>1715</sup>

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<sup>1710</sup> *Id.* at 40.

<sup>1711</sup> *Id.*

<sup>1712</sup> *Dahlstrom v. Sun Times*, 777 F.3d 937, 939 (7th Cir. 2015).

<sup>1713</sup> *Id.*

<sup>1714</sup> *Id.* at 940.

<sup>1715</sup> *Id.* at 947.

The Seventh Circuit cited *Travis v. Reno* (1998), in which it rejected a facial challenge to the DPPA and noted that “[p]eering into public records is not part of the ‘freedom of speech’ that the First Amendment protects. ‘There is no constitutional right to have access to particular government information, or to require openness from the bureaucracy.’”<sup>1716</sup>

Regarding prohibition on disclosing such information, the Seventh Circuit ruled that although such a prohibition was “a direct regulation of speech,”<sup>1717</sup> the Sun-Times had not cited any “authority for the proposition that an entity that acquires information by breaking the law enjoys a First Amendment right to disseminate that information.”<sup>1718</sup> The court called it a “still-open question . . . whether, in cases where information has been acquired unlawfully by a newspaper[,] . . . government may ever punish not only the unlawful acquisition, but the ensuing publication as well.”<sup>1719</sup> In balancing government interests versus press interests, the Seventh Circuit concluded that although the Sun-Times’ reporting “was on a matter of public significance[,] the allegation that the Chicago Police Department manipulated a homicide investigation,” the publication of the information “both intruded on [the] privacy [of the officers] and threatened their safety, while doing little to advance Sun-Times’s reporting[.]”<sup>1720</sup> Conversely, the “government’s interests — (1) deterring the initial illegal acquisition of personal

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<sup>1716</sup> *Id.* (citing *Travis v. Reno*, 163 F.3d 1000, 1007 (7th Cir. 1998); *Houchins*, 438 U.S. at 14). The court added that “the maintenance of driving records . . . can hardly be described as an ‘essential component’ of self-government.” *Id.*

<sup>1717</sup> *Id.* at 949.

<sup>1718</sup> *Id.* at 950.

<sup>1719</sup> *Id.* at 951–52 (citing *Bartnicki*, 532 U.S. at 528).

<sup>1720</sup> *Id.* at 953.

information, and (2) protecting the privacy of individuals whose information has been illegally obtained—are unrelated to the suppression of free expression and instead relate to the promotion of public safety,<sup>1721</sup> therefore providing significant governmental interests, with the statute being narrowly tailored to achieve those purposes.

Taken together, the above court precedent indicates that the press enjoys few, if any, special privileges under the First Amendment to obtain government information, including related to law enforcement. The Supreme Court and federal circuit courts have instead generally held that it is acceptable under the First Amendment for the government to selectively grant access to public record information.

However, one privilege afforded to the press related to law enforcement is the “fair report privilege,” which generally provides immunity for individuals who publish false, defamatory information so long as the individual relied on an official public document or a statement by a public official, made clear that the document or statement was their source, and fairly and accurately used the source.<sup>1722</sup> The privilege is codified in some states and based in common law, which “has long recognized an interest in protecting the publication of fair and accurate reports of judicial, legislative and executive proceedings.”<sup>1723</sup>

In *Larson v. Gannett Co., Inc.* (2020), the Minnesota Supreme Court applied the fair report privilege directly to law enforcement press conferences and press releases.<sup>1724</sup>

The case arose following a 2012 fatal shooting of police officer Tom Decker, who was in

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<sup>1721</sup> *Id.* at 954.

<sup>1722</sup> See e.g. Kirsten Murphy, “Fair Reporting,” *The News Media & The Law* (Winter 2004): 14.

<sup>1723</sup> *Ibid.*

<sup>1724</sup> *Larson v. Gannett Co., Inc.*, 940 N.W.2d 120 (Minn. 2020).

the process of performing a welfare check on the plaintiff, Ryan Larson. Police arrested Larson soon after the shooting, and the following day, senior local and state law enforcement officials held a press conference and issued a press release about the incident. Based on the law enforcement press conference and press release, numerous news organizations, including KARE 11 — the Twin Cities’ NBC affiliate — and the *St. Cloud Times*, reported the fatal shooting, investigation, and arrest of Larson. However, days after his arrest, Larson was freed because authorities lacked sufficient evidence to prosecute him.<sup>1725</sup> On May 28, 2015, Larson sued KARE 11 and the *St. Cloud Times*, alleging they published 11 defamatory statements about his arrest.

The Minnesota Supreme Court held that the fair report privilege applied to seven statements the media published based on the press conference and press release.<sup>1726</sup> Justice Margaret Chutich, writing for the majority, first concluded that the press conference was public because it was meant to “convey information to the community, and the community was able to view the press conference live on television or through the subsequent media coverage.”<sup>1727</sup> Justice Chutich added, “[I]n a society in which each individual has but limited time and resources with which to observe at first hand the operations of . . . government, [they rely] necessarily upon the press to bring . . . in convenient form the facts of those operations.”<sup>1728</sup> Second, Justice Chutich concluded

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<sup>1725</sup> Jonathan Anderson, “High-Profile Defamation Lawsuits Target National and Local Media Outlets,” *Silha Bulletin* 25, no. 2 (Winter/Spring 2020): 37-40.

<sup>1726</sup> *Larson*, 940 N.W.2d at 125 (The Court further held that a jury needed to determine whether the privilege applied to several remaining statements, while also finding that the final four statements were not actionable.).

<sup>1727</sup> *Id.* at 133–34.

<sup>1728</sup> *Id.* at 134 (citing *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 491–92 (1975)).

that the press conference and press release were matters of public concern and were covered by the privilege because they were “an official action or proceeding” organized by law enforcement agency senior officials.<sup>1729</sup> Finally, Justice Chutich wrote that a report is fair and accurate when it “simply relay[s] information to the reader that [they] would have seen or heard [themselves] were [they] present” at the official proceeding.<sup>1730</sup>

Thus, although the press enjoys few, if any, special privileges under the First Amendment to obtain government information, it does receive some protection from the fair report privilege when reporting based on police press conferences, press releases, and other “official action[s] or proceeding[s].”<sup>1731</sup>

Turning to statutory law, at the federal level, FOIA was signed into law by President Lyndon B. Johnson in 1966 and took effect on July 4, 1967.<sup>1732</sup> The legislation was passed by Congress with the intention of creating a presumption of public access to the records of federal agencies.<sup>1733</sup> In general, federal agencies are required to disclose records unless they fall under one of nine exemptions, including Exemption 7(C), which excuses from disclosure “records or information compiled for law enforcement purposes”

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<sup>1729</sup> *Id.* at 135.

<sup>1730</sup> *Id.* at 133.

<sup>1731</sup> *Id.* at 135.

<sup>1732</sup> Freedom of Information Act, 5 U.S.C. § 552 (2006).

<sup>1733</sup> See generally “History of FOIA,” *Electronic Frontier Foundation*, accessed Sept. 27, 2019, <https://www.eff.org/issues/transparency/history-of-foia>; Joan M. Katz, “The Games Bureaucrats Play: Hide and Seek Under the Freedom of Information Act,” *Texas Law Review* 48 (1969): 1261-84; Suzanne J. Piotrowski, *Governmental Transparency in the Path of Administrative Reform* (New York: State University of New York Press, 2008); Michael R. Lemov, *People’s Warrior: John Moss and the Fight for Freedom of Information and Consumer Rights* (Teaneck, New Jersey: Fairleigh Dickinson University Press, 2011); Jane Kirtley, Scott Memmel, and Jonathan Anderson, “More ‘Substantial Harm’ Than Good: Recrafting FOIA’s Exemption 4 after *Food Marketing Institute v. Argus Leader Media*,” *Mitchell Hamline Law Review* 46, no. 3 (June 2020).

if their production “could reasonably be expected to constitute an unwarranted invasion of personal privacy.”<sup>1734</sup> The FOIA Improvement Act of 2016 further promoted public access by creating the explicit requirement that federal agencies must consider releasing records under a “presumption of openness” standard.<sup>1735</sup>

Observers have long praised FOIA as an “important tool” for the press in covering federal agencies and obtaining important records.<sup>1736</sup> However, questions remain about the effectiveness of the law, especially for journalists.<sup>1737</sup> Two key Supreme Court rulings in particular address law enforcement records and raise concerns about the breadth of Exemption 7(C).<sup>1738</sup> *U.S. Department of Justice v. Reporters Committee for Freedom of the Press* (1989) arose when CBS and the Reporters Committee for Freedom of the Press (RCFP) sought information on the Medico family, which was associated with

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<sup>1734</sup> 5 U.S.C. § 552(b)(7)(C). See also “Exemption 7(C),” *Department of Justice Guide to the Freedom of Information Act*, July 23, 2014. The *Department of Justice Guide to the Freedom of Information Act* provides an extensive discussion of Exemption 7(C), including the significant court precedent related to the exemption. The Guide also discusses the differences between Exemption 7(C) and Exemption 6, which also covers privacy interests.

<sup>1735</sup> FOIA Improvement Act of 2016, Pub. L. No. 114-85, 130 Stat. 538. See also Scott Memmel, “President Obama Signs Law Making Significant Amendments to the Freedom of Information Act,” *Silha Bulletin* 21, no. 3 (Summer 2016): 10-11.

<sup>1736</sup> See Pariss Briggs, “FOIA protects press and public’s access to information on retailer revenue from SNAP, Reporters Committee argues,” *Reporters Committee for Freedom of the Press*, March 25, 2019; Paul McMasters, “FOIA: It’s always there,” *Quill*, October 1996, <https://www.spj.org/foiabout.asp>.

<sup>1737</sup> See McMasters, “FOIA”; Nikita Lalwani and Sam Winter-Levy, “Op-Ed: After 50 years, the Freedom of Information Act needs updating,” *Los Angeles Times*, July 8, 2016, <https://www.latimes.com/opinion/op-ed/la-oe-lalwai-winter-levy-foia-50-anniversary-20160708-snap-story.html>; “Freedom of Information Act flaws need fixing, experts say,” *American Bar Association*, Aug. 4, 2018, <https://www.americanbar.org/news/abanews/aba-news/>; “Delayed, Denied, Dismissed: Failures on the FOIA Front,” *ProPublica*, July 21, 2016; “The media’s problems with FOIA,” *News Media & The Law* (October 2001).

<sup>1738</sup> See “Exemption 7(C).” The DOJ Guide to the Freedom of Information Act discusses several additional cases involving Exemption 7(C), though the following two represent the most significant rulings.

a government contract scandal and organized crime.<sup>1739</sup> CBS and RCFP filed a FOIA request seeking disclosure of any arrests, indictments, acquittals, convictions, and sentences of any of the four Medicos, though the request was later narrowed to include only publicly available records. Although the FBI provided some documents, the agency refused to release the electronic rap sheet for Charles Medico, the only family member still alive at the time, which was compiled in a new centralized computer database.<sup>1740</sup>

Justice Stevens wrote the majority opinion and found that it was an unwarranted invasion of privacy to make rap sheets available.<sup>1741</sup> He cited “practical obscurity,” meaning that although all the information contained within the rap sheets was available in hard copy, such information would be hard to find as it was located at a number of locations around the United States. It would also take CBS and RCFP a significant amount of time and money to find them. The result, according to Justice Stevens, was that the subject of the rap sheets had an expectation of privacy to such records, even though they were public elsewhere.<sup>1742</sup> Justice Stevens further held that the public interest in the release of the rap sheet was outweighed by the privacy interests in the case, including because FOIA was meant to determine what the government is up to, which, according to Justice Stevens, was not the case here.<sup>1743</sup> Thus, the case provided precedent expanding the interpretation of Exemption 7(C) and weighing privacy interests over newsgathering.

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<sup>1739</sup> *Dept. of Justice v. Rep. Comm. for Freedom of the Press*, 489 U.S. 749, 757 (1989).

<sup>1740</sup> *Id.*

<sup>1741</sup> *Id.* at 762–71.

<sup>1742</sup> *Id.* at 770–71.

<sup>1743</sup> *Id.* at 775.

*National Archives and Records Administration v. Favish* (2004) arose when Vincent Foster, Jr., deputy counsel to President Bill Clinton, was found dead in Fort Marcy Park near Washington, D.C.<sup>1744</sup> During its investigation, the U.S. Park Police took color photographs of the death scene, including 10 of Foster’s body. The Park Police determined that Foster committed suicide, a conclusion also reached in subsequent investigations by the FBI, U.S. Senate and House of Representatives committees, and independent counsels Robert Fiske and Kenneth Starr. However, Allan Favish, a U.S. citizen interested in the case, filed a FOIA request seeking 11 photographs, one of Foster’s eyeglasses and the 10 depicting his body. The National Park Service and Office of Independent Counsel (OIC) refused the request under Exemption 7(C).<sup>1745</sup>

Justice Anthony Kennedy delivered the Supreme Court’s unanimous opinion. He first held that Congress’ use of the term “personal privacy” under Exemption 7(C) “permit[s] family members to assert their own privacy rights against public intrusions long deemed impermissible under the common law and in our cultural traditions.”<sup>1746</sup> Second, Justice Kennedy balanced the privacy interests of Foster’s family with the public interest in disclosure. He held that “where there is a privacy interest protected by Exemption 7(C) and the public interest being asserted is to show that responsible officials acted negligently or otherwise improperly in the performance of their duties, the requester must establish more than a bare suspicion . . . to obtain disclosure.”<sup>1747</sup>

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<sup>1744</sup> *National Archives and Records Administration v. Favish*, 541 U.S. 157 (2004).

<sup>1745</sup> *Id.* at 161–62.

<sup>1746</sup> *Id.* at 167.

<sup>1747</sup> *Id.* at 174.

Although FOIA and the FOIA Improvement Act tend to promote greater public access to government materials, the Supreme Court has expanded the records falling under Exemption 7(C). Additionally, the Court weighed the privacy interests more heavily than the public interest in disclosure, demonstrating the uphill battle when requesting federal law enforcement records. Nevertheless, FOIA remains a tool for journalists to at least attempt to obtain such information.

At the state level, public disclosure laws and open records statutes, often called Freedom of Information (FOI) laws,<sup>1748</sup> generally provide that police records are open unless an exemption allows for police to deny access to the information.<sup>1749</sup> However, statutes governing access to police records still “vary greatly from state to state.”<sup>1750</sup>

One such law is the Minnesota Government Data Practices Act (MGDPA),<sup>1751</sup> which was enacted in 1974 as the first data privacy law in the United States.<sup>1752</sup> The purpose of the statute is to “balance the public’s right to know what their government is

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<sup>1748</sup> Chris Pagliarella, “Police Body-Worn Camera Footage: A Question of Access,” *Yale Law & Policy Review* 34, no. 2 (2016): 534-43; “State Freedom of Information Laws,” *National Freedom of Information Coalition*, accessed Feb. 19, 2020; “Open Government Guide,” *Reporters Committee for Freedom of the Press*, accessed Feb. 19, 2020; Burt A. Braverman and Wesley R. Heppler, “A Practical Review of State Open Records Laws,” *George Washington Law Review* 49, no. 4 (May 1981): 720-60.

<sup>1749</sup> Cross, *The People’s Right to Know*, 96; “Police Records,” 4. Most agencies and departments have written policies covering what information is public.

<sup>1750</sup> “Police Records,” 4. RCFP explained that “[s]ome states’ open records laws . . . go into great detail about access to arrest records, incident reports and ‘rap sheets.’ Open records laws in some states make no mention of law enforcement records. In some of these states, court opinions specify the law enforcement records that are open. Often the records law will exempt ‘investigatory’ records.”

<sup>1751</sup> Minnesota Government Data Practices Act, Minn. Stat. § 13.01 *et seq.* (2016). *See also* Memmel, “Police Body Cameras,” 85-88.

<sup>1752</sup> Leita Walker and Shannon Jankowski, “Minnesota: Open Government Guide,” *Reporters Committee for Freedom of the Press*, 2018, <https://www.rcfp.org/open-government-guide/minnesota/>.

doing, individuals' right to privacy in government data created and maintained about them, and the government's need to function responsibly and efficiently."<sup>1753</sup>

The MGDPA defines government data as that “collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use.”<sup>1754</sup> All government data is either “data on individuals,” meaning an individual “is or can be identified as the subject of that data,” or “data not on individuals,” meaning an individual is not identifiable.<sup>1755</sup> The MGDPA classifies government data into three categories, including “public data,” which includes records not classified by state statute or federal law as either private or confidential. Such records are accessible to “anyone for any reason.”<sup>1756</sup> The second category is “private data” and “nonpublic data,” which are only accessible to the subject of the data and government officials whose duties reasonably require access.<sup>1757</sup> Data is classified as private if it is “data on individuals”; it is classified as nonpublic if it is “data not on individuals.”<sup>1758</sup> The third category is “confidential data” and “protected nonpublic data,” which are only available to government officials.<sup>1759</sup> Data is classified as confidential, instead of protected nonpublic, if it is “data on individuals.” The phrase “not public data”

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<sup>1753</sup> Donald A. Gemberling and Gary A. Weissman, “Data Privacy: Everything You Wanted to Know About the Minnesota Government Data Practices Act – From ‘A’ to ‘Z,’” *William Mitchell Law Review* 8, (1982): 574; “Data Practices: Analyze, Classify, Respond,” *League of Minnesota Cities*, July 22, 2016.

<sup>1754</sup> Minn. Stat. § 13.01; Gemberling and Weissman, “Data Privacy,” 580.

<sup>1755</sup> *Id.* § 13.02.

<sup>1756</sup> *Id.*; “Data Practices: Analyze, Classify, Respond.”

<sup>1757</sup> Minn. Stat. § 13.02; Gemberling and Weissman, “Data Privacy,” 580.

<sup>1758</sup> *Id.*

<sup>1759</sup> *Id.*

refers to any data classified as private, nonpublic, confidential, or protected nonpublic and is used throughout the MGDPA.<sup>1760</sup>

<b>Cat.</b>	<b>Data On Individuals</b>	<b>Degree of Accessibility</b>	<b>Data Not On Individuals</b>
(1)	Public	Accessible to anyone	Public
(2)	Private	Accessible to data subjects and government officials whose duties reasonably require access. Not accessible to the public.	Nonpublic
(3)	Confidential	Accessible to government officials whose duties reasonably require access. Not accessible to public or data subjects.	Protected, Nonpublic

*Table 5.1 Minnesota Government Data Practices Act Data Classifications*<sup>1761</sup>

The MGDPA “establishes a presumption that government data are public.”<sup>1762</sup> Thus, any government data “shall be public unless classified by statute or temporary classification.”<sup>1763</sup> However, there are several instances where data is classified as private or nonpublic. In particular, section 13.82 covers “Comprehensive Law Enforcement Data,” which applies to “agencies which carry on a law enforcement function, including but not limited to municipal police departments, county sheriff departments, . . . [and] the Minnesota State Patrol,” among others.<sup>1764</sup> Some records are “public at all times,” including documents related to law enforcement “cit[ing], arrest[ing], [and/or]

<sup>1760</sup> *Id.*

<sup>1761</sup> Gemberling and Weissman, “Data Privacy,” 579; Minn. Stat. § 13.02.

<sup>1762</sup> Minn. Stat. § 13.01(3).

<sup>1763</sup> *Id.* § 13.02(7).

<sup>1764</sup> *Id.* § 13.82(1).

incarcerat[ing] . . . an adult individual,” such as a police “blotter.”<sup>1765</sup> However, other data, such as audio recordings of 911 calls or data on child abuse, are generally private data.<sup>1766</sup> This is also the case for “investigative data collected or created by a law enforcement agency in order to prepare a case against a person . . . for the commission of a crime or other offense for which the agency has primary investigative responsibility,” which are “confidential or protected nonpublic while the investigation is active.”<sup>1767</sup> Thus, although just one example, the MGDPA demonstrates how federal and state laws allow disclosure of some law enforcement records while restricting access to others.

Common law also provides at least some right of access for the press and public to government records. For example, the Michigan Supreme Court found in 1928 that “[i]f there is any rule of English common law that denied the public the right of access to public records, it is repugnant to the spirit of our democratic institutions. Ours is a government of the people.”<sup>1768</sup>

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<sup>1765</sup> *Id.* See also Lyle W. Denniston, *The Reporter and the Law: Techniques of Covering the Courts* (New York: Columbia University Press, 1992), 84-87; “Police Records,” 3; Cross, *The People’s Right to Know*, 104.

<sup>1766</sup> Minn. Stat. §§ 13.82(4),(8-9). See also “States’ Laws on Disclosing Crime Scene Photographs, Autopsy Reports, and 911 Tapes and Transcripts,” *OLR Research Report*, Sept. 18, 2013. The study found that “(1) nine states . . . have laws directly addressing the disclosure of crime scene photos, (2) 26 states [have] laws directly addressing the disclosure of autopsy reports, and (3) 16 states [have] laws directly addressing the disclosure of 911 tapes, seven of which directly address . . . 911 transcripts. Generally, the laws restrict the disclosure of the above records to certain entities (e.g., next of kin), but in some cases . . . they specify that [these] records . . . are available to the public.”

<sup>1767</sup> *Id.* § 13.82(7).

<sup>1768</sup> *Nowack v. Fuller*, 243 Mich. 200 (Mich. 1928). See also Joseph Regalia, “The Common Law Right to Information,” *Richmond Journal of Law and the Public Interest* 18, no. 2 (2015): 90-132; Daniel J. Solove, “Access and Aggregation: Privacy, Public Records, and the Constitution,” *Minnesota Law Review* 86, no. 1 (2002): 1137-1218.

Nevertheless, in some cases, law enforcement records may be unavailable, incomplete, or unreleased,<sup>1769</sup> which may prompt members of the press or media organizations to take “some formal legal action . . . to obtain access to police records.”<sup>1770</sup> However, some observers have argued that this should be used only as “a last resort [because] it has obvious potential for converting a highly useful, informal understanding into a formalized arrangement that may result in diminished access.”<sup>1771</sup> Therefore, there are likely to be circumstances where the press may look to other sources of police information. One such type of record is semi-public documents, such as a police detective’s notes.<sup>1772</sup> However, these documents may not be official government records, meaning a journalist “might not be privileged to report the information contained in it,” such as under the fair-report defense to a defamation claim.<sup>1773</sup> Reporters may also monitor police radio frequencies<sup>1774</sup> and police departments’, officials’, or officers’ social media accounts, as well as forge relationships with officials and officers who can provide details when records or police radio may be unavailable.<sup>1775</sup> As the content analysis

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<sup>1769</sup> See e.g. Dan Papszun, “How access to public records is being threatened by police union contracts,” *Reporters Committee for Freedom of the Press*, March 4, 2020, <https://www.rcfp.org/police-unions-records-access/>.

<sup>1770</sup> Denniston, *The Reporter and the Law*, 85.

<sup>1771</sup> Ibid.

<sup>1772</sup> Dalglish, “First Amendment Handbook,” 14.

<sup>1773</sup> Ibid. Dalglish noted that in at least one instance, however, a federal appellate court ruled that publishing information from a secret police report is not an invasion of privacy because there is no reasonable expectation that information given to the police will be kept secret,” citing *Scheetz v. The Morning Call, Inc.*, 946 F.2d 202 (3rd Cir. 1991). See also “Fair Report Privilege,” *Digital Media Law Project*, accessed Feb. 21, 2020, <https://www.dmlp.org/legal-guide/fair-report-privilege>. The fair-report privilege protects reporters “from liability -- even if [they] publish something that is defamatory -- if [they] relied upon a[n] official public document or statement by a public official for the false information, made clear that the document or statement was your source, and fairly and accurately used the source.”

<sup>1774</sup> Denniston, *The Reporter and the Law*, 87-88.

<sup>1775</sup> Denniston, 88; “Police Records,” 3-4.

revealed, a “reporter’s access will depend, most of the time, on the nature of [their] relations with [their] sources.”<sup>1776</sup> Lastly, reporters can, and do, speak with the public, including eyewitnesses, victims, suspects, detained individuals, past offenders, and others.<sup>1777</sup> Nevertheless, there are numerous examples of lawsuits where journalists sought to get records after their requests for such information were denied.<sup>1778</sup>

#### e. Newsgathering Conclusions

Taken together, the legal landscape reveals that there are several ways in which the press can cover and investigate police, such as through access to certain locations and to information subject to FOIA and related state laws. The press also receives protection

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<sup>1776</sup> Denniston, *The Reporter and the Law*, 85.

<sup>1777</sup> Denniston, 84-85.

<sup>1778</sup> See e.g. *Rep. Comm. for Freedom of the Press*, 489 U.S. at 750; Chao Xiong, “Group says Minneapolis violated law in withholding information in fatal police shooting,” *Star Tribune*, Dec. 19, 2019, <http://www.startribune.com/lawsuit-minneapolis-violated-data-law-in-withholding-information-in-sunday-s-fatal-police-shooting/566315632/?refresh=true>; Bob Egelko, “Court says public has right to see records held by AG of police shootings, misconduct,” *San Francisco Chronicle*, Jan. 29, 2020, <https://www.sfchronicle.com/news/article/Court-says-public-has-right-to-see-records-held-15015219.php>; Dylan Brogan, “City apologizes, settles public records lawsuit with Isthmus,” *Isthmus*, March 30, 2018, <https://isthmus.com/news/news/city-apologizes-settles-public-records-lawsuit-with-isthmus/>. See also Mara H. Gottfried, “ACLU files lawsuit against St. Paul, saying police department has ‘unlawfully’ not released public info about policing,” *Pioneer Press*, Dec. 4, 2019, <https://www.twincities.com/2019/12/04/aclu-files-lawsuit-against-st-paul-saying-police-department-has-unlawfully-not-released-public-info-about-policing/>; Liz Sawyer, “ACLU lawsuit: City of St. Paul improperly withholding police data,” *Star Tribune*, Dec. 4, 2019, <http://www.startribune.com/aclu-lawsuit-city-of-st-paul-improperly-withholding-police-data/565803062/>; Press Release, ACLU of Minnesota, ACLU-MN Sues Saint Paul for Withholding Public Police Records, Dec. 4, 2019, <https://www.aclu-mn.org/en/press-releases/aclu-mn-sues-saint-paul-withholding-public-police-records>. For example, in December 2019, the American Civil Liberties Union (ACLU) of Minnesota filed a lawsuit against the city of St. Paul, Minnesota, claiming that the St. Paul Police Department had “unlawfully refused to provide . . . critical public data about its policing activities in the community.” In particular, the ACLU sought information about traffic stops, citations, arrests, and use of force by the police between 2015 and 2019. In a statement, ACLU of Minnesota staff attorney David McKinney said, “A full accounting of police activities is crucial to ensure adequate oversight, accountability and transparency, and to understand the scope of racial disparities that are already apparent in the limited amount of data that the police department has released. This information is essential to make sure that all interactions with police are safe and just.”

for newsgathering from 1) court rulings emphasizing the press' independence from government intrusion 2) limited court precedent providing First Amendment protection for newsgathering, 3) the right to record police, and 4) the reporter's privilege not to reveal confidential sources or information.

However, the Supreme Court and lower courts have held that the press does not receive a special right of access under the First Amendment to locations<sup>1779</sup> and to information,<sup>1780</sup> especially if journalists are likely to interfere with police activities.<sup>1781</sup> The press is also subject to laws of general applicability,<sup>1782</sup> including related to invasion of privacy, trespass, and wiretapping,<sup>1783</sup> among other areas of law.<sup>1784</sup> The result is that the press can still cover and investigate police, but with limitations often meant to protect law enforcement interests. As the following sections will further demonstrate, it is because the current legal landscape allows both parties to achieve their goals, purposes, functions, and actions that their relationship is often cooperative co-existence. But at the same time, because the press is able to achieve its watchdog function, the press-police relationship can also, at times, become more contentious. And as examples below will also demonstrate, press coverage and investigations of police have not only important implications for their relationship, but also several key effects on both parties and the public.

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<sup>1779</sup> See notes 1587-1593 above.

<sup>1780</sup> See notes 1703-1721 above.

<sup>1781</sup> See *Mazzetti*, 518 F.2d at 781; *Lashinsky*, 81 N.J. at 1; *Connell*, 733 F.Supp. at 466, 470; *Fields*, 862 F.3d at 360; *Turner*, 848 F.3d at 678; *Glik*, 655 F.3d at 84.

<sup>1782</sup> See *Cohen*, 501 U.S. at 669; *Pennekamp*, 328 U.S. at 364.

<sup>1783</sup> See notes 1634-1647, 1653-1681 above. *But see Desnick*, 44 F.3d at 1353.

<sup>1784</sup> See notes 882-899 above.

### 3. Publication and Broadcasting

In order for newsgathering to be effective, there need to be protections for the publishing or broadcasting of the acquired information. Courts precedent has provided such protection in rulings related to: 1) prior restraints, 2) the publication of lawfully obtained, truthful information, and 3) the free flow of information. However, the protections for publishing and broadcasting are not absolute, raising implications for police coverage and investigations of police. Such limitations include: 1) exceptions to the heavy presumption against prior restraints, 2) court precedent stating that the press may face lawsuits and other consequences for what they publish, and 3) regulation of radio and television broadcasting.

#### a. Prior Restraints

One area of precedent protecting publication from government intrusion is the general prohibition of prior restraints. *Near v. Minnesota* (1931) arose when Jay Near published a series of “muckraking” stories in *The Saturday Press* in Minneapolis, alleging that the chief of police was taking bribes, among other claims related to corruption in government and organized crime.<sup>1785</sup> Near was prosecuted under Minnesota’s public nuisance law, which provided that an individual “who . . . ‘regularly and customarily produc[es] [and] publish[es] . . . a malicious, scandalous and defamatory newspaper. . . or other periodical,’ is guilty of a nuisance.”<sup>1786</sup>

Chief Justice Charles Hughes ultimately ruled that the press’ “constitutional right” to publish protected it from government imposition of prior restraints, except in limited

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<sup>1785</sup> *Near v. Minnesota*, 283 U.S. 697, 704 (1931).

<sup>1786</sup> *Id.* at 701–02 (citing Minn. Stat. §§ 10112, 10113 (1927)).

circumstances.<sup>1787</sup> He cited the “need [for] a vigilant and courageous press,” concluding that “interference with the . . . freedom of publication” would mean “the constitutional protection [of freedom of the press] would be reduced to a mere form of words.”<sup>1788</sup> He added that “liberty of the press, historically considered and taken up by the Federal Constitution, has meant, principally, although not exclusively, immunity from previous restraints or censorship.”<sup>1789</sup>

A second key case in prior restraint jurisprudence is *New York Times v. United States* (1971), in which the Court was tasked with determining whether *The New York Times* and *The Washington Post* could publish a U.S. Department of Defense study detailing the history of U.S. activities in Vietnam, which was leaked by military analyst Daniel Ellsberg.<sup>1790</sup> President Richard Nixon’s administration argued that a prior restraint was necessary to protect national security.

The Court, in what has become known as the *Pentagon Papers* case, ruled in a *per curiam* opinion that the Nixon administration had not overcome the “heavy presumption” against prior restraints.<sup>1791</sup> As noted above, in his concurring opinion, Justice Black explained that the “power to censor the press was abolished so that the press would remain forever free to censure the government.”<sup>1792</sup> In a separate concurring opinion, Justice William Douglas wrote that the First Amendment “leaves . . . no room

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<sup>1787</sup> *Id.* at 714–16 (citing *Patterson v. Colorado*, 205 U.S. 454, 462 (1907) (holding that the purpose of the press clause of the First Amendment is “to protect . . . [previous] restraints upon publication.”); *Republica v. Oswald*, 1 U.S. 319 (1788)).

<sup>1788</sup> *Id.* at 719, 722.

<sup>1789</sup> *Id.* at 716.

<sup>1790</sup> *New York Times v. United States*, 403 U.S. 713 (1971).

<sup>1791</sup> *Id.* at 714.

<sup>1792</sup> *Id.* at 717.

for governmental restraint on the press”<sup>1793</sup> and prevents “the widespread practice of governmental suppression of embarrassing information.”<sup>1794</sup> Ultimately, *Near* and *Pentagon Papers*, among other key rulings, established a First Amendment presumption against prior restraints in most cases, demonstrating the significance of preventing government intrusion into the press’ ability to publish information.<sup>1795</sup>

### **b. Publication of Lawfully Obtained, Truthful Information**

A second area of jurisprudence protecting the press’ right of publication is regarding the publication of lawfully obtained, truthful information. In what is sometimes referred to as the *Daily Mail* string of cases, the Supreme Court held that statutes prohibiting the media from publishing such information, including — 1) the name of a rape victim,<sup>1796</sup> 2) the confidential proceedings before a state judicial review commission,<sup>1797</sup> 3) a preliminary hearing open to the public and press,<sup>1798</sup> and 4) the name of a juvenile defendant<sup>1799</sup> — violated the First Amendment.

Additionally, in *Bartnicki v. Vopper* (2001), the Supreme Court addressed to “what degree of protection, if any, the First Amendment provides to speech that discloses the contents of an illegally intercepted communication,” but is also truthful

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<sup>1793</sup> *Id.* at 720.

<sup>1794</sup> *Id.* at 723.

<sup>1795</sup> See *Proctor & Gamble v. Bankers Trust Co.* 78 F.3d 219, 225 (6th Cir. 1996) (“allegedly improper conduct in obtaining the information is insufficient to justify imposing a prior restraint”); *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971); *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992); *CBS v. Davis*, 510 U.S. 1315 (Blackmun, Cir. Justice, 1994); *United States v. The Progressive*, 467 F. Supp. 990 (W.D. Wis. 1979); *Alexander v. United States*, 509 U.S. 544 (1993); *United States v. Providence Journal Co.*, 485 U.S. 693 (1988).

<sup>1796</sup> *Florida Star v. B. J. F.*, 491 U.S. 524 (1989); *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975).

<sup>1797</sup> *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829 (1978).

<sup>1798</sup> *Oklahoma Publishing Co. v. Oklahoma County District Court*, 430 U.S. 308 (1977).

<sup>1799</sup> *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97, 103 (1979).

information.<sup>1800</sup> The Court held that “a stranger’s illegal conduct does not suffice to remove the First Amendment shield from speech about a matter of public concern.” The Court therefore ruled that, at least in the particular circumstances of the case, the First Amendment right of publication exceeded the government’s interests, including privacy, therefore protecting the press from punishment where it did not participate in, but only received, the illegal interception of communications.<sup>1801</sup>

### **c. Free Flow of Information**

A third area of jurisprudence is Supreme Court rulings emphasizing the importance of the free flow of information under the First Amendment so the press and public can criticize and hold accountable the government, including law enforcement. In *New York Times v. Sullivan* (1964), the Court emphasized the “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”<sup>1802</sup> Similarly, in *Garrison v. Louisiana* (1964), the Court recognized the “paramount public interest in a free flow of information to the people concerning public officials, their servants.”<sup>1803</sup> In *Hustler Magazine, Inc. v. Falwell* (1988), the Court held that

[a]t the heart of the First Amendment is the recognition of the fundamental importance of the free flow of ideas and opinions on matters of public interest and concern. . . . The sort

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<sup>1800</sup> *Bartnicki v. Vopper*, 532 U.S. 514, 517 (2001).

<sup>1801</sup> *Id.* at 535.

<sup>1802</sup> *New York Times v. Sullivan*, 376 U.S. 254 (1964). *See also* *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949) (“[I]t is only through free debate and free exchange of ideas that government remains responsive to the will of the people.”); *DeJonge v. Oregon*, 299 U.S. 353, 365 (1937) (“the more imperative is the need to preserve [free speech and the free press] to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people.”).

<sup>1803</sup> *Garrison v. Louisiana*, 379 U.S. 64, 77 (1964).

of robust political debate encouraged by the First Amendment is bound to produce speech that is critical of those who hold public office or those public figures who are “intimately involved in the resolution of important public questions[.]”<sup>1804</sup>

Similarly, the Court ruled in *Mills v. Alabama* (1966) that “there is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs.”<sup>1805</sup> Thus, the Court has promoted the free flow of information, protecting the press’ ability to criticize the police, therefore holding law enforcement accountable.

Courts have also emphasized the importance of the free flow of information so that the public can be informed about important issues. In *Thornhill v. Alabama* (1940), the Court found that the press and public have “the liberty [under the Constitution] to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment.”<sup>1806</sup> The Court reasoned that there was a “public need for information and education,” especially regarding “significant issues of the times.” In *First National Bank of Boston v. Bellotti* (1978) that Court wrote that the free flow of information means “prohibit[ing] government from limiting the stock of information from which . . . the public may draw.”<sup>1807</sup> The Court has, therefore, provided at least some protection of the press’ purpose of informing the public.

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<sup>1804</sup> *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 50–51 (1988) (citing *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 164 (1967) (Warren, J., concurring)). *See also* *Baumgartner v. United States*, 322 U.S. 665, 673–74 (1944) (“[a] prerogative[] of . . . citizenship is the right to criticize public men and measures.”).

<sup>1805</sup> *Mills v. Alabama*, 384 U.S. 214, 218 (1966). *See also* *Harte–Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 686 (1989); *Arizona Free Enterprise Club v. Bennett*, 564 U.S. 721, 755 (2011); *Buckley v. Valeo* 424 U.S. 1, 14 (1976).

<sup>1806</sup> *Thornhill v. Alabama*, 310 U.S. 88, 95, 101–02 (1940). “Prior restraints” will be discussed more below.

<sup>1807</sup> *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978). *See also* *Boos v. Barry*, 485 U.S. 312 (1988) (“our own citizens must tolerate insulting [and] outrageous[] speech . . . to

Significantly, in *Fields v. Philadelphia* (2017), the Third Circuit connected the importance of the free flow of information directly to oversight of law enforcement. The court held that “[a]ccess to information regarding public police activity is particularly important because it leads to citizen discourse on public issues, ‘the highest rung of the hierarchy of First Amendment values[.]’”<sup>1808</sup> Thus, the Third Circuit concluded that the obtaining and spreading of information about police fell under “special [First Amendment] protection.”<sup>1809</sup>

#### **d. Circulation and Dissemination**

The Supreme Court has held that without protection for the circulation and dissemination of materials by the press under the First Amendment, publication would be worthless. In *Ex parte Jackson* (1877), the Court reasoned that “[l]iberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.”<sup>1810</sup> The Court reaffirmed these conclusions in *Lovell v. City of Griffin* (1938), finding that a statute, which “in its broad sweep prohibit[ed] the distribution of ‘circulars, handbooks, advertising, or literature of any kind,’” was “invalid

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provide ‘adequate “breathing space” to the freedoms protected by the First Amendment.’”); *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95 (1972); Scott Memmel, “Defending the Press: The Shield that Sets Minnesota Apart,” *Communication Law Review* 19, no. 1 (2019): 1-21.

<sup>1808</sup> *Fields v. Philadelphia*, 862 F.3d 353, 359 (3rd Cir. 2017) (citing *Snyder v. Phelps*, 562 U.S. 443, 452 (2011); *Connick v. Myers*, 461 U.S. 138, 145 (1983)).

<sup>1809</sup> *Fields*, 862 F.3d at 359.

<sup>1810</sup> *Ex parte Jackson*, 96 U.S. 727, 733 (1877). (The Court cited Senator John Caldwell Calhoun, who insisted that Congress did not have the power to pass a law prohibiting the transmission and circulation of the press’ publications through the mail, arguing it would “abridge the liberty of the press.” Calhoun stated that “if . . . Congress has the right to discriminate in reference to their character, what papers shall or what shall not be transmitted by the mail, would subject the freedom of the press . . . completely to its will and pleasure. It would in fact, in some respects, more effectually control the freedom of the press than any sedition law, however severe its penalties.”).

on its face. Whatever the motive which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press by subjecting it to license and censorship.”<sup>1811</sup> The result is that the press is protected from government intrusion into the circulation and dissemination of information to the public, therefore allowing the press to effectively publish and broadcast news through further protections against government intrusion.

#### **e. Limitations on Publication and Broadcasting**

However, these protections for publication are not without limitations. First, in *dicta* in *Near*, Chief Justice Hughes noted circumstances where prior restraints may be constitutional,<sup>1812</sup> provided the government can show an interest of “the highest order”<sup>1813</sup> or “irreparable harm.” One such exception was speech that is a “hinderance to [the war] effort.”<sup>1814</sup> More specifically, Chief Justice Hughes wrote that the “government might prevent actual obstruction to its recruiting service or the publication of the sailing dates of transports or the number and location of troops.”<sup>1815</sup> He also noted possible exceptions for “obscene publications,” “incitements to acts of violence and the overthrow by force of orderly government,” and “uttering [of] words that may have all the effect of force.”<sup>1816</sup> Nevertheless, the Court emphasized the “exceptional nature of [these] limitations[.]”<sup>1817</sup>

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<sup>1811</sup> *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938).

<sup>1812</sup> *Near*, 283 U.S. at 716.

<sup>1813</sup> *Bartnicki*, 532 U.S. at 522, 528 (“Our [ruling] is consistent with this Court’s repeated refusal to answer categorically whether truthful publication may ever be punished consistent with the First Amendment.”).

<sup>1814</sup> *Id.* (citing *Schenck v. United States*, 249 U.S. 47, 52 (1919)).

<sup>1815</sup> *Id.*

<sup>1816</sup> *Id.* (citing *Gompers v. Buck Stove & Range Co.*, 221 U.S. 418, 439 (1911)).

<sup>1817</sup> *Id.* See also Kathleen Ann Ruane, “Freedom of Speech and Press: Exceptions to the First Amendment,” *Congressional Research Service*, Sept. 8, 2014. Unprotected speech includes obscenity, child pornography, and “fighting words.” Some speech receives lesser protection.

Second, court precedent has established that publication and broadcasting by the press can result in liability and subsequent punishment. In *Gitlow v. People of State of New York* (1925), the Supreme Court held that “[i]t is a fundamental principle, long established, that the freedom of speech and of the press which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom.”<sup>1818</sup> The Court added that “this freedom is an inestimable privilege in a free government; without such limitation, it might become the scourge of the republic.”<sup>1819</sup> Similarly, in *R.A.V. v. St. Paul* (1992), the Court held that “our society . . . has permitted restrictions upon the content of speech in a few limited areas, which are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.”<sup>1820</sup> The Court added, “freedom of speech that the First Amendment protects “does not include a freedom to disregard these traditional limitations.”<sup>1821</sup>

The press is therefore not immune from liability following publication, including for invasion of privacy,<sup>1822</sup> defamation,<sup>1823</sup> intentional infliction of emotional distress,<sup>1824</sup>

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<sup>1818</sup> *Gitlow v. People of State of New York*, 268 U.S. 652, 666 (1925) (citing *Robertson v. Baldwin*, 165 U.S. 275 (1897); *Patterson v. Colorado*, 205 U.S. 454, 462 (1907); *Fox v. Washington*, 236 U.S. 273, 276 (1915); *Frohwerk v. United States*, 249 U.S. 204, 206 (1919); *Schaefer v. United States*, 251 U.S. 466, 474 (1920); *Gilbert v. Minnesota*, 254 U.S. 325, 332 (1920)).

<sup>1819</sup> *Id.* at 667.

<sup>1820</sup> *R.A.V. v. St. Paul*, 505 U.S. 377, 382–83 (1992).

<sup>1821</sup> *Id.* at 383.

<sup>1822</sup> See notes 1653-1699 above.

<sup>1823</sup> See generally *Sullivan*, 376 U.S. at 254; *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).

<sup>1824</sup> See generally *Hustler v. Falwell*, 485 U.S. 46 (1988).

and other areas of law. As examples below further demonstrate, such lawsuits can lead to costly and time-consuming legal battles for journalists and news organizations, hindering the press' ability to gather and publish news, including related to police.

Finally, radio and television broadcasting face more limitations than print publications, namely through Federal Communications Commission (FCC) rules.

Although broadcast networks and stations are protected by the First Amendment and statutory law,<sup>1825</sup> the “right to broadcast material is not absolute,” meaning that “[t]here are some restrictions on the material that a licensee can broadcast.”

Three FCC rules directly implicate the coverage of law enforcement, including “hoaxes,” which are the broadcasting “of false information concerning a crime or catastrophe.”<sup>1826</sup> Such broadcasting violates the FCC’s rules if “[t]he station licensee knew that the information was false; Broadcasting the false information directly causes substantial public harm; and [i]t was foreseeable that broadcasting the false information

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<sup>1825</sup> “The Public and Broadcasting,” *Federal Communications Commission*, accessed Feb. 24, 2020, <https://www.fcc.gov/media/radio/public-and-broadcasting>. The FCC’s “The Public and Broadcasting” guide explained that the “First Amendment, as well as Section 326 of the Communications Act, prohibits the Commission from censoring broadcast material and from interfering with freedom of expression in broadcasting. The Constitution’s protection of free speech includes programming that may be objectionable to many viewers or listeners. Therefore, the FCC cannot prevent the broadcast of any particular point of view. In this regard, the Commission has observed that “the public interest is best served by permitting free expression of views.” The FCC cited the fundamental importance of the free flow of information to our democracy” as the reason why the commission cannot “tell[] station licensees how to select material for news programs or prohibiting the broadcast of an opinion on any subject.” The FCC continued, “The First Amendment’s guarantee of freedom of speech similarly protects programming that stereotypes or may otherwise offend people with regard to their religion, race, national background, gender, or other characteristics. It also protects broadcasts that criticize or ridicule . . . the government and its officials. The Commission recognizes that . . . people must be free to say things that the majority may abhor, not only what most people may find tolerable or congenial.”

<sup>1826</sup> *Ibid.*

would cause such harm.”<sup>1827</sup> FCC rules also state that radio or television stations receiving licenses “may not intentionally distort the news.”<sup>1828</sup> The FCC “investigate[s] a station for news distortion if it receives documented evidence of rigging or slanting, such as testimony or other documentation, from individuals with direct personal knowledge that a licensee or its management engaged in the intentional falsification of the news.”<sup>1829</sup> Lastly, the FCC prohibits broadcast networks and stations from transmitting indecent, profane, or obscene content.<sup>1830</sup>

Ethical issues also arise when determining what police materials to publish,<sup>1831</sup> such as crime scene photographs or recordings,<sup>1832</sup> autopsy reports,<sup>1833</sup> 911 calls,<sup>1834</sup> and

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<sup>1827</sup> 47 CFR § 73.1217. See also Joel Timmer, “Potential FCC Actions Against ‘Fake News’: The News Distortion Policy and the Broadcast Hoax Rule,” *Communications Law and Policy* 24, no. 1 (2019): 1-53.

<sup>1828</sup> “The Public and Broadcasting”; Timmer, “Potential FCC Actions Against ‘Fake News.’”

<sup>1829</sup> Ibid. See also Chad Raphael, “The FCC’s broadcast news distortion rules: Regulation by drooping eyelid,” *Communication Law and Policy* 6, no. 3 (2001): 485-539.

<sup>1830</sup> See “Obscene, Indecent and Profane Broadcasts,” *FCC*, accessed Feb. 24, 2020, <https://www.fcc.gov/consumers/guides/obscene-indecnt-and-profane-broadcasts>. See also Miller v. California, 413 U.S. 15 (1973); Federal Comm. Comm’n v. Pacifica Found., 438 U.S. 726 (1978).

<sup>1831</sup> See generally Jane Kirtley and Chris Ison, *Media Ethics Today: Issues, Analysis, Solutions* (San Diego, California, Cognella Academic Publishing, 2016), 53-108.

<sup>1832</sup> See “Documenting Tragedy: The Ethics of Photojournalism,” *National Public Radio*, Dec. 6, 2012, <https://www.npr.org/2012/12/06/166666261/documenting-tragedy-the-ethics-of-photojournalism>; Helen Lewis, “How Newsrooms Handle Graphic Images of Violence,” *NiemanReports*, Jan. 5, 2016, <https://niemanreports.org/articles/how-newsrooms-handle-graphic-images-of-violence/>; Matt Pearce, “Body camera video of police officer’s killing stirs ethical debate,” *Los Angeles Times*, Jan. 16, 2015, <https://www.latimes.com/nation/la-na-az-body-cam-20150115-story.html>.

<sup>1833</sup> See Kelly McBride, “Questions to consider before publishing autopsy reports,” *Poynter*, Aug. 24, 2002, <https://www.poynter.org/reporting-editing/2012/questions-to-consider-before-publishing-autopsy-reports/>.

<sup>1834</sup> See “Guidelines for 911 Calls,” *Radio Television Digital News Association*, accessed Feb. 20, 2020, [https://www.rtdna.org/content/guidelines\\_for\\_911\\_calls](https://www.rtdna.org/content/guidelines_for_911_calls); Gene Policinski, “When and Why We Need to Hear 911 Calls,” *Freedom Forum Institute*, Dec. 14, 2013, <https://www.freedomforuminstitute.org/2013/12/14/when-and-why-we-need-to-hear-911-calls/>.

mugshots.<sup>1835</sup> Ethical issues also arise regarding how much the press should trust law enforcement versus push against police claims, such as during the 1993 siege between FBI agents and members of the Branch Davidian religious group in Waco, Texas.<sup>1836</sup> Additionally, observers for many years have raised concerns with media coverage depicting “publicity-seeking crimes,” sometimes seeking regulation of such coverage to avoid several problems, including the risk of other individuals engaging in such criminal conduct.<sup>1837</sup>

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<sup>1835</sup> See Keri Blakinger, “Newsrooms Rethink a Crime Reporting Staple: The Mugshot,” *Marshall Project*, Feb. 11, 2020, <https://www.themarshallproject.org/2020/02/11/newsrooms-rethink-a-crime-reporting-staple-the-mugshot>; Lulu Garcia-Navarro, “Some Newsrooms Are Rethinking Their Approach to Publishing Mugshots,” *National Public Radio*, Feb. 16, 2020, <https://www.npr.org/2020/02/16/806417359/some-newsrooms-are-rethinking-their-approach-to-publishing-mugshots>; Corey Hutchins, “Mugshot galleries might be a web-traffic magnet. Does that justify publishing them?,” *Columbia Journalism Review*, Oct. 24, 2018, [https://www.cjr.org/united\\_states\\_project/mugshots-ethics.php](https://www.cjr.org/united_states_project/mugshots-ethics.php).

