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Police Accountability and the Media

Jerome H. Skolnick and Candace McCoy

This article explores First Amendment theory and the role of the media in generating police accountability through public understanding of police organizations. We argue that free speech theory can and should look beyond “abridgment” issues and raise questions about the civic responsibility of the press to inform the public about key governmental institutions. The media’s concern with crime news, we found, vastly overshadows its coverage of the police as a complex, interesting, and expensive governmental agency. Reporting about police institutional patterns and policies contributes more toward fulfilling First Amendment values—not only that of “checking” police excesses, but of facilitating the goal of enlightened citizen participation in local government.

Those who won our independence believed . . . that public discussion is a political duty; and that this should be a fundamental principle of American government. They recognized the risks to which all human institutions are subject.

—Justice Brandeis

Whitney v. California, 274 U.S. 357, 375 (1927)

INTRODUCTION

Any theory of the police in a constitutional democracy must consider the issue of police accountability. Of course, American police are accountable to the courts and are under duty to uphold the Constitution. One need only refer to Fourth and Fifth Amendment law to perceive the depth of legal accountability regarding arrest, search, seizure, and interrogation. These areas of law have evoked major debates and controversies, usually over police ca-

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capacity to enforce the law effectively within the constraints imposed by courts. Yet none of the debaters has denied that police accountability is necessary, nor that police should be carefully monitored. We assume that police in a democratic society should serve the public and not their own interests. Accordingly, we draw boundaries around police activities, and encourage behavior within these limitations.

What institutions or forces can hold police accountable? Influenced by the public debates of the past two decades, most Americans would probably reply that courts are the primary reviewers of police activities. In practice, such other political actors as city administrators and budget planners are probably equally potent. In addition, several cities have organized citizen complaint boards that investigate and sanction particular incidents of misconduct and—perhaps most important—that circumscribe police behavior by insistent reminders that public opinion is the final measure of police accountability.

In considering the variety of institutional checks on police activities, and mindful especially of the influence of public opinion, our inquiry naturally turned to the role of media—press and broadcast outlets—in shaping public awareness about police and crime. The media, in their daily scrutiny of public agencies, can be a powerful force for police accountability.

This article addresses the communal responsibilities of these two American institutions—the police and the media. We shall conclude that a theory of free speech can go beyond the question of speech abridgment by government to the broader issue of the moral and civic responsibilities of print and broadcast media under the expansive freedom of expression offered by the First Amendment. The role of media in influencing accountability of police organizations is surely a fitting topic for such an exploration.

As a significant and complex governmental institution, police do generate considerable media and public interest. At the same time, part of the police “product” involves sensational crime news. By and large, we suggest, the media’s focus on that aspect of a police department’s productivity vastly overshadows coverage of its complex governmental side. Thus, inquiry into one of our most fundamental public institutions is less varied, thoughtful, and searching than is desirable. Further, considering the robust state of our major media, it is surprising that their police reporting is less complete than their strength would indicate is possible.

THE IDEA OF POLICE ACCOUNTABILITY

It is hardly a new idea that police are ultimately accountable to the citizenry. Indeed, before the establishment of the independent police departments in 1829 in England, the police *were* the citizenry.

At that time, intense public debate focused on whether Englishmen should retain what was essentially a watchman system. Aside from such rudimentary organizations as “The Bow Street Runners and Patrol”—half a dozen former parish constables organized by Henry Fielding to act as detectives—individual community members were responsible for patrolling and

for apprehending criminals. Their work, however, was ineffective. How, then, in the absence of an organized police department, was order to be enforced and life and property protected? Evidently, England trusted the supposed deterrent effect of a rigorous penal code as its first line of defense. It was believed possible to extirpate crime with severe punishment. Melville Lee comments wryly that this belief “survived in the face of the fact, that as punishment increased in bitterness, so did offenses grow in frequency and in violence.”¹ The penal laws were written in blood—160 different offenses were punishable by death, without benefit of clergy, and as many as 40 people were known to be hanged in one day.