<sup>1836</sup> See Tara Isabella Burton, “The Waco tragedy, explained,” *Vox*, April 19, 2018, <https://www.vox.com/2018/4/19/17246732/waco-tragedy-explained-david-koresh-mount-carmel-branch-davidian-cult-25-year-anniversary>; Jeremy Schwartz, “Lessons for media still echo from Waco tragedy,” *Statesman*, April 19, 2018, <https://www.statesman.com/NEWS/20180419/Lessons-for-media-still-echo-from-Waco-tragedy>; “What Really Happened at Waco,” *CBS News*, Jan. 25, 2000, <https://www.cbsnews.com/news/what-really-happened-at-waco/>. The Waco “tragedy” or “massacre,” as it has been referred, was a 51-day siege that pitted federal agencies, including the FBI, against the Branch Davidian religious group. It began when Bureau of Alcohol Tobacco and Firearms agents raided the group’s compound, which was suspected of holding a large number of high-powered weapons. The ensuing siege lasted 51 days until on FBI agents, April 19, 1993, fired tear gas into the compound, eventually leading it to become engulfed in flames, killing more than 70 men, women, and children. According to Burton, the media coverage raised a number of ethical issues, including that media coverage of the Branch Davidian community created a “prevailing narrative [that] presumed that all inhabitants of the [group] were crazy, and that therefore, any violent means used against them would be justified.” Schwartz explained that the press would merely report on what law enforcement said during daily press briefings without necessary accountability and calling out lies by law enforcement. In ensuing months, the Society of Professional Journalists (SPJ) “call[ed] for a new way to cover huge, breaking stories. The group called not just for a more confrontational stance against law enforcement agencies seeking to control the coverage, but greater cooperation among outlets and a more humane approach to covering communities that suddenly find themselves in the media glare.”

<sup>1837</sup> See e.g. Michelle Ward Ghetti, “The Terrorist Is A Star!: Regulating Media Coverage of Publicity-Seeking Crimes,” *Federal Communications Law Journal* 60, no. 3 (2008): 481-534.

However, the *Daily Mail* line of cases provides that if the press lawfully obtains such information and reports it accurately, news organizations may publish it at its discretion. And as *Near* and *Pentagon Papers* demonstrated, the press rarely faces prior restraints before publishing such information. Furthermore, so long as these materials and footage do not violate FCC rules, broadcast stations may also choose to broadcast them, though, like print media, face potential liability for doing so.

#### **4. Editorial Control**

Protections for newsgathering, access, and publication allow the press to not only gather and access information, but also print and/or broadcast it. However, the Supreme Court has recognized that such protections would be ineffective if the press was unable to make editorial decisions about their reporting and coverage.

More specifically, the Supreme Court has held that once journalists and news organizations have acquired information through newsgathering, the government cannot intrude into their editorial decisions. In *Miami Herald v. Tornillo* (1974), the Court held that the First Amendment protects “the editorial control and judgement” of a news organization, including the “choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues

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Ghetti argued that although the First Amendment would protect against much regulation of such crime coverage, “it is possible, though not probable, that in the public interest the FCC could require its licensees to provide balanced coverage of the phenomenon.” She also proposed additional means of limiting press coverage, including “[restricting] media access to the scenes of on-going crimes,” among several other possibilities. A long line of media effects literature addresses whether media coverage leads to copy cat mass shootings, for example. *See e.g.* James N. Meindl and Jonathan W. Ivy, “Mass Shootings: The Role of the Media in Promoting Generalized Imitation,” *American Journal of Public Health* 107, no. 3 (March 2017): 368-70.

and public official — whether fair or unfair.”<sup>1838</sup> The Court found that it was “yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time.” In a concurring opinion, Justice Byron White wrote that the First Amendment

erects a virtually insurmountable barrier between government and the print media so far as government tampering, in advance of publication, with news and editorial content is concerned. . . . Regardless of how beneficent-sounding the purposes of controlling the press might be, we prefer “the power of reason as applied through public discussion.”<sup>1839</sup>

Justice White added that the Court remained “intensely skeptical about those measures that would allow government to insinuate itself into the editorial rooms of [the] press.”

In *Arkansas Educational Television Commission v. Forbes* (1989), the Court made a similar ruling regarding public broadcasting, holding that “[w]hen a public broadcaster exercises editorial discretion in the selection and presentation of its programming, it engages in speech activity.”<sup>1840</sup> Thus, the Court has barred government interference into the decision-making of the press, therefore promoting the press’ ability to carry out its important purposes and functions.

## **5. Effects on the Press, the Police, and their Relationship**

The legal landscape around press coverage and investigations of police, combined with relevant examples, demonstrate key effects of the practices on both parties and the

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<sup>1838</sup> *Miami Herald v. Tornillo*, 418 U.S. 241, 258 (1974).

<sup>1839</sup> *Id.* at 259.

<sup>1840</sup> *Arkansas Educational Television Commission v. Forbes*, 523 U.S. 666, 674 (1998) (citing *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 653 (1994); *Los Angeles v. Preferred Communications, Inc.*, 476 U.S. 488, 494 (1986) (“[Through] ‘original programming or by exercising editorial discretion over which stations or programs to include in its repertoire,’ cable programmers and operators ‘see[k] to communicate messages on a wide variety of topics and in a wide variety of formats.’”). *See also Turner Broadcasting System, Inc.*, 512 U.S. at 653 (explaining that the “First Amendment protects the editorial independence of the press.”); *Turner Broadcasting System, Inc. v. FCC*, 520 U.S. 180 (1997).

public. The legal implications and examples also provide evidence for why the press-police relationship is at times cooperative co-existence, while other times more contentious.

#### **a. Cooperative Co-Existence: Press Coverage of Police**

Cooperative co-existence is most likely when the press simply covers what takes place at a location of police activity, making it more likely that the press is aiming to inform the public, rather than targeting the police with negative coverage. The legal landscape provides evidence of this in that existing protections, rights, and privileges allow the press to cover police activities and matters largely without government or law enforcement interference. Thus, the First Amendment and other areas of law provide the press the greater ability to gather, publish/broadcast, and disseminate news, therefore informing the public.

At the same time, the qualified nature of the protections for the journalistic process ensures that police functions are also not impeded. For example, the press largely cannot record the police if it interferes with law enforcement activities<sup>1841</sup> and cannot enter a crime scene if told by police they are not allowed to do so.<sup>1842</sup> Although not ideal for the press, the legal landscape therefore means that the relationship is less likely to become contentious or blurred when both parties are able to carry out at least a large portion of their purposes and functions.

In some cases, the two parties may even cooperate. For example, WTMJ-TV, Milwaukee, Wisconsin's NBC affiliate, reported on a police investigation into a missing

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<sup>1841</sup> See *Fields*, 862 F.3d at 360; *Turner*, 848 F.3d at 678; *Glik*, 655 F.3d at 84.

<sup>1842</sup> See *Connell*, 733 F.Supp. at 466, 470; *Mazzetti*, 518 F.2d at 781; *Lashinsky*, 81 N.J. at 1.

woman.<sup>1843</sup> WTMJ wrote that its news team had obtained information from the Milwaukee Police Department, demonstrating that the two could not only co-exist, but also cooperate in investigating the woman's disappearance. This case represents one of numerous instances where the press and police cooperatively co-exist in that the press independently covers police activity, but may also aim to serve the public by working with police, reflecting Social Responsibility Theory (SRT).

Ultimately, the qualified nature of the First Amendment protections for the press covering law enforcement is certainly not ideal for the news media and press freedoms, but it allows for cooperative co-existence of the press-police relationship. More specifically, the two parties are able to cooperate and co-exist while still being able to perform their own functions and maintain independence from the intrusion of the other. And as the theoretical framework demonstrated, both may also aim to serve the public in similar ways, ensuring that the public benefits from the important purposes and functions of both parties.

#### **b. Contentious: Press Investigations of Police**

However, where the relationship becomes more contentious is when the press seeks to investigate, criticize or critically report on the police, including on wrongdoing or misconduct. Such coverage and investigations can, and often do, increase contentiousness of the press-police relationship, as well as lead to several effects, some positive and some negative, implicating both parties and the public.

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<sup>1843</sup> "Milwaukee police investigating report of missing woman," *WTMJ-TV*, Feb. 20, 2020, <https://www.tmj4.com/news/local-news/milwaukee-police-investigating-report-of-missing-woman>.

For the police, one consequence of press coverage and investigations is that it can lead the public or government to call for accountability and transparency. For example, reporting on police killings of Black individuals beginning in 2014 prompted calls for police reform, including the implementation of police body-worn cameras (BWCs).<sup>1844</sup> In one case in October 2014, Chicago Police Department (CPD) officers responded to a report that a man with a knife was trying to break into vehicles.<sup>1845</sup> Officers approached 17-year-old Laquan McDonald and told him to drop the knife. McDonald refused and began jogging down a four-lane road. Two officers followed him on foot and in a car for several blocks before Jason Van Dyke, one of the six police officers at the scene, fired his weapon and struck McDonald 16 times.<sup>1846</sup>

Jamie Kalven, an independent journalist based in Chicago, was the first reporter to cover inconsistencies in the CPD's official reports of McDonald's death.<sup>1847</sup> Kalven, through an Illinois FOIA request,<sup>1848</sup> obtained the autopsy report, which detailed the precise number of times Van Dyke shot McDonald, which previously had not been released. *Slate* magazine published Kalven's story on February 15, 2015, detailing how the autopsy told a different story than what had been provided by police officials. Kalven

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<sup>1844</sup> Elliott C. McLaughlin, "We're not seeing more police shootings, just more news coverage," *CNN*, April 21, 2015, <https://www.cnn.com/2015/04/20/us/police-brutality-video-social-media-attitudes/index.html>.

<sup>1845</sup> "Dash-Cam Video Released Showing Laquan McDonald's Fatal Shooting," *NBC 5 Chicago*, Nov. 24, 2015, <http://www.nbcchicago.com/news/local/Police-Release-Disturbing-Video-of-Officer-Fatally-Shooting-Chicago-Teen-352231921.html>. See also Scott Memmel, "Canada Passes Federal Shield Law," *Silva Bulletin* 23, no. 2 (Winter/Spring 2018): 30-33.

<sup>1846</sup> "Dash-Cam Video Released Showing Laquan McDonald's Fatal Shooting."

<sup>1847</sup> Megan Crepeau, "Laquan McDonald reporter won't be forced to testify at Chicago cop's hearing," *Chicago Tribune*, Dec. 13, 2017, <https://www.chicagotribune.com/news/laquan-mcdonald/ct-met-laquan-mcdonald-jamie-kalven-sources-20171212-story.html>.

<sup>1848</sup> Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.* (2010).

reported that the Chicago police’s theory of a “clear case of self-defense” did not align with the physical evidence of the shooting.<sup>1849</sup>

Kalven’s reporting led to several important effects, including that it contributed to charges being filed against Van Dyke.<sup>1850</sup> In October 2018, the officer was found guilty of second-degree murder and 16 counts of aggravated battery.<sup>1851</sup> A second effect was the release of dash camera footage depicting the shooting of McDonald amidst growing calls for accountability by the public. Kalven had learned from an anonymous source that dash camera footage of the shooting existed and was not being released by the CPD.<sup>1852</sup> In November 2015, a Cook County Judge ordered the CPD to release the dash camera footage,<sup>1853</sup> with which the department complied on November 24.<sup>1854</sup> The U.S. Department of Justice (DOJ) later opened an investigation, publishing its findings in January 2017.<sup>1855</sup> Lastly, Kalven’s reporting led to greater calls for police reform and

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<sup>1849</sup> Jaimie Kalven, “Sixteen Shots,” *Slate*, Feb. 10, 2015, <https://perma.cc/X5BN-KQQ6>.

<sup>1850</sup> Nausheen Husain, “Data: Laquan McDonald timeline: The shooting, the video and the fallout,” *Chicago Tribune*, Nov. 24, 2015, <http://www.chicagotribune.com/news/laquan-mcdonald/ct-graphics-laquan-mcdonald-officers-fired-timeline-htmlstory.html>.

<sup>1851</sup> Aamer Madhani, “Chicago Police Officer Jason Van Dyke guilty of second-degree murder in 2014 shooting death of 17-year-old Laquan McDonald,” *USA Today*, Oct. 5, 2018, <https://www.usatoday.com/story/news/2018/10/05/chicago-police-jason-van-dyke-guilty-murder-death-laquan-mcdonald/1525648002/>.

<sup>1852</sup> Kalven, “Sixteen Shots.” Kalven wrote in his February 2015 story that “[a] source close to the case confirmed to me that the dashboard camera in one of the squad cars on the scene captured the incident.”

<sup>1853</sup> *Smith v. Chicago Police Department*, No. 2015 CH 11780 (2015).

<sup>1854</sup> Jason Meisner, Jeremy Gorner, and Steve Schmadeke, “Chicago releases dash-cam video of fatal shooting after cop charged with murder,” *Chicago Tribune*, Nov. 24, 2015, <https://www.chicagotribune.com/news/breaking/ct-chicago-cop-shooting-video-laquan-mcdonald-charges-20151124-story.html>.

<sup>1855</sup> Press Release, Department of Justice, Justice Department Announces Findings of Investigation into Chicago Police Department, Jan. 13, 2017, <https://www.justice.gov/opa/pr/justice-department-announces-findings-investigation-chicago-police-department>; “Investigation of the Chicago Police Department,” *U.S. Department of Justice Civil Rights Division and U.S. Attorney’s Office Northern District of Illinois*, Jan. 13, 2017.

accountability of officers, including through BWCs.<sup>1856</sup> Chicago police summarily expanded their use of BWCs to begin regaining the public's trust.<sup>1857</sup>

However, Kalven's reporting did not come without pushback from Van Dyke. At a December 2017 hearing, Daniel Herbert, an attorney for the officer, alleged that Kalven had received leaked documents from the now-defunct Independent Police Review Authority (IPRA), which obtained protected statements made by Van Dyke following the shooting.<sup>1858</sup> Circuit Court of Cook County Judge Vincent M. Gaughan quashed a subpoena brought by Van Dyke and ruled that Kalven did not have to testify about his reporting.<sup>1859</sup> Gaughan held that the subpoena was "not sufficiently specific" and that Kalven's sources were protected by the Illinois Reporter's Privilege Act, which generally prohibits a court from compelling "any person to disclose the source of any information obtained by a reporter."<sup>1860</sup> Although the decision was hailed by some observers as a First Amendment victory, Kalven told the *Columbia Journalism Review* that the subpoena should have been quashed immediately and that the proceedings affected his credibility. He added that such actions against other reporters would have the same effect.<sup>1861</sup>

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<sup>1856</sup> Kami Chavis Simmons, "Body-mounted Police Cameras: A Primer on Police Accountability vs. Privacy," *Howard Law Journal* 58 (2014): 882-83; "Considering Police Body Cameras," in "Developments in the Law: Policing," *Harvard Law Review* 128, (2014): 1794.

<sup>1857</sup> Annie Sweeney and Toddy Lighty, "Body cams give close-up, disturbing view of fatal police shooting," *Chicago Tribune*, Aug. 12, 2016, <http://www.chicagotribune.com/news/local/breaking/ct-chicago-police-shooting-body-camera-met-20160805-story.html>.

<sup>1858</sup> Andy Grimm, "Journalist Jaimie Kalven Due in Court in Laquan McDonald Case," *Chicago Sun-Times*, Dec. 5, 2017, <https://chicago.suntimes.com/2017/12/5/18368506/journalist-jaimie-kalven-due-in-court-in-laquan-mcdonald-case>.

<sup>1859</sup> *Illinois v. Van Dyke*, No. 17 CR 4286 (2017).

<sup>1860</sup> *Id.* (citing Illinois Reporter's Privilege Act, 735 ILCS 5/8-907 (2001)).

<sup>1861</sup> Jeremy Borden, "Jamie Kalven on why his court win isn't a free-press 'victory'," *Columbia Journalism Review*, Jan. 24, 2018, [https://www.cjr.org/united\\_states\\_project/kalven-laquan-mcdonald-van-dyke-trial.php](https://www.cjr.org/united_states_project/kalven-laquan-mcdonald-van-dyke-trial.php).

Nevertheless, the aftermath of the McDonald shooting demonstrated not only the importance of press investigations into police matters, but also that such reporting carries several effects, including leading to public calls for reform and accountability. Similarly, the Minneapolis *Star Tribune*'s reporting on uninvestigated sexual assaults in the "Denied Justice" series led to greater scrutiny of the police across Minnesota and calls for reform,<sup>1862</sup> among several additional examples from across the country in first part of the 21st century.<sup>1863</sup>

Stemming from calls for reform is another possible effect of the press' coverage of police misconduct or wrongdoing: police departments, officials, and/or officers take different actions to address the concerns and issues raised by the press and public. In the McDonald case, the CPD released dash camera footage and also instituted several

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<sup>1862</sup> "Denied Justice podcast/Postscript: Investigating rape," *Star Tribune*, March 13, 2019, <http://www.startribune.com/follow-the-denied-justice-podcast/488719141/>; "Readers Write: 'Denied Justice,' endorsements of Klobuchar and 'experienced' law enforcers, change to Sunday comics," *Star Tribune*, Oct. 26, 2018, <http://www.startribune.com/readers-write-denied-justice-endorsements-of-klobuchar-and-freeman-change-to-sunday-comics/498732641/>.

<sup>1863</sup> See e.g. Jim Schaefer and Gina Kaufman, "How problem cops stay on Michigan's streets," *Detroit Free Press*, July 9, 2017, <https://www.freep.com/story/news/local/michigan/2017/07/09/how-problem-cops-stay-street/414813001/>; Cody Dulaney, "Fort Myers officers, Lee deputy implicated in criminal inquiry, documents show," *Naples Daily News*, Oct. 16, 2017, <https://www.naplesnews.com/story/news/local/2017/10/16/documents-fort-myers-police-lee-county-sheriff-deputy-under-investigation-followimplicated-corruptio/768490001/>; Michael Hirsh, "The Great Police Violence Cover-Up," *Politico*, Nov. 26, 2014, <https://www.politico.com/magazine/story/2014/11/the-great-police-violence-cover-up-113190>; Karen Pilarski, "Wauwatosa cop who punched teen at Mayfair was suspended three times before, records show," *Milwaukee Journal Sentinel*, June 26, 2018, <https://www.jsonline.com/story/communities/west/news/wauwatosa/2018/06/26/tosa-cop-who-punched-teen-trouble-before/733866002/>; "Investigation reveals about 1,000 police officers lost jobs over sexual misconduct," *Associated Press*, Nov. 1, 2015, <https://www.theguardian.com/us-news/2015/nov/01/police-sexual-assault-investigation>; "AP investigation: Across U.S., police officers abuse confidential databases," *Associated Press*, Sept. 28, 2016, <http://www.chicagotribune.com/news/nationworld/ct-ap-police-database-abuse-20160928-story.html>.

reforms, including adopting BWCs.<sup>1864</sup> Another example arose in July 2017 when Minneapolis Police Officer Mohamed Noor responded to a 911 call of an assault.<sup>1865</sup> But less than 30 minutes later, Noor had allegedly shot and killed not the possible assailant, but the woman who called the police, 40-year-old personal health coach Justine Damond.<sup>1866</sup> The incident prompted questions from officials and the public across the United States and Australia, where Damond was from. However, neither Noor nor Officer Matthew Harrity had turned on their BWCs until after the shooting, despite the Minneapolis Police Department's BWC policy requiring the officers to activate the cameras in a "critical incident," such as "the use of deadly force by or against a Minneapolis police officer."<sup>1867</sup>

In the wake of the shooting, although details remained largely unclear,<sup>1868</sup> the press' reporting, among other factors, contributed to three significant changes amidst

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<sup>1864</sup> Sweeney and Lighty, "Body cams give close-up, disturbing view of fatal police shooting."

<sup>1865</sup> Emanuella Grinberg and Carma Hassan, "Australian woman in Minneapolis fatally shot by police officer," *CNN*, July 17, 2017, <https://www.cnn.com/2017/07/16/us/australian-woman-shot-minneapolis/index.html>; Pat Pheifer, "Justine Damond fatally shot through door of Minneapolis police car, sources say," *Star Tribune*, July 17, 2017, <http://www.startribune.com/australian-woman-justine-damond-fatally-shot-by-minneapolis-police-officer/434782213/>.

<sup>1866</sup> Pheifer, "Justine Damond fatally shot through door of Minneapolis police car, sources say."

<sup>1867</sup> Andy Mannix, "Officer heard loud noise before partner Mohamed Noor shot Justine Damond, Minnesota BCA says," *Star Tribune*, July 19, 2017, <http://www.startribune.com/minneapolis-police-officer-heard-loud-noise-before-partner-mohamed-noor-shot-justine-damond-minnesota-bca-says/435251273/>; Gerry Mullany and Isabella Kwai, "Australian Woman Is Fatally Shot by Minneapolis Police," *New York Times*, July 16, 2017, <https://www.nytimes.com/2017/07/16/us/australian-woman-minneapolis-police-fatal-shooting-body-cameras.html>.

<sup>1868</sup> "Prosecutor needs longer on Minneapolis cop's killing of Justine Damond," *Associated Press*, Dec. 28, 2017, <https://www.twincities.com/2017/12/28/prosecutor-needs-longer-minneapolis-mohamed-noor-shooting-justine-damond/>; "137 days later, responding officers still to be interviewed in Damond killing," *KMSP FOX 9*, Nov. 29, 2017, <http://www.fox9.com/news/137-days-later-responding-officers-still-to-be-interviewed-in-damond-killing>; Tim Nelson and Doualy Xaykaothao, "Woman killed by Mpls. cop was the 911 caller," *MPR News*, July 16, 2017, <https://www.mprnews.org/story/2017/07/16/woman-dead-after-officerinvolved-shooting-in-minneapolis>.

growing public criticism. First, Minneapolis Police Chief Janeé Harteau resigned at the request of Minneapolis Mayor Betsy Hodges as more details were uncovered and reported in the case, including the circumstances around Damond's death and the failure of the officers to activate their BWCs.<sup>1869</sup> Second, on May 1, 2019, Noor was found guilty of third-degree murder and second-degree manslaughter.<sup>1870</sup> Finally, the Minneapolis Police Department changed its BWC policy.<sup>1871</sup> Whereas it previously only included a limited list of situations in which BWCs must be activated, department and city officials changed the policy to include a list of multiple specific situations in which the cameras must be turned on, such as immediately after the officers start responding to a 911 call or when a situation "becomes adversarial."<sup>1872</sup> The policy change also codified disciplinary measures for not activating BWCs, which could include termination. In so doing, the number of videos recorded increased to 55,729 in the month following the policy change, up from 23,876 the previous month.<sup>1873</sup> The number of recorded hours rose from 2,521 to about 9,060. Ultimately, reporting by the press likely played a role in

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<sup>1869</sup> Kent Erdaahl, "Minneapolis police chief resigns in wake of Australian woman's shooting death," *USA Today*, July 21, 2017, <https://www.usatoday.com/story/news/nation-now/2017/07/21/justine-damond-rally-minneapolis-police-shooting/499726001/>.

<sup>1870</sup> Chao Xiong, "Mohamed Noor guilty of third-degree murder, manslaughter in killing of Justine Ruszczuk Damond," *Star Tribune*, May 1, 2019, <http://www.startribune.com/mohamed-noor-guilty-murder-manslaughter-fatal-shooting-justine-ruszczuk-damond-minneapolis-police/509224642/>. For more information on the legal battle around the press and the public viewing and obtaining key evidence from the Noor trial, as well as legal rulings regarding such claims and arguments, see Scott Memmel, "Media Coalition Wins Legal Victory to Access Body Camera Video in Trial of Former Minneapolis Police Officer," *Silva Bulletin* 24, no. 2 (Winter/Spring 2019): 1-7.

<sup>1871</sup> Libor Jany, "Council member: Audit shows body camera use by Minneapolis officers spotty," *Star Tribune*, Sept. 18, 2017, <http://www.startribune.com/council-member-audit-shows-minneapolis-officers-body-camera-use-remains-spotty/445459883/>.

<sup>1872</sup> Mullany and Kwai, "Australian Woman Is Fatally Shot by Minneapolis Police."

<sup>1873</sup> Jany, "Council member: Audit shows body camera use by Minneapolis officers spotty."

these changes by making the public more aware of the details of the shooting. Combined with the effect of leading to calls for police reform and criminal charges being filed against officers in some cases, these effects suggest the importance of press investigations of law enforcement, especially when critical reporting is needed to hold the police accountable.

However, such reporting is still likely to create antagonism with law enforcement and especially the particular officials and officers named in the story. One potential effect of this greater contentiousness of the press-police relationship is that journalists and news organizations can face legal action related to their coverage and investigations, including for invasion of privacy.<sup>1874</sup> Journalists may also be the target of legal action in order to compel the disclosure of their confidential sources, like Kalven in the McDonald case.<sup>1875</sup> Additionally, the press may be the target of defamation lawsuits, such as in May 2018 when Carroll, Iowa police officer Jacob Smith sued the *Carroll Daily Times Herald*. Reporter Jared Strong had “spent at least two months gathering . . . Smith’s personnel records, private messages and other public documents,” as well as conducting interviews, in order to investigate claims that Smith was having inappropriate relationships with teenage girls.”<sup>1876</sup> Strong discovered that the claims were true, including a relationship

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<sup>1874</sup> See notes 1653-1699 above.

<sup>1875</sup> See notes 1858-1861 above.

<sup>1876</sup> Meagan Flynn, “A small-town Iowa newspaper brought down a cop. His failed lawsuit has now put the paper in financial peril,” *Washington Post*, Oct. 10, 2019, <https://www.washingtonpost.com/nation/2019/10/10/iowa-newspaper-cop-investigation-leads-libel-lawsuit-financial-peril/>; Katrina Lamansky, “Iowa newspaper struggling with legal fees after winning libel case against ex-cop,” *WQAD ABC 8*, Oct. 11, 2019, <https://www.wqad.com/article/news/local/drone/8-in-the-air/small-town-newspaper-struggling-with-legal-fees-after-winning-libel-case-against-ex-cop/526-d261ac30-12ea-46e0-991f-af5380eae05f>; Tim Cushing, “Cop’s Bogus Defamation Lawsuit Nearly Puts A Small Iowa Newspaper Out Of Business,” *Techdirt*, Oct. 22, 2019,

that began when the officer met a 17-year-old girl while investigating a potential car burglary.<sup>1877</sup> An Iowa judge ultimately dismissed Smith’s defamation lawsuit, ruling that the articles published by the newspaper were accurate.<sup>1878</sup> However, the \$140,000 in legal expenses not covered by libel insurance put the paper’s future in doubt, as did a decrease in subscribers who doubted or criticized Strong’s reporting. Nevertheless, co-owner and vice president of news Douglas W. Burns remained confident that the *Times Herald* would survive, though he still created a GoFundMe page to “keep it healthy” and continue robust reporting.<sup>1879</sup> Thus, cases like this demonstrate that lawsuits stemming from press investigations of police can, and do, limit journalists’ ability to do their jobs in the face of lengthy and costly legal battles.<sup>1880</sup>

Another negative effect that can arise from the press providing critical reporting of law enforcement is the loss of access and source relationships due to negative reactions to such coverage by police. In several instances, police departments, officials, and officers have pushed against press coverage of misconduct, wrongdoing, or violence, calling it “biased” or “inaccurate.”<sup>1881</sup> Such claims can undermine the press’ credibility if

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<https://www.techdirt.com/articles/20191014/19474843191/cops-bogus-defamation-lawsuit-nearly-puts-small-iowa-newspaper-out-business.shtml>; “A Small Newspaper in Iowa Wins a Libel Suit, but Legal Costs May Force It to Close,” *First Amendment Watch*, Oct. 10, 2019, <https://firstamendmentwatch.org/a-small-newspaper-in-iowa-wins-a-libel-suit-but-legal-costs-may-force-it-to-close/>.

<sup>1877</sup> Flynn, “A small-town Iowa newspaper brought down a cop.”

<sup>1878</sup> “Judge dismisses former officer’s lawsuit against Daily Times Herald,” *Carroll Daily Times Herald*, May 22, 2018, [https://www.carrollspaper.com/news/judge-dismisses-former-officer-s-lawsuit-against-daily-times-herald/article\\_133d2692-e93b-11e9-845b-63d6bc411edf.html](https://www.carrollspaper.com/news/judge-dismisses-former-officer-s-lawsuit-against-daily-times-herald/article_133d2692-e93b-11e9-845b-63d6bc411edf.html).

<sup>1879</sup> Flynn, “A small-town Iowa newspaper brought down a cop.”

<sup>1880</sup> See e.g. Josh Gerstein, “Media’s legal defeats trouble First Amendment advocates,” *Politico*, Sept. 23, 2019, <https://www.politico.com/story/2019/09/23/legal-defeats-media-first-amendment-1508565>.

<sup>1881</sup> See e.g. Nick Budnick, “Portland police union taking PR push nationwide,” *Portland Tribune*, Aug. 29, 2017, <https://pamplinmedia.com/pt/9-news/370375-253482-portland-police-union->

members of the public believe the police’s narrative over that of the news media. Independent journalist Jeremy Borden perhaps put it best when he wrote that the “relationship between the media and police is naturally fraught with tension and a central ethical quandary: Reporters rely on police to serve as sources on crime and other public safety issues, even as they function as a check on police power.”<sup>1882</sup>

However, even if the police limit access or push against press coverage, the legal landscape demonstrated that the press enjoys protections and rights that although not absolute still allow for some degree of access to police, locations where officials and officers work, and police data, records, and information. This ensures that the press can hold police accountable even when the press-police relationship is more contentious.<sup>1883</sup>

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taking-pr-push-nationwide-; Fran Spielman, “Police union accuses ‘media bias’ of painting police shooting as unjustified,” *Chicago Sun-Times*, July 16, 2018, <https://chicago.suntimes.com/2018/7/16/18410050/police-union-accuses-media-bias-of-painting-police-shooting-as-unjustified>; “NBC15 opens up conversation about police and media coverage,” *WMTV NBC 15*, June 20, 2017, <https://www.nbc15.com/video?vid=429795513>; Cinnamon Janzer, “How to deal with obstructive public information officers? Challenge them.,” *Columbia Journalism Review*, May 20, 2019, [https://www.cjr.org/united\\_states\\_project/pio-pushback-block-journalists.php](https://www.cjr.org/united_states_project/pio-pushback-block-journalists.php).

<sup>1882</sup> Jeremy Borden, “‘Cease and desist’: Journalism’s strained relationship with police,” *Columbia Journalism Review*, Oct. 18, 2017, [https://www.cjr.org/united\\_states\\_project/chicago-police-union-reporters.php](https://www.cjr.org/united_states_project/chicago-police-union-reporters.php). Borden noted, however, that “[m]ost law enforcement understand that blaming the messenger is counterproductive, according to Stephen Handelman, the director of the Center on Media, Crime and Justice at John Jay College of Criminal Justice [who also said], ‘If you go behind the headlines of the accusations, . . . you find on a street level that cops and reporters get along with the same sort of wary suspicion they always have. . . . There’s a latent respect on both sides and [the relationship] still operates.’” Borden quoted several other observers who pushed against police criticizing the press for “competent” reporting. For example, Frank Straub, a former police chief who now works at the Washington, DC-based Police Foundation, contended that most police officials understand their relationship with reporters and understood “why there are times when law enforcement feels like they must defend their officers.” However, Straub added that “there have been some instances . . . of unions being ‘over aggressive’ in their attacks on the press when police misconduct is alleged—a counterproductive approach.”

<sup>1883</sup> Borden, “‘Cease and desist.’” Borden reached a similar conclusion, writing, “So long as police accountability is an issue, the relationship between law enforcement and the press will be tense. That doesn’t mean either side should stop talking.”

## 6. Conclusions

The above examples of the press covering and investigating police demonstrated that the press-police relationship is at times cooperative co-existence, while at other times contentious, supporting and building on the findings of the theoretical framework and the history of the press-police relationship. The legal landscape helped explain why this is the case by illustrating how press coverage of police can lead to more cooperative co-existence, while investigations and critical reporting often lead to greater contentiousness.

In terms of cooperative co-existence, constitutional, statutory, and common law provide the press with important protections from government intrusion needed to gather, publish, and disseminate news, including related to law enforcement. The press can therefore fulfill its important goals, purposes, functions, and actions largely free from government and police intrusion, including informing the American public. However, because such protections are not absolute, the legal landscape also allows the police to similarly perform their important functions without press interference, though investigations by the news media, importantly, are still possible. Although such limitations are not ideal for the press because they can limit journalists' ability to inform the public and hold police accountable, they do not entirely preclude these purposes while allowing law enforcement to fulfill its purposes and functions. In some cases, the legal landscape may even allow both parties to cooperate in order to serve the public. In this sense, the press-police relationship therefore includes tradeoffs needed to make it work, explaining the reasons for, and the importance of, cooperative co-existence.

Where this changes and leads the relationship to be more contentious is when the press investigates, criticizes, or critically reports on the police. On one hand, this has the

positive effect of allowing the press to hold law enforcement accountable, sometimes leading to calls for reform and changes to law enforcement. On the other hand, great contentiousness can strain the press-police relationship as police departments, officials, and officers may respond negatively to the coverage, resulting in the possible loss of access and police sources. Journalists may also be the target of legal action or pushback from law enforcement officials and officers. However, the legal landscape ensures that even with greater contentiousness and these negative effects, the press can continue such critical reporting and holding police accountable. Nevertheless, it is important that journalists and news organizations ensure that critical reporting on the police is accurate and fair, relying on journalistic best practices to do so. By taking such actions, the press, at the very least, defend itself from retaliatory lawsuits and actions by law enforcement. But ideally, the press would also minimize contentiousness in its relationship with the police while still performing its important functions, as discussed more in Chapter 6.

But significantly, press coverage of police becomes particularly problematic when the lines become blurred between the two parties, including in media ride-alongs, as revealed by the content analysis. This section, as well as the following discussion of law enforcement arresting, searching, subpoenaing, or surveilling the press, therefore provide key contextual information to the legal landscape around the blurred lines between the press and police, further demonstrating the problematic nature of such practices.

### **B. Interaction #3: Police Arrests, Searches and Seizures, Subpoenas, and Surveillance of the Press**

In much the same way as press investigations can implicate and focus on police, law enforcement investigations can target or otherwise sweep up journalists and news

organizations. And also like press investigations of police, this third type of interaction — law enforcement arrests, searches and seizures, subpoenas, and surveillance of the press — is likely to lead the press-police relationship to be more contentious. The legal landscape around this interaction, combined with contemporary examples, demonstrate how and why this is the case, as well as negative effects that stem from the practices.

### **1. Arrests, Attacks, and Threats of Journalists and Members of the Media by Police**

One way in which police investigations can directly implicate the press is arrests of journalists, a practice dating back to the 18th and 19th centuries and continuing ever since. In connection to arrests, journalists may also face threats and attacks by police, whether they purposely targeted the press or not, such as through tear gas and other chemical agents, rubber bullets, pepper bullets, riot batons, being tackled to the ground, and more. Certainly, such arrests and other police actions may be for matters unrelated to journalistic functions, such as for murder. However, when police arrest members of the news media for, or in the course of, their journalistic functions, significant concerns arise about press freedom and government intrusion.

#### **a. Legal Landscape**

In *Cohen*, the Supreme Court established that “[g]enerally applicable laws do not offend the First Amendment simply because their enforcement against the press has incidental effects on its ability to gather and report the news.”<sup>1884</sup> The result is that the press does not have a special privilege to avoid arrests for laws of general applicability. Additionally, the Supreme Court and lower courts have found that the press does not

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<sup>1884</sup> *Cohen*, 501 U.S. at 669. See also *Pennekamp*, 328 U.S. at 364.

receive a special right of access under the First Amendment to restricted places<sup>1885</sup> and to information,<sup>1886</sup> especially if they are likely to interfere with police activities.<sup>1887</sup> As discussed above, the press may, therefore, be the target of invasion of privacy, trespass, wiretap, and other claims, including when they misrepresent themselves to gain access to otherwise private locations.<sup>1888</sup>

RCFP cautioned that journalist also face arrests if they “take anything from the crime scene” as they would “be charged with theft.”<sup>1889</sup> For example, in August 2007, Tom Lyden, a reporter for KMSP-TV, the Fox affiliate in Minneapolis and St. Paul, Minnesota, noticed a videotape inside the unlocked vehicle of a boxer suspected of organizing dogfights.<sup>1890</sup> Lyden took the tape and used it in preparing a story about dog fighting and a related police investigation before returning it to authorities. He ultimately pled guilty to tampering with a motor vehicle, resulting in a \$500 fine, community service, and a year of probation. Lyden also apologized on the air.<sup>1891</sup>

Arrests largely stem from the “tension [of] allowing the police to do what they need to do to protect public safety and conduct a complete investigation and balancing that with journalists’ right to report.”<sup>1892</sup> For example, in *Matthews*, the Fourth Circuit

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<sup>1885</sup> See notes 1587-1593 above.

<sup>1886</sup> See notes 1703-1721 above.

<sup>1887</sup> See *Mazzetti*, 518 F.2d at 781; *Lashinsky*, 81 N.J. at 1; *Connell*, 733 F.Supp. at 466, 470; *Fields*, 862 F.3d at 360; *Turner*, 848 F.3d at 678; *Glik*, 655 F.3d at 84.

<sup>1888</sup> See notes 1634-1647, 1653-1681 above. *But see Desnick*, 44 F.3d at 1353.

<sup>1889</sup> “Tips for covering protests,” *News Media & The Law* (Spring 2003): 10.

<sup>1890</sup> Neal Justin, “The adventures of Tom Lyden,” *Star Tribune*, March 17, 2008, <https://www.startribune.com/the-adventures-of-tom-lyden/16686151/>; “Taking a plea,” *Broadcasting & Cable*, Aug. 7, 2000, <https://www.nexttv.com/news/taking-plea-87138>.

<sup>1891</sup> Justin, “The adventures of Tom Lyden.”

<sup>1892</sup> Ellyn Angelotti, “During protests, police may balance journalists’ rights with public safety,” *Poynter*, Aug. 14, 2014, <https://www.poynter.org/reporting-editing/2014/during-protests-police-may-balance-journalists-rights-with-public-safety/>.

and District of Maryland weighed the law enforcement interest in protecting children over the press' ability to gather news.<sup>1893</sup> In addition to rulings favoring law enforcement over the press, the result is that the police may impose time, place, and manner restrictions in order to protect their law enforcement purposes and functions, though they cannot do so in a discriminatory way.<sup>1894</sup>

However, if law enforcement arrests a journalist specifically for covering the news, rather than under suspicion of breaking the law, the detained journalist may potentially bring a civil claim under 42 U.S.C. § 1983, known as a "1983 action" against police for interfering with their ability to gather news.<sup>1895</sup> A journalist could file such an action in federal court "[claiming] that by unlawfully interfering with [their] newsgathering," such as by denying access "to a public forum for no good reason," the police violated the journalist's First Amendment rights.<sup>1896</sup> However, such claims may not always be successful because

it can be difficult for a reporter to establish that by interfering with newsgathering, the police violated [their] First Amendment rights. [It can also] be difficult for a reporter to establish that the interference harmed [them]. [They would] have to explain intangibles like timeliness and newsworthiness, which to many lie somewhere between abstractions and inside baseball.<sup>1897</sup>

Nevertheless 1983 actions provide a means for the press to argue for First Amendment rights.

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<sup>1893</sup> *Matthews*, 209 F.3d at 350; *Matthews*, 11 F.Supp.2d at 661–63.

<sup>1894</sup> See notes 1584-1586 above.

<sup>1895</sup> *Ibid.* See also Kelly Weill, "ACLU Sues D.C. Police Over Journalist's Inauguration Arrest," *Daily Beast*, June 23, 2017, <https://www.thedailybeast.com/aclu-sues-dc-police-over-journalists-inauguration>.

<sup>1896</sup> Jonathan Peters, "Journalists in Ferguson: Know your rights," *Columbia Journalism Review*, Aug. 21, 2014, [https://archives.cjr.org/united\\_states\\_project/press\\_rights\\_in\\_ferguson.php](https://archives.cjr.org/united_states_project/press_rights_in_ferguson.php).

<sup>1897</sup> *Ibid.*

From 2017-2019, 52 journalists were arrested while performing reporting activities,<sup>1898</sup> suggesting that such arrests are not rare and have important implications for press purposes and functions. As the literature review revealed, members of the press have been arrested for a variety of reasons under federal and state statutes, including in the course of reporting.<sup>1899</sup> In the course of being arrested, journalists often faced threats and physical attacks by police, including with tear gas and other chemical agents, rubber bullets, pepper bullets, riot batons, being tackled to the ground, and more. As the case study below more fully demonstrates, journalists have faced arrests, attacks, and threats most frequently in connection to protests, demonstrations, and riots, including following the death of George Floyd in police custody in Minneapolis in May 2020.

#### **b. Case Study: Journalists Face Arrests, Attacks, and Threats Amidst Protests and Riots Over the Death of George Floyd and Other Demonstrations**

Journalists have faced arrests, attacks, threats by law enforcement, as well as subsequent misdemeanor and felony charges, most frequently in connection to protests, demonstrations, and riots. Such actions can be traced back at least to the 1968 DNC in Chicago<sup>1900</sup> and have continued in the present, such as in Ferguson, Missouri in 2014<sup>1901</sup>

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<sup>1898</sup> “34 arrests, 44 physical attacks, and more chilling numbers from the U.S. Press Freedom Tracker’s first year,” *U.S. Press Freedom Tracker*, Jan. 17, 2018, <https://pressfreedomtracker.us/blog/34-arrests-44-physical-attacks-and-more-chilling-numbers-us-press-freedom-trackers-first-year/>; “Arrest / Criminal Charge,” *U.S. Press Freedom Tracker*, accessed Feb. 25, 2020, <https://pressfreedomtracker.us/arrest-criminal-charge/?categories=4>.

<sup>1899</sup> See notes 882-899 above.

<sup>1900</sup> See notes 484-491 above.

<sup>1901</sup> James Poniewozik, “It’s Now Guns Vs. Cameras in Ferguson,” *Time*, Aug. 14, 2014, <https://time.com/3111133/ferguson-journalists-arrested-police-media/>; Brian Stelter, “6 more journalists arrested in Ferguson protests,” *CNN*, Aug. 19, 2014, <https://www.cnn.com/2014/08/19/us/ferguson-journalists-arrested/index.html>; Mariah Stewart, “Journalist Arrested During Ferguson Protest Is Convicted,” *HuffPost*, March 18, 2016, [https://www.huffpost.com/entry/mary-moore-journalist-ferguson\\_n\\_56ccda2ce4b0928f5a6d99fc](https://www.huffpost.com/entry/mary-moore-journalist-ferguson_n_56ccda2ce4b0928f5a6d99fc).

and Standing Rock in 2017.<sup>1902</sup> Another significant series of cases of journalists facing arrests, attacks, and threats by police amidst protests and riots came in May and June 2020 after the death of George Floyd, a 46-year-old African American man, while he was in in the custody of Minneapolis Police Department (MPD) officers on May 25, 2020.<sup>1903</sup> Floyd's death prompted widespread protests and riots, with the epicenter being Minneapolis as demonstrations eventually spread across the United States to at least 64 cities and 24 states.<sup>1904</sup> The following case study first provides background of Floyd's death, then focuses on the arrests, attacks, and threats journalists faced from police as representative of the cases from around the country over the course of multiple days and nights. The case study then focuses on lawsuits arising from the incidents, as well as

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At least two dozen journalists were arrested during the protests over the police shooting of teenager Michael Brown, including freelance journalist Mary Moore, who was given a suspected sentence for failure to comply with a police order while filming the protest.

<sup>1902</sup> Alexandra Ellerbeck, "Journalists covering Standing Rock face charges as police arrest protesters," *Committee to Protect Journalists*, Feb. 17, 2017, <https://cpj.org/blog/2017/02/journalists-covering-standing-rock-face-charges-as.php>; "Reporter Jenni Monet arrested at Standing Rock," *U.S. Press Freedom Tracker*, May 25, 2017, <https://pressfreedomtracker.us/all-incidents/reporter-jenni-monet-arrested-standing-rock/>; Amy Dalrymple, "Journalist arrested while reporting on protest found not guilty," *Duluth News Tribune*, June 1, 2018, <https://www.duluthnewstribune.com/news/4454863-journalist-arrested-while-reporting-protest-found-not-guilty>. During the Standing Rock Sioux Tribe's protests over the Dakota Access Pipeline (DAPL) in 2017, at least 10 journalists were arrested and charged for trespass and engaging in riots. Several stated that "police used heavy-handed tactics, ignored or dismissed their press credentials, or arrested them even though they were following dispersal orders or commands to stay behind police lines." Reporter Jenni Monet was found not guilty of criminal trespass because she complied with police orders and did not knowingly break the law.

<sup>1903</sup> Dalton Bennett, Joyce Lee, and Sarah Cahlan, "The death of George Floyd: What video and other records show about his final minutes," *Washington Post*, May 30, 2020, <https://www.washingtonpost.com/nation/2020/05/30/video-timeline-george-floyd-death/?arc404=true>.

*See also* Scott Memmel and Jonathan Anderson, "Special Report: Journalists Face Arrests, Attacks, and Threats by Police Amidst Protests Over the Death of George Floyd," *Silha Bulletin* 25, no. 2 (Winter/Spring 2020): 3-15.

<sup>1904</sup> U.S. Press Freedom Tracker (@uspresstracker), Twitter (June 10, 2020, 11:28 AM), <https://twitter.com/uspresstracker/status/1270754727240691712>.

concerns that police were not properly releasing public records. Finally, the case study notes additional instances of arrests and attacks of journalists arising during protests in recent years, providing additional examples of such incidents and 1983 actions arising from such police actions.

Floyd's death occurred on May 25, 2020 when he was arrested in south Minneapolis for allegedly using a counterfeit \$20 bill.<sup>1905</sup> Surveillance footage showed Floyd being dragged out of his vehicle at the intersection of E. 38th Street and Chicago Avenue.<sup>1906</sup> MPD officer J.A. Kueng then held Floyd's back and officer Thomas Lane held his legs.<sup>1907</sup> Bystander video taken of the scene showed that as Floyd was lying on his stomach, MPD Officer Derek Chauvin "dug his knee into the man's neck," despite Floyd pleading that he was in pain and could not breathe.<sup>1908</sup> Chauvin continued to press his knee down on Floyd's neck for nearly nine minutes, causing Floyd to fall silent and

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<sup>1905</sup> Erin Donaghue and Graham Kates, "Fired Minneapolis officer charged with murder in death of George Floyd," *CBS News*, May 29, 2020, <https://www.cbsnews.com/news/derek-chauvin-arrested-george-floyd-death-third-degree-murder-manslaughter/>. See also Adam Uren, "Minneapolis releases transcript of 911 call that led to George Floyd's arrest," *Bring Me The News*, May 28, 2020, <https://bringmethenews.com/minnesota-news/minneapolis-releases-transcript-of-911-call-that-led-to-george-floyds-arrest>. According to a transcript of the 911 call, the caller also alleged that Floyd "had cigarettes," was "under the influence of something," and was "not acting right."

<sup>1906</sup> Elisha Fieldstadt, "New video shows Minneapolis officers appear to struggle with George Floyd in back of patrol car," *NBC News*, June 1, 2020, <https://www.nbcnews.com/news/us-news/new-video-shows-minneapolis-officers-appear-struggle-george-floyd-back-n1220856>.

<sup>1907</sup> Brian Ries, "8 notable details in the criminal complaint against ex-Minneapolis Police Officer Derek Chauvin," *CNN*, June 2, 2020, <https://www.cnn.com/2020/05/29/us/derek-chauvin-criminal-complaint-trnd/index.html>.

<sup>1908</sup> Lisa Marie Pane, "Police, experts condemn knee restraint used on George Floyd," *Associated Press*, May 28, 2020, <https://apnews.com/0eeb28e505231ce153c60559c921f5d3>. See also Brian Dakss, "Video shows Minneapolis cop with knee on neck of motionless, moaning man who later died," *CBS News*, May 27, 2020, <https://www.cbsnews.com/news/minneapolis-police-george-floyd-died-officer-kneeling-neck-arrest/>; "New video shows another angle of George Floyd being restrained by police," *MSNBC*, May 28, 2020, <https://www.msnbc.com/msnbc/watch/new-video-shows-another-angle-of-george-floyd-being-restrained-by-police-84061253930>.

unresponsive, despite bystanders begging the officers to relent. Officer Tou Thoa, who arrived at the scene with Chauvin, blocked witnesses from interfering. Media outlets later reported that Floyd suffocated and died in police custody, despite officers calling an ambulance, which transported Floyd to the Hennepin County Medical Center.<sup>1909</sup>

Paramedics and emergency room staff “worked for nearly an hour to revive Floyd . . . who arrived with no pulse,” but he was pronounced dead at approximately 9:25 p.m.<sup>1910</sup>

On May 29, 2020, prosecutors released the criminal complaint against Chauvin.<sup>1911</sup> The complaint, filed in the Minnesota Fourth Judicial District Court, included one count for third-degree murder and one count of second-degree manslaughter.<sup>1912</sup> However, on May 31, Minnesota Governor Tim Walz announced that Minnesota Attorney General Keith Ellison would take over the investigation and prosecution of the MPD officers involved in Floyd’s death.<sup>1913</sup> On June 3, Ellison declared that he had upgraded the charges against Chauvin to second-degree murder and had also charged Kueng, Lane, and Thoa with aiding and abetting.<sup>1914</sup> On June 1, the Hennepin County Medical Examiner (ME) released its updated findings, which stated

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<sup>1909</sup> Liz Sawyer, “George Floyd showed no signs of life from time EMS arrived, fire department report says,” *Star Tribune*, May 28, 2020, <https://www.startribune.com/first-responders-worked-nearly-an-hour-to-save-floyd-before-he-was-pronounced-dead/570806682/>.

<sup>1910</sup> *Ibid.*

<sup>1911</sup> Complaint, *Minnesota v. Chauvin*, No. 27-CR-20-12646 (filed May 29, 2020), <https://www.cnn.com/2020/05/29/us/derek-chauvin-criminal-complaint-trnd/index.html>. Three days earlier, the four officers involved in the incident were fired.

<sup>1912</sup> *Ibid.*

<sup>1913</sup> “Minnesota AG Keith Ellison to take lead on George Floyd case,” *KSTP*, May 31, 2020, <https://kstp.com/news/minnesota-attorney-generals-office-to-assist-hennepin-county-attorney-in-george-floyd-case/5747276/>.

<sup>1914</sup> Tommy Wilta, “3 other former Minneapolis police officers involved in George Floyd death charged, in custody,” *KSTP*, June 3, 2020, <https://kstp.com/news/criminal-complaint-3-other-former-minneapolis-police-officers-involved-in-george-floyd-death-charged-in-custody/5750207/>.

that Floyd’s death was a homicide, finding that he died of “cardiopulmonary arrest complicating law enforcement subdual, restraint, and neck compression.”<sup>1915</sup>

Meanwhile, in the days and weeks following Floyd’s death, peaceful and violent protests erupted in Minneapolis, St. Paul, and across the United States. Amidst the protests, journalists faced arrests, attacks, and threats by police. According to the U.S. Press Freedom Tracker, a database of press freedom violations managed by the Freedom of the Press Foundation, the protests led to at least 405 “press freedom incidents,” including 54 “physical attacks” by police, 52 “tear gassings,” 31 “pepper sprayings,” 87 uses of “rubber bullet / projectiles,” and 53 cases of equipment or newsroom damage.<sup>1916</sup> The incidents spanned 64 cities and 34 states, with the most occurring in Minneapolis (66 cases), followed by Washington, D.C. (27 casts), New York City (23 cases), and Los Angeles (19 cases).<sup>1917</sup>

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<sup>1915</sup> Press Release, Hennepin County Medical Examiner, Press Release Report, June 1, 2020, [https://content.govdelivery.com/attachments/MNHENNE/2020/06/01/file\\_attachments/1464238/2020-3700%20Floyd,%20George%20Perry%20Update%206.1.2020.pdf](https://content.govdelivery.com/attachments/MNHENNE/2020/06/01/file_attachments/1464238/2020-3700%20Floyd,%20George%20Perry%20Update%206.1.2020.pdf). The ME further found The report claimed that the “injury occurred” because the “[d]ecedent experienced a cardiopulmonary arrest while being restrained by law enforcement officer(s),” though it also noted that Floyd had other “significant conditions, including “[a]rteriosclerotic and hypertensive heart disease; fentanyl intoxication; [and] recent methamphetamine use.” See also Ivan Pereira, “Independent autopsy finds George Floyd died of homicide by asphyxia,” *ABC News*, June 1, 2020, <https://abcnews.go.com/US/independent-autopsy-george-floyd-findings-announced/story?id=70994827>. An independent autopsy requested by Floyd’s family reached a similar conclusion, namely that he died of “asphyxiation from sustained pressure,” meaning a lack of blood flow to the brain due to compression on his back and neck caused by officers kneeling on him.

<sup>1916</sup> U.S. Press Freedom Tracker (@uspresstracker), Twitter (June 10, 2020, 11:09 AM), <https://twitter.com/uspresstracker/status/1270750066165166080>. The U.S. Press Freedom Tracker is overseen by an advisory committee chaired by the Committee to Protect Journalists (CPJ) and also includes the Reporters Committee for Freedom of the Press (RCFP), among other organizations.

<sup>1917</sup> U.S. Press Freedom Tracker (@uspresstracker), Twitter (June 10, 2020, 11:28 AM), <https://twitter.com/uspresstracker/status/1270754727240691712?s=20>.

The incidents in Minneapolis are representative of the range of actions taken by the police against reporters, photojournalists, and other members of the press, including arrests. For example, on May 29, 2020, CNN reported that correspondent Omar Jimenez, photojournalist Leonel Mendez, and producer Bill Kirkos were arrested by Minnesota State Patrol officers while reporting live from the protests in south Minneapolis.<sup>1918</sup> The arrests were made early in the morning on May 29 despite Jimenez “holding his CNN badge while reporting, identifying himself as a reporter, and telling the officers the crew would move wherever officers needed them to.” During the live report, Jimenez was heard telling the police, “We can move back to where you like. We are live on the air here. . . . Put us back where you want us. We are getting out of your way — wherever you want us (we’ll) get out of your way. . . . We were just getting out of your way when you were advancing through the intersection.”<sup>1919</sup>

Nevertheless, an officer told the crew “You’re under arrest” as another officer “gripped [Jimenez’s] arm . . . then put him in handcuffs.”<sup>1920</sup> In a report following being released, Jimenez said that while he and his crew were detained, everyone “was pretty cordial” and showed “no animosity.”<sup>1921</sup> He added, “There seemed to be a little bit of confusion around what was allowed to happen. . . . The moment before the arrest actually

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<sup>1918</sup> Jason Hanna and Amir Vera, “CNN crew released from police custody after they were arrested live on air in Minneapolis,” *CNN*, May 29, 2020, <https://www.cnn.com/2020/05/29/us/minneapolis-cnn-crew-arrested/index.html>.

<sup>1919</sup> *Ibid.*

<sup>1920</sup> Joe Concha, “CNN reporter, crew arrested on live TV,” *Hill*, May 29, 2020, <https://thehill.com/homenews/media/500075-cnn-reporter-crew-arrested-on-live-tv>.

<sup>1921</sup> Paul Walsh, “CNN reporter arrested on live TV, let go after Gov. Tim Walz intervened,” *Star Tribune*, May 29, 2020, <https://www.startribune.com/cnn-reporter-arrested-on-live-tv-let-go-after-gov-tim-walz-intervened/570860202/>.

happened, we saw one protester, or at least someone was not media, run past us . . . and after that person was apprehended, [police] turned toward us.” Jimenez added that an individual hired to provide security for the crew was also apprehended and released.<sup>1922</sup>

The Minnesota State Patrol alleged in a May 29 tweet that “[i]n the course of clearing the streets and restoring order at Lake Street and Snelling Avenue, four people were arrested by State Patrol troopers, including three members of a CNN crew. The three were released once they were confirmed to be members of the media.”<sup>1923</sup> However, CNN’s Communications Department responded in a tweet that the State Patrol’s claim was “not accurate - our CNN crew identified themselves, on live television, immediately as journalists.”<sup>1924</sup> CNN also pointed out in a separate tweet the Jimenez, who is of Hispanic heritage and identifies as Black, was “arrested while legally covering the protests in Minneapolis” while a “white reporter also on the ground was not.”<sup>1925</sup>

Following the incident, Walz apologized for the arrests and explained that he had worked to ensure the CNN crew members were released immediately.<sup>1926</sup> Nevertheless, the incident prompted significant concern from observers, including University of Minnesota Silha Center Director and Silha Professor of Media Ethics and Law Jane Kirtley, who wrote in a May 29 statement,

The CNN crew, as well as all journalists, have a First Amendment right to cover the protests. Although, like other members of the public, they cannot impede or interfere with legitimate law enforcement activity, they must be allowed to conduct lawful

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<sup>1922</sup> Ibid.

<sup>1923</sup> MN State Patrol (@MnDPS\_MSP), Twitter (May 29, 2020, 7:00 AM), [https://twitter.com/MnDPS\\_MSP/status/1266338580596690949](https://twitter.com/MnDPS_MSP/status/1266338580596690949).

<sup>1924</sup> CNN Communications (@CNNPR), Twitter (May 29, 2020, 7:30 AM), <https://twitter.com/cnnpr/status/1266346228851318784>.

<sup>1925</sup> CNN (@CNN), Twitter (May 29, 2020, 5:59 AM), <https://twitter.com/CNN/status/1266323257520766976?s=20>.

<sup>1926</sup> Ibid.

newsgathering. The seizure of these journalists and their equipment violates not only the First Amendment, but the federal Privacy Protection Act of 1980, which shields journalists from unlawful seizure of their work product and documentary materials.<sup>1927</sup>

The Reporters Committee for Freedom of the Press (RCFP),<sup>1928</sup> and the Society of Professional Journalists (SPJ),<sup>1929</sup> among several other organizations and observers, also raised concerns with the arrest of the CNN television crew.

In a May 29 press conference, Walz again apologized for the arrests. He said,

I take full responsibility. There is absolutely no reason something like this should happen. Calls were made immediately. This is a very public apology to that team. . . . The issue here is trust. The community that's down there that's terrorized by this, if they see a reporter being arrested, their assumption is it's because something's going to happen that they don't want to be seen. . . . We will continue to strive to make sure that that accessibility is maintained. Not only that, the protection and security and safety of the journalists covering this is a top priority, not because it is a nice thing to do, because it is a key component of how we fix this. Sunshine, disinfectant[,] and seeing what's happening has to be done.<sup>1930</sup>

The same day, Walz signed Executive Order 20-65, which “implement[ed] a temporary nighttime curfew.” The order exempted “members of the media,” among others.<sup>1931</sup>

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<sup>1927</sup> Press Release, Silha Center for the Study of Media Ethics and Law, The Silha Center for the Study of Media Ethics and Law condemns the arrest of Omar Jimenez, May 29, 2020, <https://hsjmc.umn.edu/news/2020-05-29-silha-center-study-media-ethics-and-law-condemns-arrest-omar-jimenez>. Kirtley continued, “It is less than ten years ago that the cities of Minneapolis and St. Paul settled a lawsuit brought by Democracy Now! journalist Amy Goodman and her colleagues after violating their constitutional rights by arresting them during their reporting on the Republican National Convention in 2008. It is disheartening that the lesson that government cannot interfere with newsgathering has been so quickly forgotten.” See also Patrick File, “Dozens of Journalists Arrested at Republican National Convention in St. Paul,” *Silha Bulletin* 14, no. 1 (Fall 2008): 1-4.

<sup>1928</sup> Press Release, Reporters Committee for Freedom of the Press, Reporters Committee condemns arrest of CNN crew in Minneapolis, May 29, 2020, <https://www.rcfp.org/cnn-crew-arrest-statement/>.

<sup>1929</sup> Press Release, Society of Professional Journalists, SPJ demands answers on CNN crew's on-air arrest, May 29, 2020, <https://www.spj.org/news.asp?REF=1730>.

<sup>1930</sup> Louis Nelson, “‘That is unacceptable’: Minnesota governor apologizes for arrest of CNN news crew,” *Politico*, May 29, 2020, <https://www.politico.com/news/2020/05/29/cnn-reporters-covering-minnesota-riots-arrested-live-on-air-288575>.

<sup>1931</sup> Press Release, Office of Governor Tim Walz & Lt. Governor Peggy Flanagan, Governor Walz Implements Temporary Nighttime Curfew, May 29, 2020, <https://mn.gov/governor/news/#/detail/appId/1/id/434117>.

Despite the exemption for the press, as well as Walz's apologies, the following day, Tom Aviles, a veteran photographer at WCCO, the Twin Cities' CBS affiliate, was arrested by the Minnesota State Patrol when covering the ongoing protests over the death of Floyd.<sup>1932</sup> After being hit by a rubber bullet, Aviles recorded his encounter with the police as he attempted to leave the area he was covering. As a line of officers walked down the road towards Aviles and WCCO producer Joan Gilbertson, an officer could be heard in the footage repeatedly yelling, "Get back!" and "Get out of here." Aviles was summarily forced onto the ground when an officer said, "You are under arrest." While on the ground, Aviles repeated "I'm not fighting."<sup>1933</sup>

Although Aviles was released later the same night from police custody,<sup>1934</sup> the move prompted renewed concern from observers, including University of Minnesota Hubbard School of Journalism and Mass Communication director Elisia Cohen, who tweeted, "I condemn the arrest of a @WCCO reporter. Reporters are exempt from the curfew and have a right to lawfully document the police action."<sup>1935</sup>

The arrests of the CNN television crew and Aviles marked only two of numerous incidents between journalists and police in Minneapolis during the protests over Floyd's death, which included threats and physical attacks of journalists by police using tear gas,

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<sup>1932</sup> "WCCO Photojournalist Tom Aviles Arrested In South Minneapolis," *WCCO*, May 30, 2020, <https://minnesota.cbslocal.com/2020/05/30/wcco-photojournalist-tom-aviles-arrested-in-south-minneapolis/>.

<sup>1933</sup> Ibid.

<sup>1934</sup> Caroline Linton, "Photographer with CBS Minnesota released from custody after being struck with rubber bullet and arrested," *CBS News*, May 31, 2020, <https://www.cbsnews.com/news/tom-aviles-arrested-wcco-photographer-arrested-and-shot-with-rubber-bullet-2020-05-30/>.

<sup>1935</sup> Dr. Elisia Cohen (@ECohen\_UMN), Twitter (May 30, 2020, 9:37 PM), [https://twitter.com/ECohen\\_UMN/status/1266921642896351238](https://twitter.com/ECohen_UMN/status/1266921642896351238).

rubber bullets, pepper bullets, riot batons, tackling journalists to the ground, and more (Table 5.2).<sup>1936</sup>

Date	Incident
May 26	Minneapolis <i>Star Tribune</i> reporter Andy Mannix, in the course of reporting on the Minneapolis protests stemming from the killing of George Floyd, tweeted that he had been “shot . . . in the thigh” by a rubber bullet. <sup>1937</sup>
	Niko Georgiades, a reporter at Unicorn Riot, a nonprofit media organization dedicated to “exposing root causes of dynamic social and environmental issues,” was hit with a projectile shot by police. <sup>1938</sup>
May 27	Freelance journalist Jared Goyette was struck in the eye by an unknown object and tear gassed by police. <sup>1939</sup>
	Dymanh Chhoun, a photojournalist at WCCO, was hit with tear gas. <sup>1940</sup>
	<i>Minnesota Reformer</i> reporter Ricardo Lopez was “physically yanked away” by a police officer who wanted the media to move away from the advancing police line. <i>Reformer</i> reporter Max Nesterak was struck in the chest by a rubber bullet. <sup>1941</sup>
Night of May 28 / May 29	<i>Des Moines Register</i> reporter Tyler J. Davis was “hit with chemical irritants.” Davis wrote that as he “pulled out [his] camera to record the [protests],” an officer “redirected his chemical spray” toward Davis. <sup>1942</sup>
	<i>Star Tribune</i> columnist Jennifer Brooks was standing with a group of other media members at a light rail station when the driver of a police car indiscriminately pepper sprayed Brooks, other media members, and nearby protesters. <sup>1943</sup>

<sup>1936</sup> “List of Incidents Involving Police and Journalists During Civil Unrest in Minneapolis, MN,” *Silha Center for the Study of Media Ethics and Law*, June 3, 2020, <https://hsjmc.umn.edu/news/2020-06-02-list-incidents-involving-police-and-journalists-during-civil-unrest-minneapolis-mn>.

<sup>1937</sup> Andy Mannix (@AndrewMannix), Twitter (May 26, 2020, 8:00 PM), <https://twitter.com/andrewmannix/status/1265447846079315973>.

<sup>1938</sup> “Journalists struck by projectiles while covering Minneapolis protest,” *U.S. Press Freedom Tracker*, May 26, 2020, <https://pressfreedomtracker.us/all-incidents/journalists-struck-projectiles-while-covering-minneapolis-protest/>.

<sup>1939</sup> “Journalists hit with ‘less lethal’ rounds during second day of Minnesota protests,” *U.S. Press Freedom Tracker*, May 27, 2020, <https://pressfreedomtracker.us/all-incidents/journalists-hit-less-lethal-rounds-during-second-day-minnesota-protests/>.

<sup>1940</sup> Dymanh Chhoun (@Dymanh), Twitter (May 27, 2020, 8:32 PM), <https://twitter.com/Dymanh/status/1265818108339650560>.

<sup>1941</sup> “Journalists hit with ‘less lethal’ rounds during second day of Minnesota protests.”

<sup>1942</sup> Tyler J. Davis, “What one Des Moines Register reporter saw during George Floyd protests — until he was temporarily blinded by pepper spray,” *Des Moines Register*, May 29, 2020, <https://www.desmoinesregister.com/story/opinion/2020/05/29/george-floyd-minneapolis-protests-leave-usa-today-reporter-hit-chemical-spray/5285067002/>.

<sup>1943</sup> Jennifer Brooks (@stribrooks), Twitter (May 28, 2020, 8:57 PM), <https://twitter.com/stribrooks/status/1266186985041022976>.

Night of May 29 / May 30	Samara Freemark, the senior producer of “In the Dark,” an investigative podcast by <i>APM Reports</i> , tweeted that “an officer ran up and pointed some kind of weapon (tear gas? Projectile?)” at herself, Minnesota Public Radio (MPR) reporter Matt Sepic, “In the Dark” lead reporter Madeleine Baran, and <i>APM Reports</i> reporter Parker Yesko. <sup>1944</sup>
	Unicorn Riot reported that police were “no longer respecting freedom of press in Minneapolis,” explaining that “SWAT just forced our reporting team into a business and slammed the door.” <sup>1945</sup>
	Freelance photojournalist Linda Tirado said that she permanently lost vision in one eye after she was hit with a rubber bullet while covering the protests in Minneapolis.
	Associated Press (AP) photojournalist John Minchillo was shot with a less-lethal projectile. <sup>1946</sup>
	Photojournalist Lucas Jackson was pepper sprayed in the face and also shot in the back with a less-lethal projectile. <sup>1947</sup>
Night of May 30 / May 31	Ryan Raiche, an investigative reporter at KSTP, the Twin Cities’ ABC affiliate, his photographer, and producer “were with a group of media and thought we were in a safe spot. We kept saying we’re media. Police tear gassed and pepper sprayed the entire group. Everyone ran. It was insane. It happened so fast.” <sup>1948</sup>
	NBC News staff producer Ed Ou, producer, director, and cinematographer Mike Shum, and photojournalist Peter Van Agtmael were among other journalists hit with “peppery spray, concussion grenades, batons, and tear gas by the Minnesota state patrol.” <sup>1949</sup>
	FOX 9 reporter Christina Palladino and her crew “identified themselves as media,” but “were still shot at twice by MPD” with the rubber bullets hitting the windshield of their vehicle. <sup>1950</sup>
	<i>Los Angeles Times</i> reporter Molly Hennessy-Fiske reported that although she and approximately 12 additional television and print journalists identified themselves as members of the news media, the Minnesota State Patrol “fired tear gas canisters . . . at point blank range.” <sup>1951</sup>

<sup>1944</sup> Samara Freemark (@sfreemark), Twitter (May 30, 2020, 1:01 AM), <https://twitter.com/sfreemark/status/1266610636173324288>.

<sup>1945</sup> Unicorn Riot (@UR\_Ninja), Twitter (May 30, 2020, 3:04 AM), [https://twitter.com/UR\\_Ninja/status/1266641683162300416](https://twitter.com/UR_Ninja/status/1266641683162300416).

<sup>1946</sup> john minchillo (@johnminchillo), Twitter (May 31, 2020, 10:31 AM), <https://twitter.com/johnminchillo/status/1267116569223725059>.

<sup>1947</sup> Lucas Jackson (@Lucas\_Jackson\_), Twitter (May 30, 2020, 4:43 AM), [https://twitter.com/Lucas\\_Jackson\\_/status/1266666583012892672](https://twitter.com/Lucas_Jackson_/status/1266666583012892672).

<sup>1948</sup> Ryan Raiche (@ryanraiche), Twitter (May 30, 2020, 9:26 PM), <https://twitter.com/ryanraiche/status/1266919035033264130>.

<sup>1949</sup> Ed Ou (@edouphoto), Twitter (June 2, 2020, 6:16 PM), <https://twitter.com/edouphoto/status/1267958349477249024>.

<sup>1950</sup> Dawn Mitchell (@DawnAtFOX9), Twitter (May 30, 2020, 8:53 PM), <https://twitter.com/dawnatfox9/status/1266910636916781060>.

<sup>1951</sup> Molly Hennessy-Fiske (@mollyhf), Twitter (May 30, 2020, 8:56 PM), <https://twitter.com/mollyhf/status/1266911382613692422>.

	NBC News social media strategist Micah Grimes tweeted that the Minnesota State Patrol or National Guard “aimed and intentionally shot me in side with canister with green powder.” <sup>1952</sup>
	An unidentified cameraperson with a “Press” written on his helmet was hit by a projectile fired by police as he ran to safety. <sup>1953</sup>
	CBS News correspondent Michael George tweeted that “Minneapolis police fired on our CBS News crew with rubber bullets” although the crew was “wearing credentials and had cameras out.” <sup>1954</sup>
	Police “raided the gas station” where <i>Vice News</i> correspondent Michael Anthony Adams and other journalists “were sheltering at” and summarily tackled journalists and used pepper spray on others. <sup>1955</sup>
	A police officer drew and pointed a weapon at <i>FiveThirtyEight</i> reporter Maggie Koerth and Goyette despite them repeating that they were members of the news media. <sup>1956</sup>
	<i>Star Tribune</i> reporter Chao Xiong tweeted that “[o]fficers of some type just shot some type of rounds (rubber bullets)” at the vehicle in which he and <i>Star Tribune</i> reporter Ryan Faircloth were “driving near Lake St.” <sup>1957</sup> Faircloth tweeted that police or members of the Minnesota National Guard “just blew my passenger window out with live rounds as I tried to turn left and get out of the area.” <sup>1958</sup>
	<i>Star Tribune</i> reporter Chris Serres was also hit by a rubber bullet. <sup>1959</sup>
	Xiong also reported that he was with <i>Star Tribune</i> reporter Elizabeth Sawyer, as well as “2 Kurdish journalists and 1 Japanese journalists” when officers “told us to go home.” <sup>1960</sup> Similarly, <i>Star Tribune</i> reporter Mara Klecker tweeted that “St. Paul Police also told media to go home tonight. I showed my press badge and was told ‘doesn’t matter.’” <sup>1961</sup>

<sup>1952</sup> Micah Grimes (@MicahGrimes), Twitter (May 29, 2020, 8:09 PM), <https://twitter.com/MicahGrimes/status/1266537250998956032>.

<sup>1953</sup> Timothy Burke (@bubbaprog), Twitter (May 30, 2020, 9:01 PM), <https://twitter.com/bubbaprog/status/1266912774833287169>.

<sup>1954</sup> Michael George (@MikeGeorgeCBS), Twitter (May 30, 2020, 9:28 PM), <https://twitter.com/mikegeorgecbs/status/1266919447970942986>.

<sup>1955</sup> Michael Anthony Adams (@MichaelAdams317), Twitter (May 30, 2020 11:11 PM), <https://twitter.com/MichaelAdams317/status/1266945268567678976>.

<sup>1956</sup> Marc Tracy and Rachel Abrams, “Police Target Journalists as Trump Blames ‘Lamestream Media’ for Protests,” *New York Times*, June 1, 2020, <https://www.nytimes.com/2020/06/01/business/media/reporters-protests-george-floyd.html?>.

<sup>1957</sup> Chao Xiong (@ChaoStrib), Twitter (May 30, 2020, 11:18 PM), <https://twitter.com/ChaoStrib/status/1266947047162359811>.

<sup>1958</sup> Ryan Faircloth (@RyanFaircloth), Twitter (May 31, 2020, 12:48 AM), <https://twitter.com/RyanFaircloth/status/1266969731241775104>.

<sup>1959</sup> Chris Serres (@ChrisSerres), Twitter (May 31, 2020, 9:18 AM), <https://twitter.com/chrisserres/status/1267098060938776581>.

<sup>1960</sup> Chao Xiong (@ChaoStrib), Twitter (May 31, 2020, 12:06 AM), <https://twitter.com/ChaoStrib/status/1266959110265856000>.

<sup>1961</sup> Mara Klecker (@MaraKlecker), Twitter (May 31, 2020, 12:25 AM), <https://twitter.com/MaraKlecker/status/1266963871861964800>.

	Advancing police shot tear gas towards protestors, MSNBC host Ali Velshi, and his MSNBC crew. <sup>1962</sup>
	Reuters producer Julio-César Chávez was shot in the arm and neck “with rubber bullets in the middle of covering the Minneapolis protests.” <sup>1963</sup>
	Simon Moya-Smith, a contributing writer for NBC news, “was pepper-sprayed then arrested . . . by Minneapolis PD even after identifying myself as a reporter MULTIPLE times.” <sup>1964</sup>
	<i>Star Tribune</i> staff photographer Anthony Soufflé tweeted his thanks to several individuals who “came to my and several other journalists aid when we were tear gassed yesterday.” <sup>1965</sup>
	Reporter Andrew Buncombe of the <i>Independent</i> in the United Kingdom (UK), tweeted that the “[i]nternational media [was] being targeted with tear gas [and] non-lethal rounds.” <sup>1966</sup>
	Radio-Canada journalist Philippe Leblanc was shoved by police as officers arrived at the scene of a protest in a Minneapolis transit bus. <sup>1967</sup>
	Canadian Broadcasting Corporation (CBC) senior correspondent Susan Ormiston was struck in the shoulder with a rubber bullet. <sup>1968</sup>
	Swedish, Norwegian, and French journalists faced rubber bullets fired by police. <sup>1969</sup>

<sup>1962</sup> “‘There was no warning whatsoever’: Police shoot tear gas toward protestors, MSNBC crew,” *MSNBC*, May 30, 2020, <https://www.msnbc.com/msnbc/watch/-there-was-no-warning-whatsoever-police-shoot-tear-gas-toward-protesters-msnbc-crew-84141125529>.

<sup>1963</sup> “Reuters camera crew hit by rubber bullets as more journalists attacked at U.S. protests,” *Reuters*, May 31, 2020, <https://www.reuters.com/article/us-minneapolis-police-protest-update/reuters-cameraman-hit-by-rubber-bullets-as-police-disperse-protesters-idUSKBN237050>.

<sup>1964</sup> Simon Moya-Smith (@SimonMoyaSmith), Twitter (May 31, 2020, 6:23 AM), <https://twitter.com/SimonMoyaSmith/status/1267054164774916096>. Moya-Smith said that an officer checked his press credential while another told him to “Roll on your side, Mr. Journalist.” A third officer “loaded” Moya-Smith into a police car, when he saw his “badge and shrug[ged].”

<sup>1965</sup> Anthony Soufflé (@AnthonySouffle), Twitter (May 31, 2020, 10:57 AM), <https://twitter.com/AnthonySouffle/status/1267122936105893892>.

<sup>1966</sup> Andrew Buncombe (@AndrewBuncombe), Twitter (May 30, 2020, 8:54 PM), <https://twitter.com/AndrewBuncombe/status/1266911003356381184>.

<sup>1967</sup> Philippe Leblanc (@phil\_leblancSRC), Twitter (May 30, 2020, 8:40 PM), [https://twitter.com/phil\\_leblancSRC/status/1266907398003924992](https://twitter.com/phil_leblancSRC/status/1266907398003924992).

<sup>1968</sup> “United States: Journalist Susan Ormiston was shot in the shoulder with a rubber bullet while covering protests in the USA,” *Coalition For Women In Journalism*, June 2, 2020, <https://womeninjournalism.org/cfwij-press-statements/usa-journalist-susan-ormiston-was-shot-in-the-shoulder-with-a-rubber-bullet-while-covering-protests-in-the-usa>.

<sup>1969</sup> David Bauder, “Fox News reporter attacked, chased from demonstration,” *Associated Press*, May 30, 2020, [https://www.washingtonpost.com/national/fox-news-reporter-attacked-chased-from-demonstration/2020/05/30/c35b1d58-a2af-11ea-be06-af5514ee0385\\_story.html](https://www.washingtonpost.com/national/fox-news-reporter-attacked-chased-from-demonstration/2020/05/30/c35b1d58-a2af-11ea-be06-af5514ee0385_story.html); Nick Waters, “US Law Enforcement Are Deliberately Targeting Journalists During George Floyd Protests,” *Bellingcat*, May 31, 2020, <https://www.bellingcat.com/news/americas/2020/05/31/us-law-enforcement-are-deliberately>; “French television correspondent arrested for curfew violation in Minneapolis,” *U.S. Press Freedom Tracker*, May 30, 2020, <https://pressfreedomtracker.us/all-incidents/french-television-correspondent-arrested-curfew-violation-minneapolis/>.

	Tim Arvier, a journalist at <i>Nine News</i> in Australia, his cameraman, and their security were “detained and searched by #Minneapolis Police.” <sup>1970</sup>
	Freelance photojournalist Hossein Fatemi and other journalists nearby were hit with tear gas even though they “told the police [they] were from the press.” <sup>1971</sup>
	A <i>Deutsche Welle (DW) News</i> reporter and his camera operator “[were] shot at [overnight] with projectiles by Minneapolis police and threatened with arrest while covering the protests sparked by the death of George Floyd.” <sup>1972</sup>
	European Pressphoto Agency (EPA) photojournalist Tannen Maury and Minneapolis freelance photojournalist Craig Lassig were two of several photojournalists arrested by police for “violating Minneapolis curfew, despite [the] press exemption.” <sup>1973</sup>
	Megan Palmer, a reporter at the <i>Minnesota Daily</i> , the student newspaper at the University of Minnesota, tweeted that “the police pulled a weapon on me twice tonight, once for doing my job and once for trying to get home.” <sup>1974</sup>
	Minnesota State Patrol and other law enforcement agencies slashed the tires of dozens of vehicles, including those belonging to members of the press. <sup>1975</sup>
	On May 31, Walz once again apologized to the journalists and news organizations targeted by the police. However, he added, “People picked up with guns [claimed] to be reporters during the confusion of all of this,” perhaps providing justification for police actions toward journalists. <sup>1976</sup>

<sup>1970</sup> Alana Mazzoni and Rachel Sharp, “Channel 9 reporter Tim Arvier and his cameraman are ‘handcuffed, searched and detained’ in Minneapolis while covering race riots,” *Daily Mail*, May 31, 2020, <https://www.dailymail.co.uk/news/article-8373567/Channel-9-reporter-Tim-Arvier-cameraman-handcuffed-Minneapolis-covering-race-riots.html>.

<sup>1971</sup> Hossein Fatemi (@hosseinfatemii), Twitter (May 30, 2020, 9:28 PM), <https://twitter.com/hosseinfatemii/status/1266919473111588865>.

<sup>1972</sup> DW News (@dwnews), Twitter (May 31, 2020, 10:45 AM), <https://twitter.com/dwnews/status/1267119897806397442>.

<sup>1973</sup> “European Pressphoto Agency photojournalist arrested during Minneapolis protests,” *U.S. Press Freedom Tracker*, May 30, 2020, <https://pressfreedomtracker.us/all-incidents/european-pressphoto-agency-photojournalist-arrested-during-minneapolis-protests/>.

<sup>1974</sup> Megan Palmer (@megmegpalm), Twitter (May 30, 2020, 10:50 PM), <https://twitter.com/megmegpalm/status/1266940151151955973?s=20>.

<sup>1975</sup> Bill Chappell, “Police Officers Slashed Car Tires During Minneapolis Protests, Police Agencies Say,” *National Public Radio*, June 9, 2020, <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/06/09/873110812/police-officers-slashed-car-tires-during-minneapolis-protests-police-agencies-sa>; Christopher Brito, “Minnesota state troopers admit ‘strategically’ deflating tires during George Floyd protests,” *CBS News*, June 9, 2020, <https://www.cbsnews.com/news/minnesota-state-patrol-deflated-tires-protests-george-floyd-black-lives-matter/>.

<sup>1976</sup> “Minnesota Governor Holds News Conference on George Floyd Protests,” *NBC News*, May 31, 2020, <https://www.youtube.com/watch?v=DK-Ua2TICHw>.

Night of May 31 / June 1	WCCO reporter Mike Max and his cameraperson “had to run for cover” while officers shot rubber bullets and tear gas in the area. <sup>1977</sup>
	<i>Vice News</i> deputy D.C. bureau chief Todd Zwillich was “hit in the head with a rubber bullet,” even though his “press credentials [were] out.” <sup>1978</sup>
	<i>The Washington Post</i> reported that “Somali youth vetted journalists who approached on Google, matching their publications with previous work online before they would agree to speak.” <sup>1979</sup>
Night of June 1 / June 2	WCCO reporter John Lauritsen tweeted that as the Minnesota State patrol “move[d] in,” he was “caught inside by protesters.” Lauritsen said he was “[d]etained but released after [he] showed [his] credentials.”

Table 5.2 Incidents Involving Police and Journalists During Civil Unrest in Minnesota<sup>1980</sup>

On June 1, the Minnesota State Patrol notified journalists that it was reviewing the incidents involving journalists and police in Minneapolis, as well as reviewing its training protocols “to prevent similar interactions.”<sup>1981</sup> Additionally, the Minnesota Department of Public Safety issued new guidance to journalists that they should wear visible credentials that can be seen from four feet away, among other provisions.<sup>1982</sup> Nevertheless, law enforcement’s actions continued to raise concerns from members of the news media and press advocates.<sup>1983</sup>

<sup>1977</sup> Cathy Wurzer (@CathyWurzer), Twitter (May 31, 2020, 8:47 PM), <https://twitter.com/CathyWurzer/status/1267271631233323008>.

<sup>1978</sup> Tom Zwillich (@toddzwillich), Twitter (May 31, 2020, 10:15 PM), <https://twitter.com/toddzwillich/status/1267293699630866433>.

<sup>1979</sup> Holly Bailey, Robert Klemko, Jared Goyette, and Tarkor Zehn, “Minneapolis has become a war zone,” *Washington Post*, May 31, 2020, [https://www.washingtonpost.com/national/minneapolis-has-become-a-war-zone/2020/05/31/321b5836-a380-11ea-bb20-ebf0921f3bbd\\_story.html](https://www.washingtonpost.com/national/minneapolis-has-become-a-war-zone/2020/05/31/321b5836-a380-11ea-bb20-ebf0921f3bbd_story.html).

<sup>1980</sup> “List of Incidents Involving Police and Journalists During Civil Unrest in Minneapolis, MN.”

<sup>1981</sup> Mara Klecker and Torey Van Oot, “Gov. Tim Walz says arrests, injuries to media members ‘unacceptable,’” *Star Tribune*, June 1, 2020, <https://www.startribune.com/walz-says-arrests-injuries-to-media-members-unacceptable/570912002/>.

<sup>1982</sup> Ibid.

<sup>1983</sup> See e.g. Chris Snowbeck, “MNSPJ Denounces Police Treatment of Journalists,” *Minnesota Society of Professional Journalists*, May 31, 2020, <http://www.mnspj.org/2020/05/31/mn-spj-denounces-police-treatment-of-journalists/>.

Although similar arrests, attacks, and threats were directed at numerous journalists by police amidst protests around the United States in ensuing days and weeks,<sup>1984</sup> the cases in Minneapolis provide a good case study of how police can, and have, intentionally or unintentionally targeted journalists amidst protests and riots. Additionally, the incidents in Minneapolis provide a good case study in that they prompted at least two lawsuits against law enforcement in Minnesota.

The first lawsuit was filed on June 2, 2020 in the U.S. District Court for the District of Minnesota by the American Civil Liberties Union (ACLU) on behalf of freelance journalist Jared Goyette and “other similarly situated individuals,” namely several of the journalists included in Table 5.2.<sup>1985</sup> The class-action complaint first argued that the defendants — The City of Minneapolis, Minneapolis Chief of Police Medaria Arradondo, Minneapolis Police Lieutenant Robert Kroll, Minnesota Department of Public Safety Commissioner John Harrington, and Minnesota State Patrol Colonel Matthew Langer, in their official capacities<sup>1986</sup> — each had 1) “a custom or policy of deploying chemical agents and injurious, less-lethal ballistics against members of the news media,”<sup>1987</sup> 2) “a custom or policy of failing to provide warnings and/or dispersal orders before using chemical agents and injurious, less-lethal ballistics against protesters

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<sup>1984</sup> “Press Freedom in Crisis,” *U.S. Press Freedom Tracker*, accessed June 11, 2020, <https://pressfreedomtracker.us/george-floyd-protests/>.

<sup>1985</sup> Complaint, *Goyette v. City of Minneapolis*, No. 0:20-cv-01302-WMW-DTS (D. Minn. filed June 2, 2020), [https://www.aclu-mn.org/sites/default/files/goyette\\_-\\_complaint-c.pdf](https://www.aclu-mn.org/sites/default/files/goyette_-_complaint-c.pdf).

<sup>1986</sup> Two unnamed police officers were also included as defendants.

<sup>1987</sup> *Id.* at ¶ 72.

and members of the news media,”<sup>1988</sup> and 3) “a custom or policy of arresting or detaining news media lawfully reporting on protests and other First Amendment . . . activity.”<sup>1989</sup>

The complaint provided several examples, including the 2008 arrest of *Democracy Now!* Journalist Amy Goodman during the Republican National Convention (RNC) in St. Paul, Minnesota and the 2017 arrests of *City Pages* journalist Susan Du and *Minneapolis Daily* city editor David Clarey during the protests following the fatal shooting of Philando Castile by Jeronimo Yanez, a Hispanic-American police officer in St. Anthony, Minnesota.<sup>1990</sup>

Second, the complaint argued that the defendants had “a history of deficient or non-existent training with respect to the Constitution in general and Plaintiff’s First Amendment rights in particular.”<sup>1991</sup> The complaint provided the example of Minneapolis Police Policy and Procedure Manual Section 6-200, which provides that “MPD employees shall not unnecessarily obstruct news media personnel from performing their duties at emergency scenes,” but does not provide any “instruction or guidance on how to identify the media or ensure their First Amendment rights are respected.”<sup>1992</sup> The complaint added that the MPD “has not investigated, disciplined, or suspended any officer involved in any of the unlawful conduct described in this Complaint.”<sup>1993</sup>

Third, the complaint alleged three counts against the defendants under 42 U.S.C. § 1983. The first count alleged that the defendants “retaliated against Plaintiff and the

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<sup>1988</sup> *Id.* at ¶ 73.

<sup>1989</sup> *Id.* at ¶ 74.

<sup>1990</sup> *Id.* at ¶¶ 79-80.

<sup>1991</sup> *Id.* at ¶ 82.

<sup>1992</sup> *Id.* at ¶ 83.

<sup>1993</sup> *Id.* at ¶ 76.

Plaintiff Class for engaging in constitutionally protected [reporting] activity,” therefore violating the First Amendment. The complaint contended that the actions by law enforcement created a chilling effect on constitutionally protected activity, namely journalists’ ability “to observe and record some events of public interest, including constitutionally protected demonstrations and the conduct of law enforcement officers on duty in a public place.”<sup>1994</sup>

The second count alleged that the defendants violated the Fourth Amendment protections against unlawful seizure and excessive force.<sup>1995</sup> The complaint claimed that the plaintiff and plaintiff class “were seized by Defendants” when law enforcement officers 1) “intentionally, through the use of force and threat of arrest, chemical agents, and nonlethal projectiles, terminated their freedom of movement” and 2) detained and/or arrested the members of the news media.<sup>1996</sup> The complaint asserted that police did so even though the journalists “did not commit a crime” because they “were specifically exempted from the Curfew Orders and permitted to cover the protests outside the restricted times” and also “did not pose a threat to any of Defendants’ officers or agents or any other person.”<sup>1997</sup>

The third count alleged that the “Due Process rights of Plaintiff and the Plaintiff Class were violated” when law enforcement agents and officers “arrested members of the

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<sup>1994</sup> *Id.* at 36. The complaint added, “Plaintiffs and the Plaintiff Class reasonably fear the continued deployment of chemical agents without warning, unlawful seizure, and excessive force through the firing of flash bang grenades, less-lethal projectiles, riot batons, and other means if they continue to engage in constitutionally protected activity.”

<sup>1995</sup> *Id.* at 37.

<sup>1996</sup> *Id.* at 38.

<sup>1997</sup> *Id.*

Plaintiff Class without probable cause, and deployed chemical agents and nonlethal projectiles without providing a warning and opportunity to disperse in a way that a person of ordinary intelligence could understand and comply with.”<sup>1998</sup>

Finally, the complaint sought several forms of relief, including a permanent injunction “barring Defendants from engaging in unconstitutional conduct targeting journalists.”<sup>1999</sup> The complaint also sought a “declaration that Defendants’ conduct violated the First, Fourth, and Fourteenth Amendments of the U.S. Constitution.” Lastly, the complaint sought “[d]amages compensating [Goyette] for his injuries, including but not limited to compensatory, pecuniary, and medical expense damages.”<sup>2000</sup>

On June 10, 2020, Linda Tirado, the freelance journalist who permanently lost vision in one eye after being hit with a rubber bullet while covering the protests in Minneapolis (Table 5.2), filed a lawsuit against Arradondo, Kroll, Harrington, Langer, and four unnamed police officers in the District of Minnesota.<sup>2001</sup> The complaint first stated that “[u]ntil recently, few Americans could have imagined police officers shooting at journalists reporting on civil protests.”<sup>2002</sup>

Second, the complaint alleged that police tear gassed Tirado even though “her press credentials were displayed prominently around her neck” and was allowed to photograph the protests because news media were exempt from the city-wide curfew.<sup>2003</sup>

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<sup>1998</sup> *Id.* at 40.

<sup>1999</sup> *Id.* at 41.

<sup>2000</sup> *Id.*

<sup>2001</sup> Complaint, *Tirado v. City of Minneapolis*, No. 0:20-cv-01338-JRT-ECW (D. Minn. filed June 10, 2020), <https://www.courthousenews.com/wp-content/uploads/2020/06/Tirado-v-Minneapolis.pdf>.

<sup>2002</sup> *Id.* at ¶ 2.

<sup>2003</sup> *Id.* at ¶¶ 4, 6.

The complaint also argued that Tirado was acting under color of law.<sup>2004</sup> Additionally, Tirado yelled “I’m press, I’m press” as the police fired tear gas at protesters and herself.

Third, the complaint argued that the police’s actions were an affront to freedom of the press. The complaint read,

Whatever one’s view of police conduct in relation to the protestors, and of protestors’ actions, there can be no doubt that under the . . . First Amendment, the police must not shoot journalists reporting on civil protests. Journalists, like Linda Tirado, cover the protests and capture any tactics employed by law enforcement. If the press is silenced, the story does not get amplified, and nobody can see the police violence committed against citizens for exercising their First Amendment rights[.]. . . What is more, the public could not learn about any incidents of law enforcement’s deliberate use of excessive force in violation of the Fourth Amendment.<sup>2005</sup>

The complaint added, “Law enforcement must face repercussions for blinding the very people they are supposed to protect.”<sup>2006</sup>

Fourth, the complaint included several causes of action, including 1983 actions alleging violations of the First Amendment. The complaint contended that the defendants “used excessive force against [Tirado] to prevent her coverage of the matters of public concern,” therefore violating her “First Amendment rights to free press, speech and the right to peacefully assemble.”<sup>2007</sup> The complaint further alleged that the defendants “retaliated against Plaintiff and other members of the press by use of excessive force in response to the exercise of their constitutional rights.” Additionally, the complaint contended that the police’s actions “chill[ed Tirado] from exercising her constitutional rights” because she was “not medically cleared to visit the protests because the tear gas

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<sup>2004</sup> *Id.* at ¶ 63.

<sup>2005</sup> *Id.* at ¶ 9.

<sup>2006</sup> *Id.*

<sup>2007</sup> *Id.* at ¶¶ 59, 61.

utilized by law enforcement is a chemical irritant, and may further damage her eye.”<sup>2008</sup>

Additional causes of action included 1983 actions regarding violations under the Fourth Amendment and “Civil Conspiracy to Violate Plaintiff’s Constitutional Rights,” as well as state law claims for assault and battery.

Finally, the complaint called for the District of Minnesota to declare that the defendants’ actions were unconstitutional under the First and Fourth Amendments.<sup>2009</sup> The complaint also sought a permanent injunction “enjoining Defendants from engaging in the use of excessive force against Plaintiff in violation of her constitutional rights.”<sup>2010</sup> Lastly, the complaint sought “[d]amages compensating Plaintiff for her injuries against all Defendants, jointly and severally,” as well as punitive damages.<sup>2011</sup>

The incidents in Minneapolis also raised concerns about police not releasing public records nationally<sup>2012</sup> and in Minnesota, prompting at least one lawsuit.<sup>2013</sup> On June 8, 2020, Twin Cities journalist and open records advocate Tony Webster filed a lawsuit against the MPD, City of Minneapolis, and Casey Joe Carl in his official capacity as statutory responsible authority in the Minnesota Fourth Judicial District Court.<sup>2014</sup> The

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<sup>2008</sup> *Id.* at ¶ 75.

<sup>2009</sup> *Id.* at 33-34.

<sup>2010</sup> *Id.* at 34.

<sup>2011</sup> *Id.*

<sup>2012</sup> *See e.g.* Press Release, National Freedom Of Information Coalition, 50+ organizations sign NFOIC-Brechner Center statement on police records transparency, June 11, 2020, <https://www.nfoic.org/blogs/50-organizations-sign-nfoic-brechner-center-statement-police-records-transparency>; Julie Ciccolini, “New York State Passes Historic Police Transparency Bill,” *HRW*, June 10, 2020, <https://www.hrw.org/news/2020/06/10/new-york-state-passes-historic-police-transparency-bill>.

<sup>2013</sup> Complaint, Webster v. Minneapolis Police Department, No. 27-CV-20-\_\_\_\_ (filed June 8, 2020), <https://assets.documentcloud.org/documents/6939235/Complaint-Webster-v-Minneapolis-Police-Department.pdf>.

<sup>2014</sup> *Id.*

complaint first alleged that the MPD “has been systemically withholding police officer complaint and discipline data from the public in violation of state law, and releasing inaccurate data.”<sup>2015</sup>

Second, the complaint described how, in October 2019, Webster filed an open records request to the MPD under the Minnesota Government Data Practices Act (MGDPA) seeking police officer complaint and discipline data for all current MPD officers, including “complaints and charges, the final disposition of disciplinary action, and the complete terms of any employment dispute settlement agreement.”<sup>2016</sup> According to the complaint and RCFP, such records are “public” under the MGDPA.<sup>2017</sup>

The complaint alleged that six weeks after Webster submitted the request, the MPD had not provided any responsive data, despite the MGDPA requiring “prompt” compliance with requests.<sup>2018</sup> A week later, the MPD provided some responsive records, but they did not match what was available on the City of Minneapolis’ website.<sup>2019</sup> In a June 8 tweet, Webster noted that “[i]n what little complaint and discipline data Minneapolis Police did give me, they illegally redacted officer names and removed the factual details in discipline matters, which is public under law. And the complaint quantity is wildly inaccurate as compared to prior data releases.”<sup>2020</sup>

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<sup>2015</sup> *Id.* at ¶ 2.

<sup>2016</sup> *Id.* at ¶ 3.

<sup>2017</sup> *Id.* (citing Minn. Stat. § 13.82, subs. 2(a)(4), 2(a)(5), and 2(a)(6)). *See also* Walker and Jankowski, “Minnesota: Open Government Guide”; “Disciplinary Records,” *WNYC*, accessed June 11, 2020, <https://project.wnyc.org/disciplinary-records/>. Such records are public in 11 additional states outside Minnesota.

<sup>2018</sup> Complaint, Webster v. Minneapolis Police Department, No. 27-CV-20-\_\_\_\_, at ¶¶ 5-6 (filed June 8, 2020).

<sup>2019</sup> *Id.* at ¶¶ 7-8.

<sup>2020</sup> Tony Webster (@webster), Twitter (June 8, 2020, 1:32 PM), <https://twitter.com/webster/status/1270061149577306112>.

According to the complaint, seven months after Webster filed his request, the MPD had

still not produced *any* discipline details or letters for *any* Minneapolis police officers; the MPD has not produced the substantive details on *any* sustained complaints or discipline for *any* Minneapolis police officers; and the MPD has not produced *any* employment settlement agreements for *any* Minneapolis police officers.<sup>2021</sup>

The complaint added that the MPD “ignored Webster’s request for a time and cost estimate, and for a rolling production of responsive data.”<sup>2022</sup> The result, according to the complaint, was that Webster “currently does not know when or if the MPD will ever comply with his request. And Webster has heard from other community members that they, too, have been unable to get access to this data, which is public under law.”<sup>2023</sup>

Finally, the complaint asked the court “to enjoin the MPD’s further violations, issue an order compelling their compliance with the MGDPA, award damages, costs, and attorney’s fees, order a civil penalty, and order such other relief as allowed by law.”<sup>2024</sup>

Following the death of Floyd on May 25, Minneapolis became the epicenter of journalists being arrested, attacked, and threatened by police amidst peaceful and violent protests, resulting in lawsuits against law enforcement in Minnesota. Issues also arose regarding police not releasing requested records, prompting Webster’s lawsuit. Taken together, the incidents in Minneapolis, which were representative of hundreds more across the United States,<sup>2025</sup> provide a good case study of how journalists can be targeted and/or swept up in police actions seeking to suppress protests, demonstrations, and riots,

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<sup>2021</sup> Complaint, Webster v. Minneapolis Police Department, No. 27-CV-20-\_\_\_\_, at ¶ 9 (filed June 8, 2020) (emphasis in original).

<sup>2022</sup> *Id.*

<sup>2023</sup> *Id.*

<sup>2024</sup> *Id.* at ¶ 11.

<sup>2025</sup> “Press Freedom in Crisis.”

sometimes leading to 1983 actions against police for doing so in violation of the First Amendment.

Two previous instances where journalists faced arrests, attacks, and threats by police also prompted lawsuits under the First Amendment. First, in September 2017, St. Louis, Missouri police arrested more than 200 protesters who took to the streets following the acquittal of former St. Louis police officer Jason Stockley in the fatal shooting of Antony Lamar Smith.<sup>2026</sup> One of several reporters arrested by police was *St. Louis Post-Dispatch* reporter Mike Faulk, who filed a lawsuit against the St. Louis Police Department in February 2018.<sup>2027</sup> The complaint argued that Faulk was “covering the wave of protests”<sup>2028</sup> and “heeded the officers’ orders.”<sup>2029</sup> Nevertheless, according to the complaint, police used pepper spray, causing Faulk to choke and cough, and later tackled Faulk, who sustained several injuries.<sup>2030</sup> The complaint claimed one count under 42 U.S.C. § 1983 for violating Faulk’s First Amendment rights, among other claims, arguing that the police interfered with Faulk’s ability to gather information and cover a matter of public interest.<sup>2031</sup> The complaint further contended that “[o]bserving and recording

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<sup>2026</sup> Emily Shugerman, “St Louis protests: Journalists say they were beaten and arrested by police while covering demonstrations,” *Independent*, Sept. 23, 2017, <https://www.independent.co.uk/news/world/americas/st-louis-protests-journalists-police-beaten-arrested-pepper-spray-claims-a7962547.html>.

<sup>2027</sup> Ryan J. Reilly, “Journalist Sues St. Louis Police For Assaulting Him During Unconstitutional Crackdown,” *HuffPost*, Feb. 23, 2018, [https://www.huffpost.com/entry/mike-faulk-st-louis-police-protest-crackdown\\_n\\_5a90784de4b03b55731c11f0](https://www.huffpost.com/entry/mike-faulk-st-louis-police-protest-crackdown_n_5a90784de4b03b55731c11f0).

<sup>2028</sup> Complaint, *Faulk v. St. Louis*, No. 4:18-cv-308 (E.D. Mo. filed Feb. 23, 2018), <https://www.documentcloud.org/documents/4386590-Mike-Faulk-lawsuit.html#document/p1>.

<sup>2029</sup> *Id.* at ¶ 38.

<sup>2030</sup> *Id.* at ¶¶ 54–55. One officer “placed his book onto Mr. Faulk’s head and used his weight to press Mr. Faulk’s head into the asphalt of the street[,] [d]espite cries of pain from Mr. Faulk[.]” *Id.* at ¶ 57.

<sup>2031</sup> *Id.* at ¶ 86.

public protests, and the police response to those protests, is a legitimate means of gathering information for public dissemination . . . protected by the [First Amendment].”<sup>2032</sup> In a July 2019 ruling, Eastern District of Missouri Judge Jean C. Hamilton allowed the case to proceed.<sup>2033</sup>

Second, protests of President Donald Trump’s presidential inauguration in 2017, which resulted in significant property damage, led to the arrests of 230 people, including nine journalists.<sup>2034</sup> The charges, which included felony rioting, were dropped against four reporters in ensuing weeks, but not for freelance photojournalist Shay Horse and journalist Aaron Cantú.<sup>2035</sup> Nearly a year later, in December 2017, a Washington, D.C. jury found Horse not guilty on all the charges against him, including one charge of inciting a riot, five counts of destruction of property, and two misdemeanor counts of rioting and conspiracy to riot.<sup>2036</sup> In July 2018, Cantú’s case was dismissed as prosecutors in the U.S. attorney’s office for the District of Columbia dropped remaining charges for 38 defendants.<sup>2037</sup>

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<sup>2032</sup> *Id.* at ¶ 85.

<sup>2033</sup> *Faulk v. St. Louis*, No. 4:18CV308 JCH, 2019 WL 3304716 (2019).

<sup>2034</sup> Jonah Bromwich, “Felony Charges for Journalists Arrested at Inauguration Protests Raise Fears for Press Freedom,” *New York Times*, Jan. 25, 2017, [https://www.nytimes.com/2017/01/25/business/media/journalists-arrested-trump-inauguration.html?\\_r=0](https://www.nytimes.com/2017/01/25/business/media/journalists-arrested-trump-inauguration.html?_r=0).

<sup>2035</sup> Liam Stack, “Felony Charges Dropped Against 4 Reporters Arrested at Inauguration Protests,” *New York Times*, Jan. 30, 2017, <https://pen.org/press-clip/felony-charges-dropped-4-reporters-arrested-inauguration-protests/>.

<sup>2036</sup> Alex Zielinski, “SA Photojournalist Alexei Wood Found Not Guilty on All 7 Inauguration Day Charges,” *San Antonio Current*, Dec. 21, 2017, <https://www.sacurrent.com/the-daily/archives/2017/12/21/sa-photojournalist-alexei-wood-found-not-guilty-on-all-7-inauguration-day-charges>.

<sup>2037</sup> Alexandra Yoon-Hendricks, “Prosecutors Dropping Remaining Charges Against Trump Inauguration Protesters,” *New York Times*, July 6, 2018, <https://www.nytimes.com/2018/07/06/us/politics/inauguration-protests-charges-dropped.html>.

Nevertheless, in January 2020, Wood and Cantú filed a lawsuit against the District of Columbia and Metropolitan Police Department (MPD) Chief Peter Newsham, alleging that they were arrested “even though they were not participating in any unlawful activity and were instead “present as journalists to document the events of the day when they were caught up in the stampede created by MPD’s pursuit of the demonstrators and its use of chemical irritants.”<sup>2038</sup> Among other claims, the complaint argued that the arrest of Wood and Cantú violated their “First Amendment freedoms to report the news or to express [their] views.”<sup>2039</sup> The complaint further contended that the plaintiffs had “engaged in protected conduct by asserting their rights as a reporter” and that the police “retaliated against Plaintiffs by detaining them for many hours without food, water or a bathroom, pepper-spraying him, and arresting them unlawfully.”<sup>2040</sup>

Regardless of the ultimate outcome of the lawsuits arising from the Minneapolis, St. Louis, and Washington, D.C. protests, they demonstrate the First Amendment implications when members of the news media are arrested by police, especially when journalists were at the scene of a protest not to participate, but to record what was taking place and inform the public about a newsworthy topic. Significantly, the lawsuits also began illuminating the potential effects of law enforcement arresting reporters, including physical violence, threats, and interfering in the press’ newsgathering functions, especially as journalists and news organizations face potentially lengthy and costly litigation.

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<sup>2038</sup> Complaint, Cantú v. District of Columbia, No. 1:20-cv-00130 (D.D.C. filed Jan. 16, 2020), [https://www.scribd.com/document/443785933/Cantu-Wood-Lawsuit#fullscreen&from\\_embed](https://www.scribd.com/document/443785933/Cantu-Wood-Lawsuit#fullscreen&from_embed).

<sup>2039</sup> *Id.* at 21.

<sup>2040</sup> *Id.* at 22.

### c. Arrests, Attacks, and Threats in Other Contexts

Recent arrests, attacks, and threats directed at journalists by police have also occurred in other contemporary contexts, as alluded to above, such as when members of the press recorded police in public spaces, with federal courts ultimately ruling that the press and public have a First Amendment right to record police in the course of their duties in public spaces so long as they do not interfere with police activities.<sup>2041</sup> In 2018, *Colorado Independent* editor Susan Greene was handcuffed, put in a police car, and told to “act like a lady” after she attempted to photograph Denver police officers tending to an African-American man sitting handcuffed on a sidewalk.<sup>2042</sup>

Another context was apparent in May 2017 when Dan Heyman, a reporter for *Public News Service* in West Virginia, was detained and arrested by West Virginia Capitol Police after posing questions to U.S. Department of Health and Human Services Secretary Tom Price and President Trump’s senior advisor Kellyanne Conway in the hallway of the State Capitol.<sup>2043</sup> In a criminal complaint, prosecutors alleged that Heyman was “aggressively [trying to] breach Secret Service security to the point that agents were forced to remove him a couple times from the area” and charged him with one

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<sup>2041</sup> See notes 1545-1557 above.

<sup>2042</sup> David Barden, “Journalist Told To ‘Act Like A Lady’ As Police Handcuff Her For Taking Photos,” *HuffPost*, Aug. 30, 2018, [https://www.huffpost.com/entry/denver-journalist-handcuffed-act-like-a-lady\\_n\\_5b877d9ee4b0511db3d4ac5d](https://www.huffpost.com/entry/denver-journalist-handcuffed-act-like-a-lady_n_5b877d9ee4b0511db3d4ac5d); James Anderson, “Colorado journalist says she was detained by Denver police for taking photos,” *Associated Press*, July 6, 2018, <https://www.denverpost.com/2018/07/06/colorado-journalist-detained-denver-police/>.

<sup>2043</sup> Christopher Mele, “Reporter Arrested in West Virginia After Persistently Asking Questions of Tom Price,” *New York Times*, May 10, 2017, <https://www.nytimes.com/2017/05/10/business/media/reporter-arrested-tom-price.html>. See also Scott Memmel, “Journalists Face Physical Restraints and Arrests; Trump Video Raises Further Concerns about Violence Against the Media,” *Silha Bulletin* 22, no. 3 (Summer 2017): 7-10.

misdemeanor count of “willful disruption of governmental processes.”<sup>2044</sup> Heyman countered in a May 16 *Washington Post* editorial that he was wearing his press pass and had identified himself as a reporter to the authorities present in the hallway.<sup>2045</sup> Although the charge against Heyman was dropped in September 2017,<sup>2046</sup> the case still represented another context in which a journalist can be arrested for their newsgathering.

Finally, even when members of the press are not detained or arrested, they can still face the threat of such actions. For example, in February 2019, Hilde Kate Lysiak, a 12-year-old reporter, was approached by Joseph Patterson, the town marshal in Patagonia, Arizona.<sup>2047</sup> According to media reports, Patterson allegedly threatened to “throw [Lysiak] in juvenile jail,” prompting nationwide criticism by free press advocates and other observers.<sup>2048</sup>

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<sup>2044</sup> Camila Domonoske, “West Virginia Reporter Arrested For Yelling Question At HHS Secretary,” *National Public Radio*, May 10, 2017, <https://www.npr.org/sections/thetwo-way/2017/05/10/527754346/west-virginia-reporter-arrested-for-yelling-question-at-hhs-secretary>.

<sup>2045</sup> Dan Heyman, “I was arrested for asking Tom Price a question. I was just doing my job.,” *Washington Post*, May 16, 2017, <https://www.washingtonpost.com/posteverything/wp/2017/05/16/i-was-arrested-for-asking-tom-price-a-question-i-was-just-doing-my-job/>.

<sup>2046</sup> Matt Stevens, “Charge Dropped Against Reporter Who Questioned Tom Price,” *New York Times*, Sept. 6, 2017, <https://www.nytimes.com/2017/09/06/business/media/tom-price-journalist-arrest.html>. See also Letter from Lawrence C. Messina, RCFP Director of Communications, to Kevin Forman, Director of the West Virginia Department of Military Affairs and Public Safety Division of Protective Services, May 16, 2017, <https://www.rcfp.org/wp-content/uploads/imported/2017-05-16-letter-to-wv-capitol-police.pdf>. RCFP director of communications Lawrence Messina had previously argued that arresting Heyman was not in accordance with the statute under which he was charged. She explained that W. Va. Code § 61-6-19 “acknowledge[d] the importance of respecting First Amendment rights by adding that ‘any assembly in a peaceable, lawful and orderly manner for a redress of grievances shall not be a violation of this section.’”

<sup>2047</sup> Antonia Noori Farzan, “An Arizona cop threatened to arrest a 12-year-old journalist. She wasn’t backing down,” *Washington Post*, Feb. 22, 2019, <https://www.washingtonpost.com/nation/2019/02/22/an-arizona-cop-threatened-arrest-year-old-journalist-she-wasnt-backing-down/>.

<sup>2048</sup> *Ibid.*

#### **d. Effects of Arrests, Assaults, and Threats by Police on Members of the Press**

Ultimately, the above sections revealed that journalists can be, and have been, arrested under the same laws of general applicability that apply to the public, ranging from criminal trespass to rioting. However, police cannot arrest journalists solely for newsgathering or face potential 1983 actions. Nevertheless, when arrests do occur, especially in the course of journalists' newsgathering functions, there are several negative effects for not only the press and police, but also their relationship and the public.

One significant effect on the press is that journalists can, and have been, injured or forcibly detained. As discussed above, numerous journalists were injured or threatened by police amidst the protests and riots stemming from the death of George Floyd with at least one journalist permanently losing her vision in one eye. Faulk, Wood, and Cantú all experienced being pepper sprayed and tackled by police. In Faulk's case, he suffered injuries even after showing officers his press credential. In each of their lawsuits, the journalists claimed that the police violated their Fourth Amendment rights by using "excessive force" through "physical use of force" and chemical irritants.<sup>2049</sup>

Another effect is the interference by law enforcement in the press' newsgathering functions. For example, both lawsuits filed against law enforcement in Minnesota contended that arrests and physical attacks by police directed at journalists were in retaliation for their reporting on a matter of public interest. The result was not only police interfering in the journalists' ability to gather news, but also creating a chilling effect on

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<sup>2049</sup> Complaint, *Faulk v. St. Louis*, No. 4:18-cv-308, at ¶¶ 101–06 (E.D. Mo. filed Feb. 23, 2018); Complaint, *Cantú v. District of Columbia*, No. 1:20-cv-00130, at 22–24 (D.D.C. filed Jan. 16, 2020).

those journalists and others who may cover similar demonstrations in the future. Similarly, Faulk argued in his lawsuit that police had violated his First Amendment rights “by interfering with his ability to gather information and cover a matter of public interest as a member of the media.”<sup>2050</sup> Wood and Cantú argued that police violated their “First Amendment freedoms to report the news or to express [their] views.”<sup>2051</sup> Whether a judge rules in favor of journalists alleging such claims in a “1983 action” or not, the practical effect is that the reporters, by being arrested, were unable to continue covering what was taking place at the scene of a newsworthy event. It is also likely that if a member of the public or a potential source saw a journalist being arrested, it may make them less likely to trust that individual or, alternatively, further entrench their distrust of that individual, their news organization, and the press generally.

Government interference in newsgathering is only increased with the prospect of lengthy and costly legal battles for journalists and news organizations. In some cases, charges against reporters were dropped when it was determined that they were at the protest only for reporting purposes. In other cases, reporters have reached settlements with police departments after being arrested.<sup>2052</sup> But even when this is the case, the prospect of arrests and litigation can have a chilling effect on reporters’ ability, and

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<sup>2050</sup> Complaint, *Faulk v. St. Louis*, No. 4:18-cv-308, at ¶ 86. (E.D. Mo. filed Feb. 23, 2018).

<sup>2051</sup> Complaint, *Cantú v. District of Columbia*, No. 1:20-cv-00130, at 22–24 (D.D.C. filed Jan. 16, 2020).

<sup>2052</sup> Caitlin Curley, “Denver police settle with journalist they detained for filming them in public,” *Colorado Politics*, Sept. 11, 2019, [https://www.coloradopolitics.com/quick-hits/denver-police-settle-with-journalist-they-detained-for-filming-them/article\\_6cb4143c-d488-11e9-9619-3b4e31ef5a02.html](https://www.coloradopolitics.com/quick-hits/denver-police-settle-with-journalist-they-detained-for-filming-them/article_6cb4143c-d488-11e9-9619-3b4e31ef5a02.html); Tim Cushing, “Lawsuit Settlement Over Detainment Of A Journalist Will Force Denver Police Department To Admit The First Amendment Exists,” *Techdirt*, Sept. 18, 2019, <https://www.techdirt.com/articles/20190913/13591542987/lawsuit-settlement-over-detainment-journalist-will-force-denver-police-department>.

desire, to gather news. For example, following the 2017 Standing Rock protests, several of the journalists who were arrested during the demonstrations told the Committee to Protect Journalists (CPJ) that the “burden of legal costs or risk of further charges if they are arrested again has discouraged them from covering other protests.”<sup>2053</sup>

Significantly, police departments, officials, and officers are also affected when journalists are arrested, including that they can be the target of lawsuits by the press, though with fewer implications for resources and legal costs. Officers may also be punished in different ways, providing one reason that some members of the public would view law enforcement more critically after targeting the press with arrests. Conversely, police doing so could also embolden other officers to do the same in the future.

The arrest of journalists also implicates the press-police relationship in that it is more likely to become contentious. In these cases, the goals, purposes, functions, and actions of the press and police are in conflict, making their relationship more adversarial. By arresting journalists, the police interfere with press functions and, therefore, strain their relationship. As the following section will further demonstrate, police targeting the press through searches and seizures, subpoenas, and surveillance further strain the press-police relationship, making it more contentious and leading to several negative effects.

But most importantly, police arresting members of the press and, therefore, limiting journalists’ ability to do their jobs also has implications for the public and the press-police relationship. When police target journalists at protests and other scenes, the result is that members of the public are less informed about the events that the journalists

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<sup>2053</sup> Ellerbeck, “Journalists covering Standing Rock face charges as police arrest protesters.”

were covering or would otherwise be reporting on. Significantly, without reporters at protests and other scenes, there is also less accountability of police, including when law enforcement kills, harms, and/or arrests members of the American public

## **2. Searches, Seizures, and Subpoenas**

The most frequent way in which police investigations implicate the press and intrude into the news media's purposes and functions is when officers or agents execute search warrants and subpoenas against journalists or news organizations. Although such actions are a routine part of law enforcement's role in the United States, these practices raise particular concerns when executed against the news media. The following section first provides background information about the Fourth Amendment warrant requirement and exceptions before turning to the legal landscape — including constitutional, statutory, and common law, as well as federal and state law enforcement policies, rules, and guidelines — around law enforcement targeting journalists' 1) homes and offices, 2) sources, materials, and information, 3) phone calls and records, and 4) electronic devices and location information. Additionally, prosecutions by President Barack Obama's and President Donald Trump's administrations of government leakers under the Espionage Act represent a special case study potentially implicating journalists in the future. The legal landscape, combined with relevant examples, reveal not only how these actions can strain the press-police relationship, but also have significant effects on the press, police, their relationship, and the public.

### **a. Fourth Amendment Warrant Requirements and Exceptions**

Under the Fourth Amendment, law enforcement, in order to search a member of the public and/or seize their property, generally needs to secure a warrant supported by

probable cause and signed by a judge.<sup>2054</sup> The “exclusionary rule” provides that evidence obtained through illegal searches and seizures cannot be used in an ensuing trial,<sup>2055</sup> which the Supreme Court has called “a necessary corollary of the Fourth Amendment.”<sup>2056</sup> However, in *United States v. Leon* (1984), the Court created the “good faith” exception, meaning that if a police officer inadvertently violated a suspect’s Fourth Amendment rights during a search, but was acting in good faith, the exclusionary rule no longer applied.<sup>2057</sup>

Significantly, there are some exceptions to the Fourth Amendment warrant requirement. First, in *Coolidge v. New Hampshire* (1971), the Supreme Court articulated the “plain view doctrine,”<sup>2058</sup> holding that police, under certain circumstances, can seize evidence in plain view without a warrant.<sup>2059</sup> However, in *Arizona v. Hicks* (1987), the Court clarified that although a warrant is not required, probable cause is still necessary to invoke the doctrine.<sup>2060</sup>

Second, police generally do not need a warrant for searches incident to lawful arrests. The Supreme Court articulated the exception in *United States v. Robinson* (1973), ruling that “in the case of a lawful custodial arrest a full search of the person is . . . an

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<sup>2054</sup> U.S. Const. amend. IV.

<sup>2055</sup> *Weeks v. United States*, 232 U.S. 383, 398 (1914) (holding that evidence “taken from the house of the accused . . . [was] in direct violation of the constitutional rights of the defendant” and that the subsequent “use [of the evidence in] the trial” was a “prejudicial error.”).

<sup>2056</sup> *United States v. Leon*, 468 U.S. 897, 905–06 (1984) (citing *Mapp v. Ohio*, 367 U.S. 643, 651, 655–57 (1961); *Olmstead v. United States*, 277 U.S. 438, 462–63 (1928)).

<sup>2057</sup> *Leon*, 468 U.S. at 897; Balko, *Rise of the Warrior Cop*, 150-51.

<sup>2058</sup> Elsie Romero, “Fourth Amendment--Requiring Probable Cause for Searches and Seizures under the Plain View Doctrine,” *Journal of Criminal Law and Criminology* 78, no. 4 (Winter 1988): 763-91.

<sup>2059</sup> *Coolidge v. New Hampshire*, 403 U.S. 443 (1971) (plurality opinion).

<sup>2060</sup> *Arizona v. Hicks*, 480 U.S. 321 (1987).

exception to the warrant requirement of the Fourth Amendment[.]”<sup>2061</sup> However, in *Terry v. Ohio* (1968)<sup>2062</sup> and *Riley v. California* (2014),<sup>2063</sup> among other cases, the Court narrowed the scope of the exception.

Third, the Supreme Court has created exceptions to the Fourth Amendment warrant requirements at particular places, including in “open fields”<sup>2064</sup> and individuals’ vehicles.<sup>2065</sup> The “border search exception”<sup>2066</sup> generally “permit[s] government agents to search travelers’ luggage, vehicles or persons without a warrant and almost always without any individualized suspicion of wrongdoing.”<sup>2067</sup> In *United States v. Ramsey* (1977), the Supreme Court held that suspicionless, warrantless border searches are constitutional so long as they are “routine.”<sup>2068</sup> However, in *United States v. Montoya de*

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<sup>2061</sup> *United States v. Robinson*, 414 U.S. 218, 235 (1973). *See also Weeks*, 232 U.S. at 392; *Carroll v. United States*, 267 U.S. 132, 158 (1925) (holding that “[w]hen a man is legally arrested for an offense, whatever is found upon his person or in his control which it is unlawful for him to have and which may be used to prove the offense may be seized and held as evidence in the prosecution.”); *Chimel v. California*, 395 U.S. 752 (1969) (holding that the incident to arrest exception only applied to evidence around “the petitioner’s person and the area from within which he might have obtained either a weapon or something that could have been used as evidence against him. There was no constitutional justification, in the absence of a search warrant, for extending the search beyond that area.”).

<sup>2062</sup> *Terry v. Ohio*, 392 U.S. 1 (1968) (holding that “police must, whenever practicable, obtain advance judicial approval of searches and seizures,” though the Court upheld the legality of stop and frisks).

<sup>2063</sup> *Riley v. California*, 573 U.S. 373, 403 (2014). *Riley* is discussed more fully below.

<sup>2064</sup> *Hester v. United States*, 265 U.S. 57 (1924).

<sup>2065</sup> *Carroll*, 267 U.S. at 132; *Chambers v. Maroney*, 399 U.S. 42 (1970); *Arkansas v. Sanders*, 442 U.S. 753, 761 (1979); *Cardwell v. Lewis*, 417 U.S. 583, 590 (1974) (plurality opinion); *Whren v. United States*, 517 U.S. 806 (1996). *See also* “Vehicular Searches,” *Justia U.S. Law*, accessed Feb. 29, 2020, <https://law.justia.com/constitution/us/amendment-04/16-vehicular-searches.html#tc-291>.

<sup>2066</sup> *See* Memmel, “Crossing Constitutional Boundaries,” 32-33.

<sup>2067</sup> Sophia Cope, “Law Enforcement Uses Border Search Exception as Fourth Amendment Loophole,” *Electronic Frontier Foundation*, Dec. 8, 2016, <https://www.eff.org/deeplinks/2016/12/law-enforcement-uses-border-search-exception-fourth-amendment-loophole>.

<sup>2068</sup> *United States v. Ramsey*, 431 U.S. 606, 616 (1977). The Court added that “searches made at the border, pursuant to the longstanding right of the sovereign to protect itself by stopping and

*Hernandez* (1985), the Court held that customs officials needed reasonable suspicion for “non-routine” searches.<sup>2069</sup> The Court extended the reasonable suspicion finding to other “highly intrusive searches” in *United States v. Flores-Montano* (2004).<sup>2070</sup>

Fourth, a warrant is not required if an individual provides consent to search themselves, their property, or their possessions.<sup>2071</sup> For example, a police officer, after stopping an individual on a public sidewalk, may request to search their bag, and do so if they obtain consent. Such searches are the most common and “permeate real-world policing.”<sup>2072</sup> The Supreme Court has held that the exception requires that an individual “voluntarily” provide consent, ruling in *Schneckloth v. Bustamonte* (1973) that they need to understand that they have the right to refuse to do so.<sup>2073</sup> However, how consent is provided and obtained continues to evolve.<sup>2074</sup>

Finally, the police are not required to obtain a warrant in “exigent circumstances,” meaning situations in which an officer reasonably believes that evidence or contraband

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examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border, should, by now, require no extended demonstration.” See also Brief of Electronic Frontier Foundation as *Amicus Curiae* in Support of Appellant, *United States v. Saboonchi*, 990 F. Supp.2d 536, 539 (2014), <https://www EFF.org/document/eff-saboonchi-amicus-brief> (citing *Carroll*, 267 U.S. at 154; *Boyd v. United States*, 116 U.S. 616 (1886); *Montoya de Hernandez*, 473 U.S. at 537; *Thirty-Seven Photographs*, 402 U.S. at 376; *Almeida-Sanchez v. United States*, 413 U.S. 266, 272 (1973) (In its *amicus* brief in *United States v. Saboonchi* (2014), the Electronic Frontier Foundation (EFF) explained that there were several purposes for creating such an exception, including “national self-protection” and preventing the passage of contraband, such as drugs or explosives, through U.S. borders).

<sup>2069</sup> *United States v. Montoya de Hernandez*, 473 U.S. 531, 544 (1985).

<sup>2070</sup> *United States v. Flores-Montano*, 541 U.S. 149, 152 (2004).

<sup>2071</sup> See Michael J. Friedman, “Another Stab at Schneckloth: The Problem of Limited Consent Searches and Plain View Seizures,” *Journal of Criminal Law and Criminology* 89, no. 1 (Fall 1998): 313-46.

<sup>2072</sup> See e.g. Alafair S. Burke, “Consent Searches and Fourth Amendment Reasonableness,” *Florida Law Review* 67, no. 2 (January 2016): 509-63.

<sup>2073</sup> *Schneckloth v. Bustamonte*, 412 U.S. 218, 222 (1973).

<sup>2074</sup> Burke, “Consent Searches and Fourth Amendment Reasonableness,” 509.

may be destroyed, hidden, or removed before a search warrant can be obtained.<sup>2075</sup> In other cases, police may enter a private space without a warrant if the situation demands “immediate action.”<sup>2076</sup>

## **b. Homes and Offices**

Additional legal considerations are raised when law enforcement executes search warrants against journalists, including on their homes and personal offices. Although the Supreme Court has never heard a Third Amendment case, this constitutional protection — providing that “[n]o Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law” — is nevertheless important because it shows the founders’ concern about government intrusion into private homes.<sup>2077</sup> The Supreme Court similarly raised this concern in *Weeks v. United States* (1914), emphasizing “the sanctity of a man’s home and the privacies of life.”<sup>2078</sup>

At the federal level, the DOJ has implemented guidelines regarding search warrants and subpoenas targeting journalists, including through searches of their private homes and offices.<sup>2079</sup> The guidelines, titled “Policy regarding obtaining information from, or records of, members of the news media; and regarding questioning, arresting, or

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<sup>2075</sup> *Mincey v. Arizona*, 437 U.S. 385 (1978); Jeanette Doran Brooks, “Valid Searches and Seizures Without Warrants,” *Institute of Government*, November 2004.

<sup>2076</sup> See *North Carolina v. Nance*, 149 N.C. App. 734, 743–44 (N.C. Ct. App. 2002).

<sup>2077</sup> U.S. Const. amend. III; Balko, *Rise of the Warrior Cop*, 11–14.

<sup>2078</sup> *Weeks*, 232 U.S. at 391 (citing *Boyd*, 116 U.S. at 616; *Adams v. New York*, 192 U.S. 585 (1904)).

<sup>2079</sup> 28 CFR § 50.10; See also Scott Memmel, “Department of Justice Continues Mulling Policies Regarding Jailing, Subpoenaing, and Searching U.S. Journalists,” *Silha Bulletin* 24, no. 2 (Winter/Spring 2019): 10–12.

charging members of the news media,” were first instituted in 1970 by Attorney General John Mitchell in response to press concerns about the increasing number of subpoenas aimed at compelling journalists to reveal their confidential sources.<sup>2080</sup> The DOJ amended the guidelines in 2013, 2014, and 2015, strengthening protections for reporters.<sup>2081</sup>

The guidelines first provide a statement of principles, including that “[b]ecause freedom of the press can be no broader than the freedom of members of the news media to investigate and report the news, th[is] policy is intended to provide protection to . . . the news media from certain law enforcement tools . . . that might unreasonably impair newsgathering activities.”<sup>2082</sup> Second, the guidelines state that the use of “subpoenas, court orders, . . . and search warrants to seek information from, or records of, non-consenting members of the news media [are] extraordinary measures, not standard investigatory practices.”<sup>2083</sup> Such measures may only be used 1) after the Attorney General has authorized the use, 2) when the information sought is “essential to a successful investigation, prosecution, or litigation,” and 3) after “all reasonable alternative attempts have been made to obtain the information from alternative sources.”<sup>2084</sup>

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<sup>2080</sup> Moon, Brown, and Rottman, “New DOJ reports provide detail on use of law enforcement tools against the news media.”

<sup>2081</sup> Ibid. See also John Solomon, “Rosenstein, DOJ exploring ways to more easily spy on journalists,” *Hill*, Jan. 14, 2019, <https://thehill.com/opinion/judiciary/425189-rosenstein-doj-exploring-ways-to-more-easily-spy-on-journalists>. In January 2019, *The Hill* reported that then-Deputy Attorney General Rod Rosenstein’s office had been overseeing the revision of the guidelines based on two main goals: to “lower the threshold that prosecutors must meet before requesting subpoenas for journalists’ records” and to “eliminate the need to alert a media organization that [the DOJ] intends to issue a subpoena.”

<sup>2082</sup> 28 CFR § 50.10(a).

<sup>2083</sup> *Id.* § 50.10(b).

<sup>2084</sup> *Id.* § 50.10(c).

Third, the guidelines list principles the Attorney General is to consider regarding subpoenas, court orders, and search warrants. For example, in criminal matters, there “should be reasonable grounds to believe . . . that a crime has been committed, and that the information sought is essential to the successful investigation or prosecution of that crime.”<sup>2085</sup> In civil matters, the information sought must also be essential to the litigation.<sup>2086</sup> In cases where the Attorney General authorized a subpoena or search warrant pursuant to a journalist, the affected individual(s) “shall be given reasonable and timely notice,” unless “such notice would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm.”<sup>2087</sup>

Finally, the DOJ may obtain warrants to search “the premises [and] property” of members of the news media.<sup>2088</sup> The department can also seek the disclosure of “communications records,” which include “the contents of electronic communications as well as source and destination information associated with communications, such as email transaction logs and local and long distance telephone connection records.”<sup>2089</sup> The guidelines also allow the DOJ to seek disclosure of “business records,” which include “work product and other documentary materials, and records of the activities, including the financial transactions, of a member of the news media related to the coverage, investigation, or reporting of news.”<sup>2090</sup>

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<sup>2085</sup> *Id.* § 50.10(c)(4)(ii)(A).

<sup>2086</sup> *Id.* § 50.10(c)(4)(ii)(B).

<sup>2087</sup> *Id.* § 50.10(e).

<sup>2088</sup> *Id.* § 50.10(d).

<sup>2089</sup> *Id.* § 50.10(b)(2)(i).

<sup>2090</sup> *Id.* § 50.10(b)(2)(iI).

At the state level, a recent example saw law enforcement execute search warrants of a freelance journalist's home and personal office, raising additional legal considerations. On May 10, 2019, approximately 10 San Francisco Police Department (SFPD) officers "banged" on the outer gate of the home of Bryan Carmody, a freelance journalist in the San Francisco Bay Area, attempting to break the gate with a crowbar and sledgehammer.<sup>2091</sup> The SFPD executed one search warrant on his home and later a second at his office. Carmody said the police officers seized his confidential work materials, as well as his computers, cell phones, and other electronic devices.<sup>2092</sup>

The raids of Carmody's home and office stemmed from an SFPD investigation to determine the leak of a police report Carmody sold to three local television stations, a practice he had done several times before to generate income, working as a "stringer."<sup>2093</sup> Five San Francisco County Superior Court judges ultimately quashed the warrants they

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<sup>2091</sup> Evan Sernoffsky, "SF police raid journalist's home in probe over leaked Adachi report," *San Francisco Chronicle*, May 10, 2019, <https://www.sfchronicle.com/crime/article/SF-police-raid-journalist-s-home-in-probe-over-13837363.php>. See also Scott Memmel, "Police Raid Freelance Journalist's Home and Office, Prompting Criticism and Legal Action," *Silha Bulletin* 24, no. 3 (Summer 2019): 6-9; Scott Memmel, "Fifth Judge Orders Release of Warrant Materials Tied to Searches of Freelance Journalist's Home, Office, and Phone Records; Free Speech Group Files Lawsuit Seeking Additional Records," *Silha Bulletin* 25, no. 1 (Fall 2019): 32-33.

<sup>2092</sup> Sernoffsky, "SF police raid journalist's home in probe over leaked Adachi report."

<sup>2093</sup> Heather Knight, "Adachi leak: San Francisco ransacks its values with police raid on reporter's home," *San Francisco Chronicle*, May 18, 2019, <https://www.sfchronicle.com/bayarea/heatherknight/article/Adachi-leak-San-Francisco-ransacks-its-values-13855468.php>; Laurel Wamsley, "San Francisco Police Raid Journalist's Home After He Refuses To Name Source," *National Public Radio*, May 13, 2019, <https://www.npr.org/2019/05/13/722745266/san-francisco-police-raid-journalists-home-after-he-refuses-to-name-source>; "Police to return property seized from San Francisco reporter," *Associated Press*, May 21, 2019, <https://www.latimes.com/local/california/la-me-bryan-carmody-san-francisco-journalist-seeks-property-20190521-story.html>. The report was related to events in February 2019 when public defender Jeff Adachi collapsed at an apartment with a "mysterious woman" who was not his wife. The report contained "salacious" details, suggesting that "perhaps one or more members of the [SFPD] were trying to tarnish [Adachi's reputation], who was known as a police watchdog and fierce advocate for criminal justice reform." It was determined that Adachi died from an accidental overdose of cocaine and alcohol.

had previously signed allowing for the searches of Carmody’s home, office, and phone.<sup>2094</sup> The judges generally found that the searches were “breathtakingly broad” and that the SFPD had failed to inform them that Carmody was a freelance journalist.<sup>2095</sup> The orders meant that investigators could not use any evidence obtained through the searches and also needed to return any property of Carmody. The judges also ordered that any sealed documents related to the warrants be released.<sup>2096</sup>

Although SFPD initially defended the raid, SFPD Chief Bill Scott later apologized for the searches and seizures, stating SFPD “should have done a better job.”<sup>2097</sup> The raids also prompted significant criticism from press advocates, who raised different concerns with the practice. For example, David Snyder, executive director of the First Amendment Coalition (FAC), a free-speech and media support group, said in a statement that journalists “have to be able to perform their work without fear of being

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<sup>2094</sup> Memmel, “Fifth Judge Orders Release of Warrant Materials.”

<sup>2095</sup> “Police Failed To Tell Judge Of Bryan Carmody’s Status As Journalist Before Obtaining Warrant, Unsealed Records Show,” *First Amendment Coalition*, July 23, 2019, <https://firstamendmentcoalition.org/2019/07/police-failed-to-tell-judge-of-bryan-carmodys-status-as-journalist-before-obtaining-warrant-unsealed-records-show/>; Eli Rosenberg, “A judge signed a warrant to search a journalist. But police didn’t tell her the whole story.,” *Washington Post*, July 23, 2019, <https://www.washingtonpost.com/nation/2019/07/23/judge-signed-warrant-search-journalist-police-didnt-tell-her-whole-story/>.

<sup>2096</sup> “Police Failed To Tell Judge Of Bryan Carmody’s Status As Journalist Before Obtaining Warrant.” See also Peter Fimrite, “SF settles suit by journalist whose home, office were illegally raided,” *San Francisco Chronicle*, March 2, 2020, <https://www.sfchronicle.com/bayarea/article/San-Francisco-settles-suit-by-journalist-whose-15100172.php>. In March 2020, Carmody reached a settlement with San Francisco, which included paying for losses he sustained during the raids of his home, office, and devices.

<sup>2097</sup> Audrey McNamara, “San Francisco Police Chief Bill Scott Does a 180, Says Raid on Journalist Was Wrong,” *Daily Beast*, May 25, 2019, <https://www.thedailybeast.com/san-francisco-police-chief-bill-scott-does-a-180-says-raid-on-journalist-was-wrong>; Rachel Frazin, “San Francisco police chief apologizes for raid on journalist’s home,” *Hill*, May 24, 2019, <https://thehill.com/homenews/media/445518-san-francisco-police-chief-apologizes-for-raid-on-journalist>.

compelled to explain to the state or show the state how they went about their business.”<sup>2098</sup> He later added, “The more we learn about the police department’s extreme overreach here, the more the city’s violation of California and federal law becomes obvious. There must be accountability, at the highest levels of San Francisco government, for this trampling on journalists’ rights.”<sup>2099</sup>

Although rare, searches of journalists’ homes and personal offices have multiple impacts on the ability of members of the news media to do their jobs. In this case, the searches and seizures limited Carmody’s ability to do his job because he was preoccupied with the searches and ensuing legal action. Additionally, SFPD further limited his ability to gather news by confiscating his electronic devices and notes, a practice with deep legal implications and negative effects discussed more below. Lastly, the raids raised concerns from observers that it would chill newsgathering by other journalists who would fear being the target of similar actions.<sup>2100</sup>

### **c. Sources, Information, Materials, and Newsrooms**

A second area of law regarding searches, seizures, and subpoenas targeting the press is reporters’ footage, notes, and unpublished information. Although the Supreme Court ruled in *Branzburg* and *Zurcher* that the press does not receive special protection

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<sup>2098</sup> Bob Egelko, “California Journalists Shield Law One of the Strongest in the Nation,” *San Francisco Chronicle*, May 15, 2019, <https://www.rlslawyers.com/california-journalists-shield-law-one-of-the-strongest-in-the-nation/>.

<sup>2099</sup> “Police Failed To Tell Judge Of Bryan Carmody’s Status As Journalist Before Obtaining Warrant.”

<sup>2100</sup> “San Francisco police raid freelancer Bryan Carmody’s home,” *Committee to Protect Journalists*, May 13, 2019, <https://cpj.org/2019/05/san-francisco-police-raid-freelancer-bryan-carmody.php>. North America program coordinator Alexandra Ellerbeck said the police “sen[t] a chilling message to all local media.” See also Sabrina Conza, “San Francisco police memo: Officers told not to use bodycams during raid of journalist’s home,” *Reporters Committee for Freedom of the Press*, June 17, <https://www.rcfp.org/carmody-bodycam-sfpd-memo/>.

under the First Amendment against subpoenas seeking confidential sources<sup>2101</sup> and search warrants,<sup>2102</sup> respectively, both rulings opened the door for important statutory protections and lower court precedent. Nevertheless, journalists and news organizations have continued to face subpoenas and search warrants, actions dating back to the colonial period of the United States.

First, although there is no absolute First Amendment reporter's privilege to avoid compelled disclosure of confidential sources and information, as well as no federal shield law, 49 states recognize at least a qualified privilege.<sup>2103</sup> Additionally, each federal circuit court, as well as other lower courts, has recognized at least a qualified reporter's privilege under the First Amendment or through the application of state shield laws.<sup>2104</sup>

Despite the protections provided by federal and state courts, as well as state shield laws, journalists have, like in the past,<sup>2105</sup> continued to face subpoenas in recent years, including Jaime Kalven in relation to the Laquan McDonald shooting.<sup>2106</sup> Other cases have included *New York Times* reporter Frances Robles,<sup>2107</sup> Minneapolis *Star Tribune* reporter Paul McEnroe,<sup>2108</sup> and *BuzzFeed* in connection to the "Steele Dossier," a

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<sup>2101</sup> *Branzburg*, 408 U.S. at 665.

<sup>2102</sup> *Zurcher*, 436 U.S. at 547.

<sup>2103</sup> See notes 1558-1573 above.

<sup>2104</sup> *Ibid.*

<sup>2105</sup> See notes 901-915 above.

<sup>2106</sup> See notes 1858-1861 above.

<sup>2107</sup> See Vivian Wang, "Court Weighs Whether Times Reporter Must Testify in 'Baby Hope' Trial," *New York Times*, June 5, 2018, <https://www.nytimes.com/2018/06/05/nyregion/baby-hope-trial-reporter-testify.html>; James C. McKinley, Jr., "Court Ruling Means Times Reporter Must Testify in 'Baby Hope' Trial," *New York Times*, June 27, 2018, <https://www.nytimes.com/2018/06/27/nyregion/baby-hope-reporter-testify.html>.

<sup>2108</sup> Rochelle Olson, "Court of Appeals: Star Tribune isn't required to release source's identity in nursing home story," *Star Tribune*, Sept. 12, 2016, <https://www.startribune.com/court-of-appeals-star-tribune-isn-t-required-to-release-source-s-identity-in-nursing-home-story/393144511/>.

document compiled by former MI6 intelligence officer Christopher Steele detailing ties between the Russian government and then-presidential candidate Donald Trump,<sup>2109</sup> among other instances. In each case, the journalists, media members, or news organizations faced the undermining of their credibility and source relationships, making it more difficult to accomplish their important purposes and functions.

A particularly notable case arose in 2006 when federal prosecutors issued a subpoena to free-lance blogger Joshua Wolf to appear before a grand jury.<sup>2110</sup> Wolf had recorded a protest in San Francisco during which an individual struck and seriously injured a police officer with a pipe. Although the video was not aired, Wolf refused to turn it over. Wolf served 225 days in jail for contempt after the Ninth Circuit held that he could not claim the reporter's privilege for non-confidential materials.<sup>2111</sup> Wolf was ultimately released after he agreed to post the video on his web site, though it did not depict who had struck the police officer.<sup>2112</sup>

Second, in response to *Zurcher*, Congress passed the Privacy Protection Act (PPA) in 1980.<sup>2113</sup> The statute makes it “unlawful for a government officer or employee,

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<sup>2109</sup> *Gubarev v. BuzzFeed*, No. 1:17-cv-60426-UU (S.D. Fla. 2017). On Dec. 21, 2017, Southern District of Florida Magistrate Judge John O’Sullivan ruled against Russian businessman Aleksey Gubarev, who attempted to compel *BuzzFeed News* to disclose how it obtained the Steele Dossier.

<sup>2110</sup> “FBI v. Wolfe,” *Digital Media Law Project*, Sept. 3, 2008, <http://www.dmlp.org/threats/fbi-v-wolf>; Elaine Hargrove, “Court of Appeals Orders Freelance Journalist To Hand Over Videotape,” *Silha Bulletin* 11, no. 4 (Summer 2006): 29-30; Scott Schraut, “Blogger Ordered Back to Jail for Refusal to Disclose Videotapes,” *Silha Bulletin* 12, no. 1 (Fall 2006): 3, 5.

<sup>2111</sup> *In Re: Grand Jury Subpoena Joshua Wolf* (9th Cir. 2006).

<sup>2112</sup> “Imprisoned Journalist Josh Wolf Released After Record 225 Days in Jail,” *Democracy Now!*, April 4, 2007,

[https://www.democracynow.org/2007/4/4/imprisoned\\_journalist\\_josh\\_wolf\\_released\\_after](https://www.democracynow.org/2007/4/4/imprisoned_journalist_josh_wolf_released_after).

<sup>2113</sup> Privacy Protection Act, 42 U.S.C. § 2000aa *et seq.* (2020). *See also* “The Privacy Protection Act of 1980,” *Electronic Privacy Information Center*, accessed Feb. 27, 2020, <https://epic.org/privacy/ppa/>.

in connection with the investigation or prosecution of a criminal offense, to search for or seize any work product materials possessed by a person reasonably believed to have a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication.”<sup>2114</sup> However, the PPA includes exceptions in situations where a journalist is specifically under investigation or a search is needed to “prevent the death of, or serious bodily injury to, a human being.” The PPA also prohibits the seizure of “documentary materials,” which include information that is “recorded, and includes, but is not limited to, written or printed materials, photographs, motion picture films, negatives, video tapes, audio tapes, and other mechanically, magnetically or electronically recorded cards, tapes, or discs.”<sup>2115</sup>

Several federal circuits have applied the PPA to newsroom searches.<sup>2116</sup> Additionally, although the PPA applies to federal and state law enforcement officers, eight states — California, Connecticut, Illinois, Nebraska, New Jersey, Oregon, Texas and Washington — have their own statutes providing similar or greater protection.<sup>2117</sup>

Although rare, some newsroom searches have still occurred in recent years. For example, on December 19, 2016, New Brunswick, New Jersey police officers executed a search warrant at the offices of the *New Brunswick Today*, retrieving a water meter that had become the center of a controversy related to local city government scandals.<sup>2118</sup> The

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<sup>2114</sup> 42 U.S.C. § 2000aa(a).

<sup>2115</sup> *Id.* § 2000aa(b).

<sup>2116</sup> See “A. Newsroom searches,” *Reporters Committee for Freedom of the Press*, accessed June 9, 2020, <https://www.rcfp.org/privilege-sections/a-newsroom-searches/>.

<sup>2117</sup> “Legal protections for journalists’ sources and information,” *Student Press Law Center*, Sept. 1, 2000, <https://splc.org/2000/09/legal-protections-for-journalists-sources-and-information/>.

<sup>2118</sup> Charlie Kratovil, “NBPD Confiscates Water Scandal Evidence From NBToday Office,” *New Brunswick Today*, Dec. 25, 2016, <https://newbrunswicktoday.com/2016/12/25/nbpd-confiscates->

New Jersey Society of Professional Journalists (SPJ) criticized the search and seizure, arguing that “[search warrants] can have chilling effects on journalists and deter them from investigating instances of government misconduct. . . . [T]he actions of the New Brunswick [police] suggest they are more interested in chilling the First Amendment and preventing *New Brunswick Today* from digging further into a matter of real public concern.”<sup>2119</sup> RCFP noted that newsroom searches occurred in Missouri in 1995<sup>2120</sup> and Nevada in 1999,<sup>2121</sup> among other cases around that time period.<sup>2122</sup> RCFP also noted that two additional newsroom searches took place in 2010, leading to a settlement in one case and the withdrawal of a warrant in the other.<sup>2123</sup>

#### **d. Phone Calls, Phone Records, and Emails**

Connected to government and law enforcement seeking to obtain reporters’ sources, information, and materials is search warrants and subpoenas targeting journalists’ or news organizations’ 1) phone calls, 2) phone records, and 3) emails.

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water-scandal; Scott Memmel, “Filmmaker and Journalists Face Subpoena Threats, Newsroom Searches, and Orders to Testify,” *Silva Bulletin* 22, no. 2 (Winter/Spring 2017): 27-31.

<sup>2119</sup> “Journalists object to New Brunswick Today search warrant,” *NJ Today*, Jan. 19, 2017, <http://njtoday.net/2017/01/19/journalists-object-new-brunswick-today-search-warrant/>.

<sup>2120</sup> “Prosecutor fined \$1,000 for newsroom search in violation of federal law,” *Reporters Committee for Freedom of the Press*, Feb. 7, 1995, <https://www.rcfp.org/prosecutor-fined-1000-newsroom-search-violation-federal-law/>.

<sup>2121</sup> “Reno D.A. orders searches of four newsrooms,” *Reporters Committee for Freedom of the Press*, Jan. 25, 1999, <https://www.rcfp.org/reno-da-orders-searches-four-newsrooms/>.

<sup>2122</sup> Lucy A. Dalglish, Gregg P. Leslie, and Wendy Tannenbaum, “Agents of Discovery: A Report on The Incidence of Subpoenas Served on the News Media in 2001,” *Reporters Committee for Freedom of the Press* (2003): 9. See also Allan Wolper, “Newsies aren’t police,” *Editor & Publisher*, July 3, 1999. Wolper wrote that an East Lansing, Michigan “police officer strolled into the newsroom of *The State News* at Michigan State University (MSU) in [April 1999] searching for sources” amidst efforts to get “student reporters to testify against some of the thousands of drunken, battling, car-burning rioters” after MSU lost to Duke University in the National Collegiate Athletic Association (NCAA) basketball tournament, known as “March Madness.”

<sup>2123</sup> “Newsroom searches occurring despite law,” *News Media & The Law* (Summer 2010): 16.

First, federal agencies, in recording domestic phone calls made by the public,<sup>2124</sup> may also monitor or record those made by journalists. As discussed below, federal agents can do so outside of conventional warrants and subpoenas, including through mass surveillance and bulk data collection. The monitoring of journalists' phone calls can also happen at the local level, as evidenced by the raids of Carmody's home and office. SFPD officers, through warrants for his cell phone, may have even listened to his private calls.<sup>2125</sup>

Regarding obtaining phone records, in *Smith v. Maryland* (1979), the Supreme Court ruled that law enforcement's use of a "pen register," a mechanical device that records the numbers dialed on a telephone, did not constitute a "search" under the Fourth Amendment and that police could do so without a warrant.<sup>2126</sup> In a series of cases, the Supreme Court has "consistently . . . held that a person has no legitimate expectation of privacy in information [they] voluntarily turns over to third parties," which is known as the "third-party doctrine."<sup>2127</sup>

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<sup>2124</sup> See e.g. Evan Dashevsky, "Don't freak out, but the government records and stores every phone call and email," *TechHive*, May 6, 2013, <https://www.techhive.com/article/2037632/don-t-freak-out-but-the-government-records-and-stores-every-phone-call-and-email.html>.

<sup>2125</sup> Evan Sernoffsky, "SF police got warrant to monitor journalist's phone months before controversial raid," *San Francisco Chronicle*, June 3, 2019, <https://www.sfchronicle.com/crime/article/SF-police-got-warrant-to-tap-journalist-s-phone-13912559.php>. Ben Berkowitz, Carmody's attorney, said, "SFPD appears to have used the illegal warrant to spy on Bryan's . . . phone calls and communications. . . . This is an alarming and deeply disturbing attack on the free press in an attempt to unmask [Carmody's] confidential source."

<sup>2126</sup> *Smith v. Maryland*, 442 U.S. 735 (1979). See also *Katz*, 389 U.S. at 347; *United States v. New York Tel. Co.*, 434 U.S. 159, 167 (1977).

<sup>2127</sup> *Smith*, 442 U.S. at 743–44 (citing *Couch v. United States*, 409 U.S. 322, 335–36 (1973); *United States v. White*, 401 U.S. 745, 752 (1971) (plurality opinion); *Hoffa v. United States*, 385 U.S. 293, 302 (1966); *Lopez v. United States*, 373 U.S. 427 (1963)). See also *United States v. Miller*, 425 U.S. 435, 442–44 (1976) ("[as a] general rule . . . the issuance of a subpoena to a third party to obtain the records of that party does not violate the [defendant's] rights.").

The D.C. Circuit focused specifically on the press' phone records in *RCFP v. American Telephone & Telegraph Company* (1978), holding that the government can subpoena records of journalists' long-distance calls because in making such calls, they "expos[ed] their actions to a third party."<sup>2128</sup> The court rejected RCFP's argument that journalists "are entitled under the First Amendment to prior notice of toll-call-record subpoenas issued in the course of felony investigations, even if citizens in general have no such right."<sup>2129</sup> The court reasoned that the history of the First and Fourth Amendments, as well as court precedent, "support the proposition that the First Amendment affords no procedural or substantive protection against good faith criminal investigative activity beyond that afforded by the Fourth [Amendment]." The court added that subpoenaing journalists' long-distance call records does not "chill" communication.<sup>2130</sup>

In *New York Times Co. v. Gonzalez* (2006), the Second Circuit held that two *New York Times* reporters' telephone records were not protected by New York's shield law.<sup>2131</sup> The court required the journalists to hand over 11 days' worth of records to a

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<sup>2128</sup> Rep. Comm. for Freedom of Press v. American Tel. & Tel. Co., 593 F.2d 1030, 1057 (D.C. Cir. 1978).

<sup>2129</sup> *Id.* at 1046. RCFP also contended that "journalists have a right under the First Amendment to gather information from clandestine sources." However, the D.C. Circuit noted that the Supreme Court has held the press generally does not receive special privileges. *Id.* at 1047 (citing *Branzburg*, 408 U.S. at 665).

<sup>2130</sup> *Id.* at 1058. The court continued, "To the extent individuals desire to exercise their First Amendment rights in private, free from possible good faith law enforcement investigation, they must operate within the zone of privacy secured by the Fourth Amendment. When individuals expose their activities to third parties, they similarly expose these activities to possible Government scrutiny. The mere prospect that such investigation may [and do] occur . . . does not 'chill' or otherwise abridge First Amendment rights."

<sup>2131</sup> *New York Times v. Gonzalez*, 459 F.3d 160 (2nd Cir. 2006); N.Y. CVR § 79-h. *See also* "Journalists' phone records not protected by privilege," *Reporters Committee for Freedom of the Press*, Aug. 1, 2006, <https://www.rcfp.org/journalists-phone-records-not-protected-privilege/>.

grand jury, which was investigating how the reporters learned about planned law enforcement action against two Islamic charities suspected of funding terrorist activities. The court cited *Branzburg*, reasoning that nothing in Justice White’s majority opinion “prevent[s] the present grand jury from accessing information concerning the identity of the reporters’ source(s).”<sup>2132</sup> The court further reasoned that the government had a compelling interest in the investigation and had shown a sufficient need for the information, which could not be obtained through other means.<sup>2133</sup> The court applied the third-party doctrine, ruling that the reporter’s privilege and First Amendment do not extend to records in the possession of a third-party provider.”<sup>2134</sup>

Lastly, in *United States v. Warshak* (2010), the Sixth Circuit held that government agents had violated defendant Steven Warshak’s Fourth Amendment rights by compelling NuVox, an internet service provider (ISP), “to turn over the emails without first obtaining a warrant based on probable cause.”<sup>2135</sup> However, the court held that because the federal agents “relied in good faith on provisions of the Stored Communications Act, the exclusionary rule d[id] not apply in this instance,” meaning the information obtained through the warrant was permissible in the trial. The court ultimately ruled that the evidence “was sufficient to support Warshak’s . . . conviction[] for conspiracy to commit mail, wire, . . . bank fraud,” and other crimes.<sup>2136</sup>

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<sup>2132</sup> *Id.* at 174 (citing *Branzburg*, 408 U.S. at 665).

<sup>2133</sup> *Id.* at 170.

<sup>2134</sup> *Id.* at 168. However, the court noted that if a “third party plays an ‘integral role’ in reporters’ work, the [party’s] records . . . detailing that work are . . . covered by the same privileges” afforded to reporters.

<sup>2135</sup> *United States v. Warshak*, 631 F.3d 266, 274 (6th Cir. 2010).

<sup>2136</sup> *Id.* at 275.

Significantly, the ruling in *Warshak* prompted ISPs, email providers, and social media companies to insist that both federal and state law enforcement officials and officers get a warrant in order to obtain communications content,<sup>2137</sup> including through the Stored Communications Act (SCA).<sup>2138</sup> The result was that ISPs went beyond the privacy standards in the Electronic Communications Privacy Act (ECPA), which requires that law enforcement obtain a subpoena in order to read emails and other forms of digital communication.<sup>2139</sup>

The federal government and law enforcement have, in fact, obtained phone records and emails of journalists and news organizations. For example, in 2013, the DOJ obtained Associated Press (AP) telephone records listing incoming and outgoing numbers of AP reporters, the general AP office numbers in New York, Washington, D.C., and Hartford, Conn., and the main number for AP reporters in the U.S. House of Representatives press gallery.<sup>2140</sup> AP president Gary Pruitt called it a “serious

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<sup>2137</sup> Hanni Fakhoury, “Will Telcos Follow ISPs and Extend Warrant Protection for All?,” *Electronic Frontier Foundation*, June 17, 2014, <https://www.eff.org/deeplinks/2014/06/will-telcos-follow-isps-and-require-warrant-cell>. See e.g. *Carpenter v. United States*, 138 S. Ct. 2206, 2221 (2018).

<sup>2138</sup> Stored Communications Act, 18 U.S.C. § 2703(d) (2019). The Act requires that the government have “reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation.” *But see Carpenter*, 138 S. Ct. at 2221.

<sup>2139</sup> Brendan Sasso, “Facebook, email providers say they require warrants for private data seizures,” *Hill*, Jan. 25, 2013, <https://thehill.com/policy/technology/279441-facebook-email-providers-require-warrant-for-private-data>. See also Electronic Communications Privacy Act, Pub.L. 99–508 (1986).

<sup>2140</sup> Charlie Savage and Leslie Kaufman, “Phone Records of Journalists Seized by U.S.,” *New York Times*, May 13, 2013, <https://www.nytimes.com/2013/05/14/us/phone-records-of-journalists-of-the-associated-press-seized-by-us.html>; Kim Zetter, “Obama Administration Secretly Obtains Phone Records of AP Journalists,” *Wired*, May 13, 2013, <https://www.wired.com/2013/05/doj-got-reporter-phone-records/>.

interference with [AP]’s constitutional rights to gather and report the news,”<sup>2141</sup> demonstrating the negative effects of such seizures on the press’ ability to gather news.

The same year, the DOJ seized phone records from at least five numbers associated with Fox News, as well as the personal cell phone number of Fox News reporter James Rosen.<sup>2142</sup> The DOJ also obtained emails from Rosen’s Google account and named him as a co-conspirator in a government leak by Jin-Woo Kim, a former State Department contractor.<sup>2143</sup> Fox News executive vice president for news Michael Clemente said, “We are outraged to learn . . . that James Rosen was named a criminal co-conspirator for simply doing his job as a reporter. In fact, it is downright chilling. We will unequivocally defend his right to operate as a member of what up until now has always been a free press.”<sup>2144</sup> Thus, the case once again demonstrated the potential chilling effect of government obtaining journalists’ phone records, as well as the intrusion into the free press, despite the DOJ guidelines purporting to limit the practice.

More recently, *New York Times* reporter Ali Watkins was swept up in the DOJ’s 2018 prosecution of former U.S. Senate Select Committee on Intelligence (SSCI) director of security James A. Wolfe in connection to an investigation into “multiple unauthorized disclosures of information to one or more members of the news media.”<sup>2145</sup> Federal

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<sup>2141</sup> Savage and Kaufman, “Phone Records of Journalists Seized by U.S.”

<sup>2142</sup> Ryan Lizza, “The Justice Department and Fox News’s Phone Records,” *New Yorker*, May 21, 2013, <https://www.newyorker.com/news/news-desk/the-justice-department-and-fox-newss-phone-records>.

<sup>2143</sup> Ann E. Marimow, “A rare peek into a Justice Department leak probe,” *Washington Post*, May 19, 2013, [https://www.washingtonpost.com/local/a-rare-peek-into-a-justice-department-leak-probe/2013/05/19/0bc473de-be5e-11e2-97d4-a479289a31f9\\_story.html](https://www.washingtonpost.com/local/a-rare-peek-into-a-justice-department-leak-probe/2013/05/19/0bc473de-be5e-11e2-97d4-a479289a31f9_story.html).

<sup>2144</sup> Lizza, “The Justice Department and Fox News’s Phone Records.”

<sup>2145</sup> Memmel, “Investigations, Prosecutions, and Sentencing Continue in Government Leak Cases,” 38-42. Wolfe ultimately pled guilty to one count of making a false statement to the FBI.

officials seized several years' worth of Watkins' phone and email records, potentially in violation of the DOJ policies regarding journalists' records.<sup>2146</sup> Prosecutors obtained “years of customer records and subscriber information from telecommunications companies, including Google and Verizon, for two email accounts and a phone number of hers,” though they did not obtain the content of the messages.<sup>2147</sup>

Observers highlighted several possible effects of the practice, including the undermining of journalists' source relationships as the seized information may contain identifying information of sources.<sup>2148</sup> When journalists are unable to forge such relationships because their credibility has been undermined, their ability “to reveal the truth about the actions of government is crucial in a democracy” is threatened. Furthermore, observers emphasized that such efforts represent the intrusion of the state into the “important newsgathering role of the press.”<sup>2149</sup>

#### **e. Electronic Devices, Social Media Accounts, and Location Information**

Law enforcement searches and seizures have also targeted members of the press' and public's electronic devices, social media accounts, and location information, raising additional legal considerations. In 2017, the U.S. Press Freedom Tracker recorded 15 incidents of journalists being subjected to “equipment searches & seizures” by police.<sup>2150</sup>

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<sup>2146</sup> Adam Goldman, Nicholas Fandos, and Katie Benner, “Ex-Senate Aide Charged in Leak Case Where Times Reporter's Records Were Seized,” *New York Times*, June 7, 2018, <https://www.nytimes.com/2018/06/07/us/politics/times-reporter-phone-records-seized.html>; Emily Stewart, “Trump's targeting of a New York Times journalist, explained by experts,” *Vox*, June 9, 2018, [vox.com/policy-and-politics/2018/6/9/17442918/trump-leak-times-journalist-press](http://vox.com/policy-and-politics/2018/6/9/17442918/trump-leak-times-journalist-press).

<sup>2147</sup> Goldman, Fandos, and Benner, “Ex-Senate Aide Charged.”

<sup>2148</sup> Stewart, “Trump's targeting of a New York Times journalist, explained by experts.”

<sup>2149</sup> *Ibid.*

<sup>2150</sup> Peter Sterne, “Editor's note: Equipment searches, seizures, and damage,” *U.S. Press Freedom Tracker*, Jan. 24, 2018, <https://pressfreedomtracker.us/blog/editors-note-equipment-searches-seizures-and-damage/>.

A key case regarding searches and seizures of individuals' electronic devices is *Riley v. California* (2014), which arose when officers examined the defendants David Riley's and Brima Wurie's cell phones under suspicion that they were involved in gang- or drug-related activities.<sup>2151</sup> Chief Justice John Roberts first balanced the degree of intrusion a search would have on an individual's privacy with the government interest in conducting the search.<sup>2152</sup> He held that courts in previous Fourth Amendment cases could not have imagined the large amount of data and information contained within modern cell phones,<sup>2153</sup> but also acknowledged that limiting police officers' abilities to search cell phones would effect efforts to combat crime.<sup>2154</sup> However, Chief Justice Roberts ruled that although "the information on a cell phone is [not] immune from search[es] . . . a warrant is generally required before such a search, even when a cell phone is seized incident to arrest." He added, "[W]hat police must do before searching a cell phone seized incident to an arrest is accordingly simple — get a warrant."<sup>2155</sup>

However, as Chief Justice Roberts noted, such protections are not absolute. For example, journalists' electronic devices have been the target of warrantless searches and seizures at U.S. borders.<sup>2156</sup> However, because of the Fourth Amendment border search

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<sup>2151</sup> *Riley v. California*, 573 U.S. 373, 379, 381 (2014).

<sup>2152</sup> *Id.* at 403.

<sup>2153</sup> *Id.* at 385. Chief Justice Roberts wrote, "Modern cell phones, as a category, implicate privacy concerns far beyond those implicated by the search of a cigarette pack, a wallet, or a purse." *Id.* at 393.

<sup>2154</sup> *Id.* at 401.

<sup>2155</sup> *Id.* at 403.

<sup>2156</sup> "Nothing to Declare: Why U.S. Border Agency's Vast Stop and Search Powers Undermine Press Freedom," *Committee to Protect Journalists*, 2018, <https://cpj.org/reports/2018/10/nothing-to-declare-us-border-search-phone-press-freedom-cbp.php>. See also Seth Harp, "I'm a Journalist But I Didn't Fully Realize the Terrible Power of U.S. Border Officials Until They Violated My Rights and Privacy," *Intercept*, June 22, 2019, <https://theintercept.com/2019/06/22/cbp-border-searches-journalists/>. *Rolling Stone* contributor Seth Harp documented his experience of having

exception, as well as a federal court split on the issue, journalists “have not received adequate protections against warrantless searches and seizures at U.S. borders and remain confused and uncertain about their rights.”<sup>2157</sup> Furthermore, the federal government has also compiled information about journalists and other travelers crossing U.S. borders, including in relation to the “migrant caravan,” a group of more than 5,000 migrants seeking asylum at the U.S.-Mexico border in November 2018.<sup>2158</sup> Such surveillance has only further raised concerns about press freedom at U.S. borders.

Connected to law enforcement attempts to search and/or seize electronic devices is the targeting of individuals’ social media accounts. In February 2017, the DOJ filed search warrants against Facebook seeking information on three accounts linked to the protests during President Trump’s inauguration.<sup>2159</sup> The warrants also sought personal

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his electronic devices searched during a secondary screening by CBP agents in June 2019, providing an additional example of CBP’s practice of conducting such searches against journalists without a warrant or probable cause.

<sup>2157</sup> Memmel, “Crossing Constitutional Boundaries,” 29. The article goes on to discuss the legal landscape around warrantless searches and seizures of electronic devices at U.S. borders, including of journalists.

<sup>2158</sup> Tom Jones, Mari Payton, and Bill Feather, “Source: Leaked Documents Show the U.S. Government Tracking Journalists and Immigration Advocates Through a Secret Database,” *NBC San Diego*, Mar. 6, 2019, <https://www.nbcsandiego.com/investigations/Source-Leaked-Documents-Show-the-US-Government-Tracking-Journalists-and-Advocates-Through-a-Secret-Database-506783231.html>. The secret database included the names, birthdates, countries of commencement, and photographs of journalists, a U.S. attorney, and forty-eight other individuals from the United States and abroad labeled as “organizers” or “instigators,” or that their roles were “unknown.”

<sup>2159</sup> Jessica Schneider, “DOJ demands Facebook information from ‘anti-administration activists,’” *CNN*, Sept. 30, 2017, <https://www.cnn.com/2017/09/28/politics/facebook-anti-administration-activists/index.html>; *See also* Scott Memmel, “Federal Search Warrants and Nondisclosure Orders Lead to Legal Action; DOJ Changes Gag Order Practices,” *Silha Bulletin* 23, no. 1 (Fall 2017): 1-10. The DOJ also filed a broad search warrant against web-hosting company DreamHost related to the inauguration protests. On Aug. 24, 2017, District of Columbia Superior Court Chief Judge Robert Morin ordered DreamHost to comply with the warrant seeking email addresses and other information on individuals who visited [www.disruptj20.org](http://www.disruptj20.org), which was used to organize protests. However, on Oct. 10, 2017, Morin limited the information the DOJ could obtain, allowing DreamHost to redact some information.

information of 6,000 users who “liked” DisruptJ20, an anti-Trump Facebook page operated by one of the users identified in the warrants. In November 2017, the District of Columbia Superior Court Chief Judge Robert Morin required the DOJ to follow several procedural safeguards to “ensure that the identities of innocent persons [and third parties were] not revealed.”<sup>2160</sup> Morin also limited the warrants by requiring Facebook to redact the personally identifying information of all third parties tied to the three accounts.<sup>2161</sup> Although it is not clear whether journalists or news organizations were implicated in the search warrant, future broad warrants by the DOJ could target the press.

More recently, a journalist’s Twitter account was the target of a subpoena in New York.<sup>2162</sup> In December 2019, the New York Police Department (NYPD) issued a subpoena seeking information from *New York Post* reporter and police bureau chief Tina Moore’s Twitter account.<sup>2163</sup> The NYPD sought ISP addresses, emails, and other information affiliated with the account as part of an investigation into “the leaking of crime scene photos to Ms. Moore . . . [who] posted images from a shooting that left four people dead.” It was later revealed that the photos were given to Moore by freelance photographer Amr Alfiky, who was arrested for disorderly conduct, despite explaining that he was a journalist, after he refused to stop taking photographs of the crime scene.

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<sup>2160</sup> Complaint, In the Matter of the Search of Information Associated with Facebook Accounts, No. 17 CSW 658-660 (filed Nov. 9, 2011), [https://www.acludc.org/sites/default/files/field\\_documents/11-9-2017\\_dc\\_superior\\_ct\\_order.pdf](https://www.acludc.org/sites/default/files/field_documents/11-9-2017_dc_superior_ct_order.pdf).

<sup>2161</sup> *Id.* at 15.

<sup>2162</sup> Craig McCarthy, “NYPD tried to subpoena NY Post reporter’s Twitter account citing anti-terror law,” *New York Post*, Feb. 13, 2020, <https://nypost.com/2020/02/13/nypd-tried-to-subpoena-ny-post-reporters-twitter-account-citing-anti-terror-law/>.

<sup>2163</sup> Ali Watkins, “Why the N.Y.P.D. Subpoenaed a Reporter’s Twitter Feed,” *New York Times*, Feb. 14, 2020, <https://www.nytimes.com/2020/02/14/nyregion/patriot-act-subpoena-nypd.html>.

Ultimately, after Twitter refused to comply with the subpoena and notified the *New York Post*, the NYPD dropped the subpoena.<sup>2164</sup> In February 2020, NYPD Commissioner Dermot Shea apologized for the subpoena, stating that it was “wrong” to file the subpoena and that there “were certainly other avenues [the NYPD] can take.”<sup>2165</sup>

RCFP Technology and Press Freedom Project Director Gabe Rottman explained that had this been a federal case, the DOJ guidelines regarding subpoenaing the press would have applied, likely requiring the attorney general to approve the subpoena.<sup>2166</sup> However, Rottman called the subpoena “bizarre” because “the legal authority cited by the NYPD includes both city law and a hyper-obscure provision of the USA Patriot Act, the federal law passed in the wake of 9/11 and the 2001 anthrax attacks.” More specifically, the subpoena cited an “obscure provision”: Section 211, which “clarified that when a cable company provides telephone or Internet service, it must comply with the same disclosure laws that apply to any other telephone company or Internet service provider.”<sup>2167</sup> Rottman contended that there were two possible reasons why the NYPD cited this provision.<sup>2168</sup> First, the NYPD may have done so by mistake, though this would “still be trouble [by] ‘implicat[ing of] press freedoms.’” Second, the NYPD may have used the citation to “intimidate a respondent into complying, [which] would be the most

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<sup>2164</sup> Tracy Thomas, “Top cop sorry for subpoena vs. journalist,” *New York Daily News*, Feb. 27, 2020, <https://www.pressreader.com/usa/new-york-daily-news/20200227/281655372110446>.

<sup>2165</sup> Ibid.

<sup>2166</sup> Gabe Rottman, “Special analysis: Why did the NYPD cite an ‘anti-terrorism’ law when it subpoenaed a reporter’s Twitter account?,” *Reporters Committee for Freedom of the Press*, Feb. 21, 2020, <https://www.rcfp.org/nypd-patriot-act-subpoena/>.

<sup>2167</sup> USA Patriot Act, Pub. L. No. 107-56 § 211 (2001). Section 211 provides that the reason for doing so is that “[t]errorists no longer can exempt themselves from lawful investigations simply by choosing cable companies as their communications providers.”

<sup>2168</sup> Rottman, “Special analysis.”

disturbing element of this whole mysterious story.” *The New York Times* added that the subpoena may have indicated that the NYPD was “taking aggressive steps to control the media’s coverage of the agency.”<sup>2169</sup> In any event, the subpoena marked an intrusion into freedom of the press, a significant effect of such actions by law enforcement.

Finally, federal agencies, as well as state and local police departments, may utilize new and evolving technologies to track past and current locations of journalists, including through GPS and cell site location information (CSLI). Two Supreme Court cases in particular have addressed government use of technology to track the locations of members of the public. In *United States v. Jones* (2012), Justice Antonin Scalia and a plurality of the Court held that the federal government’s installation of a GPS device on a vehicle, as well as the subsequent use of the tracker to monitor the vehicle’s movements, constituted a “search” within the meaning of the Fourth Amendment.<sup>2170</sup> In a concurring opinion, Justice Sonia Sotomayor wrote that “[t]he Government usurped Jones’ property

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<sup>2169</sup> Watkins, “Why the N.Y.P.D. Subpoenaed a Reporter’s Twitter Feed.” *See also* “NYPD subpoenaed journalist’s Twitter data, citing anti-terrorism law,” *Committee to Protect Journalists*, Feb. 14, 2020, <https://cpj.org/2020/02/nypd-subpoenaed-journalists-twitter-data-citing-an.php>. CPJ Advocacy Director Courtney Radsch similarly argued that “[u]sing the Patriot Act to subpoena a journalist’s social media data is not only a gross overstep by the [NYPD], it is reminiscent of how countries without democratic safeguards use anti-terrorism laws to dampen or retaliate against critical journalism. . . . Police should respect reporters’ right to keep source information private, rather than subpoenaing tech companies to gain information on journalists and their sources and methods.”

<sup>2170</sup> *United States v. Jones*, 565 U.S. 400, 401 (2012). The case arose from the arrest of Washington, D.C., resident Antoine Jones, the owner of D.C.’s Levels nightclub, who was suspected of drug trafficking. During an investigation by a joint Federal Bureau of Investigation and Metropolitan Police Department task force, law enforcement officers obtained a warrant to install a GPS device on Jones’s car. However, by the time it was installed, the warrant had expired. Nevertheless, the government tracked the car’s movements for twenty-eight days, creating more than 2,000 pages of data. Justice Scalia wrote that the government’s “physical intrusion on [a personal] ‘effect’ for the purpose of obtaining information constituted a ‘search.’” *Id.* at 402–04. *See also Katz*, 389 U.S. at 347.

for the purpose of conducting surveillance on him, thereby invading privacy interests long afforded, and undoubtedly entitled to, Fourth Amendment protection.”<sup>2171</sup> Thus, five justices, though not all in Justice Scalia’s majority opinion, concluded that “longer term GPS monitoring in government investigations of most offenses impinges on expectations of privacy.”<sup>2172</sup>

In *Carpenter v. United States* (2018), the Court held that government actors need a warrant to obtain CSLI, which is historical data from cell phone carriers detailing the movements and location of a user.<sup>2173</sup> In his majority opinion, Chief Justice Roberts explained that cell phones “continuously scan their environment looking for the best signal, which generally comes from the closest cell site. . . . Each time the phone connects to a cell site, it generates . . . CSLI,” which wireless carriers collect and store for their own business purposes and sell in aggregated form to third parties.<sup>2174</sup> Chief Justice Roberts cited *Katz* and his opinion in *Riley* as support that the acquisition of CSLI by law enforcement constitutes a Fourth Amendment search. He also cited *Kyllo v. United States* (2001), in which the Court rejected a “mechanical interpretation” of the Fourth

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<sup>2171</sup> *Jones*, 565 U.S. at 413–14 (Sotomayor, J., concurring).

<sup>2172</sup> *Id.* at 412.

<sup>2173</sup> *Carpenter*, 138 S. Ct. at 2207. The case arose in April 2011 when Timothy Carpenter and Timothy Sanders were among four individuals arrested for committing armed robberies in Detroit, Michigan. The FBI applied for three orders from magistrate judges seeking CSLI, among other data, arguing that it would “provide evidence that Sanders, Carpenter and other known and unknown individuals had violated the Hobbs Act, 18 U.S.C. § 1951 (2006).” The magistrate judges granted the applications. Using CSLI and other data, FBI agent Christopher Hess, created “maps showing [their] phones were within a half-mile to two miles of the location of each of the robberies around the time the robberies happened.” *Id.* at 2213; *United States v. Carpenter*, 819 F.3d 880, 884–85 (6th Cir. 2016).

<sup>2174</sup> *Carpenter*, 138 S. Ct. 2206, 2212 (2018).

Amendment and held that use of a thermal imager to detect heat radiating from the side of the defendant's home was a search.<sup>2175</sup>

Chief Justice Roberts declined to apply the “third-party doctrine,” but instead relied on *Jones*, finding that a “majority of this Court has already recognized that individuals have a reasonable expectation of privacy in the whole of their physical movements.”<sup>2176</sup> He observed that police, both in the past and present, “would not — and . . . could not — secretly monitor and catalogue every single movement of an individual's car for a very long period.” Chief Justice Roberts therefore held that “[a]llowing government access to cell-site records contravenes that expectation . . . because [m]apping a cell phone's location over the course of 127 days provides an all-encompassing record of the holder's whereabouts.” He concluded that police “must generally obtain a warrant supported by probable cause before acquiring [CSLI].”<sup>2177</sup>

Ultimately, despite some protection from court precedent and DOJ guidelines, journalists' electronic devices, social media accounts, and location information remain possible targets of law enforcement investigations. The result is the same as when government and police target journalists' homes, offices, sources, materials, newsrooms, phone calls, and emails: the undermining of the press' purposes and functions. More specifically, such actions undermine journalists' and news organizations' credibility, source relationships, ability to gather news, and independence, making it more difficult to inform the public and hold police accountable.

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<sup>2175</sup> *Id.* (citing *Kyllo v. United States*, 533 U.S. 27, 34 (2001)).

<sup>2176</sup> *Id.* at 2217 (citing *Jones*, 565 U.S. at 430 (Alito, J., concurring)).

<sup>2177</sup> *Id.* at 2221 (Chief Justice Roberts added, “[T]he [g]overnment's obligation is a familiar one — get a warrant.”).

## f. Special Case: Government Leak Cases

Government leak prosecutions present a special case of government and law enforcement targeting journalists' sources, information, and electronic devices. Such prosecutions generally include charges under the Espionage Act, which was passed in 1917 after the United States entered World War I (WWI).<sup>2178</sup> The statute was drafted to prohibit the obtaining, recording, or copying of information that could cause harm to national defense or foreign relations.<sup>2179</sup> Although the Espionage Act has yet to be used to prosecute a journalist, it has been used to target dissenting voices and, more recently, leakers of classified government information.<sup>2180</sup>

In 1919, the Supreme Court upheld the convictions of three individuals viewed by the federal government to be dissenting voices and threats to the war effort, including in *Schenck v. United States*,<sup>2181</sup> *Debs v. United States*,<sup>2182</sup> and *Abrams v. United States*.<sup>2183</sup> Through 2009, only one person had been convicted under the statute for leaking

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<sup>2178</sup> Espionage Act, 18 U.S.C. § 793 (2010).

<sup>2179</sup> David Asp and Deborah Fisher, "Espionage Act of 1917 (1917)," *First Amendment Encyclopedia*, May 2019, <https://www.mtsu.edu/first-amendment/article/1045/espionage-act-of-1917>. The act was also passed to target individuals seen as obstructing enlistment or causing disloyalty to the U.S. military.

<sup>2180</sup> Alexandra Ellerbeck, "How US Espionage Act can be used against journalists covering leaks," *Committee to Protect Journalists*, May 20, 2017, <https://cpj.org/blog/2017/05/how-us-espionage-act-can-be-used-against-journalis.php>.

<sup>2181</sup> *Schenck v. United States*, 249 U.S. 47 (1919) (upholding the conviction of Charles T. Schenck, who circulated a flyer arguing that the draft violated the Thirteenth Amendment).

<sup>2182</sup> *Debs v. United States*, 249 U.S. 211 (1919) (ruling against Eugene Debs, who had delivered a public speech, which the Court found would have "the probable effect" of preventing military recruiting).

<sup>2183</sup> *Abrams v. United States*, 250 U.S. 616 (1919) (Although the majority found that the Espionage Act criminalized the actions of "anarchists," "rebels," and "revolutionists," Justice Oliver Wendell Holmes, Jr. wrote a dissenting opinion articulating the "marketplace of ideas" theory.).

government documents to a news organization.<sup>2184</sup> However, President Barack Obama's and President Donald Trump's administrations used the Espionage Act more frequently to prosecute leakers. One such individual was former army intelligence analyst Chelsea Manning, who in 2010 leaked over 700,000 pages of classified U.S. documents to WikiLeaks, a non-profit organization known for publishing leaked government information.<sup>2185</sup> The documents included incident logs from the Iraq and Afghanistan Wars, diplomatic cables from American embassies, and a video of a helicopter crash in Baghdad that killed two journalists.<sup>2186</sup> In July 2013, a military court found Manning guilty of six counts under the Espionage Act. She was sentenced to 35 years in prison before President Obama commuted most of her remaining sentence in 2017.<sup>2187</sup>

A second notable leak case involved former National Security Agency (NSA) contractor Edward Snowden, who leaked classified information to *The Washington Post* and *The Guardian* in 2013.<sup>2188</sup> The information documented the scope of U.S.

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<sup>2184</sup> Peter Sterne, "Obama used the Espionage Act to put a record number of reporters' sources in jail, and Trump could be even worse," *Freedom of the Press Foundation*, June 21, 2017, <https://freedom.press/news/obama-used-espionage-act-put-record-number-reporters-sources-jail-and-trump-could-be-even-worse/>.

<sup>2185</sup> C. J. Chivers, et al., "View Is Bleaker Than Official Portrayal of War in Afghanistan," *New York Times*, July 25, 2010; Patrick File, "WikiLeaks' Document Dump Sparks Debate," *Silha Bulletin* 15, no. 3 (Summer 2010): 1-4.

<sup>2186</sup> Scott Memmel, "President Obama Commutes Chelsea Manning's Sentence, Pardons Gen. James E. Cartwright, Takes No Action on Edward Snowden," *Silha Bulletin* 22, no. 2 (Winter/Spring 2017): 11-13.

<sup>2187</sup> "Chelsea Manning ordered back to jail for contempt," *BBC*, May 17, 2019, <https://www.bbc.com/news/world-us-canada-48304792>. See also Kim Lyons, "Judge orders Chelsea Manning released from jail," *Verge*, March 12, 2020, <https://www.theverge.com/2020/3/12/21177562/judge-chelsea-manning-released-jail-wikileaks-assange>. Manning was jailed once more after refusing to testify before a grand jury investigating WikiLeaks, though she was released under a court order in March 2020.

<sup>2188</sup> Paul Szoldra, "This is everything Edward Snowden revealed in one year of unprecedented top-secret leaks," *Bus. Insider*, Sept. 16, 2016, <https://www.businessinsider.com/snowden-leaks-timeline-2016-9>.

intelligence agencies' surveillance and data collection efforts, discussed more fully below.<sup>2189</sup> Snowden fled to Russia after leaking the documents, and has remained there ever since to avoid possible U.S. charges.<sup>2190</sup>

Another leak case by the Obama administration implicated Pulitzer Prize-winning *New York Times* reporter James Risen. In 2010, prosecutors indicted former Central Intelligence Agency (CIA) officer Jeffrey Sterling under the Espionage Act.<sup>2191</sup> The DOJ alleged that Sterling had provided classified information for Risen's book, *State of War*.<sup>2192</sup> In 2011, then-U.S. Attorney General Eric Holder authorized a subpoena ordering Risen to testify at Sterling's trial, to which Risen refused, arguing that he had a First Amendment right to protect his source. In 2013, the Fourth Circuit overturned a district court order, which had prevented prosecutors from asking Risen to name his source.<sup>2193</sup> After the Supreme Court declined to hear Risen's case, he faced potential jail time for contempt. However, the DOJ did not seek Risen's testimony, having found the information elsewhere.<sup>2194</sup> Sterling was convicted under the Espionage Act and sentenced to 42 months in prison, of which he served over two years before his release.<sup>2195</sup>

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<sup>2189</sup> Jason Steck, "Snowden Leaks Reveal Extensive National Security Agency Monitoring of Telephone and Internet Communication," *Silha Bulletin* 18, no. 3 (Summer 2013): 1-7.

<sup>2190</sup> Memmel, "President Obama Commutes Chelsea Manning's Sentence."

<sup>2191</sup> Charlie Savage, "Ex-C.I.A. Officer Named in Disclosure Indictment," *New York Times*, Jan. 6, 2011, <https://www.nytimes.com/2011/01/07/us/07indict.html>.

<sup>2192</sup> Scott Memmel, "Reporters and Leakers of Classified Documents Targeted by President Trump and the DOJ," *Silha Bulletin* 22, no. 3 (Summer 2017): 1-6.

<sup>2193</sup> *United States v. Sterling*, 724 F.3d 482, 483 (4th Cir. 2013).

<sup>2194</sup> Memmel, "Reporters and Leakers of Classified Documents Targeted," 1-6.

<sup>2195</sup> Peter Maass, "Jeffrey Sterling, Convicted of Leaking About Botched CIA Program, Has Been Released from Prison," *Intercept*, Jan. 19, 2018, <https://theintercept.com/2018/01/19/jeffrey-sterling-cia-leaking-prison/>.

The Trump administration also targeted several leakers, including NSA contractor Reality Winner,<sup>2196</sup> FBI agent Terry James Albury,<sup>2197</sup> CIA employee Joshua A. Schulte,<sup>2198</sup> U.S. Air Force intelligence analyst Daniel Everette Hale,<sup>2199</sup> and Defense Intelligence Agency (DIA) employee Henry Kyle Frese.<sup>2200</sup> As discussed above, in connection to a different leak case, reporter Ali Watkins' phone and email records were secretly obtained by the DOJ.<sup>2201</sup>

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<sup>2196</sup> Charlie Savage, "Intelligence Contractor Is Charged in First Leak Case Under Trump," *New York Times*, June 5, 2017, <https://www.nytimes.com/2017/06/05/us/politics/reality-winner-contractor-leaking-russia-nsa.html>; Dave Philipps, "Reality Winner, Former N.S.A. Translator, Gets More Than 5 Years in Leak of Russian Hacking Report," *New York Times*, Aug. 23, 2018, <https://www.nytimes.com/2018/08/23/us/reality-winner-nsa-sentence.html>. In 2018, Winner was sentenced to 63 months in prison for leaking classified documents detailing Russian involvement in the 2016 Presidential Election, among other information.

<sup>2197</sup> Libor Jany, "Ex-FBI agent gets 4 years in prison for leaking sensitive documents to press," *Star Tribune*, Oct. 18, 2018, <http://www.startribune.com/ex-fbi-agent-gets-4-years-in-prison-for-leaking-sensitive-documents-to-press/497945251/>. See also Scott Memmel, "Trump Administration Targets Two More Leakers of Government Information," *Silha Bulletin* 25, no. 1 (Fall 2019): 8-10. In, Albury, who leaked agency documents detailing surveillance of journalists, among other topics, was charged with two counts of violating the Espionage Act and sentenced to four years in prison.

<sup>2198</sup> Scott Shane and Adam Goldman, "Suspect Identified in C.I.A. Leak Was Charged, but Not for the Breach," *New York Times*, May 15, 2018, <https://www.nytimes.com/2018/05/15/us/cia-hacking-tools-leak.html>; Scott Memmel, "Trump Administration Targets Journalist, Leaker of Government Information, and Former Government Employees Who Took Classified Documents," *Silha Bulletin* 23, no. 3 (Summer 2018): 9-16. Schulte was charged under the Espionage Act for leaking CIA documents, marking the agency's largest loss of confidential information in its history.

<sup>2199</sup> Goldman, Fandos, and Benner, "Ex-Senate Aide Charged." Hale "illegally obtain[ed] classified national defense information" and disclosed it to a reporter.

<sup>2200</sup> Savannah Behrmann, "Intelligence employee pleads guilty to leaking classified info to journalists," *USA Today*, Feb. 20, 2020, <https://www.usatoday.com/story/news/politics/2020/02/20/henry-kyle-frese-pleads-guilty-leaking-information-journalists/4824552002/>. In October 2019, the DOJ charged Frese with two counts under the Espionage Act for leaking classified national defense information to two journalists, one at NBC News and the other at CNBC. Frese pled guilty in February 2020.

<sup>2201</sup> See notes 2145-2149 above. See also Josh Bell, "How the Justice Department's Seizure of a Reporter's Email Records Subverts the Free Press," *American Civil Liberties Union*, June 8, 2018, <https://www.aclu.org/blog/free-speech/freedom-press/how-justice-departments-seizure-reporters-email-records-subverts-free>.

In one cases, a journalist served jail time for contempt for refusing to disclose her confidential source in relation to a leak case. In 2005, the D.C. Circuit upheld a ruling by a federal district court judge, who found *New York Times* reporter Judith Miller in contempt after she refused to appear before a federal grand jury investigating who had leaked the identity of CIA agent Valerie Plame.<sup>2202</sup> Miller spent 85 days in prison before Lewis Libby, Dick Cheney’s Chief of Staff, consented to letting Miller testify that she was the source of the leak.

In May 2019, federal prosecutors charged Julian Assange, the founder of WikiLeaks, with 17 counts under the Espionage Act, marking perhaps the closest the federal government has come to prosecuting a journalist or news organization for involvement in leak cases.<sup>2203</sup> The DOJ claimed that Assange and WikiLeaks had “repeatedly sought, obtained, and disseminated information that the United States classified due to the serious risk that unauthorized disclosure could harm the national security of the United States.”<sup>2204</sup> The DOJ further alleged that Assange had “encourage[d] [sources] with access to protected information, including classified information, to provide it to WikiLeaks for public disclosure.” The charges prompted

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<sup>2202</sup> In re Grand Jury Subpoena Judith Miller, 397 F.3d 964 (D.C. Cir. 2005).

<sup>2203</sup> Indictment, U.S. v. Assange, No. 1:18-cr-111 (CMH) (E.D. Va. filed May 23, 2019), <https://assets.documentcloud.org/documents/6024848/5-23-19-US-Assange-Superseding-Indictment.pdf>. See also Jon Swaine, “New US charges against Julian Assange could spell decades behind bars,” *Guardian*, May 23, 2019, <https://www.theguardian.com/media/2019/may/23/wikileaks-founder-julian-assange-with-violating-the-espionage-act-in-18-count-indictment>; Ken Dilanian and Doha Madani, “WikiLeaks co-founder Julian Assange indicted on 17 new charges under Espionage Act,” *NBC News*, May 23, 2019, <https://www.nbcnews.com/news/us-news/wikileaks-founder-julian-assange-indicted-new-charges-under-espionage-act-n1009441>. See also James C. Goodale, “More Than a Data Dump,” *Harpers*, April 2019, <https://harpers.org/archive/2019/04/more-than-a-data-dump-julian-assange/>.

<sup>2204</sup> Indictment, U.S. v. Assange, No. 1:18-cr-111 (CMH) (E.D. Va. filed May 23, 2019).

significant concern from observers, including that the indictment was potentially the next step in prosecuting traditional journalists under the Espionage Act.<sup>2205</sup> Leak prosecutions, and the threat of implicating journalists and news organizations, therefore represent an additional way the government and law enforcement can target the press.

### **g. Search Warrants and Subpoenas Conclusions**

Taken together, police use of search warrants and subpoenas to target journalists' homes, offices, newsrooms, sources, materials, information, electronic devices, social media accounts, and locations raise important implications for the press. The risk of journalists and news organizations being prosecuted under the Espionage Act only further raises concerns about government and law enforcement targeting the press. Although court precedent and statutory law provide some protections, concerns still remain, including the impact on journalists' ability to gather news, forge source relationships, and retain credibility, therefore making the press-police relationship more contentious and implicating the American public.

### **3. Surveillance and Evolving Technologies**

Surveillance — including “mass” surveillance, wiretapping, and bulk data collection, as well as secretive searches, seizures, and subpoenas, among other practices where government or law enforcement closely observers or spies on the public or the

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<sup>2205</sup> See e.g. Nick Robins-Early, “Assange’s Espionage Act Charge Sets Up A Fight Over The First Amendment,” *HuffPost*, May 24, 2019, [https://www.huffpost.com/entry/assange-espionage-first-amendment\\_n\\_5ce8457ae4b00e03656dfc5e](https://www.huffpost.com/entry/assange-espionage-first-amendment_n_5ce8457ae4b00e03656dfc5e). For example, University of Minnesota Silha Center Director and Silha Professor of Media Ethics and Law Jane Kirtley said, “This is serious. . . . Everybody in the news business and frankly everybody who is a consumer of information needs to be paying attention to this. . . . Whatever happens to Julian Assange could potentially happen to any journalist, anywhere — including someone who the government would acknowledge has a more traditional journalistic role.”

press — raises significant concerns for journalists and news organizations beyond conventional warrants and subpoenas. Mass surveillance is made possible at the federal level by Section 702 of the Foreign Intelligence Surveillance Act (FISA) Amendments Act (FAA) (Section 702),<sup>2206</sup> amendments to Rule 41 of the Federal Rules of Criminal Procedure (Rule 41),<sup>2207</sup> and National Security Letters (NSLs). Through these mechanisms, the federal government and law enforcement are able to obtain warrants and subpoenas that allow for even more invasive surveillance of journalists' sensitive information, phone and email records, electronic devices, communications, and more, raising significant press freedom concerns. At the state and local levels, use of facial recognition technologies and the Internet of Things (IoT) by police create further security and privacy concerns, raising implications for the news media, the press-police relationship, and the public.

At the federal level, mass surveillance is made possible by several legal mechanisms. First, leaked documents by Snowden revealed the existence and use of Section 702,<sup>2208</sup> which provides authority for the NSA's "downstream" and "upstream" surveillance programs.<sup>2209</sup> The NSA defines "downstream" surveillance, previously referred to as "PRISM," as "acquir[ing] communications 'to or from' a Section 702

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<sup>2206</sup> Foreign Intelligence Surveillance Act Amendments Act, 50 U.S.C. § 1881a (2017).

<sup>2207</sup> Fed. R. Crim. P. 41.

<sup>2208</sup> 50 U.S.C. § 1881a. *See also* Ewen Macaskill and Gabriel Dance, "NSA Files: Decoded," *Guardian*, Nov. 1, 2013, <https://www.theguardian.com/world/interactive/2013/nov/01/snowden-nsa-files-surveillance-revelations-decoded#section/1>; Neema Singh Guliani, "Congress Just Passed a Terrible Surveillance Law. Now What?," *Speak Freely*, Jan. 18, 2018, <https://www.aclu.org/blog/national-security/privacy-and-surveillance/congress-just-passed-terrible-surveillance-law-now>.

<sup>2209</sup> Scott Memmel, "The United States, the European Union, and the Irish High Court Wrangle Data Privacy Concerns," *Silha Bulletin* 23, no. 1 (Fall 2017): 26-37.

selector (such as an email address).<sup>2210</sup> “Upstream” surveillance is defined as “acquir[ing] communications ‘to, from, *or about*’ a Section 702 selector.”<sup>2211</sup> Section 702 primarily authorizes the U.S. government to monitor electronic communications by non-U.S. citizens “reasonably believed to be located outside the United States”<sup>2212</sup> and to compel cooperation from “electronic communication service provider[s].”<sup>2213</sup> However, loopholes in Section 702 also allow the collection of U.S. persons’ information because they may be connected to data acquisitions of foreigners.<sup>2214</sup> Experts have called these loopholes “backdoor” searches.<sup>2215</sup>

In January 2018, President Trump signed the “FISA Amendments Reauthorization Act of 2017,”<sup>2216</sup> which reauthorized Section 702 and other FISA

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<sup>2210</sup> Press Release, National Security Agency, NSA Stops Certain Section 702 ‘Upstream’ Activities, April 29, 2017, <https://www.nsa.gov/news-features/press-room/Article/1618699/nsa-stops-certain-section-702-upstream-activities/>.

<sup>2211</sup> Ibid (emphasis added); Ellen Nakashima, “NSA halts controversial email collection practice to preserve larger surveillance program,” *Washington Post*, April 28, 2017, [https://www.washingtonpost.com/world/national-security/nsa-halts-controversial-email-collection-practice-to-preserve-larger-surveillance-program/2017/04/28/e2ddf9a0-2c3f-11e7-be51-b3fc6ff7faee\\_story.html](https://www.washingtonpost.com/world/national-security/nsa-halts-controversial-email-collection-practice-to-preserve-larger-surveillance-program/2017/04/28/e2ddf9a0-2c3f-11e7-be51-b3fc6ff7faee_story.html). An example of an “about” email communication is one that includes the targeted email address in the text or body of the email, even though the email is between two persons who are not targets. In 2017, the NSA announced that it was ending upstream surveillance, though it is not clear whether this remains the case.

<sup>2212</sup> 50 U.S.C. § 1881a.

<sup>2213</sup> Richard Lawler, “Trump signs bill extending NSA’s warrantless surveillance,” *Engadget*, Jan. 20, 2018, <https://www.engadget.com/2018/01/20/trump-signs-bill-extending-nsas-warrantless-surveillance/>.

<sup>2214</sup> Philip Bump, “How the Government Can Fix the Spying Problem It Doesn’t Want to Fix,” *Atlantic*, June 7, 2018, <https://www.theatlantic.com/politics/archive/2013/06/nsa-privacy-government-fixes/314487/>.

<sup>2215</sup> Lawler, “Trump signs bill extending NSA’s warrantless surveillance.”; Neema Singh Guliani, “4 Things to Be Worried About in the NSA’s New Transparency Report,” *Speak Freely*, May 7, 2018, <https://www.aclu.org/blog/national-security/privacy-and-surveillance/4-things-be-worried-about-nsas-new-transparency>; “Statistical Transparency Report,” *Office of the Director of National Intelligence*, 2017. In 2017, there were 7,512 backdoor searches of U.S. persons, up from 5,288 in 2016. The NSA also collected over 530 million call records in 2017, more than three times the number in 2016.

<sup>2216</sup> FISA Amendments Reauthorization Act of 2017, S. 139, 115th Cong. (2018).

provisions through December 2023.<sup>2217</sup> Although the Act states that “[a]ny information concerning a United States person acquired under section 702 shall not be used in evidence against that United States person,” it contains an exception for when the FBI “obtain[s] an order . . . to access such information” under the authority of Section 702 or the Attorney General determines that “the criminal proceeding affects, involves, or is related to the national security of the United States.”<sup>2218</sup>

Connected to Section 702 is the U.S. Foreign Intelligence Surveillance Court (FISA Court or FISC), a secretive panel of 11 federal district court judges provided authority under FISA to approve monitoring, intelligence-related wiretapping, and other surveillance carried out by the FBI and other bodies domestically and abroad.<sup>2219</sup> The result is that the FISA Court can issue “FISA warrants” allowing for “electronic surveillance, physical search, and other investigative actions for foreign intelligence purposes.”<sup>2220</sup> To protect national security, the Court does so in secret, meaning “outside the sort of adversarial judicial process that allows journalists and other targets of regular criminal warrants to eventually challenge their validity.”<sup>2221</sup>

CPJ contended that Section 702, by allowing for the “[acquiring and] retention of surveillance data poses a unique threat to journalism in the digital age, particularly as

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<sup>2217</sup> Lawler, “Trump signs bill extending NSA’s warrantless surveillance.”

<sup>2218</sup> 50 U.S.C. § 1881e.

<sup>2219</sup> Cora Currier, “Government Can Spy on Journalists in the U.S. Using Invasive Foreign Intelligence Process,” *Intercept*, Sept. 17, 2018, <https://theintercept.com/2018/09/17/journalists-fisa-court-spying/>.

<sup>2220</sup> “About the Foreign Intelligence Surveillance Court,” *U.S. Foreign Intelligence Surveillance Court*, accessed Feb. 28, 2020, <https://www.fisc.uscourts.gov/about-foreign-intelligence-surveillance-court>.

<sup>2221</sup> *Ibid.*

technological advances allow . . . intelligence agencies to store indefinitely not only the transactional details of all communications . . . but also huge amounts of the content of phone calls, texts, and emails.”<sup>2222</sup> Adding to concerns for journalists is that the “circumstances when the government might consider a journalist an agent of a foreign power,” remain unclear, as does how law enforcement should handle information risking journalists’ sources.<sup>2223</sup>

The result is several negative effects of Section 702 on the press. A 2018 study published in *Digital Journalism* found that journalists had increasingly reported that their “work has changed under a real or perceived threat of mass government surveillance,” including under Section 702, therefore “making their work more difficult.”<sup>2224</sup> A related effect is the undermining of journalists’ source relationships. The study argued that Section 702 “potentially damag[es journalists’] communications with sources,” and “that the vital relationship between journalists and sources—an essential component of the modern journalistic paradigm—is under threat with the presence of mass surveillance programs.” CPJ also emphasized that “[a]s the government stores more and more data, it will become next to impossible for journalists to keep sources confidential.”<sup>2225</sup> Similarly, the *Intercept* asserted that journalists “could become entangled [by Section

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<sup>2222</sup> Geoffrey King, “The NSA Puts Journalists Under a Cloud of Suspicion,” *Committee to Protect Journalists*, February 2014, <https://cpj.org/2014/02/attacks-on-the-press-surveillance-storage.php>.

<sup>2223</sup> Currier, “Government Can Spy on Journalists in the U.S. Using Invasive Foreign Intelligence Process.”

<sup>2224</sup> Stephenson Waters, “The Effects of Mass Surveillance on Journalists’ Relations With Confidential Sources,” *Digital Journalism* 6, no. 10 (2018): 1294-1313.

<sup>2225</sup> King, “The NSA Puts Journalists Under a Cloud of Suspicion.”

702] since many of them likely communicate with people who meet the broad definition of possessing ‘foreign intelligence’ information.”<sup>2226</sup>

CPJ added that there are several additional effects of data acquisition and retention under Section 702, including the ability of federal agents to “recreate a reporter’s research, retrace a source’s movements, and even retroactively listen in on communications that would otherwise have evaporated forever.”<sup>2227</sup> The result is the disruption of the free flow of information and intrusion into freedom of the press, with several experts already stating that “they believe that the NSA targets journalists for surveillance.”<sup>2228</sup>

Second, amendments to Rule 41 of the Federal Rules of Criminal Procedure also implicate law enforcement’s ability to search and surveil journalists.<sup>2229</sup> The changes allow the FBI to access computers outside jurisdiction limitations, so long as agents obtain a warrant from a magistrate judge.<sup>2230</sup> RCFP fellows Victoria Baranetsky and Selina MacLaren argued that such changes “have an outsized impact on journalists,”

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<sup>2226</sup> Currier, “Government Can Spy on Journalists in the U.S. Using Invasive Foreign Intelligence Process.”

<sup>2227</sup> King, “The NSA Puts Journalists Under a Cloud of Suspicion.”

<sup>2228</sup> Ibid. King cited ACLU attorney Alex Abdo, who contended that “all reporters should be worried. . . . Reporters who work for the largest media organizations should be worried probably primarily because their sources will dry up as those sources recognize that there is no way to cover their trail. . . . [For independent journalists, the primary concern is that] they themselves will be swept up in the course of their reporting, because they don’t enjoy some of the institutional protections that journalists get when they work at the bigger organizations.”

<sup>2229</sup> Victoria Baranetsky and Selina MacLaren, “Recent Rule 41 Changes: A Catch-22 for Journalists,” *Just Security*, Dec. 23, 2016, <https://www.justsecurity.org/35804/rule-41-changes-catch-22-journalists/>.

<sup>2230</sup> Tim Cushing, “Supreme Court Approves Rule 41 Changes, Putting FBI Closer To Searching Any Computer Anywhere With A Single Warrant,” *Techdirt*, April 29, 2016, <https://www.techdirt.com/articles/20160429/04233634312/supreme-court-approves-rule-41-changes-putting-fbi-closer-to-searching-any-computer-anywhere-with-single-warrant.shtml>.

reasoning that the changes allow law enforcement to obtain remote access to computers where anonymization tools are used, a common practice by reporter's in order to keep confidential source relationships.<sup>2231</sup> Law enforcement can, therefore, not only view journalists' information, but also remotely manipulate their computer, making the Rule 41 changes inconsistent with the PPA and DOJ guidelines.<sup>2232</sup> Additionally, an officer could use such access to impersonate the journalist who owns the device.<sup>2233</sup> Thus, the changes to Rule 41 "risk compounding the chilling effect on speech by endangering journalists, jeopardizing trust of the news media, and undermining the media's credibility and ability to independently report on the government."<sup>2234</sup>

Finally, NSLs are "administrative orders [through] which the FBI can obtain certain phone and financial records without a judge's oversight."<sup>2235</sup> Such orders are therefore "an extraordinary search procedure that gives the FBI the power to compel the disclosure of customer records held by banks, telephone companies, [ISPs], and

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<sup>2231</sup> Baranetsky and MacLaren, "Recent Rule 41 Changes." Baranetsky and MacLaren continued, "In essence, these tools serve a similar function of concealing identities as the famed parking garage where *Washington Post* journalist Bob Woodward obtained tips from Deep Throat to unveil the Watergate scandal. . . . However, under the Rule 41 changes, a district court now has jurisdiction . . . where the location of the journalist or media organization is 'concealed' or obfuscated. The new amendments therefore not only undermine Fourth Amendment requirements, . . . but also undermine [journalistic] best practices[.]" The article added that although the DOJ has argued that such changes would not alter Fourth Amendment protections, it did not provide the same assurances for the First Amendment.

<sup>2232</sup> Ibid. See also Letter from Reporters Committee for Freedom of the Press to Members of the Advisory Committee on Criminal Rules, Feb. 17, 2015, <https://www.rcfp.org/wp-content/uploads/imported/2015-02-17-rule-41-comment.pdf>.

<sup>2233</sup> Baranetsky and MacLaren, "Recent Rule 41 Changes."

<sup>2234</sup> Ibid.

<sup>2235</sup> Currier, "Government Can Spy on Journalists in the U.S. Using Invasive Foreign Intelligence Process."

others.”<sup>2236</sup> Legal authority for NSLs stems from 1) The Right to Financial Privacy Act (RFPA),<sup>2237</sup> 2) the ECPA, 3) The Fair Credit Reporting Act (FCRA), including amendments by the Patriot Act,<sup>2238</sup> and 4) The National Security Act.<sup>2239</sup> What makes NSLs particularly problematic is that the subjects of the searches are prohibited from telling anyone that they received a letter, making “oversight difficult.”<sup>2240</sup> However, the Second Circuit and Northern District of California have previously held that NSL gag orders are content-based prior restraints on speech and, therefore, violate the First Amendment.<sup>2241</sup> Despite the secrecy and potential unconstitutionality of NSLs, they have been used “to obtain personal data from far more companies than previously disclosed.”<sup>2242</sup>

Freedom of the Press Foundation (FPF) executive director Trevor Timm called NSLs a key tool for surveillance of journalists by the federal government.<sup>2243</sup> He explained that NSLs allow the FBI “to completely circumvent” the DOJ policies regarding subpoenaing journalists, and that the agency can do so “with absolutely no

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<sup>2236</sup> “National Security Letters,” *Electronic Privacy Information Center*, accessed Feb. 28, 2020, <https://epic.org/privacy/nsl/>.

<sup>2237</sup> Right to Financial Privacy Act, 12 U.S.C. § 3414 (1995).

<sup>2238</sup> Fair Credit Reporting Act, 15 U.S.C. § 1681u (2004).

<sup>2239</sup> National Security Act, 50 U.S.C. § 436 (2010).

<sup>2240</sup> “National Security Letters: FAQ,” *Electronic Frontier Foundation*, accessed Feb. 28, 2020, <https://www.eff.org/issues/national-security-letters/faq#18>.

<sup>2241</sup> *Ibid.* See also Kim Zetter, “Federal Judge Finds National Security Letters Unconstitutional, Bans Them,” *Wired*, March 15, 2013, <https://www.wired.com/2013/03/nsl-found-unconstitutional/>.

<sup>2242</sup> Jennifer Valentino-DeVries, “Secret F.B.I. Subpoenas Scoop Up Personal Data From Scores of Companies,” *New York Times*, Sept. 20, 2019, <https://www.nytimes.com/2019/09/20/us/data-privacy-fbi.html>. Between early 2016 and September 2017, the FBI evaluated 11,874 orders.

<sup>2243</sup> Trevor Timm, “When can the FBI use National Security Letters to spy on journalists? That’s classified,” *Columbia Journalism Review*, Jan. 11, 2016, [https://www.cjr.org/criticism/national\\_security\\_letters.php](https://www.cjr.org/criticism/national_security_letters.php).

court oversight.” Little else is known about how NSLs can be used against the press because, as stated in DOJ documents obtained by FPF, rules for issuing such surveillance orders on journalists are “classified.”<sup>2244</sup> Although it is unclear how many journalists have been targeted by NSLs, the federal government admitted in redacted Inspector General reports<sup>2245</sup> to using NSLs on unnamed *New York Times* and *Washington Post* reporters during President George W. Bush’s administration.<sup>2246</sup> In 2014, *Washington Post* reporter Barton Gellman revealed that his phone records had been obtained through an NSL.<sup>2247</sup>

Surveillance of the press and public can also be conducted by state and local law enforcement, namely through new and evolving technologies that, at the same time, raise security and privacy concerns. One such type of technology is facial recognition, which has been increasingly employed or considered by law enforcement, including in connection to BWCs.<sup>2248</sup> Civil liberties and privacy advocates have raised several

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<sup>2244</sup> Ibid. See also Cora Currier, “Secret Rules Make it Pretty Easy for the FBI to Spy on Journalists,” *Intercept*, June 30, 2016, <https://theintercept.com/2016/06/30/secret-rules-make-it-pretty-easy-for-the-fbi-to-spy-on-journalists/>. Currier reported that when the FBI targets a journalist for confidential sources, a provision requires the “general counsel and the executive assistant director [to] consult with the assistant attorney general for the [DOJ’s] National Security Division.” However, Timm was quoted as saying that such rules “are incredibly weak . . . as long as they have that second signoff they’re basically good to go.”

<sup>2245</sup> “A Review of the FBI’s Use of National Security Letters: Assessment of Corrective Actions and Examination of NSL Usage in 2006,” *Office of the Inspector General*, March 2008.

<sup>2246</sup> Timm, “When can the FBI use National Security Letters to spy on journalists? That’s classified.”

<sup>2247</sup> Darren Samuelsohn, “Barton Gellman aware of legal risks,” *Politico*, Feb. 25, 2014, <https://www.politico.com/blogs/media/2014/02/barton-gellman-aware-of-legal-risks-183998>.

<sup>2248</sup> See generally Jennifer Valentino-DeVries, “How the Police Use Facial Recognition, and Where It Falls Short,” *New York Times*, Jan. 12, 2020, <https://www.nytimes.com/2020/01/12/technology/facial-recognition-police.html>; Shirin Ghaffary, “How to avoid a dystopian future of facial recognition in law enforcement,” *Vox*, Dec. 10, 2019, <https://www.vox.com/recode/2019/12/10/20996085/ai-facial-recognition-police-law-enforcement-regulation>. See also Jon Schuppe, “Should police body cameras have facial

concerns with facial recognition technology, including that it “provides government with unprecedented power to track people going about their daily lives,” therefore raising privacy concerns.<sup>2249</sup> Another concern is that the technology often “return[s] more false matches for African-Americans than for white people, a sign of . . . ‘algorithmic bias’” resulting in police harassment, false arrests, and other forms of discrimination and profiling.<sup>2250</sup> Similarly, evidence suggests that facial recognition technology has a higher risk of false matches in younger faces.<sup>2251</sup> Conversely, law enforcement advocates have argued that the technology provides a useful tool for law enforcement in maintaining public safety.<sup>2252</sup> Nevertheless, through 2019, four cities banned police use of facial recognition software, including San Francisco, Oakland, and Berkeley, California and Somerville, Massachusetts.<sup>2253</sup>

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recognition tech? Axon, the largest U.S. maker of devices, says no,” *NBC News*, June 27, 2019, <https://www.nbcnews.com/news/us-news/should-police-body-cameras-have-facial-recognition-tech-axon>.

<sup>2249</sup> Kate Conger, Richard Fausset, and Serge F. Kovalski, “San Francisco Bans Facial Recognition Technology,” *New York Times*, May 14, 2019, <https://www.nytimes.com/2019/05/14/us/facial-recognition-ban-san-francisco.html?smtyp=cur&smid=tw-nytimes>.

<sup>2250</sup> See Evan Greer, “Opinion: Don’t Regulate Facial Recognition. Ban It.,” *BuzzFeed News*, July 18, 2019, <https://www.buzzfeednews.com/article/evangreer/dont-regulate-facial-recognition-ban-it>; Tom Simonite, “The Best Algorithms Struggle To Recognize Black Faces Equally,” *Wired*, July 22, 2019, <https://www.wired.com/story/best-algorithms-struggle-recognize-black-faces-equally/>; Amy Harmon, “As Cameras Track Detroit’s Residents, a Debate Ensues Over Racial Bias,” *New York Times*, July 8, 2019, <https://www.nytimes.com/2019/07/08/us/detroit-facial-recognition-cameras.html?action=click&module=Top%20Stories&pgtype=Homepage>.

<sup>2251</sup> Joseph Goldstein and Ali Watkins, “She Was Arrested at 14. Then Her Photo Went to a Facial Recognition Database,” *New York Times*, Aug. 1, 2019, <https://www.nytimes.com/2019/08/01/nyregion/nypd-facial-recognition-children-teenagers.html>.

<sup>2252</sup> Conger and Kovalski, “San Francisco Bans Facial Recognition Technology.”

<sup>2253</sup> Tom McKay, “Berkeley Becomes Fourth U.S. City to Ban Face Recognition in Unanimous Vote,” *Gizmodo*, Oct. 16, 2019, <https://gizmodo.com/berkeley-becomes-fourth-u-s-city-to-ban-face-recogniti-1839087651>.

Another area of evolving technology raising privacy and security concerns is the IoT. Such concerns include that IoT devices collect sensitive information, including financial account numbers, health information, precise geolocation, and more.<sup>2254</sup> At the same time, these devices, because they are connected to the internet, are susceptible to cyberattacks and hacking. Nevertheless, police departments across the United States have begun implementing IoT, such as “smart” firearms, which record data every time the gun is fired, among several other examples.<sup>2255</sup> Additionally, there have been efforts by police to gain more access to video recordings, such as those collected by Ring, a doorbell-camera firm,<sup>2256</sup> which can be stored indefinitely.<sup>2257</sup> Lastly, in much the same way as Google and Amazon “collect data on their consumers, so [too] do the police.”<sup>2258</sup> For example, “person-based predictive policing” allows law enforcement to “collect[]

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<sup>2254</sup> Jane Kirtley and Scott Memmel, “Rewriting the ‘Book of the Machine,’: Regulatory and Liability Issues for the Internet of Things,” *Minnesota Journal of Law, Science & Technology* 19, no. 2 (2018): 455-513; Jane Kirtley and Scott Memmel, “Too Smart for Its Own Good: Addressing the Privacy and Security Challenges of the Internet of Things,” *Journal of Internet Law* 22, no. 4 (2018): 1, 19-30.

<sup>2255</sup> Colin Neagle, “How the Internet of Things is transforming law enforcement,” *Network World*, Nov. 3, 2014, <https://www.networkworld.com/article/2842552/how-the-internet-of-things-is-transforming-law-enforcement.html>. See also Bill Searcy, “Tapping Into the Internet of Things Will Help Police Departments Turn Smart Cities into Safe Cities,” *Police Chief*, accessed Feb. 27, 2020, <https://www.policechiefmagazine.org/tapping-internet-things/>; Peter Swire, “Privacy and Cybersecurity Lessons at the Intersection of the Internet of Things and Police Body-Worn Cameras,” *North Carolina Law Review* 96 (2018): 101–45.

<sup>2256</sup> Drew Harwell, “Doorbell-camera firm Ring has partnered with 400 police forces, extending surveillance concerns,” *Washington Post*, Aug. 28, 2019, <https://www.washingtonpost.com/technology/2019/08/28/doorbell-camera-firm-ring-has-partnered-with-police-forces-extending-surveillance-reach/?arc404=true>.

<sup>2257</sup> Drew Harwell, “Police can keep Ring camera video forever and share with whomever they’d like, Amazon tells senator,” *Washington Post*, Nov. 19, 2019, <https://www.washingtonpost.com/technology/2019/11/19/police-can-keep-ring-camera-video-forever-share-with-whomever-theyd-like-company-tells-senator/>.

<sup>2258</sup> Jonathan Capehart, “How your data is used by police, and where it goes wrong,” *Washington Post*, July 17, 2018, <https://www.washingtonpost.com/blogs/post-partisan/wp/2018/07/17/how-your-data-is-used-by-police-and-where-it-goes-wrong/?noredirect=on>.

information about people, about people they consider at risk, individuals they think will be most likely to commit an act of violence or be victims of violence.”<sup>2259</sup>

Taken together, Section 702, Rule 41 changes, and NSLs, as well as facial recognition technology and IoT devices, allow the federal government and law enforcement to conduct surveillance on the American public and the press. Such practices result in the manipulating of reporters’ computers, recording of electronic or phone communications, obtaining and retaining sensitive information, impersonation, and other problematic actions. These efforts therefore raise significant implications for the news media, including threatening the press’ ability to gather news, forge source relationships, and maintain credibility and trust with the public. Furthermore, such practices can make the press-police relationship more contentious.

#### **4. Conclusions**

Like in cases where the press investigates police, law enforcement arrests, searches, seizures, subpoenas, and surveillance of journalists or news organizations represent practices that can strain the press-police relationship, therefore making it more contentious. This is particularly the case because such practices represent clear intrusions by the government and law enforcement into the purposes and functions of a free press. In such cases, as the theoretical framework suggested, the goals, purposes, functions, and actions of both parties are in conflict, making it harder for the two to co-exist or cooperate.

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<sup>2259</sup> Ibid.

Significantly, law enforcement arrests, searches, seizures, subpoenas, and surveillance of the press raise several important implications. First, these practices limit the press' ability to gather news as they instead must handle being arrested or targeted by a warrant or subpoena. Ensuing court action would only further limit the press' ability to carry out its important functions, especially if it causes financial strain. Second, the risk of arrests, searches and seizures, subpoenas, and surveillance, as well as possible legal action stemming from the practices, may lead some journalists to avoid covering an otherwise important story, therefore creating a chilling effect on the press. Finally, such actions can undermine journalists' credibility and create anti-press sentiment as members of the public see the news media as being the target of law enforcement efforts often coinciding with targeting criminals.

Although law enforcement may be able to further its purposes and functions through arrests, searches, seizures, subpoenas, and surveillance of the press, the benefits of such practices are undermined if police could have used a different tactic to get the needed information or did not need the information at all. Additionally, departments, officials, and officers may face possible consequences, including First and Fourth Amendment lawsuits by the press, as well as shifts in public opinion about police tactics. The execution of search warrants or subpoenas against the news media, as well as arresting journalists, may also embolden police in problematic ways, leading to potential cases of misconduct or overreach.

Police targeting the press through arrests, searches and seizures, subpoenas, and surveillance also results in the press-police relationship becoming increasingly contentious because the parties' goals, purposes, functions, and actions conflict. When

law enforcement uses such practices against the press, it means interference in, and the undermining of, the news media's purposes and functions, therefore leading the press to potentially be more adversarial in its interactions with federal, state, or local law enforcement.

Significantly, it is the public that is negatively affected when law enforcement searches, seizures, subpoenas, and surveillance target the news media. If the press is unable to do its job due to such actions, the public loses its source of information and ability to hold police accountable. When journalists face arrests, warrants, subpoenas, or surveillance, they are unable to, or decide not to, cover the very events or topics that led to such actions in the first place. Without the press at protests or covering police misconduct, for example, the public remains uninformed about important developments, making accountability impossible.

Thus, the negative effects on the public undermine the potential benefits of arrests, searches and seizures, subpoenas, and surveillance of the press, necessitating that the use of these practices against journalists and news organizations need to be reevaluated. It is important, therefore, that federal, state, and local law enforcement limit the use of such practices against the press, especially those of a secretive nature that provide no opportunity for accountability or scrutiny. This study does not call for the curtailing of law enforcement's important purposes and functions in the United States; however, it does argue that the police can, and should, look to alternative means to conduct investigations without implicating the press and the public in problematic ways, as discussed more in Chapter 6.

## **II. Legal Analysis of the Blurred Lines Between the Press and Police**

The content analysis revealed several negative effects of police impersonation of the press, press impersonation of the police, and media ride-alongs, including how the practices blur the lines of the press-police relationship. Using the legal landscape detailed in Part I, the following sections discuss the different legal considerations raised by the interactions that blur the lines between the news media and law enforcement. Combined with contemporary examples, the legal landscapes of police impersonation of the press, press impersonation of the police, and media ride-alongs further reveal implications on both parties, their relationship, and the public, building on the theoretical framework, literature review, and content analysis.

### **A. Police Impersonation of the Press**

Police impersonation of the press raises several of the legal considerations related to press coverage and investigations of the police, as well as several additional areas of law. To best understand this legal landscape, the following section walks through a First Amendment claim seeking to prevent police impersonation of the press. Because such a claim is unlikely to succeed, additional legal considerations and effects are also analyzed to better understand how the practices implicate both parties, their relationship, and the American public.

To date, a journalist or news organization has not brought a constitutional challenge, such as under 42 U.S.C. § 1983, against police impersonation of the press.<sup>2260</sup>

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<sup>2260</sup> Letter from Reporters Committee for Freedom of the Press, to Attorney General Eric Holder (Nov. 6, 2014). RCFP has argued that police impersonation of the news media raises First Amendment concerns and implications. The letter read in part, “[Use of impersonation of the press] should have been subjected to heightened review and scrutiny, disclosed to OGC and the

Although the news media could potentially establish standing to bring such a claim, including by arguing significant First Amendment implications and harms, it is unlikely that a court would rule in favor of the press.

A preliminary, but important question is whether a journalist or news organization could establish standing to bring the First Amendment claim against police impersonation of the press. To establish standing under Article III of the U.S. Constitution, a plaintiff must show an “injury in fact” stemming from the challenged action by the defendant.<sup>2261</sup> In *Spokeo, Inc. v. Robins* (2016), the Supreme Court held that in order to demonstrate that they suffered an injury-in-fact, a plaintiff must show an invasion of a legally protected interest which is “concrete and particularized.”<sup>2262</sup> Significantly, the Supreme Court and lower courts have found that “standing is more permissive when First Amendment harms are alleged because First Amendment challenges are necessary for the very functioning of our democracy.”<sup>2263</sup> For example, courts have allowed third-parties to assert First

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magistrate judge, and evaluated for what it was – an investigation that involved significant First Amendment concerns.”

<sup>2261</sup> *Virginia v. American Booksellers Association*, 484 U.S. 383, 392 (1988). *See also* Michael N. Dolich, “Alleging A First Amendment ‘Chilling Effect’ to Create a Plaintiff’s Standing: A Practical Approach,” *Drake Law Review* 43 (1993): 175-90.

<sup>2262</sup> *Spokeo, Inc. v. Robins*, 136 S.Ct. 1540 (2016) (Justice Samuel Alito added that in determining whether an intangible harm is sufficient under Article III, courts must determine whether the injuries have “traditionally been regarded as providing a basis for a lawsuit in English or American courts.” Additionally, Alito wrote that Congress’s judgment is both “instructive and important.”).

<sup>2263</sup> Brief of Amici Curiae, *Wikimedia Foundation v. National Security Agency*, No. 1:15-cv-662-TSE (D. Md. filed Sept. 3, 2015), [https://www.aclu.org/sites/default/files/field\\_document/85-1\\_proposed\\_amicus\\_brief\\_-\\_first\\_amendment\\_legal\\_scholars\\_9.3.15.pdf](https://www.aclu.org/sites/default/files/field_document/85-1_proposed_amicus_brief_-_first_amendment_legal_scholars_9.3.15.pdf). *See also* Erica Goldberg, “Ninth Circuit Ruling Creates Unjust Barrier for First Amendment Plaintiffs,” *Fire*, Sept. 20, 2010, <https://www.thefire.org/ninth-circuit-ruling-creates-unjust-barrier-for-first-amendment-plaintiffs/>. The article stated, “In the First Amendment context, the standing requirement is relaxed considerably so that those whose speech may be chilled by unconstitutional speech restrictions can bring suit on behalf of everyone subject to the restriction.

Amendment harms on behalf of others, and have also recognized that the chilling of protected expression can constitute a First Amendment injury-in-fact.”<sup>2264</sup> Thus, the complaint must demonstrate both a First Amendment violation and potential harms resulting from the violation. As demonstrated below, a First Amendment claim against police impersonation of the press would be able to make at least plausible arguments for both, namely claiming that the practice chills First Amendment activity by undermining constitutional protections for an independent, free press, among other negative effects.<sup>2265</sup>

The first argument a journalist or news organization could raise is that police impersonation of the press undermines the independence of the news media, a key effect found in the content analysis. The press could cite Supreme Court and lower court precedent establishing barriers to government intrusion into newsgathering,<sup>2266</sup> publication,<sup>2267</sup> editorial control,<sup>2268</sup> and circulation and dissemination.<sup>2269</sup> Further demonstrating the commitment in the United States to preventing government intrusion into the free press is the theoretical framework, including the founding fathers’ emphasis

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Lower standing requirements . . . are critical to ensuring that citizens do not censor themselves out of fear of being punished under an unconstitutional law.

<sup>2264</sup> Brief of Amici Curiae, *Wikimedia Foundation v. National Security Agency*, No. 1:15-cv-662-TSE (D. Md. filed Sept. 3, 2015). *See also* Dolich, “Alleging A First Amendment ‘Chilling Effect’ to Create a Plaintiff’s Standing,” 178-82 (citing *Laird v. Tatum*, 408 U.S. 1, 13–14 (1972); *Socialist Workers Party v. Attorney General*, 419 U.S. 1314 (1974); *Meese v. Keene*, 481 U.S. 465 (1987)).

<sup>2265</sup> Certainly, the press would likely also have to survive motions to dismiss, such as for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure, which requires that a complaint must generally “contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *See* Fed. R. Civil P. 12(b)(6); *Sandvig v. Sessions*, 315 F.Supp.3d 1, 11 (D.D.C. 2018) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

<sup>2266</sup> See notes 1510-1516 above.

<sup>2267</sup> See notes 1785-1801 above.

<sup>2268</sup> See notes 1838-1839 above.

<sup>2269</sup> See notes 1810-1811 above.

on the independence of the press.<sup>2270</sup> First Amendment theory, including the checking value of the press and the Fourth Estate, connects the press' independence from the government and, by extension, the police, with the normative responsibility of holding these entities accountable.<sup>2271</sup> By citing court precedent and theory, the news media could argue that police impersonation constitutes government intrusion into the press' independent functions in violation of the First Amendment.

Second, the press could point to examples special privileges that help journalists and news organizations avoid government intrusion. The most notable example is the reporter's privilege to avoid compelled disclosure of confidential sources and information. Although a qualified protection under the First Amendment and statutory law,<sup>2272</sup> this privilege provides protections from government interference, which is what police impersonation of the press represents. The press could also point to journalists' affirmative right to a press pass as an example of greater protection for the news media compared to members of the public.<sup>2273</sup> Additionally, the press could argue that the Privacy Protection Act (PPA) and DOJ guidelines regarding search warrants and subpoenas targeting journalists provide additional protections from government intrusion into newsgathering not otherwise extended to the public. Through such arguments, the press could request that a court rule in favor of special First Amendment protection against police impersonation of the press.

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<sup>2270</sup> See notes 49-53 above.

<sup>2271</sup> See notes 54-77 above.

<sup>2272</sup> See notes 1570-1573 above.

<sup>2273</sup> Anderson, "Freedom of the Press, 491.

Finally, journalists and news organizations could raise several additional harms caused by police impersonation of the press, including on the news media and the public. For example, the content analysis revealed that the practice leads to physical violence against journalists, and also undermines journalists' credibility, source relationships, and independence. The news media could therefore argue that the practice chills First Amendment activity, namely newsgathering. Additional areas of law demonstrating harms of police impersonation of the press include 1) diluting speech,<sup>2274</sup> 2) invasion of privacy,<sup>2275</sup> 3) copyright and trademark concerns,<sup>2276</sup> 4) injury to business reputation,<sup>2277</sup> 5) due-process concerns,<sup>2278</sup> and 6) FOIA concerns.<sup>2279</sup> The journalist or news organization plaintiff could therefore argue that because of all the above effects, police impersonation of the press can, and should, be viewed as equally problematic as police posing as doctors or lawyers, which are viewed by many observers as more problematic than posing as other members of society.<sup>2280</sup> Such concerns can, and should, be raised

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<sup>2274</sup> Andy T. Wang, "Stealing Press Credentials: Law Enforcement Identity Misappropriation of the Press in the Cyber Era," *University of Miami National Security & Armed Conflict Law Review* 6 (2016): 49-56.

<sup>2275</sup> Bernard W. Bell, "Secrets And Lies: News Media And Law Enforcement Use of Deception As An Investigative Tool," *University of Pittsburg Law Review* 60, no. 3 (1999): 745-838.

<sup>2276</sup> Wang, "Stealing Press Credentials," 38-40; Letter from Senator Patrick J. Leahy, Chairman, Senate Judiciary Committee, to Eric Holder, Attorney General, Oct. 30, 2014, [http://images.politico.com/global/2014/10/31/10-30-14\\_leahy\\_to\\_holder\\_re\\_-\\_fbi\\_fake\\_ap\\_article.html](http://images.politico.com/global/2014/10/31/10-30-14_leahy_to_holder_re_-_fbi_fake_ap_article.html).

<sup>2277</sup> Complaint, *New York Times v. Contessa Bourbon*, No. 656843/2017 (N.Y. App. Div. filed Nov. 9, 2017),

<https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=oPpyeTLoj1VQHDjXvoSrag=>;

Erik Wemple, "New York Times sues woman for allegedly impersonating Times reporter,"

*Washington Post*, Nov. 10, 2017, <https://www.washingtonpost.com/blogs/erikwemple/wp/2017/11/10/new-york-times-sues-woman-for-allegedly-impersonating-times-reporter/>.

<sup>2278</sup> Daniel M. Faber, "Coopting the Journalist's Privilege: Of Sources and Spray Paint," *New Mexico Law Review* 23, no. 1 (1993): 447.

<sup>2279</sup> See note 2317 below.

<sup>2280</sup> See e.g. Friendly, "Impersonation of Newsmen Protested"; Hollstein, "It's Dangerous And Dumb For Police To Impersonate Journalists."

when the press is the target, especially because constitutional freedoms and protections are at stake.

Ultimately, in a First Amendment claim against police impersonation of the press, the news media would be able to provide several plausible First Amendment claims, citing Supreme Court and lower court precedent, as well as statutory law and police policies, rules, and guidelines. Furthermore, the complaint could point to several important effects, including undermining the press' independence, safety, credibility, source relationships, and ability to gather news, among other implications of different areas of law.

However, even if a journalist or news organization can establish standing, a court is more likely to rule against the First Amendment claim for several reasons. First, the legal landscape around press coverage and investigations of police, as well as around police arresting, searching, subpoenaing, or surveilling the press, revealed that the news media does not enjoy special privileges not available to the general public in several contexts, including against grand jury subpoenas.<sup>2281</sup> Journalists and news organizations also do not receive a special right of access under the First Amendment to locations<sup>2282</sup> and information,<sup>2283</sup> especially if they are likely to interfere with police activities.<sup>2284</sup> Even in cases where there is a First Amendment right of access, such as to criminal proceedings, such a right is for the press *and* public.<sup>2285</sup> Additionally, the First

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<sup>2281</sup> *Branzburg*, 408 U.S. at 665.

<sup>2282</sup> See notes 1587-1593 above.

<sup>2283</sup> See notes 1703-1721 above.

<sup>2284</sup> See *Mazzetti*, 518 F.2d at 781; *Lashinsky*, 81 N.J. at 1; *Connell*, 733 F.Supp. at 466, 470; *Fields*, 862 F.3d at 360; *Turner*, 848 F.3d at 678; *Glik*, 655 F.3d at 84.

<sup>2285</sup> *Richmond Newspapers*, 448 U.S. at 580.

Amendment is “not a license” to invade individuals’ privacy, trespass, and illegally wiretap,” among other crimes applicable to the public.<sup>2286</sup> Furthermore, protections for publication and broadcasting are also not absolute.<sup>2287</sup> As a result, a court could find that the press does not or cannot have special protection from impersonation by law enforcement, especially if such protections would limit the ability of police to accomplish its purposes and functions.

Second, the reporter’s privilege is a qualified protection that can be outweighed by competing interests. In his dissenting opinion in *Branzburg*, Justice Stewart suggested a three-part test that the government must satisfy to require disclosure, including that

the government must (1) show that there is probable cause to believe that the newsman has information that is clearly relevant to a specific probable violation of law; (2) demonstrate that the information sought cannot be obtained by alternative means less destructive of First Amendment rights; and (3) demonstrate a compelling and overriding interest in the information.<sup>2288</sup>

Even in a dissenting opinion that sided with the press, Justice Stewart provided a means for the government to overcome the reporter’s privilege. Significantly, the three-part test also takes governmental and law enforcement interests into account, such as investigating “a probable violation of law.”<sup>2289</sup> This demonstrates that attempts by journalists or news organizations to eliminate police impersonation of the press could, like other privileges, result in a qualified protection, doing little to change the legal landscape.

Third, the press’ First Amendment claim would be balanced against strong government interests in police impersonation of the press, which include, as the content

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<sup>2286</sup> See notes 1518-1519, 1634-1647, 1653-1681 above. *But see Desnick*, 44 F.3d at 1353.

<sup>2287</sup> See notes 1812-1835 above.

<sup>2288</sup> *Branzburg*, 408 U.S. at 743 (Stewart, J. dissenting).

<sup>2289</sup> *Id.*

analysis revealed, law enforcement conducting investigations and ending standoffs or hostage situations. There is a long history of courts balancing First Amendment rights with government interests, beginning perhaps with *Schneider v. State* (1939), in which the Supreme Court held that “as [First Amendment] cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights.”<sup>2290</sup> In *Dennis v. United States* (1951), the Court further established the “careful weighing of conflicting interests.”<sup>2291</sup> For example, courts have weighed different interests more favorably than press purposes and functions, such as invasion of privacy torts<sup>2292</sup> and privacy protections under FOIA Exemption 7(C).<sup>2293</sup>

In some cases, courts have ruled in favor of press interests, such as in rulings that there is a First Amendment right to record police officers in the course of their official duties in public places.<sup>2294</sup> A ruling that illustrates well the balancing done by courts in such cases is *Channel 10, Inc. v. Gunnarson* (1972), in which the District of Minnesota weighed “a newsman’s right to take pictures [and gather news with] the government’s power to limit the exercise of that right,” ruling in a local news photographer’s favor.<sup>2295</sup> The case arose when Dennis Anderson, a cameraperson for Channel 10 in Duluth,

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<sup>2290</sup> *Schneider v. State*, 308 U.S. 147, 161 (1939). See also Laurent B. Frantz, “The First Amendment in the Balance,” *Yale Law Journal* 71, no. 8 (1962): 1424-50, <https://www.jstor.org/stable/pdf/794500.pdf>.

<sup>2291</sup> *Dennis v. United States*, 341 U.S. 494 (1951). See also “Balancing,” *Legal Information Institute*, accessed March 10, 2020, <https://www.law.cornell.edu/constitution-conan/amendment-1/balancing>.

<sup>2292</sup> See e.g. *Shulman*, 955 P.2d at 497; *Sanders*, 978 P.2d at 77.

<sup>2293</sup> See e.g. *Rep. Comm. for Freedom of the Press*, 489 U.S. at 775; *Favish*, 541 U.S. at 174.

<sup>2294</sup> See notes 1544-1557 above.

<sup>2295</sup> *Channel 10, Inc. v. Gunnarson*, 337 F.Supp. 634, 635 (D. Minn. 1972).

Minnesota, filmed police activity at the scene of a burglary from a public sidewalk. Two officers ordered Anderson to stop filming and also confiscated his camera.<sup>2296</sup> The court found these actions unlawful, reasoning that Anderson was allowed to film on public property and did not interfere with police activity.<sup>2297</sup> The court also held that the restrictions placed on Anderson's ability to film what took place constituted an unconstitutional prior restraint.<sup>2298</sup> The court noted the plaintiffs' argument that "the comments of the police officers since the event, in the radio interview and in their affidavits, are threats of intention in the future to engage in similar activities," which therefore "have a 'chilling effect' on the plaintiffs' exercise of their constitutionally protected rights of free speech and free press."<sup>2299</sup>

However, in other cases, courts have ruled in favor of law enforcement interests over press interests. In *Matthews*, the Fourth Circuit and District of Maryland weighed the law enforcement interest of protecting children over the press' ability to gather news.<sup>2300</sup> In particular, Judge Williams held that the press' interests in newsgathering "is insignificant compared to the government's interest in preventing the exploitation of children."<sup>2301</sup>

Regarding police impersonation of the press, a court would not be balancing a restriction on speech with a government interest, but instead protection for freedom of the press against a practice that intrudes upon its independence, but nevertheless

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<sup>2296</sup> *Id.* at 636.

<sup>2297</sup> *Id.* at 638.

<sup>2298</sup> *Id.* at 637–38 (citing *Near*, 283 U.S. at 697).

<sup>2299</sup> *Id.* at 636 (citing *Dombrowski v. Pfister*, 380 U.S. 479 (1965)).

<sup>2300</sup> *Matthews*, 209 F.3d at 350; *Matthews*, 11 F.Supp.2d at 661–63.

<sup>2301</sup> *Matthews*, 11 F.Supp.2d at 663.

accomplishes law enforcement interests. Police impersonation of the press can also be differentiated from *Matthews* and *Channel 10* in that the practice raises several particularly problematic effects on the press and public. Thus, a court would have additional harms to consider when weighing press and government interests, as well as analyzing alternatives to impersonation of the press. Nevertheless, rulings like *Matthews* reveal that police interests are often weighed over press interests. Even in cases where courts ruled in favor of the right to record police, the decisions emphasized that recording cannot interfere with police activities. The result is that although the Supreme Court and lower courts have prohibited government intrusion into the free press, such protection is not absolute, especially when weighed against strong law enforcement interests.

Fourth, at least one court has addressed whether police officers who impersonated members of the press have qualified immunity, which provides that “[g]overnment officials performing discretionary functions, such as police officers, are generally shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”<sup>2302</sup> *Spratlin v. Montgomery County* (1991) arose when Paul Spratlin attended a 1988 rally in Rockville, Maryland to protest enforcement of a zoning ordinance.<sup>2303</sup> During the rally, Montgomery County Police officers Robert Angelino and Barbara Kunkle posed as a photographer and reporter, respectively, and approached Spratlin after

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<sup>2302</sup> *Spratlin v. Montgomery County*, 941 F.2d 1207 (4th Cir. 1991) (citing *Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *Pierson v. Ray*, 386 U.S. 547 (1967); *Tarantino v. Baker*, 825 F.2d 772 (4th Cir. 1987)). See also *Slinger v. Wadman*, 595 F. Supp. 188 (D. Utah 1982) (another 1983 action, though it was only an attempted arrest that led to impersonation); Elizabeth E. Joh, “Bait, Mask, and Ruse: Technology and Police Deception,” *Harvard Law Review Forum* 128 (2014): 246-52.

<sup>2303</sup> *Id.* at \*1.

he yelled statements like “Sidney must die” in reference to County Executive Sidney Kramer. Police later conducted a background investigation of Spratlin and ordered that he undergo an emergency psychiatric evaluation.<sup>2304</sup>

The Fourth Circuit held that Angelino and Kunkle were entitled to qualified immunity “protecting them from civil liability under 42 U.S.C. § 1983.”<sup>2305</sup> The court found that “a reasonable police officer would not find apparent unlawfulness in the [officers’] actions as violative of Spratlin’s First and Fourth Amendment rights.”<sup>2306</sup> The court added that it did “not find apparent unlawfulness in [the officers’] actions,” including the impersonation.<sup>2307</sup>

Taken together, the strong law enforcement interests in impersonation, combined with various ways in which the Supreme Court and lower courts have declined to extend special privileges to the press, suggest that if a journalist or news organization were to raise a First Amendment claim seeking to eliminate police impersonation of the press, they would face an uphill battle. At best, a court may rule that the practice be limited in certain circumstances or that qualified immunity may apply to officers or agents who used impersonation for important law enforcement purposes, doing little to minimize the harms of police impersonation of the press.

Finally, outside the context of the First Amendment, statutory law, legislative efforts, and federal agency policies either only limit police impersonation of the press, rather than ending it, or fail to address the practice altogether. The result is that a court

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<sup>2304</sup> *Id.*

<sup>2305</sup> *Id.* at \*3.

<sup>2306</sup> *Id.* at \*2.

<sup>2307</sup> *Id.*

could find that Congress and other bodies have not eliminated the practice, electing to do the same. Furthermore, the legal landscape allows police impersonation of the press to continue, including in secret without the knowledge of the press and public.

First, after the revelations that the CIA was using and impersonating journalists during the Cold War, Congress passed a law prohibiting the use of journalists “as agents or assets.”<sup>2308</sup> The statute provides:

[A]n element of the Intelligence Community may not use as an agent or asset for the purposes of collecting intelligence any individual who— (1) is authorized by contract or by the issuance of press credentials to represent himself or herself, either in the United States or abroad, as a correspondent of a United States news media organization; or (2) is officially recognized by a foreign government as a representative of a United States media organization.<sup>2309</sup>

However, the statute allows the president or CIA director to “waive subsection (a) . . . [if they] make[] a written determination that the waiver is necessary to address the overriding national security interest of the United States.”<sup>2310</sup> Significantly, the statute stops short of prohibiting impersonation of the press, though shows that Congress could pass such a law in the future.

Second, three pieces of legislation, two that were drafted and one that was signed into law, have addressed police impersonation of the press. In 1980, Representative Les Aspin (D-Wis.) authored a bill that would have prohibited “the paid use of journalists . . . for intelligence purposes,” as well as CIA agents posing as journalists.”<sup>2311</sup> Although this represents the strongest effort to date addressing police impersonation of the press, it did

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<sup>2308</sup> 50 U.S. Code § 3324.

<sup>2309</sup> *Id.*

<sup>2310</sup> *Id.*

<sup>2311</sup> George Lardner Jr., “Aspin Plans to Introduce New CIA Charter Proposal,” *Washington Post*, March 17, 1980.

not advance through Congress. Conversely, a bill introduced in 1983 restricted undercover activities by federal agents, but “authorize[d] government undercover agents to infiltrate news organizations or impersonate journalists . . . when the government has ‘probable cause’ to believe it is on the trail of specific crimes.”<sup>2312</sup> The legislation prompted criticism from observers, including then-*USA Today* editorial director John Seigenthaler, who called the bill “precisely the sort of law that whittles away at the First Amendment freedoms of the constitution.”<sup>2313</sup> However, the bill once again was not passed by Congress. Lastly, in 1996, President Bill Clinton signed into law the Intelligence Authorization Act of 1997, which, among other provisions, allowed the CIA to use and pose as American journalists when “necessary to address the overriding national security interest of the United States” or when members of the press voluntarily cooperate.<sup>2314</sup> Taken together, these pieces of legislation illustrate the lack of statutory law limiting police impersonation of the press.

Finally, the U.S. Postal Service (USPS) is the only known federal agency to date that has officially banned impersonation of journalists.<sup>2315</sup> Although other federal

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<sup>2312</sup> Undercover Operations Act of 1983, S. 804, 98th Cong. (1983). *See also* James E. Roper, “Impersonating journalists,” *Editor & Publisher*, May 26, 1984; “Agents posing as reporters would taint news,” *Providence Journal*, May 28, 1984.

<sup>2313</sup> Roper, “Impersonating journalists.”

<sup>2314</sup> Intelligence Authorization Act for Fiscal Year 1997, H.R. 3259, 104th Cong. § 309 (1996). *See also* “Clinton Approves Intelligence Spending Rise,” *Associated Press*, Oct. 12, 1996; “For the Record,” *Washington Post*, July 31, 1996; Upano, “Will a history of government using journalists repeat itself under the Department of Homeland Security?,” 10.

<sup>2315</sup> Upano, “Will a history of government using journalists repeat itself under the Department of Homeland Security?,” 10. Upano wrote, “The U.S. Postal Service, on the other hand, is the only known federal agency to officially ban all use of journalist cover for investigatory purposes. The policy was implemented shortly after two postal inspectors were reported to have posed as journalists in order to uncover information on a postal employee who filed a worker’s compensation claim in 1995.”

agencies have adopted or changed their guidelines regarding the practice, they have not ended the practice altogether. For example, in 2016, the FBI amended its guidelines in connection to revelations that one of its agents impersonated an AP reporter in order to catch the source of several anonymous bomb threats targeting Timberline High School in Washington state (Timberline investigation).<sup>2316</sup> The changes in the guidelines stemmed from three FOIA requests by RCFP and the AP seeking information about the FBI's policies governing press impersonation and the use of such tactics during the Timberline investigation. The FBI initially responded to only one request, finding no responsive records. RCFP and the AP summarily filed a lawsuit claiming that the FBI and DOJ conducted an inadequate search. In December 2017, the D.C. Circuit ruled that the FBI failed to demonstrate that it "conduct[ed] a search for the requested records, using methods which can be reasonably expected to produce the information requested."<sup>2317</sup>

During the litigation, the FBI released some additional records related to the FOIA requests, including portions of the Attorney General's Guidelines on FBI

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<sup>2316</sup> See notes 1135-1140 above.

<sup>2317</sup> *Reporters Committee for Freedom of the Press v. Fed. Bureau of Investigation*, 877 F.3d 399 (D.C. Cir. 2017); Scott Memmel, "D.C. Circuit Finds FBI Failed to Conduct a 'Reasonable' Search of Records Regarding Media Impersonation," *Silha Bulletin* 23, no. 2 (Winter/Spring 2018): 37-38. *See also* *Reporters Committee for Freedom of the Press v. Federal Bureau of Investigation*, 369 F.Supp.3d 212 (D.D.C. 2019); Scott Memmel, "The Reporters Committee for Freedom of the Press Prevails in a FOIA Lawsuit Regarding FBI Impersonation of Documentary Filmmakers," *Silha Bulletin* 24, no. 2 (Winter/Spring 2019): 37-38. Litigation also arose around FOIA requests by RCFP following revelations that the FBI had impersonated documentary filmmakers in Nevada. In March 2019, Judge Rudolph Contreras of the District Court for the District of Columbia ruled in favor of RCFP, which had filed a motion for summary judgement challenging the FBI's refusal to confirm or deny the existence of records related to the impersonation of documentary film workers, known as a "*Glomar*" response. Contreras found that the response, which was pursuant to FOIA, was not appropriate because impersonation of documentary filmmakers was a law enforcement technique already known to the public, and that acknowledging the existence or absence of related records would not undermine its effectiveness.

Undercover Operations (AGG-UCO), which outlined the process for approving undercover operations, including in “sensitive circumstances” that may lead an undercover agent to pose as a journalist.<sup>2318</sup> The Undercover Review Committee was required to “weigh the risks and benefits of the operation,” including the risks of reputational damage, interference with confidential relationships, and “the suitability of government participation in the type of activity . . . expected to occur.”<sup>2319</sup>

Another document indicated that the Seattle office may not have followed internal rules in the Timberline investigation.<sup>2320</sup> A “Situation Action Background” drafted by the Seattle office’s Cyber Division in October 2014 found that “an argument can be made the reported impersonation of a fictitious member of the media constituted a ‘sensitive circumstance,’” requiring additional steps by the FBI. Nevertheless, the document stated that the FBI’s decisions had not been “unreasonable” when it failed to follow internal protocols. A September 2016 review by the Office of the Inspector General (OIG) Oversight and Review Division similarly found that “given the lack of clarity in the policy language, making a determination whether a situation was a ‘sensitive circumstance’ was a challenging one.”<sup>2321</sup> Then-FBI director James Comey defended the

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<sup>2318</sup> Hannah Bloch-Wehba, “FBI failed to follow its own rules when it impersonated The Associated Press in a 2007 investigation,” *Reporters Committee For Freedom of the Press*, April 28, 2016, <https://www.rcfp.org/browse-media-law-resources/news/fbi-failed-follow-its-own-rules-when-it-impersonated-associated-pres>; John Ashcroft, “The Attorney General’s Guidelines on Federal Bureau of Investigation Undercover Operations” (Washington, D.C.: U.S. Department of Justice, 2013).

<sup>2319</sup> *Ibid.*

<sup>2320</sup> Bloch-Wehba, “FBI failed to follow its own rules when it impersonated The Associated Press in a 2007 investigation.”

<sup>2321</sup> “A Review of the FBI’s Impersonation of a Journalist in a Criminal Investigation” (Washington, D.C.: Office of the Inspector General, U.S. Department of Justice, September 2006).

practice in letter to *The New York Times*, arguing that the “technique was proper and appropriate under [DOJ and FBI] guidelines at the time and that “[e]very undercover operation involves ‘deception,’ which has long been a critical tool in fighting crime.”<sup>2322</sup>

Nevertheless, the DOJ and FBI changed its policy to limit impersonation of members of the press and news organizations. The OIG report noted that “the [DOJ] amended [its] regulations” to “[protect] members of the news media from certain law enforcement tools . . . that might unreasonably impair newsgathering activities.”<sup>2323</sup> The report added that the new policy “clearly prohibit[ed] FBI employees from engaging in an undercover activity in which they represent, pose, or claim to be members of the news media” unless an agent gets approval from the head of their FBI field office and the Deputy Director, after a review by the Undercover Review Committee.<sup>2324</sup> Thus, like the above legislation, the policy still only limited impersonation of the press, rather than end it, providing little comfort that the FBI would refrain from using the practice in the future.<sup>2325</sup>

It is possible that given the potential harms of police impersonation of the press, as well as the First Amendment implications it raises, a journalist or news organization

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<sup>2322</sup> Letter from James B. Comey, Director, Federal Bureau of Investigation, to the Editor, *New York Times* (Nov. 6, 2014), [http://www.nytimes.com/2014/11/07/opinion/to-catch-a-crook-the-fbis-use-of-deception.html?\\_r=2&referrer=](http://www.nytimes.com/2014/11/07/opinion/to-catch-a-crook-the-fbis-use-of-deception.html?_r=2&referrer=).

<sup>2323</sup> “A Review of the FBI’s Impersonation of a Journalist in a Criminal Investigation”; Policy Regarding Obtaining Information From, or Records of, Members of the News Media; and Regarding Questioning, Arresting, or Charging Members of the News Media, 79 F.R. § 10989-01 (2014).

<sup>2324</sup> *Ibid.*

<sup>2325</sup> Davidson, “FBI impersonation of journalists can be hazardous to their health.” *See also* Jenn Topper, “Reporters Committee troubled by FBI’s stance on impersonating journalists,” *Reporters Committee for Freedom of the Press*, Sept. 15, 2016, <https://www.rcfp.org/reporters-committee-troubled-fbis-stance-impersonating-journalists/>.

could bring a constitutional challenge against the practice and establish standing. However, because of the significant law enforcement interests accomplished through police impersonation of the press, as well as court precedent limiting press privileges, it is unlikely that a First Amendment claim would succeed, meaning there would continue to be no constitutional protection for the press against the practice. Statutory law, legislative efforts, and federal agency policies provide some limitations on the practice, but still come as little relief for the press as guidelines and policies have been violated in the past, as evidenced by the Timberline investigation. Furthermore, past legislative efforts have either failed to get out of committee or allowed police impersonation of the press, also providing little protection for the news media. Thus, absent a federal court ruling in favor of the press' First Amendment claim or successful legislation prohibiting the practice, the legal landscape will continue to allow police impersonation of the press. The result is that even if the practice is limited, its negative effects can, and will, still occur, continuing to pose significant concerns for the press and the American public.

### **B. Press Impersonation of Police**

Like with police impersonation of the press, a journalist or news organization can raise a First Amendment claim regarding press impersonation of police. However, in this case, the press would be arguing for the First Amendment right to impersonate the police rather than requesting the prohibition of the practice. More specifically, the journalist or news organization could argue that federal or state statutes prohibiting impersonation of the police are unconstitutional because they chill protected First Amendment activity, namely undercover reporting. Nevertheless, the result is the same: a First Amendment claim is unlikely to succeed.

Once again, it is possible that a journalist or news organization filing the claim could establish standing. As detailed below, the press could plausibly assert First Amendment harms stemming from not being able to impersonate the police for undercover reporting, citing court precedent finding that newsgathering receives some constitutional protection.

The First Amendment claim could first raise similar arguments as the complaint targeting police impersonation of the press. In particular, the journalist or news organization could argue that the First Amendment provides protection from government intrusion into the news media's ability to gather news. The press could point to the finding in *Branzburg* that "news gathering is not without its First Amendment protections,"<sup>2326</sup> as well as to court precedent around 1) the right to record police in the course of their duties in public places<sup>2327</sup> and 2) the reporter's privilege protecting journalists' confidential sources and information.<sup>2328</sup> The press, citing this precedent, could argue that the First Amendment should provide protection for impersonation of police as a form of newsgathering.

Second, the complaint could focus in particular on undercover reporting, a newsgathering tactic with a long history in the United States and abroad.<sup>2329</sup> The press'

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<sup>2326</sup> *Branzburg*, 408 U.S. at 707. See also *Houchins*, 438 U.S. at 32 (Stevens, J., dissenting); *Lamont*, 381 U.S. at 301; *Alvarez*, 679 F.3d at 595, 597; *In re Shain*, 978 F.2d at 855 (Wilkinson J., concurring).

<sup>2327</sup> See notes 1544-1557 above.

<sup>2328</sup> See notes 1558-1573 above.

<sup>2329</sup> Brief of Scholars of First Amendment and Information Law as *Amici Curiae* in Support of Plaintiffs-Appellees, *Animal Legal Defense Fund v. Reynolds*, No. 19-1364 (8th Cir. 2019) *cert. granted*; Brooke Kroeger, "Deception For Journalism's Sake: A Database," *Undercover Reporting*, accessed Aug. 7, 2019, <http://dlib.nyu.edu/undercover/>; Brooke Kroeger, *Undercover Reporting: The Truth About Deception* (Evanston, Illinois: Northwestern University Press, 2012).

main argument would be that such reporting is imperative to investigative journalism on matters of public concern and that statutes prohibiting impersonation of police chill journalists' ability to do such reporting.<sup>2330</sup> Without the ability to conduct such investigations, the press would be unable to inform the public and hold government and law enforcement accountable.

At the federal level, 18 U.S.C § 912, found under Chapter 43 “False Impersonation” and titled “Officer or employee of the United States,” provides that anyone who “assumes or pretends” to be a federal “officer or employee” is fined and/or imprisoned for up to three years.<sup>2331</sup> Every state and the District of Columbia also prohibits impersonation of police, though statutes vary about whether doing so is a felony or a misdemeanor.<sup>2332</sup> For example, in Minnesota, it is a misdemeanor to “falsely impersonate[] . . . [a] public official with intent to wrongfully obtain money, property, or any other tangible benefit.”<sup>2333</sup> Conversely, in New York, an individual is

guilty of criminal impersonation in the second degree when [they] . . . (a) [p]retend[] to be a public servant, or wears or displays without authority any uniform, badge, insignia or facsimile thereof by which such public servant is lawfully distinguished, or falsely expresses by his words or actions that he is a public servant or is acting with approval or

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<sup>2330</sup> See Brief of Scholars of First Amendment and Information Law as *Amici Curiae* in Support of Plaintiffs-Appellees, *Animal Legal Defense Fund v. Reynolds*, No. 19-1364 (8th Cir. 2019) *cert. granted*. See also *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982).

<sup>2331</sup> 18 U.S.C. § 912 (1994).

<sup>2332</sup> Don Van Natta, Jr. “In Florida Criminals Pose as Police More Frequently and for More Violent Ends,” *New York Times*, May 29, 2011, <https://www.nytimes.com/2011/05/29/us/29fakecops.html>; Callie Marie Rennison and Mary Dodge, “Police Impersonation: Pretenses and Predators,” *American Journal of Criminal Justice* 37, no. 4 (2012): 509, 521; Jenavieve Hatch, “Men Are Impersonating Police To Sexually Exploit Women, And We’re Not Paying Enough Attention,” *HuffPost*, March 6, 2018, [https://www.huffpost.com/entry/police-impersonation\\_n\\_5a9dbc4be4b0479c025625f1](https://www.huffpost.com/entry/police-impersonation_n_5a9dbc4be4b0479c025625f1). See e.g. D.C. Code § 22-1404 (2013); Minn. Stat. § 609.475 (2017); Wis. Stat. § 946.70 (2017); Wis. Stat. § 125.105 (2001); Tex. Penal Code Ann. § 37.11 (2017); N.Y. Penal Law § 190.25-190.26 (McKinney 2008); Cal. Penal Code § 538d (West 2015).

<sup>2333</sup> Minn. Stat. § 609.475.

authority of a public agency or department; and (b) so acts with intent to induce another to submit to such pretended official authority, to solicit funds or to otherwise cause another to act in reliance upon that pretense.

Statutory law also prohibits other actions that can allow an individual to impersonate a police officer, including forging public documents, using emergency lights, and failing to obey a law enforcement officer's order.<sup>2334</sup> The press could at least attempt to argue that such laws chill journalists' First Amendment activity, namely using impersonation of police to conduct undercover reporting.

Recently, the argument that undercover reporting raises key First Amendment implications has been brought up in different contexts. One such context is ag-gag laws, which generally prohibit individuals or organizations, including the press, from gaining access to and recording areas restricted to the general public.<sup>2335</sup> In recent years, federal courts have ruled that several states' statutes violated the First Amendment, including in Iowa,<sup>2336</sup> Idaho,<sup>2337</sup> North Carolina,<sup>2338</sup> Wyoming,<sup>2339</sup> and Utah.<sup>2340</sup>

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<sup>2334</sup> See e.g. Connie Piloto, "Broward Photographer Charged With Impersonating An Officer," *Miami Herald*, March 14, 1999.

<sup>2335</sup> See Scott Memmel, "Federal Judge Strikes Down Iowa's 'Ag-Gag' Law; Coalition of Animal Rights Groups Challenges Nation's Oldest 'Ag-Gag' Law," *Silha Bulletin* 24, no. 2 (Winter/Spring 2019): 42-44; Scott Memmel, "Fourth Circuit Allows Lawsuit Targeting North Carolina Ag-Gag Law to Continue; District Court Rules Wyoming Law Unconstitutional," *Silha Bulletin*, 24, no. 1 (Fall 2018): 59-61; Scott Memmel, "Minnesota Legislature Introduces an 'Ag-Gag' Law; Federal Appeals Courts Strike Down Two States' Laws," *Silha Bulletin* 23, no. 2 (Winter/Spring 2018), 39-40; Scott Memmel, "Rolling Stone, Daily Mail, and ABC Settle High-Profile Defamation Lawsuits," *Silha Bulletin* 22, no. 3 (Summer 2017): 24-28.

<sup>2336</sup> *Animal Legal Defense Fund v. Reynolds*, No. 4:19-cv-00124-JEG-HCA (S.D. Iowa 2019); *Animal Legal Defense Fund v. Reynolds*, 353 F.Supp.3d 812 (S.D. Iowa 2019); *Animal Legal Defense Fund v. Reynolds*, No. 4:17-cv-362 (S.D. Iowa 2017).

<sup>2337</sup> *Animal Legal Defense Fund v. Wasden*, 878 F.3d 1184 (9th Cir. 2018); *Animal Legal Defense Fund v. Otter*, 118 F.Supp.3d 1195 (D. Idaho 2015).

<sup>2338</sup> *People for the Ethical Treatment of Animals v. Stein*, 737 Fed.Appx. 122 (4th Cir. 2018).

<sup>2339</sup> *Western Watersheds Project v. Michael*, 869 F.3d 1189 (10th Cir. 2017); *Western Watersheds Project v. Michael*, 353 F.Supp.3d 1176 (D. Wyo. 2018).

<sup>2340</sup> *Animal Legal Defense Fund v. Herbert*, 263 F.Supp.3d 1193 (D. Utah 2017).

In January 2020, District of Kansas Judge Kathryn H. Vratil struck down most of the nation’s oldest ag-gag law, the Kansas Farm Animal and Field Crop and Research Facilities Protect Act.<sup>2341</sup> The statute made it a crime, among other provisions, to “enter an animal facility that is not open to the public to take photographs or recordings” without “effective consent,” meaning “consent obtained without force, fraud, *deception*, duress or threat.”<sup>2342</sup>

Vratil first held that the statute’s “prohibition on deception” constituted a content- and viewpoint-based regulation of speech in violation of the First Amendment.<sup>2343</sup> She also held that the prohibition on taking photographs at an animal facility was a content-based and viewpoint-based regulation, reasoning that the restriction “only applies to speech that is made with intent to damage the enterprise conducted at an animal facility.”<sup>2344</sup> Vratil therefore applied strict scrutiny, finding that Kansas did not assert a compelling government interest in protecting “animal facility owners’ privacy and property rights” and that § 47-1827(b), (c) and (d) were not narrowly tailored anyway.<sup>2345</sup> She reasoned that these portions of the statute were “hopelessly underinclusive” because they “d[id] not prevent *everyone* from violating the property and privacy rights of animal facility owners – only those who violate said rights with intent to damage the enterprise

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<sup>2341</sup> *Animal Legal Defense Fund v. Kelly*, No. 18-2657-KHV, 2020 WL 362626 (D. Kan. 2020); K.S.A. §§ 47-1825 *et seq.* (2019).

<sup>2342</sup> *Kelly*, No. 18-2657-KHV, 2020 WL 362626 at \*6 (citing K.S.A. §§ 47-1825(e)(1)) (emphasis added).

<sup>2343</sup> *Id.* at \*15.

<sup>2344</sup> *Id.* (citing *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011) (holding that the creation and dissemination of information, including videos, photographs and recordings, constitute speech); *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 502 (1952)).

<sup>2345</sup> *Id.* at \*18.

conducted at animal facilities.”<sup>2346</sup> Vratil also held that the provisions were overbroad in that they “extend[ed] to a substantial amount of constitutionally protected speech.”

Thus, Vratil, like several other judges and courts, ultimately held that the ag-gag law caused First Amendment harm to the Animal Legal Defense Fund (ALDF) and other plaintiffs because it barred them from conducting undercover investigations that would result in protected expression on matters of public concern, therefore serving an important public interest, reflecting the press’ purpose of informing the public.<sup>2347</sup> Although these advocacy groups are not traditional journalists, they nevertheless raised important arguments about the ability to conduct undercover investigations that carry key implications for the press.

Legal questions have also arisen around claims by undercover video makers that they are entitled to First Amendment protection for their controversial hidden camera videos. Like with the plaintiffs in ag-gag cases, although these video makers are not traditional journalists, they have raised important First Amendment claims regarding undercover reporting, resulting in rulings with significant implications for the press.

In March 2013, pro-life activist David Daleiden, who describes himself as a “guerilla journalist,” founded the Center for Medical Progress (CMP) to “investigate, document, and report on the procurement, transfer, and sale of fetal tissue.”<sup>2348</sup> In 2014

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<sup>2346</sup> *Id.* (emphasis in original).

<sup>2347</sup> *Id.* at \*3. See also *Animal Legal Defense Fund v. Reynolds*, No. 4:19-cv-00124, 2019 WL 8301668 (S.D. Iowa 2019). Southern District of Iowa Judge James Gritzner similarly held that barring advocacy groups from conducting undercover investigations results in the “deprivation of First Amendment rights.”

<sup>2348</sup> Scott Memmel, “Federal Judge Rules Controversial Undercover Video Maker Protected from Certain Damages by First Amendment,” *Silha Bulletin* 24, no. 3 (Summer 2019).

and 2015, Daleiden and several anti-abortion activists misrepresented themselves as representatives of a fetal tissue research company in order to gain access to several Planned Parenthood facilities, meetings, and private conferences. Once granted access, they wore hidden video cameras and recorded hundreds of hours of footage.<sup>2349</sup> CMP later made public several of the recordings, prompting a lawsuit by Planned Parenthood alleging violations of the Electronic Communications Privacy Act and intrusion upon a private place, among other claims.<sup>2350</sup>

The lawsuit prompted several legal rulings,<sup>2351</sup> including in 2019 when District of Northern California Judge William Orrick III ruled in favor of Daleiden and CMP, holding that “absent a defamation claim,” the First Amendment provided protection from damages sought by Planned Parenthood that arose as a “result of third-party behavior and reaction to the publication of the video recordings.”<sup>2352</sup> However, in an August 2019 ruling, Orrick allowed the case to continue.<sup>2353</sup> He found that there was “no doubt that

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<sup>2349</sup> See *National Abortion Federation v. Center for Medical Progress*, 2017 WL 1164450 (9th Cir. 2017).

<sup>2350</sup> Complaint, *Planned Parenthood Federation of America, Inc. v. Center for Medical Progress*, No. 4:16-cv-00236-KAW (N.D. Cal. filed Jan. 14, 2016), <https://www.courtlistener.com/recap/gov.uscourts.cand.294859.1.0.pdf>.

<sup>2351</sup> See e.g. *Planned Parenthood Federation of America, Inc. v. Center for Medical Progress*, 735 Fed.Appx. 241 (9th Cir. 2018).

<sup>2352</sup> *Planned Parenthood Federation of America, Inc. v. Center for Medical Progress*, No. 3:16-cv-00236-WHO (N.D. Cal. 2019). Orrick added that he was “inclined to exclude from the case all damages that stem from third parties’ reactions to the release of the video recordings as impermissible publication damages barred by the First Amendment[.]” Such measures included “personal security for plaintiffs’ staff and security guards for facilities; costs for physical upgrades to plaintiffs’ facilities (e.g., security cameras, fencing, bulletproof glass); costs to fix incidents of vandalism or arson; costs to address hacks of plaintiffs’ computer systems (including lost business due to inability to make reservations), as well as costs to prevent future intrusion into computer systems.”

<sup>2353</sup> *Planned Parenthood Federation of America, Inc. v. Center for Medical Progress*, 402 F.Supp.3d 615, 633–34 (N.D. Cal. 2019).

several [CMP employees] committed fraud, breached contracts, and trespassed at the conferences and in the Planned Parenthood facilities,”<sup>2354</sup> reasoning that the First Amendment did not provide protection from such charges. Orrick cited several cases, including *Cohen, Desnick, Food Lion, and Council on American-Islamic Relations Action Network, Inc. v. Gaubatz* (2011), in which the District Court for the District of Columbia held that the “protections afforded by the First Amendment, far reaching as they may be, do not place the unlawful acquisition of information beyond the reach of judicial review.”<sup>2355</sup> Orrick did reiterate, however, that the First Amendment barred some of the damages sought by Planned Parenthood, reasoning that they were “more akin to publication or reputational damages that would be barred by the First Amendment.”<sup>2356</sup>

Another undercover filmmaker known for publishing controversial hidden camera videos is political activist James O’Keefe, who has posted footage on his website, Project Veritas, targeting *The New York Times*, *The Washington Post*, CNN, and others.<sup>2357</sup> Like

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<sup>2354</sup> *Id.* at 633.

<sup>2355</sup> *Id.* at 643 (citing *Cohen*, 501 U.S. at 669; *Desnick*, 44 F.3d at 1355; *Council on Am.-Islamic Rel. Action Network, Inc. v. Gaubatz*, 793 F. Supp. 2d 311, 330 (D.D.C. 2011)).

<sup>2356</sup> *Id.* at 644. Orrick explained that the damages not allowed under the First Amendment were the result of the acts of third parties “who were motivated by the contents of the videos,” rather than the direct acts of the defendants. Orrick listed the excluded damages, which included “costs relating to vandalism to plaintiffs’ offices and clinics” among several others. *See also* Jessie Hellmann, “Planned Parenthood awarded \$2M in lawsuit against hidden camera activists,” *Hill*, Nov. 15, 2019, <https://thehill.com/policy/healthcare/470724-planned-parenthood-awarded-2-million-in-lawsuit-against-anti-abortion>. In 2019, a jury awarded Planned Parenthood \$2 million in damages, finding that Daleiden and CMP had engaged in trespassing, fraud, and wiretapping.

<sup>2357</sup> Scott Memmel, “Undercover Video Maker James O’Keefe Continues Attacks on the News Media, Faces Setbacks in Some Legal Disputes,” *Silva Bulletin* 23, no. 2 (Winter/Spring 2018): 23-27; Scott Memmel, “Controversial Undercover Video Makers Face Legal Action and Ethical Concerns,” *Silva Bulletin* 22, no. 3 (Summer 2017): 43-49; Greg Marx, “The Ethics of Undercover Journalism,” *Columbia Journalism Review*, Feb. 4, 2010; Stefanie Chernow, “The Ethics of Undercover Journalism: Where the Police and Journalists Divide,” *Ethical Journalism Network*, accessed June 15, 2020, <https://ethicaljournalismnetwork.org/the-ethics-of-undercover-journalism-where-the-police-and-journalists-divide>.

Daleiden, O’Keefe prompted several lawsuits for such coverage,<sup>2358</sup> including by the Michigan affiliate of the American Federation of Teachers (AFT Michigan) after a Project Veritas employee posed as an intern to gain access to the organization where they recorded and gained access to confidential information, computers, and conversations.<sup>2359</sup> In December 2017, the Eastern District of Michigan lifted a temporary restraining order (TRO) against O’Keefe and Project Veritas related to the undercover operation, finding that it amounted to an unconstitutional prior restraint.<sup>2360</sup> In a separate case, the District of Massachusetts ruled in December 2018 that a state statute prohibiting the secret recording of a public official was unconstitutional.<sup>2361</sup> The court held that “the First Amendment protects the right to record audio and video of government officials.”<sup>2362</sup>

Following the release of several of Daleiden’s and O’Keefe’s videos, journalists and press advocates criticized their methods, as well as the legitimacy of their videos, including because the footage was heavily edited. Nevertheless, court rulings on Daleiden’s and O’Keefe’s First Amendment claims, like on ag-gag laws, have important implications for traditional journalists’ ability to conduct undercover reporting through misrepresentation and deception.

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<sup>2358</sup> See *AFT Michigan v. Project Veritas*, 378 F.Supp.3d 614 (E.D. Mich. 2019); *Democracy Partners v. Project Veritas Action Fund*, No. 17-1047 (D.D.C. 2017).

<sup>2359</sup> Complaint, *AFT Michigan v. Project Veritas*, No. 17-cv-13292 (filed Sept. 27, 2017), [https://www.aft.org/sites/default/files/complaint\\_aftmi\\_veritas\\_092717.pdf](https://www.aft.org/sites/default/files/complaint_aftmi_veritas_092717.pdf).

<sup>2360</sup> *AFT Michigan v. Project Veritas*, No. 17-cv-13292, 2017 WL 6032550 (E.D. Mich. 2017) (citing *Ford Motor Co. v. Lane*, 67 F. Supp. 2d 745, 749 (E.D. Mich. 1999). Judge Linda Parker concluded that “a preliminary injunction most certainly will infringe upon Defendants’ First Amendment right.”

<sup>2361</sup> *Martin v. Gross*, 340 F.Supp.3d 87, 98 (D. Mass. 2018).

<sup>2362</sup> *Id.*

A final area of law that a journalist or news organization could raise in arguing for a First Amendment right to pose as police officers is protection for false speech, such as if a journalist falsely identified themselves as a police officer. In *United States v. Alvarez* (2012), the Supreme Court struck down the “Stolen Valor Act,”<sup>2363</sup> which prohibited lying about receiving military awards or medals, such as the Congressional Medal of Honor.<sup>2364</sup> The Court held that “the remedy for speech that is false is speech that is true,” not government suppression, even when the speech “can disparage, or attempt to steal, honor that belongs to those who fought for this nation in battle.”<sup>2365</sup> The Court further held that false statements are protected by the First Amendment so long as they do not cause a “legally cognizable harm” or provide “material gain” to the speaker.<sup>2366</sup> Thus, it is not sufficient for the government to show that a reporter falsely claimed to be a police official or officer, but would instead need to show harm stemming from such speech.

Although a journalist or news organization could at least plausibly raise a First Amendment claim for protection to impersonate a police officer, they would be unlikely to succeed for several reasons. First, a court would likely cite the finding in *Cohen* that laws of general applicability apply to the press,<sup>2367</sup> including those at the federal and state levels that make it a crime to impersonate a law enforcement official or officer.<sup>2368</sup>

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<sup>2363</sup> Stolen Valor Act, 18 U.S.C. §§ 704 (b)(c) (2011).

<sup>2364</sup> *United States v. Alvarez*, 567 U.S. 709, 730 (2012).

<sup>2365</sup> *Id.* See also *Ashcroft v. ACLU*, 535 U.S. 564, 573 (2002) (holding that “the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.”).

<sup>2366</sup> *Id.* at 715. See also Alan K. Chen and Justin Marceau, “Developing a Taxonomy of Lies under the First Amendment,” *University of Colorado Law Review* 89, no. 2 (Spring 2018): 655-706.

<sup>2367</sup> *Cohen*, 501 U.S. at 664.

<sup>2368</sup> See notes 2331-2334 above.

Second, a court would likely decline to strike down such statutes on First Amendment grounds. In fact, in *United States v. Chappell* (2012), the Fourth Circuit held that there is no First Amendment right to impersonate a police officer, declining to strike down Virginia's statute.<sup>2369</sup> The case arose in October 2009 when Douglas Chappell was pulled over for speeding by a U.S. Park Police Officer in Washington, D.C.<sup>2370</sup> To avoid a ticket, Chappell falsely told the officer that he was a Fairfax County Deputy Sheriff, where he previously worked over a year earlier. Chappell also provided a false employee identification number before admitting his lie. He was charged "with impersonating a police officer in violation of . . . Virginia Code § 18.2-174 and with speeding."<sup>2371</sup> Chappell filed a complaint alleging that the statute was unconstitutional on its face under the First Amendment, focusing in particular on the clause prohibiting "falsely assum[ing] or pretend[ing] to be any such officer," under which he was charged.<sup>2372</sup>

The Fourth Circuit first declined to find the statute invalid on its face, reasoning that the law "has a plainly legitimate sweep. By protecting unsuspecting citizens from those who falsely pretend to be law enforcement officers, the statute serves the Commonwealth's critical interest in public safety."<sup>2373</sup> The statute also "deters

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<sup>2369</sup> *United States v. Chappell*, 691 F.3d 388 (4th Cir. 2012). See also Joe Palazzolo, "Is Impersonating a Police Officer Your First Amendment Right?," *Wall Street Journal*, Aug. 14, 2012, <https://blogs.wsj.com/law/2012/08/14/is-impersonating-a-police-officer-your-first-amendment-right/>.

<sup>2370</sup> *Chappell*, 691 F.3d at 391.

<sup>2371</sup> *Id.* (citing Va. Code § 18.2-174 (2015)) (The statute provides that "[a]ny person who shall falsely assume or exercise the functions, powers, duties and privileges incident to the office of sheriff, police officer, [and others], or who shall falsely assume or pretend to be any such officer, [is] guilty of a . . . misdemeanor.").

<sup>2372</sup> *Id.*

<sup>2373</sup> *Id.* at 392 (citing *People v. Ellis*, 696 N.E.2d 1, 3 (Ill. App. Ct. 1998) (noting that a state impersonation statute "exists to protect citizens who would be harmed or deceived by those acting under the color of authority")). The Fourth Circuit added, "Crucially, the second clause of § 18.2-

individuals from pretending to be police officers in an attempt to evade fines, incarceration, and other state-imposed sanctions,” which was what Chappell admitted he was attempting to do.<sup>2374</sup>

Next, the Fourth Circuit held that *Alvarez* did not protect Chappell’s speech, finding that the Supreme Court had differentiated the Stolen Valor Act from 18 U.S.C. § 912, the federal law prohibiting the impersonation of police.<sup>2375</sup> In *Alvarez*, the Court cited *United States v. Lepowitch* (1943), which established that the purpose of an earlier version of the statute, 18 U.S.C. § 76, “was ‘to maintain the general good repute and dignity of the (government) service itself.’”<sup>2376</sup>

The Fourth Circuit also declined to find that the Virginia statute was overbroad, reasoning that Chappell “failed to show any ‘realistic danger’ that the . . . statute will significantly compromise anyone’s First Amendment rights,”<sup>2377</sup> instead only showing “far-fetched applications involving innocent behavior.”<sup>2378</sup> The court concluded by acknowledging that “[t]he police function serves a significant salutary purpose in protecting public safety, but it also possesses an oppressive potential in the curtailment of liberty.”<sup>2379</sup> However, the court emphasized that “[t]o strike down police impersonation

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174 prohibits dangerous conduct—such as pretending to be a law enforcement officer in order to board an airplane—that might not fall under the first clause. And it is easy to envision how just pretending to be a police officer could—without more—assist an individual in gaining entrance to a home or abducting a child.”

<sup>2374</sup> *Id.* (citing *United States v. Jackson*, 163 F.3d 599 (4th Cir. 1998); *English v. Commonwealth*, 598 S.E.2d 322, 324 (Va. Ct. App. 2004); *People v. Reyes*, 768 N.E.2d 374, 384 (Ill. App. Ct. 2002).

<sup>2375</sup> *Id.* at 394 (citing *Alvarez*, 567 U.S. at 721).

<sup>2376</sup> *Alvarez*, 567 U.S. at 721 (citing *United States v. Lepowitch*, 318 U.S. 702, 704 (1943); *United States v. Barnow*, 239 U.S. 74, 80 (1915)).

<sup>2377</sup> *Chappell*, 691 F.3d at 395.

<sup>2378</sup> *Id.* at 393.

<sup>2379</sup> *Id.* at 399.

statutes . . . would risk expanding the oppressiveness of the police function by adding to the legitimate number of officers an untold flock of faux policemen, all without any corresponding salutary benefit.” The court added,

The First Amendment is a central and essential part of our constitutional life. For that reason, it becomes especially important to identify those instances when free speech values are truly implicated and those when they are not. Falsely identifying oneself as a policeman in order to get out of a speeding ticket is simply not the kind of expressive conduct the Framers of our first and one of our greatest amendments had in mind.<sup>2380</sup>

Thus, the Fourth Circuit’s ruling, although representing the decision of only one court, demonstrated that a First Amendment claim seeking to strike down an impersonation statute is unlikely to succeed. Furthermore, the ruling demonstrated that significant law enforcement interests would likely outweigh interests of the news media in attempting to impersonate a police officer, much like a First Amendment claim against police impersonation of the press. Such law enforcement interests include the ability to conduct investigations and maintain the public’s trust, as well as preventing a member of the public from posing as a police officer in order to conduct illegal acts without resistance, such as detaining a citizen, committing a burglary, and more.<sup>2381</sup> As the Fourth Circuit held, such concerns likely outweigh First Amendment arguments related to impersonation of police, at least regarding the constitutionality of a statute.

Third, as discussed above, First Amendment protection for newsgathering, including undercover reporting, is not absolute. The press generally does not receive under the First Amendment a special right of access to restricted places<sup>2382</sup> and to

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<sup>2380</sup> *Id.* at 400.

<sup>2381</sup> *See e.g.* “Alleged Fake Cop Ran Own ‘Police Station,’ Interrogated ‘Suspects,’” *Associated Press*, Jan. 13, 2015, <https://www.foxnews.com/story/alleged-fake-cop-ran-own-police-station-interrogated-suspects>.

<sup>2382</sup> *See* notes 1587-1593 above.

information,<sup>2383</sup> nor special protection from lawsuits for invasion of privacy, trespass, and more.<sup>2384</sup>

Finally, as revealed by the content analysis, there are several negative effects of press impersonation of the police that could further undermine the news media's arguments, including reporters being the target of investigations and arrests, sometimes leading to jail time and/or fines. Other effects include decreased public trust and the undermining of the independence of the press and police, therefore blurring the lines of their relationship. Taken together, these effects demonstrate the problematic nature of press impersonation of police, potentially further leading a court to rule against a First Amendment claim seeking to do so. Although the press would likely be able to establish standing and raises several valid arguments for the ability to impersonate police as part of undercover reporting, the legal landscape makes such a First Amendment claim unlikely to succeed. Significantly, what separates police impersonation of the press from press impersonation of police is that the latter is illegal in each state and at the federal level, providing an effective means of not only deterring, but largely eliminating the practice by reporters unless a First Amendment claim is successful.

Government intrusion into the free press and the limiting of the press' ability to gather news is far from ideal and in many ways goes against the values found under the First Amendment. However, by eliminating impersonation of the other party, the press and police can avoid one way in which they blur the lines of their relationship, therefore limiting the negative effects on each other and the public.

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<sup>2383</sup> See notes 1703-1721 above.

<sup>2384</sup> See notes 1634-1647, 1653-1681 above. *But see Desnick*, 44 F.3d at 1352, 1355.

### C. Media Ride-Alongs

A seminal moment in media ride-alongs came in 1999 when the Supreme Court ruled in *Wilson v. Layne* (1999) that under the Fourth Amendment, members of the press and the media cannot enter private homes while police execute search warrants unless they receive the consent of the homeowner or aid the police in their law enforcement duties.<sup>2385</sup> Although existing literature has provided significant analysis and commentary on the ruling,<sup>2386</sup> little research has focused on 1) federal and state court rulings addressing other implications of media ride-alongs, including before and after *Wilson*, 2) recent developments in reality television programming that employs ride-alongs, and 3) efforts by police departments across the United States to move the practice into a social media or virtual format. Such contemporary television shows and practices raise new legal considerations, as well as effects, of media ride-alongs.

Several rulings prior to *Wilson* addressed similar Fourth Amendment questions arising from media ride-alongs, including in 1994,<sup>2387</sup> 1996,<sup>2388</sup> and 1997.<sup>2389</sup> Although

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<sup>2385</sup> *Wilson*, 526 U.S. at 614.

<sup>2386</sup> Markin, "An 'Unholy Alliance,'" 33-60; Gossett, "Constitutional Law and Criminal Procedure," 679-708; O'Neil, "Ride-Alongs, Paparazzi, and Other Media Threats to Privacy," 1167-85; Worrall, "Constitutional issues in reality-based police television programs: Media ride-alongs," 41; Costello, "Ride-alongs may cause legal trouble for the media," 35; Trueblood, "Curbing the Media," 541-570; John P. Cronan, "Subjecting the Fourth Amendment to Intermediate Scrutiny: The Reasonableness of Media Ride Alongs," *Yale Law & Policy Review* 17, no. 2 (1998): 949-64; Dina Hovsepian, "Piercing the Reporter's Privilege for Media Who Ride Along," *Loyola of Los Angeles Entertainment Law Review* (2012): 335-64; Ronald B. Kowalczyk, "Supreme Court Slams the Door on the Press: Media 'Ride-Along' Found Unconstitutional in *Wilson v. Layne*," *DePaul Journal of Art, Technology & Intellectual Property Law* 9, no. 2 (1999): 353-96.

<sup>2387</sup> *Ayeni v. Mottola*, 35 F.3d 680 (2nd Cir. 1994).

<sup>2388</sup> *Parker v. Boyer*, 93 F.3d 445 (8th Cir. 1996), *cert. denied*, 117 S. Ct. 1081 (1997); David Bond, "Police Liability for the Media 'Ride-Along,'" *Boston University Law Review* 77 (1997).

<sup>2389</sup> *Berger v. Hanlon*, 129 F.3d 505, 507 (9th Cir. 1997) (*Berger* arose in 1993 when U.S. Fish and Wildlife Service (USFWS) agents searched the ranch of Paul and Erma Berger following

the Second Circuit in *Ayeni v. Mottola* (1994) and the Ninth Circuit in *Berger v. Hanlon* (1997) concluded that the presence of the news media during the execution of a search warrant was unreasonable under the Fourth Amendment, the Eighth Circuit held in *Parker v. Boyer* (1996) that such media ride-alongs during the execution of a search warrant do not violate the Fourth Amendment.<sup>2390</sup>

The courts also reached differing conclusions about whether law enforcement officers were entitled to qualified immunity, which generally provides that government officials, including police officers, cannot be held liable for their actions within their official duties if they were “reasonably” unaware that such actions violated someone’s constitutional or statutory rights.<sup>2391</sup> The Second Circuit held that a Secret Service agent’s “claim of qualified immunity was properly rejected.”<sup>2392</sup> Similarly, the Ninth Circuit ruled that “the federal officers are not entitled to qualified immunity in this case.”<sup>2393</sup> Conversely, the Eighth Circuit held that the court could not “say that the kind of conduct in which police engaged in this case was a violation of a clearly established constitutional

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allegations that they had poisoned and shot eagles. They did so not only pursuant to a search warrant, but also “a written contract with appellees Cable News Network and Turner Broadcasting System, authorizing the filming and recording of the search for broadcast[.]” The agreement was made because “the media wanted footage of the discovery of evidence showing that Paul Berger was poisoning eagles, and the government wanted the publicity.”)

<sup>2390</sup> *Ayeni*, 35 F.3d at 686; *Berger*, 129 F.3d at 507; *Parker*, 93 F.3d at 447. See also Brad M. Johnston, “The Media’s Presence During the Execution of a Search Warrant: A Per Se Violation of the Fourth Amendment,” *Ohio State Law Journal* 58 (1997): 1501.

<sup>2391</sup> See Isaac Scher, “A controversial legal doctrine protects cops from misconduct lawsuits. Here’s how ‘qualified immunity’ works,” *Business Insider*, June 8, 2019, <https://www.businessinsider.com/what-is-qualified-immunity-police-accountability-law-2020-6>.

<sup>2392</sup> *Ayeni*, 35 F.3d at 683.

<sup>2393</sup> *Berger*, 129 F.3d at 507.

principle of which the police, at the time they executed their search warrant, should have been aware,” therefore ruling that the officers were entitled to qualified immunity.<sup>2394</sup>

Another issue where the courts differed was whether journalists become state actors in the course of joining police on a ride-along. In *Parker*, the Eighth Circuit found

that [the journalists from KSDK] acted independently of the police in deciding to enter the house and videotape the events there and that neither KSDK nor the police assisted the other in the performance of their separate and respective tasks. The KSDK personnel did not execute the search warrant and they entered the house after the police did. The television station was there for reasons of its own and was engaged in a mission entirely distinct from the one that brought the police to the house.<sup>2395</sup>

Conversely, in *Berger*, the Ninth Circuit held that although “the media here collaborated with the government in order to conduct a search for its own benefit, there was nothing passive about the government’s involvement with the media in this case. They acted together.”<sup>2396</sup> Thus, the “media acted sufficiently in concert with the federal agents to be held accountable for that violation as government actors.”<sup>2397</sup> On remand from the Supreme Court, the Ninth Circuit nevertheless held that “[t]he media defendants have not asserted and are not entitled to assert qualified immunity as a defense.”<sup>2398</sup> The court added, “The Supreme Court affirmed our holding that a violation of the Fourth Amendment by the media defendants was alleged in this case.”<sup>2399</sup>

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<sup>2394</sup> *Parker*, 93 F.3d at 447.

<sup>2395</sup> *Id.* at 448 (“the reporting crew was not acting under color of state law when it entered the Parkers’ house.” *Id.* at 446).

<sup>2396</sup> *Berger*, 129 F.3d at 515–16. (“In this case we have not only a verbal agreement, but a written contractual commitment between the government and the media to engage jointly in an enterprise that only the government could lawfully institute—the execution of a search warrant—for the mutual benefit of both the private interests of the media and the government officials’ interest in publicity.” *Id.* at 515).

<sup>2397</sup> *Id.* at 507.

<sup>2398</sup> *Berger v. Hanlon*, 188 F.3d 1155, 1157 (9th Cir. 1999).

<sup>2399</sup> *Id.*

The most recent ruling in a media ride-along case was *Smart v. City of Miami* (2015), in which the Southern District of Florida applied the Supreme Court’s ruling in *Wilson*.<sup>2400</sup> The case arose following the murders of two teenagers in a Miami, Florida apartment.<sup>2401</sup> The ensuing investigation was recorded by a camera crew for the reality television show, “The First 48,” including the interrogation of plaintiff Taiwan Smart, the prime suspect, who lived in the same apartment. Smart was later arrested for second degree murder. He filed a lawsuit for false arrest and a 1983 action against the City of Miami, arguing that the city had violated his rights “by allowing its police force to be involved in the production of ‘[T]he First 48,’ without adequately training the police on the proper manner of dealing with the [camera crew.]” Southern District of Florida Judge Marcia G. Cooke ultimately held that Smart’s “theory that his constitutional rights were violated . . . is sound” applying the Supreme Court’s reasoning in *Wilson*.<sup>2402</sup>

However, other media ride-alongs cases have raised additional considerations outside the Fourth Amendment. For example, in *Florida Publishing v. Fletcher* (1976), the Florida Supreme Court held that a news photographer had not trespassed when he was invited into the scene of a house fire and took a photograph of a deceased victim.<sup>2403</sup> The case arose when the local fire marshal and a police sergeant entered the home to begin their investigation. They invited the press to accompany them, their standard practice.<sup>2404</sup>

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<sup>2400</sup> *Smart v. City of Miami*, F. Supp. 3d 1271 (S.D. Fla. 2015).

<sup>2401</sup> *Id.* at 1275.

<sup>2402</sup> *Id.* at 1286.

<sup>2403</sup> *Florida Publishing v. Fletcher*, 340 So.2d 914, 915 (Fla. 1976).

<sup>2404</sup> *Id.* (The Florida Supreme Court explained that the “media representatives entered through the open door; there was no objection to their entry; they entered quietly and peaceably; they did no damage to the property; and their entry was for the purpose of their news coverage[.]”).

The Fire Marshal requested that a photographer take a “silhouette” picture of the victim of the fire as part of the investigation. However, the photograph was also published and broadcast in subsequent media coverage. The mother of the deceased individual brought a complaint “alleging (1) trespass and invasion of privacy, (2) invasion of privacy, [and] (3) wrong intentional infliction of emotional distress (IIED).”<sup>2405</sup>

The Florida Supreme Court first dismissed the trespass claim, finding that “there is no unlawful trespass when peaceable entry is made, without objection, under common custom and usage.”<sup>2406</sup> The Court also reasoned that the news media’s presence was “common custom” not only in the local community, but across the United States at the time. The Court therefore also dismissed the invasion of privacy and IIED claims, finding that the recovery for those claims “must necessarily be based upon trespass, and, therefore, the only question is whether or not there was a trespass by the news photographer.”<sup>2407</sup>

In *Baugh v. CBS, Inc.* (1993), the Northern District of California was similarly tasked with determining whether the filming of crime victims by news reporters in their home violated various torts under California law, including invasion of privacy.<sup>2408</sup> The case revolved around the show “Street Stories,” which was aired by CBS affiliates across the United States and was produced by Group W Television, Inc. An April 1992 episode depicted the Alameda County District Attorney Mobile Crisis Intervention Team

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<sup>2405</sup> *Id.* at 916.

<sup>2406</sup> *Id.* See also *Green Valley School, Inc. v. Cowles Florida Broadcasting, Inc.*, 327 So.2d 810 (Fla.App.1Dist. 1976).

<sup>2407</sup> *Id.* at 917–18.

<sup>2408</sup> *Baugh v. CBS, Inc.*, 828 F. Supp. 745, 749 (N.D. Cal. 1993).

providing assistance to plaintiff Yolanda Baugh (Baugh) and her daughter, Donyelle, both survivors of domestic violence. CBS News reporter Bob McKeown followed the team into Baugh's home and recorded what took place.<sup>2409</sup>

Northern District of California Judge Fern M. Smith first considered Baugh's claim that CBS had violated Cal. Civil Code § 3344(a), which prohibited the appropriation of "another's name, voice, signature, photograph, or likeness, in any manner . . . without such person's prior consent."<sup>2410</sup> Smith denied the appropriation claim, reasoning that the reporting was truthful and for the purpose of "news or public affairs," entitling the broadcast to protection. Smith added that "when news or public affairs publications are involved, the balance must be drawn strongly in favor of dissemination."<sup>2411</sup> Smith similarly held that CBS had not violated the disclosure of private facts tort, finding that although the broadcast contained private facts that a reasonable person would not want disclosed, the majority of the broadcast was on "newsworthy matters of legitimate public interest."<sup>2412</sup> Lastly, Smith turned to the trespass and intrusion upon seclusion claims, in which Baugh argued that although she gave permission for the news media to enter their home, such consent was not effective because they misrepresented themselves as part of the Mobile Crisis Intervention Team. Smith held that "[n]o California cases indicate that the consent must be knowing or meaningful."<sup>2413</sup> She added that "[i]n a case where consent was fraudulently induced, but

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<sup>2409</sup> *Id.*

<sup>2410</sup> *Id.* at 753

<sup>2411</sup> *Id.* at 754.

<sup>2412</sup> *Id.* at 755.

<sup>2413</sup> *Id.* at 757.

consent was nonetheless given, plaintiff has no claim for trespass” and concluded that the same reasoning applied to intrusion upon seclusion.

However, Smith acknowledged that a plaintiff “may still have a remedy based on fraud or intentional misrepresentation.” She also denied a motion to dismiss on an IIED claim, finding that the defendants’ use of misrepresentation to enter Baugh’s home and obtain her consent to videotaping “at a time of extreme emotional vulnerability” plausibly rose to the level of “outrageous conduct.”<sup>2414</sup>

In *Best v. Malec* (2010), the Northern District of Illinois similarly ruled against several television production companies for IIED, but also went further and ruled against the media for invasion of privacy.<sup>2415</sup> The case stemmed from the depiction of the arrest of plaintiff Eran Best without her consent on the reality television show “Female Forces,” which followed female police officers patrolling Chicago suburbs.

Judge Matthew F. Kennelly first denied the media’s motion to dismiss an appropriation claim under the Illinois Right of Publicity Act (IRPA), reasoning that the footage of Best was used for a “commercial purpose,” namely providing entertainment without her consent.<sup>2416</sup> Turning to the publication of private facts tort, Kennelly focused on “a shot of a computer screen on the dashboard of [police officer Stacey] Malec’s patrol car,” which displayed “personal details about [Best], including her name, age, height, weight, driver’s license number, and information about previous traffic stops and

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<sup>2414</sup> *Id.* at 578.

<sup>2415</sup> *Best v. Malec*, No. 09 C 7749, 2010 WL 2364412 at \*1 (N.D. Ill. 2010).

<sup>2416</sup> *Id.* at \*3 (citing Illinois Right of Publicity Act, 765 ILCS 1075/30 (2005)) (The statute “prohibits use of an individual’s identity for commercial purposes without written consent.”).

arrests.”<sup>2417</sup> Kennelly held that such information included private facts that, if revealed, would be highly offensive to a reasonable person, including because they provide records of at least one arrest when Best was a minor.<sup>2418</sup> Lastly, Kennelly denied the defendants’ motion to dismiss the IIED claim, finding that Best had adequately alleged that the broadcasting of officers’ comments at the scene “mocking . . . her Coach products, her Jaguar, and the fact that they interrupted her trip to the grocery store” went beyond “mere insults” and was plausibly “extreme and outrageous.”<sup>2419</sup> Kennelly added that “Best’s complaint also sufficiently allege[d] that broadcasting the footage of her arrest caused her substantial emotional distress.”<sup>2420</sup>

A final case demonstrating the various legal issues stemming from media ride-alongs was *United States v. Hendrixson* (2000), in which the Eleventh Circuit was tasked with determining whether evidence obtained in a private home by the police in the presence of a television reporter could be used in an ensuing trial.<sup>2421</sup> The case arose in 1997 when police seized evidence from the home of plaintiff Mable Stephens as part of an investigation into a “drug distribution conspiracy spanning over three years.” Stephens sought to suppress evidence obtained during the search on the grounds “that the police allowed the involvement of the news media.”<sup>2422</sup>

Citing *Wilson*, the Eleventh Circuit held that the presence of a television reporter in Stephens’ home violated her Fourth Amendment rights, finding that the reporter did

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<sup>2417</sup> *Id.* at \*4.

<sup>2418</sup> *Id.* at \*5.

<sup>2419</sup> *Id.* at \*6.

<sup>2420</sup> *Id.*

<sup>2421</sup> *United States v. Hendrixson*, 234 F.3d 494, 495 (11th Cir. 2000).

<sup>2422</sup> *Id.* at 495–96.

not aid in the execution of the search warrant.<sup>2423</sup> However, the court held that “suppression of the evidence found during the search of her home is not required in this case.” The court cited Chief Justice Rehnquist’s opinion in *Wilson*, in which he wrote that the Court had “no occasion here to decide whether the exclusionary rule would apply to any evidence discovered or developed by the media representatives.”<sup>2424</sup> The Eleventh Circuit explained that because the Supreme Court was “careful to point out that the violation of the Fourth Amendment was the presence of the media in the home, not the presence of the police,” any evidence that was obtained by law enforcement “is not subject to the exclusionary rule.” The court therefore concluded that “[a]lthough the media were present for the search of Stephens’ residence, [their] presence did not expand the scope of the search (the search actually carried out by the police themselves) beyond that allowed by the terms of the warrant.”<sup>2425</sup>

The above rulings demonstrate that although some courts have sided with the press or media in cases stemming from media ride-alongs, such as in *Florida Publishing* and *Baugh*, most have sided with individuals claiming Fourth Amendment violations. But despite such rulings, media ride-alongs have continued in recent years,<sup>2426</sup> including new reality television shows based on the same concept as COPS. Police departments have

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<sup>2423</sup> *Id.* at 496 (citing *Wilson*, 526 U.S. at 614).

<sup>2424</sup> *Id.* (citing *Wilson*, 526 U.S. at 614 n. 2).

<sup>2425</sup> *Id.* (citing *United States v. Jones*, 31 F.3d 1304, 1314 (4th Cir.1994); *United States v. Leon*, 468 U.S. 897, 911 (1984)) (The court further reasoned that the police were not “acting outside of the boundaries of the warrant” and that “[p]olice misconduct does not necessarily require the exclusion of the evidence seized in a search.”).

<sup>2426</sup> *See e.g.* Brynn Gingras, “Inside the intense world of a New York Police hostage negotiator,” *CNN*, Nov. 10, 2017, <https://www.cnn.com/2017/11/10/us/new-york-police-hostage-negotiation-team-beyond-the-call-of-duty/index.html>.

also begun conducting virtual and social media ride-alongs, meaning social media users can follow live updates and videos of police activities at a given time.<sup>2427</sup> These new reality television shows and practices have raised renewed legal questions and effects of media ride-alongs.

In a June 2019 opinion piece for *The New York Times*, documentary filmmaker and podcaster Dan Taberski highlighted several legal and ethical issues arising out of “COPS” in recent years.<sup>2428</sup> First, Taberski found that the show “is edited far more problematically than it lets on,” explaining that there is a “remarkable level of control the police have over the content of the show. . . . In exchange for giving ‘Cops’ cameras access, the Police Department is provided episodes ahead of time to make ‘any changes they deem necessary.’” The result is that the show portrays the police in an overly positive light, such as “present[ing] excessive force as good policing.” This is only made worse in that “over a third of all arrests on ‘Cops’ are drug arrests, three times the percentage of drug arrests in real life,” therefore providing an inaccurate view of policing and of drug use in the United States. Thus, like the content analysis found, in exchange for access to police vehicles, those riding along, in this case a reality television camera crew, must provide something in return, such as an overly positive view of policing.<sup>2429</sup>

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<sup>2427</sup> Dalton, “What is a Twitter Ride-Along?” Dalton wrote, “Twitter has made the idea of virtual ride-alongs possible. Police departments can live-tweet the events that occur during a particular officer’s shift, giving Twitter followers a glimpse into the day or night’s activities. Including a specific hashtag on all of the ride-along tweets helps the department’s followers on Twitter easily keep up with the ride-along or revisit the tweets in the future.”

<sup>2428</sup> Dan Taberski, “Is the Show ‘Cops’ Committing Crimes Itself?,” *New York Times*, June 18, 2019, <https://www.nytimes.com/2019/06/18/opinion/cops-podcast-investigation-abuse.html?action=click&module=Opinion&pgtype=Homepage>.

<sup>2429</sup> Ibid.

Taberski also argued that “COPS” has raised new legal questions. He contended that because reality television camera crews are not traditional journalists, “the shows’ producers have to obtain the written legal consent of every suspect whose face appears on camera.” However, interviews with several suspects depicted on the show revealed that they either did not provide consent, were too inebriated to do so, or were “coerced into signing” a consent form. Some suspects claimed that police threatened to add additional charges if they did not sign.<sup>2430</sup>

More recent reality television programs employing media ride-alongs have echoed the concerns raised by Taberski, including that they provide an overly positive view of police while providing a negative view of minority individuals. Even police officials admitted that new shows like “Live PD,” which purports to show live police activity, have significant “PR value” for police departments.<sup>2431</sup> Questions also remain about whether such shows properly obtain consent from those depicted in the footage.<sup>2432</sup>

New reality television shows have also prompted lawsuits for defamation and other legal claims, often ending in settlements. For example, in 2018, a Miami man reached a \$1.3 million settlement with “The First 48” after the show falsely accused him

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<sup>2430</sup> Ibid.

<sup>2431</sup> See Adam H. Johnson, “Media Frame: Time to Ban Ride-Along Police TV,” *Appeal*, June 24, 2019, <https://theappeal.org/media-frame-time-to-ban-ride-along-police-tv/>. Johnson explained that “[w]hen Williamson County, Texas, debated canceling its contract with ‘Live PD’, . . . Sheriff Robert Chody lobbied to keep the contract[, arguing] that it doubled as a recruiting tool for [police].” The article added, “This isn’t journalism, it’s PR—a formula . . . unchanged since ‘Cops’ first aired 30 years ago.” See also Cary Aspinwall and Sachi McClendon, “Did ‘Live PD’ Let Police Censor Footage?,” *Marshall Project*, July 1, 2017, <https://www.themarshallproject.org/2020/07/01/did-live-pd-let-police-censor-footage>.

<sup>2432</sup> Ann-Derrick Gaillot, “A live version of ‘Cops’ is the most disturbing show on TV,” *Outline*, July 17, 2017, <https://theoutline.com/post/1923/live-pd-cops-ae-policing-reality-tv?zd=2&zi=xv6hw3js>.

of murder.<sup>2433</sup> Another example arose the same year when a man's vehicle was searched by Greenville, South Carolina police in front of "Live PD" cameras. He sued production company Big Fish Entertainment and its producers for defamation, IIED, and invasion of privacy,<sup>2434</sup> further demonstrating the range of legal issues that can arise from reality television ride-alongs. The lawsuit ended in a \$9,000 settlement in January 2020.<sup>2435</sup>

A different set of legal issues arose in relation to "The First 48" after the show followed Minneapolis police officers as they investigated several serious crimes that had occurred throughout the city in 2015.<sup>2436</sup> As several cases related to the recorded investigations went to trial, prosecutors and defense attorneys both sought to compel Kirkstall Road Enterprises, the production company of "The First 48," to release footage to be used in the trials.<sup>2437</sup> The company refused to comply, citing the First Amendment and Minnesota's shield law.<sup>2438</sup> Attorney John Borger, who represented Kirkstall Road Enterprises, argued that the attorneys had not met the three-part test under the statute that

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<sup>2433</sup> Johnson, "Media Frame."

<sup>2434</sup> Daniel J. Gross, "Man sues Sheriff's Office after vehicle search on 'Live PD'," *Greenville News*, Aug. 18, 2018, <https://www.greenvilleonline.com/story/news/crime/2018/08/15/livepd-lawsuit-greenville-county-sheriffs/999494002/>.

<sup>2435</sup> Daniel J. Gross, "'Live PD' lawsuit: Greenville man gets settlement in case against Sheriff's Office," *Greenville News*, Jan. 9, 2020, <https://www.greenvilleonline.com/story/news/local/south-carolina/2020/01/09/live-pd-tv-show-lawsuit-greenville-sc-man-wins-settlement-against-sheriffs-office/2842356001/>. See e.g. "Settlement Reached in \$30-Million Geraldo Suit," *United Press International*, July 20, 1990, <https://www.latimes.com/archives/la-xpm-1990-07-20-ca-422-story.html>; Christopher Coble, "Man Sues 'Live PD', Cops Following Aired Arrest," *FindLaw*, May 8, 2019, [https://blogs.findlaw.com/celebrity\\_justice/2019/05/man-sues-live-pd-cops-following-aired-arrest.html](https://blogs.findlaw.com/celebrity_justice/2019/05/man-sues-live-pd-cops-following-aired-arrest.html).

<sup>2436</sup> Scott Memmel, "Television Program's Refusal to Disclose Footage Raises Questions over Minnesota Shield Law," *Silva Bulletin* 21, no. 6 (Winter/Spring 2016): 12-13.

<sup>2437</sup> *Ibid.* Defense attorneys sought to determine whether police had properly conducted the investigations.

<sup>2438</sup> Minn. Stat. 595.021 *et seq.* See also Andy Mannix, "'The First 48' won't hand over footage in Minneapolis double homicide case," *Star Tribune*, Jan. 30, 2016, <http://www.startribune.com/the-first-48-won-t-hand-over-footage-in-minneapolis-double-homicide-case/367052501/>.

could compel disclosure.<sup>2439</sup> Hennepin County Prosecutor Mike Freeman countered that the statute did not apply to “The First 48” because it was for entertainment, not journalistic purposes.<sup>2440</sup> Although no footage was released, the case, among other similar instances,<sup>2441</sup> represented another way in which media ride-alongs can raise important legal issues, including whether reality television production companies and employees qualify for protection under the First Amendment and state shield laws.

Social media ride-alongs can pose many of the same concerns as reality television shows, including raising privacy concerns, especially if they purport to be live. Another concern is that they may not be sufficient for journalists because a reporter or member of the media cannot talk to the officer conducting the ride-along. Social media ride-alongs may also allow police to exclude certain footage that casts them in a negative light, further limiting the press’ ability to inform the public. However, social media ride-alongs do provide some potential benefits, including that they present no physical danger to participants who simply follow along on their electronic device. Thus, like traditional media ride-alongs, virtual versions raise important considerations for journalists looking to cover police.

Following *Wilson*, several observers expressed concern about the future of media ride-alongs.<sup>2442</sup> But over 20 years later, reality television programs, police departments,

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<sup>2439</sup> See note 1568 above.

<sup>2440</sup> Andy Mannix, “Battle over ‘First 48’ TV footage now embroils up to 12 court cases,” *Star Tribune*, March 18, 2016, <http://www.startribune.com/battle-over-first-48-footage-turning-into-drama-for-prosecutors/372623831/>. See also Memmel, “Television Program’s Refusal to Disclose Footage Raises Questions over Minnesota Shield Law.”

<sup>2441</sup> Johnson, “Media Frame.”

<sup>2442</sup> See note 1283 above.

members of the press and media, and the public still use the practice. Perhaps the primary reason media ride-alongs have continued after *Wilson* is that the ruling limited prohibitions of ride-alongs to only the entering of private places without the owner's or a third-party's consent. The media remain able to record police activities in public spaces,<sup>2443</sup> though non-news media members likely still need to obtain consent from those being recorded,<sup>2444</sup> such as to avoid a lawsuit for the publication of private facts or other claims where they do not have newsworthiness as a defense.

Additionally, departments across the United States have implemented policies regarding ride-alongs. For example, the Minneapolis (Minnesota) Police Department's Policy & Procedure Manual § 6-400 details the department's ride-along program, which aims "to improve police and public relations by familiarizing participants with the complex and unpredictable nature of police work."<sup>2445</sup> The manual details the eligibility of participants, how to sign up for a ride-along, instructions and rules, and more.<sup>2446</sup> In Milwaukee, Wisconsin, the "Ride-Along Program" policy lays out additional rules and guidelines, and also explicitly states that "[a]ny media organization/representative" may participate.<sup>2447</sup> Like in Minneapolis, the policy states that participants should follow officers' instructions, but do not elaborate on what these are.

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<sup>2443</sup> See notes 1544-1557 above.

<sup>2444</sup> Dan Taberski, "Is the Show 'Cops' Committing Crimes Itself?."

<sup>2445</sup> Minneapolis Police Department, Policy & Procedure Manual § 6-400 Ride-Along Program, accessed March 12, 2020, [http://www.ci.minneapolis.mn.us/police/policy/mpdpolicy\\_6-400\\_6-400](http://www.ci.minneapolis.mn.us/police/policy/mpdpolicy_6-400_6-400).

<sup>2446</sup> Ibid.

<sup>2447</sup> Milwaukee Police Department, Standard Operating Procedure § 580.00 *et seq.* Ride-Along Program, Sept. 14, 2017, [https://www.city.milwaukee.gov/ImageLibrary/Groups/cityFPC/agendas5/171102\\_IV\\_A.pdf](https://www.city.milwaukee.gov/ImageLibrary/Groups/cityFPC/agendas5/171102_IV_A.pdf).

Conversely, the Madison (Wisconsin) Police Department’s “Standard Operating Procedures” provides explicit guidelines for officers “determining whether to allow a ride-along to enter a scene.”<sup>2448</sup> The guidelines state that ride-along participants cannot “accompany officers into private residences or into any other place not readily open to the public when the officer’s legal basis for entering is not based upon consent (i.e., warrant execution, exigent circumstances, community caretaker, etc.),” reflecting a clear response to the Supreme Court’s ruling in *Wilson*. The guidelines state that a ride-along participant may accompany an officer into private places when “[t]he owner/resident or other person in control of the premises expressly consents to the ride-along’s entry” and “[t]he ride-along is directly assisting the officer in the performance of the officer’s duties, (example: intern assisting with searching or evidence collection during search warrant execution),” again reflecting *Wilson*. The guidelines add that participants “may accompany officers any place that is open to the public,” though such access is subject to state and local laws, such as not allowing an individual under 21 to enter a bar or tavern.<sup>2449</sup>

Although the policies in Minneapolis, Madison, and Milwaukee represent only three of numerous such guidelines across the United States, they provide illustrative examples of what such policies generally include. One crucial aspect is laying out rules meant to keep ride-along participants safe. Although the content analysis revealed that such measures cannot fully guarantee the safety of participants, they provide a way in

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<sup>2448</sup> Madison Police Department, Standard Operating Procedure Tours, Visitors and Ride-Alongs, Aug. 13, 2018, <https://www.cityofmadison.com/police/documents/sop/ToursVisitorsRidealongs.pdf>.

<sup>2449</sup> Ibid.

which departments have attempted to at least mitigate such concerns. Additionally, the Madison Police Department’s policy reflects the ruling in *Wilson* by prohibiting ride-along participants from entering private homes and locations unless the owner provides consent or the media is directly aiding law enforcement. Thus, this policy, and others, demonstrate that measures have been taken to ensure that ride-alongs can continue without violating members of the public’s Fourth Amendment rights.

However, some jurisdictions have taken a different approach and have banned reality television crews from riding along with police, including in Detroit, Michigan in 2010 when then-Mayor Dave Bing prohibited the practice after a seven-year-old girl was shot and killed during a raid in which “The First 48” accompanied police.<sup>2450</sup> In 2018, the Spokane, Washington City Council voted to largely ban ride-along television.<sup>2451</sup> Several other cities voted to end their contracts with “Live PD,” concluding that “the national spotlight on criminal activity overshadowed the positive things happening in their hometowns.”<sup>2452</sup>

Nevertheless, although court precedent, department policies, and local government decisions help mitigate some of the concerns with media ride-alongs,

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<sup>2450</sup> Kate Abbey-Lambertz, “How A Police Officer Shot A Sleeping 7-Year-Old To Death,” *HuffPost*, Sept. 17, 2014, [https://www.huffpost.com/entry/aiyana-stanley-jones-joseph-weekley-trial\\_n\\_5824684?guccounter=1](https://www.huffpost.com/entry/aiyana-stanley-jones-joseph-weekley-trial_n_5824684?guccounter=1).

<sup>2451</sup> Doug Nadvornick, “Spokane City Council Restricts Reality-Based Police TV Programs,” *Northwest Public Broadcasting*, March 6, 2018, <https://www.nwpb.org/2018/03/06/spokane-city-council-restricts-reality-based-police-tv-programs/>; Kip Hill, “Police shows like ‘Live PD’ would get more restrictions under new Spokane law,” *Spokesman-Review*, March 3, 2018, <https://www.spokesman.com/stories/2018/mar/03/police-shows-like-live-pd-would-get-more-restricti/>.

<sup>2452</sup> Dave Collins, “3 cities end their ‘Live PD’ roles over public image concerns,” *Associated Press*, Jan. 16, 2018, <https://www.policeone.com/patrol-issues/articles/3-cities-end-their-live-pd-roles-over-public-image-concerns-hQxPPmgatkUjqiyu/>.

including protecting the safety of those riding along and avoiding privacy concerns, several additional effects identified in the content analysis still remain, including the undermining of trust in both the press and police, as well as limiting the press' ability to fully inform the public and hold law enforcement accountable. Additionally, reality television and virtual ride-alongs have raised new legal implications, including that television crews often fail to properly obtain the consent of suspects they film and also record footage in ways that can lead to retaliatory lawsuits. Such shows also raise questions over whether reality television production companies and employees qualify for protection under the First Amendment and state shield laws. Although these concerns do not outweigh the benefits to the extent that media ride-alongs need to be eliminated, it is nevertheless important that the press in particular take action to mitigate the negative effects arising from the blurred lines of the press-police relationship.

### **III. Conclusions**

Taken together, the legal landscapes around the four types of interactions between the press and police — 1) press coverage police, 2) press investigations of police, 3) law enforcement arrests, searches and seizures, subpoenas, and surveillance of the press, and 4) both parties blurring the lines of the relationship in the form of impersonation and media ride alongs — are deeply complicated and raise a variety of different areas of constitutional, statutory, and common law, as well as federal, state, and local law enforcement agency or department policies, rules, and guidelines. The legal considerations around press coverage of police, combined with relevant examples, revealed how and why the press-police relationship can and, ideally, should be cooperative co-existence, building off the findings of the theoretical framework and

content analysis. At the same time, the legal landscape and relevant examples of press investigations of police and law enforcement arrests, searches and seizures, subpoenas, and surveillance of the press revealed that these interactions can, and do, make the relationship more contentious, necessitating actions by both parties to limit instances where conflict and interference arise in order to minimize the negative effects and move toward cooperative co-existence.

Where things become more problematic is when the lines are blurred between the two parties. On one hand, the legal landscape around police impersonation of the press generally allows the practice to continue, including because a First Amendment claim against police impersonation of the press is unlikely to succeed. Although it is limited in some ways, the law around police impersonation of the press does not prevent law enforcement from using the practice or minimizing the potential harms identified by the content analysis. On the other hand, federal and state statutes have largely eliminated press impersonation of police, or has at least made it a riskier proposition for journalists, barring a successful First Amendment claim, which is unlikely to succeed. This suggests that legal remedies can be used to mitigate, or even eliminate, police impersonation of the press, therefore limiting the negative effects on both parties, their relationship, and the public. But in the event that legal remedies are insufficient, not possible, or not followed, it is up to the press and police to ensure that impersonation by one party of the other is not used.

Regarding media ride-alongs, the legal landscape also allows the practice to continue, though with some limitations, including the protection of members of the public's Fourth Amendment rights. However, even with such restrictions, the law around

media ride-alongs does little to address several of the negative effects stemming from the practice, including that it can undermine public trust in both institutions and that it is not an effective means of informing the public and holding law enforcement accountable. Thus, it is up to the press in particular to take actions to help mitigate these concerns while still allowing for the positive aspects of media ride-alongs, as discussed in the following chapter.

## **Chapter 6: Implications of the History and Law of the Press-Police Relationship**

The press-police relationship in the United States can be traced back to the colonial era, but especially to the formation of the modern conceptions of both institutions in the 1830s-1840s. In each era of the relationship, the parties responded to the same societal contexts and interacted in different ways that remained largely consistent over time. Throughout this history, the interactions between the press and police raised important legal implications, creating a complicated, but important, legal landscape incorporating several areas of U.S. law.

The theoretical framework, literature review, content analysis, and legal analysis each provided important insight into the history, law, and importance of the press-police relationship, as well as how it has and continues to work in the past and present. First, the theoretical framework provided and discussed the goals, purposes, functions, and actions of the press and police, demonstrating the importance of both institutions in the United States. Second, the literature review and content analysis provided the most comprehensive history of the press-police relationship to date, including when the lines are blurred between the two parties. Third, the legal analysis provided the most complete discussion and analysis of the legal landscape around the press-police relationship to date, bringing together elements of constitutional, statutory, and common law, as well as department and agency policies, rules, and guidelines and relevant examples. In so doing the content analysis and legal analysis provided important insight into the past and present state of the press-police relationship.

Finally, each of these chapters, by revealing positive and negative implications of the categories and types of interactions that comprise the press-police relationship, also

illuminated ways in which the relationship can be improved moving forward. As detailed below, such efforts entail allowing for more of the positive effects tied to cooperative co-existence, while also limiting the negative effects stemming from the press-police relationship becoming contentious or blurred. This study therefore makes a series of important, tangible recommendations that can have significant and positive implications and effects for the press, police, and their relationship, but also, most importantly, the American public.

### **I. Importance of the Press-Police Relationship and How It Works**

Throughout their histories and continuing in the present, the press and police, as well as their relationship, have been fundamental and important parts of American society. On one hand, the press' goals, purposes, functions, and actions have long been important in the United States because the news media is meant to inform the public and hold government accountable. The police also play a crucial role, including protecting public safety, maintaining order, and more. Despite both parties facing political, economic, social, and technological tension, pressure, and scrutiny, their purposes and functions remain critically important.

However, the press' and police's purposes and functions may not always lead to a harmonious relationship. In particular, First Amendment theory focusing on the press' independence from government, as well as its watchdog role as the Fourth Estate and through its checking value, revealed that the goals, purposes, functions, and actions of both institutions can be in conflict. But at the same time, Social Responsibility Theory (SRT) revealed that because the two parties actually have a great deal in common in that

they both are meant to benefit and serve the public, they can and often need to get along, or at least co-exist.

The relationship between the press and police can therefore be broken down into three categories — 1) cooperative co-existence, 2) contentious, and 3) blurred — and four types of interactions — 1) press coverage of police 2) press investigations of police, 3) police arresting, searching and seizing, subpoenaing, or surveilling the press, and 4) both parties blurring the lines of the relationship, including police impersonation of the press, press impersonation of the police, and media ride-alongs — that begin to reveal how the relationship has worked in the past and present. Whereas cooperative co-existence means that the parties can co-exist at the same locations and/or work together without undermining their independence, contentiousness means their goals, purposes, functions, and actions are at odds, requiring one party to target the other or otherwise act in a way counter to the other party's responsibilities. The lines are blurred between the press and police when their purposes and functions overlap in ways that call into question whether each is actually working in the best interest of themselves and the public.

## **II. Historical Findings**

Although previous literature has focused on the history of press and the history of the police in the United States, it has not detailed the history of the two parties' relationship. By combining these histories, the literature review provided the first comprehensive history of the press-police relationship to date, beginning with the colonial era and continuing through the creation of the modern forms of the press and police in the mid-19th century and into the 20th and 21st centuries. The history revealed that the press and police often responded to the same societal contexts, sometimes in

similar ways and sometimes different, at times marking cooperative co-existence, while at other times contentiousness. Significantly, the literature review revealed that despite moments of tension and divisiveness, there were also moments of cooperation and reform, suggesting that the press-police relationship can be improved in tangible ways.

To begin exploring how this can be achieved, this dissertation shifted to the history of the practices blurring the lines of the relationship — police impersonation of the press, press impersonation of the police, and media ride-alongs. Although such practices carry important implications for the press, police, their relationship, and the public, they have received particularly little attention by past research, as revealed by the literature review.

Police impersonation of the press can be traced back to at least 1889 and has continued through the 21st century, therefore covering a wide-range of political, economic, social, and technological contexts. The 91 examples found of the practice over this 131-year history revealed that it is not as rare as some observers have suggested and has instead been used by law enforcement across the country at different historical moments. Police have impersonated the press in several different ways and have had multiple purposes for doing so, including to conduct investigations and surveillance, as well as ending standoffs and hostage situations. However, perhaps most significant is the negative effects of the practice. Although early instances of police impersonation of the press occurred in the late-19th century, it was not until the 1930s that press associations began to recognize its problematic nature. By the 1960s-1970s, several negative effects had not only been raised by observers, but actually occurred, including undermining the press' credibility, source relationships, newsgathering abilities, physical safety,

independence, and relationship with the police. These negative effects therefore also implicated law enforcement, the press-police relationship, and the public. However, because such concerns were and are overshadowed by the benefits for police, the practice has continued, often in secret.

Press impersonation of police dates back to at least 1877 and has continued through the early 21st century. However, the practice was less common than police impersonation of the press for several potential reasons, including that it has been illegal to impersonate a public official or officer in many jurisdictions for over a century. Nevertheless, several negative effects stem from the practice, including that since the late-19th and early-20th centuries, journalists were the subject of investigations following allegations of impersonating the police. In fact, as early as 1928, journalists were also the target of arrests and charges for using the practice, sometimes leading to jail/prison time and fines. Whether they were the target of an investigation, arrest, or legal action, journalists likely became less able to perform their important goals, purposes, functions, and actions as a result, limiting their ability to properly serve and benefit the public. Press impersonation of the police also negatively affected law enforcement and the press-police relationship, including by decreasing public trust in both the press and police, as well as undermining the independence of both parties, blurring the lines of their relationship. The practice also led to the straining of the press-police relationship, further limiting the ability of both to accomplish their purposes and functions. Thus, it is also the public that suffers as a result of the practice as they are less able to benefit from the important roles the press and police play in society. Although press impersonation of police provides a

means of undercover reporting, it largely does more harm than good by undermining the ability of both parties to fully benefit and serve the public.

Finally, media ride-alongs date back to the early 1880s with the introduction of the first horse-drawn patrol wagons. For the next 137 years, as police vehicles changed and evolved, among other milestones like the rise of reality television and *Wilson v. Layne* (1999), members of the press and media would continue accompanying police in/on their patrol wagons, automobiles, and cars. In many ways, the practice has stayed the same over its history, including that the press has had similar purposes for using the practice. However, negative effects have also remained consistent, including that the press, in return for access to police vehicles and law enforcement sources, often praised the police or, at the very least, provided neutral coverage after a ride-along. Although this provides some potential benefits, including the press having a different means of covering the police and news stories, it also raises several negative effects. Perhaps most significantly, the press' providing police with largely positive or neutral coverage, especially in the absence of critical coverage, demonstrated that media ride-alongs blur the lines between the two parties in that both are not fully accomplishing their purposes and functions, therefore not adequately serving the public. This suggested that media ride-alongs are ineffective in that the press cannot fully inform the public by providing a complete view of law enforcement and also cannot hold the police accountable, at least without giving up their access and source relationships. These concerns, combined with additional negative effects of physical danger for the press and media, undermining public trust, and the threat of legal action, therefore implicate both parties, their relationship, and the public, necessitating actions to address these problems.

Taken together, the literature review and content analysis provided the most complete history of the press-police relationship in the United States to date, answering Research Question 1a. This history built off the findings of the theoretical framework by not only tracing the history of the interactions between the press and police, but also 1) revealing important implications of the press' and police's interactions, addressing Research Question 2, and 2) further explaining how and why the press-police relationship is a mixture of cooperative co-existence, contentious, and blurred, addressing Research Question 3. The content analysis also began demonstrating ways in which the press-police relationship can be improved, as discussed further below.

### **III. Legal Findings**

The legal analysis of the press-police relationship would further build on these findings. The four types of interactions between the press and police — 1) press coverage of police 2) press investigations of police, 3) police arresting, searching and seizing, subpoenaing, or surveilling the press, and 4) both parties blurring the lines of the relationship — raise several areas of constitutional, statutory, and common law, as well as department or agency policies, rules, and guidelines. When fully analyzed, the legal landscapes around these interactions provide the most complete legal analysis of the press-police relationship to date, while also further illuminating the effects of the practices and why the relationship is a combination of cooperative co-existence, contentious, and blurred.

The legal landscape around press coverage of police revealed that the press receives some privileges and protections against government intrusion, including into newsgathering, publishing and broadcasting, editorial control, and circulation and

dissemination. However, First Amendment protections and privileges are far from absolute and have several limitations, such as when the press, even in a public space, interferes with the police activities. The press also does not enjoy a special First Amendment right of access to locations and information or special protection from laws of general applicability, including related to invasion of privacy, trespass, wiretapping, and more. Although the qualified nature of the press' ability to gather news is not ideal for journalists and news organizations, it provides at least some assurance that the press can accomplish its purposes and functions. Additionally, it also means that law enforcement is generally able to accomplish its goals and actions. The result is press coverage of police most often leads to cooperative co-existence as both parties can accomplish their purposes and functions without undermining the independence of the other.

Where the relationship becomes more contentious is when the press investigates police or otherwise uncovers and reports on police wrongdoing or misconduct. Such coverage can, and often does, result in negative reactions from the police, which may have effects like limiting the press' access to locations and police sources, or leading to retaliatory lawsuits. At the same time, the practice still allows journalists and news organizations to accomplish important purposes and functions, including informing the public and holding law enforcement accountable, sometimes leading to changes and reform. Thus, it is important for the press to recognize the necessity of critical coverage of police, but also be aware of potential harms.

Also leading to greater contentiousness between the press and police are law enforcement arrests, searches, seizures, subpoenas, and surveillance of the news media,

which allows for government intrusion into the press' purposes and functions, including the ability to gather news because journalists must instead handle being arrested or cooperating with a warrant or subpoena. Ensuing court action can only further limit the press' ability to carry out its important purposes or functions, especially if such legal action results in decreased resources and/or financial strain. Arrests, searches, seizures, subpoenas, and surveillance of journalists can also have a chilling effect on journalists covering police because members of the news media may become increasingly concerned that they may face such actions for doing their jobs. Lastly, such actions can undermine journalists' credibility as members of the public see the news media as being the target of law enforcement efforts. Significantly, in cases where the press is unable to fulfill its purposes or functions, the public is affected as they will be less informed about important information and events, and less able to hold government accountable.

However, the most problematic interactions between the press and police are those that blur the lines between the two parties, raising several legal implications and effects beyond those found by the content analysis. Given the First Amendment and other concerns that police impersonation of the press raises, it is possible that a journalist or news organization could bring a constitutional challenge against the practice and establish standing. However, the significant law enforcement interests accomplished through police impersonation of the press, as well as court precedent limiting press privileges and protections, make it unlikely that a First Amendment claim would succeed. Furthermore, statutory law, legislative efforts, and federal agency policies and guidelines provide some limitations on police impersonation of the press, but are far from

guaranteed to be successful and do not eliminate the practice, providing little protection and reassurance for journalists and news organizations.

Similarly, a First Amendment claim against a federal or state law prohibiting impersonation of police and for the right to impersonate police is unlikely to succeed. The press would potentially be able to argue that such statutes chill important First Amendment activity, namely undercover reporting, and establish standing. However, the legal landscape makes such a First Amendment claim unlikely to succeed, including because of court precedent limiting protections for the press to gather news, a Fourth Circuit ruling against a similar First Amendment claim in Virginia, strong law enforcement interests in prohibiting the practice, and the negative effects of press impersonation of police. Thus, federal and state statutory law provide an effective means of not only deterring, but largely eliminating the practice.

Finally, court precedent and department policies help mitigate some of the concerns and effects raised by media ride-alongs, including protecting the safety of those riding along and avoiding potential privacy concerns. However, several additional effects identified in the content analysis remain unaddressed, including the undermining of trust in both the press and police, as well as limiting the press' ability to fully inform the public and hold law enforcement accountable. Furthermore, reality television programs using media ride-alongs, as well as virtual ride-alongs by police departments, have raised new legal implications, including that the shows fail to get the consent of the suspects they film and have been the target of retaliatory lawsuits stemming from coverage and depictions of suspects. Such programs have also raised questions over whether reality television production companies and employees qualify for protection under the First

Amendment and state shield laws, further complicating the legal landscape around media ride-alongs and demonstrating the problematic nature of the practice.

Ultimately, the legal analysis provided the most complete study of the law around the relationship to date, therefore answering Research Question 1b. The legal analysis, like the content analysis, also illuminated important implications of the press's and police's interactions, addressing Research Question 2. It also helped further explain how and why the relationship has been, and will continue to be, a combination of cooperative co-existence, contentious, and blurred, further answering Research Question 3. What remains is how each of these findings inform the future of the press-police relationship, namely how it can be improved, the basis of Research Question 4.

#### **IV. The Future of the Press-Police Relationship: Recommendations**

The press and police will continue to play major roles in the United States for many years to come, including serving and affecting the public. However, political, economic, and social tension, pressure, and scrutiny of both institutions, combined with decreasing public trust and resources, have raised questions about the future of the press and police. For example, as journalists and news organizations, especially at the local level, continue to lose resources and disappear, it means the public often needs different sources of information regarding crime. As a result, the police have increased social media use and press releases to provide this information. However, such materials raise concerns about what is lost when the press is not providing the information or accountability. Putting the situation in reverse, it would also not be appropriate to ask journalists to do the jobs of police.

This overview of the history and law of the press-police relationship is therefore beneficial in that it reveals the positive and negative implications and effects of the interactions between the press and police, providing insight into how both parties can change and improve their relationship at the federal, state, and local levels. Put differently, cooperative co-existence, contentiousness, and blurring lines are going to continue; however, it is up to the press and police to manage how they will interact with each other and best serve the public. As revealed by the literature review, there is precedent for the press and police to improve their relationship, but also to make it more strained and divisive, necessitating appropriate actions by both institutions. Thus, this study makes a series of recommendations to improve the relationship between the press and police, therefore benefiting both parties and, as a result, the public.

First, the press-police relationship works best and has the least negative effects when it is cooperative co-existence. In such interactions, both parties accomplish their goals, purposes, functions, and actions without interfering with the other, at least to the point that the press and police do not undermine what the other needs to accomplish. It is therefore imperative that members of the press and police respect the important role both institutions play in the United States. More specifically, this requires open communication between both parties, opportunities for shared training, and education about the legality of their actions, as well as the potential negative effects that can arise.

Second, contentiousness, although not ideal, is a natural part of the press-police relationship. And to some degree, it is also necessary. Journalists must continue covering and investigating the police, therefore informing the public and holding law enforcement accountable. The police may, in exceptionally rare cases, need to target members of the

press with arrests, searches and seizures, or subpoenas. However, both parties must take steps to minimize contentiousness to the greatest extent possible without undermining their purposes and functions meant to serve the public.

For the press, it is imperative that journalists and news organizations follow ethical guidelines and considerations to the greatest extent possible when covering or investigating matters related to the police. Such principles include fair and accurate reporting, using caution when relying on police sources or access granted by police, recognizing potential harms arising from reporting on law enforcement, and being transparent.<sup>2453</sup>

Law enforcement, in turn, must also continue to fulfill its goals and purposes, but in ways that avoid targeting the press through arrests, searches and seizures, subpoenas, and surveillance, especially through secretive means. This requires better training for police in how to interact with the press, including at the federal, state, and local levels. In short, law enforcement officials and officers need a better understanding of the press' purposes and functions, as well as how to interact with journalists, whether at a crime scene or press conference. The same goes for how to address protests, whether peaceful or violent, where members of the news media are likely present and the scene may

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<sup>2453</sup> See "SPJ Code of Ethics," *Society of Professional Journalists*, Sept. 6, 2014, <https://www.spj.org/ethicscode.asp>; Kirtley and Chris Ison, *Media Ethics Today*; Paul Farhi and Elahe Izadi, "Journalists are reexamining their reliance on a longtime source: The police," *Washington Post*, June 30, 2020, [https://www.washingtonpost.com/lifestyle/media/journalists-are-reexamining-their-reliance-on-a-longtime-source-the-police/2020/06/30/303c929c-b63a-11ea-a510-55bf26485c93\\_story.html](https://www.washingtonpost.com/lifestyle/media/journalists-are-reexamining-their-reliance-on-a-longtime-source-the-police/2020/06/30/303c929c-b63a-11ea-a510-55bf26485c93_story.html); Bill Kovach and Tom Rosenstiel, *The Elements of Journalism* (New York: Crown Publishing Group, 2014). Future research can, and should, delve more deeply into the various ethical considerations the press must consider when reporting on or investigating the police.

become more chaotic. Topics covered during such training, which could include and/or be run by members of the press or advocacy groups, can include First and Fourth Amendment rights, searches and seizures, federal civil rights lawsuits, relevant case law, and more.<sup>2454</sup> Furthermore, such training can, and should, cover the negative effects arising from arrests, searches and seizures, subpoenas, and surveillance of journalists, including undermining their safety, source relationships, ability to gather news, independence, and more. Lastly, police training in how to work with the press should also emphasize the importance of independent journalists as being critical to ensuring public confidence in government institutions, providing additional motivation for officials and officers to follow what was covered during the training.

In the event that training does not go far enough or proves to be ineffective, federal, state, and local government bodies should pass legislation “placing conditions on federal funding to encourage law enforcement to adopt policy changes to promote better community relations,” including with the press.<sup>2455</sup> Such policy changes could include increased training, disciplinary actions for officers that violate the law or department policies, expanded efforts to collect data on police interactions with the press and public,

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<sup>2454</sup> See “SDX Foundation Funds National Police, Journalist Training,” *NPPA*, Oct. 1, 2013, <https://nppa.org/news/sdx-foundation-funds-national-police-journalist-training>; Gabe Rottman and Chris Young, “Reporters Committee letter to Minnesota officials demands end to police attacks against journalists,” *Reporters Committee for Freedom of the Press*, June 2, 2020, <https://www.rcfp.org/minnesota-police-attacks-letter/>; “Reporters Committee letter calls on Denver officials to end police attacks on journalists at protests,” *Reporters Committee for Freedom of the Press*, June 16, 2020, <https://www.rcfp.org/briefs-comments/denver-police-protest-attacks/>.

<sup>2455</sup> “What Role Might the Federal Government Play in Law Enforcement Reform?,” *Congressional Research Service*, June 1, 2020, <https://fas.org/sgp/crs/misc/IF10572.pdf>.

and an emphasis on reasonable and responsible actions regarding protected First Amendment activity, among other possible options.<sup>2456</sup>

Both the press and police must take such actions because contentiousness leads to several negative effects for both parties and the public. As revealed above, the press faces physical violence, decreased public trust, retribution by police, and the undermining of its ability to gather news free from government intrusion. Law enforcement faces decreased public confidence, potential lawsuits, disciplinary actions, and more. Significantly, when either party cannot properly fulfill its goals, purposes, functions, and actions due to such contentiousness and effects, it is the public that suffers. It is the public that no longer reaps the benefits from each institution. Thus, if the press and police both take appropriate steps to reduce contentiousness in their relationship, they can minimize serious negative effects and move towards more cooperative co-existence.

Finally, significant action is needed regarding the blurred lines of the press-police relationship. Although police impersonation of the press, press impersonation of police, and media ride-alongs can, and sometimes do, result in some positive effects, the negative effects outweigh the benefits, necessitating change.

Police impersonation of the press undermines the press' independence, safety, credibility, source relationships, and newsgathering, therefore negatively affecting the press and public. The practice can also strain the press-police relationship. Significantly, these consequences cannot be eliminated if the practice is only restricted, especially because it is often done in secret and without the press' knowledge. Instead, law

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<sup>2456</sup> Ibid.

enforcement must end its impersonation of the press in order to improve the press-police relationship and both parties' relations with the public. More specifically, the U.S. Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI), must take the lead in adopting a policy that eliminates the practice, not just purportedly limiting it only to exceptional cases. In doing so, the DOJ and FBI can set an example for state and local police to do the same. Only by categorically prohibiting impersonation of the press can law enforcement assure the news media that the practice has ended and that the negative effects stemming from the practice will no longer occur.

Press impersonation of police does carry some potential benefits, including allowing the press to conduct more undercover reporting. By identifying themselves as police officials or officers, journalists potentially gain greater access to locations or have individuals speak to them in ways they may not otherwise. However, as the legal analysis demonstrated, the press likely faces consequences for impersonating the police, including arrests, jail time, and fines, as well as the undermining of public trust. Statutory law has already made impersonation of law enforcement illegal, with little hope that a First Amendment newsgathering claim would succeed in allowing the press to use the practice. However, to further ensure that the negative effects are avoided, the press must look to alternatives, much like the police must do regarding police impersonation of the press. Certainly, it is important that journalists and news organizations continue to hold law enforcement accountable, but they must do so without blurring the lines dividing the press-police relationship. National news organizations can, and should, take the lead in denouncing the practice and emphasizing that it should be avoided, with journalists instead using other less problematic means of investigative and undercover reporting.

Taken together, this study calls for the end of impersonation of each other by the press and police. Although both practices have purported benefits, those benefits are undermined by the negative effects arising from both practices, including on both the press and police, their relationship, and the public. Significantly, the legal analysis revealed that the legal landscape around police impersonation of the press does little to limit or prohibit the practice. The landscape around press impersonation of the police makes the practice risky, at best, for journalists, but does not completely write off the possibility that it could be used by reporters. Thus, it is imperative that the press and police, beginning at the national level and continuing to the state and local levels, take direct actions in eliminating impersonation of each other.

Unlike impersonation, media ride-alongs present potential benefits that are not completely outweighed by the concerns raised by the practice. Nevertheless, because of the negative effects, this study makes three recommendations for the press in particular.<sup>2457</sup> To start, journalists and news organizations should seek alternatives to media ride-alongs whenever possible, particularly through traditional reporting methods like interviewing multiple sources, obtaining and reviewing police records, and making their own way to the location of a news story or investigation. Doing so would mitigate concerns about undermining reporters' safety and credibility, as well as allow for better opportunities to report critically on the police without the risks arising from straining their relationship — losing access and source relationships, and facing retaliatory lawsuits. By avoiding media ride-alongs, the press can therefore decrease its reliance on

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<sup>2457</sup> To some degree, these recommendations also apply to the media, though it generally does not deal with or face the same journalistic concerns faced by the traditional press.

the police for access and information, establishing the necessary independence from law enforcement to best inform the public and hold police accountable.

However, media ride-alongs have been employed for important reasons, including providing journalists access to the police and crime scenes that may otherwise not be available. Put simply, it is important that the press continue to be able to cover matters of public concern, which may require relying on police, to at least some extent, for access to locations, information, or sources. Therefore, if reporters cannot or chose not to avoid media ride-alongs, this study makes two additional recommendations. The first is that journalists, when detailing what took place on a ride-along or the news story that unfolded, should provide greater transparency about the practice, including their reasons for using it, to readers or viewers. Journalists should also explain that the ride-along was not meant to, nor could it, provide a complete picture of law enforcement and fully hold police officials and officers accountable.

The second recommendation for journalists using media ride-alongs is that they should find and utilize alternative ways to examine and report on what may have been left out or handled differently due to their presence in the vehicle. Put differently, whenever a journalist participates in a ride-along and reports on what took place, they should utilize additional means of reporting to determine what they missed during the ride-along and to ensure they are not simply providing positive public relations for the police. Furthermore, if accountability of the police cannot be achieved through media ride-alongs, reporters must take other measures to ensure that it is not completely missing from their reporting. In many instances, a follow-up story may be needed to detail possible criticisms of police that may not have been apparent on a media ride-along, but

still warrant coverage by the press as part of its watchdog role. In so doing, the press would complement the more positive or neutral coverage generally stemming from media ride-alongs with important critical reporting, helping mitigate the concerns, problems, and negative effects arising from the practice.

Ultimately, the examination of the history and law of the press-police relationship revealed key implications of the parties' interactions on each other, their relationship, and the public, including several negative effects arising from contentiousness and blurred lines between the two institutions. At the same time, the history and law also illuminated ways for the press and police to best provide the benefits associated with their goals, purposes, functions, and actions by moving away from contentiousness towards more cooperative co-existence. The history and law of the press' and police's interactions also demonstrated ways to eliminate the negative effects of the practices that blur the lines between the parties, prompting important recommendations from this study to do so.

The tensions and conflicts arising from the press-police relationship, as well as the problems faced by both institutions individually, cannot be fixed or resolved overnight. They are deeply engrained in the long history of both institutions and their relationship. However, these recommendations provide important, tangible ways for both parties to begin addressing problems raised by their interactions, concerns in many cases dating back over a century. By avoiding contentiousness, and minimizing, if not eliminating, interactions that blur the lines of their relationship, the press and police can take important steps to address the political, economic, social, and technological tension, pressure, and scrutiny each face. Both parties, in doing so, can also improve their relationship with each other, and the American public, moving forward.

## **Chapter 7: Conclusion**

This dissertation aimed not only to fill gaps in past literature, but also provide important new research and analysis of the history and law of the press-police relationship, resulting in the recognition of several important implications and contributions. First, this study identified three categories — 1) cooperative co-existence, 2) contentious, and 3) blurred — and four types of interactions — 1) press coverage of police, 2) press investigations of police, 3) law enforcement arrests, searches and seizures, subpoenas, and surveillance of the press, and 4) both parties blurring the lines of the relationship in the form of impersonation and media ride alongs — that typify relations between the news media and law enforcement.

Second, this study provided a new and original theoretical framework, which illuminated the importance of both institutions in the United States. The theoretical framework also began discussing and analyzing the different dimensions of the press-police relationship, including how and why it is a combination of cooperative co-existence, contentious, and blurred.

Third, the literature review detailed the history of the press and the history of the police in the United States. In combining these histories, this study provided the most comprehensive history of the press-police relationship to date, while also revealing the possibility that the press-police relationship can be improved if both institutions take proper actions. The three-part content analysis then focused on the history of the interactions that blur the lines between the two parties, including police impersonation of the press, press impersonation of police, and media ride-alongs, augmenting the history provided by the literature review and filling an important gap in the literature. The

content analysis provided not only a historical timeline of these practices, but also uncovered important aspects of each, including positive and negative effects. Taken together, the history of the press-police relationship revealed the implications of the parties' interactions on each other and on the public, as well as further explaining why their relationship can, at times, be cooperative co-existence, while at other times contentious or blurred.

Fourth, the legal analysis provided the most comprehensive overview and analysis of the legal considerations around the press-police relationship to date, focusing on and synthesizing elements of constitutional, statutory, and common law, as well as department and agency policies, rules, and guidelines. The legal landscape, combined with relevant examples, helped further explain why the press-police relationship has and continues to shift between cooperative co-existence, contentiousness, and blurring lines. It also expanded on the effects of the interactions between the press and police, providing additional reasons for action to be taken to minimize potential harms and concerns, particularly regarding the blurring of their relationship.

Finally, this dissertation looked to the future of the press-police relationship, providing a series of important, tangible recommendations geared towards improving it, allowing both parties to better serve the public. Cooperative co-existence is the ideal way for the press and police to interact as it allows both parties to retain their independence while also accomplishing their important goals, purposes, functions, and actions. In order to ensure that their relationship remains largely cooperative co-existence, the press and police must make efforts towards open communication, training geared towards how to interact with the other party, and education into the potential negative effects that can

arise from their interactions not only with each other, but also the public that they both aim to benefit and serve.

However, contentiousness is also a natural part of the press-police relationship that cannot be completely avoided. It is imperative that the news media continue to hold law enforcement accountable, even if doing so risks straining the press-police relationship. By the same token, there may be rare, exceptional instances where the police may need to arrest, search, or subpoena a reporter. However, as this study revealed, such actions can, and do, produce negative effects for both institutions and the public. Such effects include the undermining of the press' safety, source relationships, ability to gather news, and independence, as well as possible retribution by police in the form of decreased access to locations, information, and sources and/or lengthy and costly legal battles. Law enforcement also faces legal action arising from greater contentiousness with the press, as well as disciplinary actions and implications for their public image and relationship. Significantly, when both parties cannot fully accomplish their purposes and functions as a result of these negative effects and others, it is the public that suffers.

Thus, both the press and police can, and should, take actions to minimize cases of the relationship becoming more contentious to only those that are absolutely necessary. For the press, this means following ethical guidelines and recommendations, including fair and accurate reporting, as well as determining how best to serve their audience through coverage and investigations of law enforcement. For the police, this means better training on how to interact with the press, especially at chaotic scenes like protests and riots. Training should also cover the consequences of, and alternatives for, searches, seizures, subpoenas, and surveillance. If such training proves to be insufficient or

ineffective, federal, state, and/or local government bodies should pass legislation or policies focused on law enforcement actions related to protected First Amendment activity, including newsgathering. By taking such steps, the press and police can minimize the negative effects arising from these interactions and move towards greater cooperative co-existence, respecting the important goals, purposes, functions, and actions of the other institution and better serving the public.

This study makes several recommendations to minimize or eliminate the significant negative effects arising from the particularly problematic practices revealed by the content analysis. For example, the legal landscape does little to eliminate police impersonation of the press. The U.S. Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) have purported to limit the use of impersonation of the press to limited circumstances only, but given the secretive nature of the rules governing the practice, it is nearly impossible to confirm that the practice is not being used. The result is that state and local police have also failed to adopt policies prohibiting the practice, allowing it to occur at all levels of law enforcement. Thus, the DOJ and FBI should set an example for state and local police by amending their policies to eliminate impersonation of the press altogether. Only by doing so can the negative effects arising from the practice truly be eliminated at the federal, state, and local levels.

Similarly, regarding press impersonation of police, it is up to the press to eliminate the practice. Although the legal landscape, particularly federal and state statutes prohibiting impersonation of police, comes close to eliminating the practice, it is up to the press, beginning with national media outlets setting an example, to ensure that alternative means of undercover and investigative reporting are used instead. The press' ending of

impersonation of police should not simply be part of a *quid pro quod* agreement to eliminate police impersonation of the press. Instead, it is a move to ensure that journalists and news organizations, whether at the national or local level, curtail the negative effects of the practice in order to best serve the public.

It is also necessary for the press to limit the use of media ride-alongs. Although this study does not call for the elimination of the practice, which does have potential benefits for newsgathering and informing the public, journalists should use it only in rare instances when the tangible benefits to their readers or viewers are unobtainable by any other means. This is because media ride-alongs raise questions about whether the press is simply providing law enforcement with positive public relations, rather than informing the public and holding police accountable. Media ride-alongs therefore blur the lines between the press and police and, significantly, undermine journalistic independence. Combined with concerns about journalists' safety, the undermining of public trust, and possible legal liability, these problems demonstrate the necessity of limiting media ride-alongs. In cases where journalists cannot or do not avoid the practice, it is therefore imperative that they provide transparency about what took place and what was accomplished, as well as conduct supplemental reporting that better allows for critical coverage of police, providing a more complete picture of law enforcement to the public while also ensuring journalistic independence.

By following these recommendations, the press and police can mitigate the concerns and problems arising from contentiousness and blurred lines of their relationship, therefore moving toward cooperative co-existence and better serving the public. The tensions, pressures, and scrutiny faced by the press and police, as well as

moments where the two parties are in conflict, such as during the protests following the death of George Floyd in May and June 2020, cannot be resolved or fixed overnight. However, this study provided several tangible recommendations that can get the ball rolling in the right direction by minimizing or eliminating at least some of the negative effects arising from the interactions between the press and police, including on each other, their relationship, and the public.

It is important to note that this dissertation has certain limitations. It did not address several possible areas of study, including the ethical considerations around the press-police relationship and media effects, such as how media coverage affects attitudes and perceptions, among other possible areas of study. Another limitation is that this dissertation largely focused on the traditional press, providing less attention to the media more generally, though with some exceptions. Additionally, the content analysis did not include television news, documentaries, and reality television shows. These limitations suggest areas of future research, including:

- A comprehensive content analysis that looks at press interactions with police more broadly, not just during ride-alongs, such as within police departments. The content analysis could also study newspaper accounts of police violence against the press, arrests, and more since the colonial period of the United States.
- A more in-depth study of department policies, press-police guidelines, and ethical considerations.
- A more in-depth literature review of existing bodies of research about press-police relationship outside of its history and law.
- A study examining fictional depictions of the press-police relationship, such as in theatre, books, film, radio, and television.
- More research providing evidence of partnerships in first half of 20th century and the more adversarial nature of the press-police relationship in the 1960s-1970s, among other areas to bolster existing literature.

Nevertheless, this dissertation took the foundational step of providing the most complete and comprehensive study of the history and law of the press-police relationship to date.

Ultimately, the press and police are both fundamental actors in United States society, with both having historical antecedents in the colonial period and modern origins traced back to the 1830-1840s. Over time, both have responded to the same societal contexts in similar and different ways, and currently face political, economic, social, and technological tension, pressure, and scrutiny. Studying the history and law of press-police relationship not only provides greater insight into each institution and their relationship, but also a greater understanding of American society as a whole. This dissertation not only filled important gaps in the literature and scholarship, but also provided new and original research and analysis of the history, law, present, and future of the press-police relationship. In 1833, Benjamin Day did not realize that he had published the first modern crime story. But the *Sun*'s reporting illustrates one of the many interactions that make up the press-police relationship, a connection with a rich history, a complex legal landscape, and deep implications for American society that will continue well into the future.

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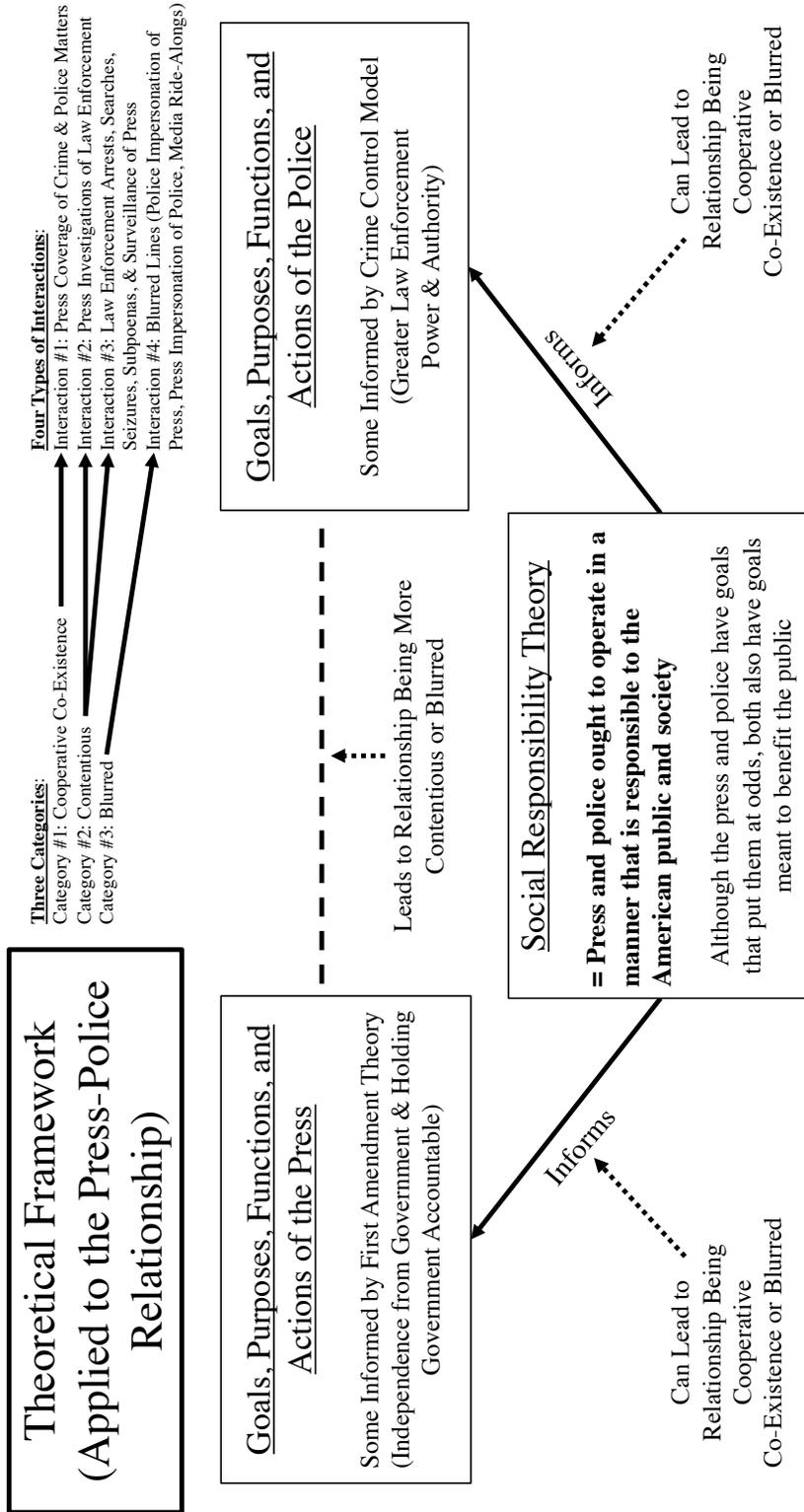
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# Appendix A



## Appendix B

**Table 4.1 Content Analysis Sample by Source/Database**

Content Analysis Sample by Source/Database:					
Topic:	Articles Provided by Past Literature	Articles Qualitatively Coded	Results in ProQuest	Articles Selected from ProQuest	Articles Qualitatively Coded
Police Impersonation of the Press	19	16	803 (includes both)	50	28
Press Impersonation of the Police	0	0	803 (includes both)	14	7
Media Ride-Alongs	0	0	538	45	34

Results in Access World News	Articles Selected from Access World News	Articles Qualitatively Coded	Results in newspapers.com	Articles Selected from newspapers.com	Articles Qualitatively Coded	Total Selected Articles:	Articles Qualitatively Coded:
970 (includes both)	43	20	~70,000 (includes both)	78	53	190	117
970 (includes both)	12	5	~70,000 (includes both)	31	17	57	29
30,429	74	67	~111,000	66	47	185	152
<b>Total:</b>						432	298

**Table 4.2 Content Analysis Sample by Year**

Content Analysis Sample by Year:										
Topic:	1860s-1870s	1880s-1890s	1900s-1910s	1920s-1930s	1940s-1950s	1960s-1970s	1980s-1990s	2000s-2010s	Total:	Total Qual. Coded:
Police Impersonation of the Press	0	10 (8)	10 (8)	10 (4)	10 (7)	56 (40)	72 (39)	22 (11)	190	117
Press Impersonation of the Police	2 (1)	2 (1)	4 (3)	11 (7)	3 (1)	8 (2)	24 (11)	3 (3)	57	29
Media Ride-Alongs	0	17 (13)	19 (16)	14 (13)	22 (15)	32 (21)	41 (37)	40 (37)	185	152
<small>* number in () indicates how many were qualitatively coded</small>									<b>Total:</b>	298

**Table 4.3 Number of Examples Found for Content Analysis**

Number of Examples Found for Content Analysis:									
Topic:	1860s-1870s	1880s-1890s	1900s-1910s	1920s-1930s	1940s-1950s	1960s-1970s	1980s-1990s	2000s-2010s	Total Examples:
Police Impersonation of the Press	0	8	8	4	6	32	27	6	91
Press Impersonation of the Police	1	1	3	6	1	1	5	2	20
Media Ride-Alongs	0	13	17	12	11	21	36	36	146
<b>Total:</b>									257

## Appendix C

The following is the author's first attempt at outlining this dissertation, written in February 2018. The author included this here as a demonstration to graduate students that a dissertation often starts in an unassuming way, but through hard work and perseverance can grow into a project worthy of obtaining a PhD. You can do it!

### **Potential Book or Dissertation Chapters**

1. **Nature of the Relationship Between Journalists and the Police/Law Enforcement = Dissertation?**
  - a. Literature Review
  - b. Theoretical Framework
  - c. Interviews and/or Survey (perhaps through MBA, WBA, others)
  - d. Places of Interactions
    - i. Crime Scene or Scene of Story
    - ii. Press Conference
    - iii. Special Events
  - e. Following get at particular interactions, both symbiotic and adversarial
2. **Media Ride-Alongs**
  - a. History
  - b. Legal Considerations
    - i. Background
    - ii. Need forms of ride-alongs
3. **Impersonation of Journalists**
  - a. History
  - b. Case Studies → Legal Considerations
4. **Police Investigations & Newsroom Searches**
  - a. History
  - b. Legal Considerations
    - i. Newsroom Searches, but also internet data, devices, and social media
    - ii. Not revealing sources = Shield Laws, etc.
5. **Recording Police**
6. **Reporters Arrested / in Danger**
7. **Fictional Depictions, Reality TV**

*Written 2/3/18*