Still, Englishmen were not prepared to accept an organized police because the European police were so deeply feared. To many people, Wilbur Miller writes, the cop on the beat represented an ominous intrusion on civil liberty. Englishmen were apprehensive about importing “despotic France’s secret political police—the Continental spy system”—or about creating a more formidable variety of England’s own network of informers and agents provocateurs.”² Crime was indeed rising at an alarming rate, but a surprising coalition of political factions resisted establishing an organized police force. As E. P. Thompson writes: “Tories feared the over-ruling of parochial and chartered rights and the powers of the local Justices of the Peace; Whigs feared an increase in the powers of the Crown or Government; Radicals . . . preferred the notion of voluntary associations of citizens.”³

Finally then, in response to major social dislocations engendered by the industrial revolution, by war, by poverty, and by economic depression, a police department was established in 1829 to maintain public order and fight crime.⁴ To relieve public fear of police, Sir Robert Peel incorporated two central and related innovations before introducing the police bill to Parliament. The bill abolished the death penalty for more than 100 serious offenses and similarly mitigated less serious crimes. Thus, when the police were to enforce the law, they would not be routinely invoking the death penalty. To further inspire community confidence and cooperation in apprehending offenders, the police were disarmed even though the Bow Street patrols had been well armed.⁵ Authority was to derive from confidence in the police, from their accountability to the citizenry through the rule of law, and not from police capacity to employ deadly force. Indeed, special uniforms were designed that would make police appear taller than, but not socially distant from, the average citizen. The uniforms were blue; Peel and his associates

1. W. L. Melville Lee, *A History of the Police in England* 204 (London: Methuen & Co., 1901) (reprinted in 1970 by Patterson Smith Publishing, Montclair, N.J.). For a comparison of the histories of English and American police, see Wilbur R. Miller, *Cops and Bobbies: Police Authority in New York and London, 1830–1870* (Chicago: University of Chicago Press, 1977).

2. Miller, *supra* note 1, at 4.

3. Edward Palmer Thompson, *The Making of the English Working Class* 82 (New York: Random House, 1966).

4. Anna A. Ramsey, *Sir Robert Peel* (New York: Dodd, Mead, 1938).

5. Lee, *supra* note 1, at 156.

had rejected scarlet and gold as being too much like army uniforms.⁶ Eventually, most citizens began to call the police *bobbies*, an affectionate nickname for Sir Robert Peel.

In sum, in response to earlier mistrust of law-enforcing authority, the British developed their police according to a well-considered plan. By contrast, the American police, although presumably modeled on the British innovation (as in Boston in 1838) were much more influenced by short-term crises, ethnic rivalries, and local politics. Like the growth of America itself, the growth of its police departments was rapid and haphazard, with the most striking developments being made in the nineteenth century.

American police institutions largely reflected the qualities of local governments, and it cannot be said that either offered much justification for civic pride. The police were primarily responsive to a rule of politics, not to a rule of law. Arguably, this may have made them more acceptable to the community, but it also made them more corrupt, more inefficient, and scarcely professional in any sense. According to historian Robert Fogelson, police were accountable neither to the courts nor to their fellow citizens, but to the political machines that dominated (and in some places continue to govern) urban America.⁷

Yet machine politics is not today the primary mode of American city government. Municipal government reform efforts, shifting demographics, and higher education levels in virtually all American social groups since the 1920s combined with a radically transformed and diversified technical and industrial base to weaken the hold of machines over local politics. In modern “interest group liberalism,” as political scientist Theodore Lowi labels it,⁸ no one political in-group can long maintain hegemony. This is partly attributable to the ability of self-interest citizen groups to mobilize political power for their favored goals and (because sustaining power depends on successfully managing shifting coalitions) incidentally to assure that local government is flexible.

In general, political machines can no longer control American police departments; nor can they protect police departments from public scrutiny. The propriety of police policies and activities came under intense public scrutiny and broad-based criticism at the local government level during the 1960s. They were perhaps the most controversial local government service. Major questions were raised—particularly by minority groups—regarding the structure and functions of police organization, the quality and direction of police training, and the proper use of police discretion.

Later, studies from several national crime commissions challenged the as-

6. Miller, *supra* note 1, at 33.

7. See Robert M. Fogelson, *Big-City Police* (Cambridge: Harvard University Press, 1977); Roger Lane, *Policing the City: Boston 1822–1885* (Cambridge: Harvard University Press, 1967); James F. Richardson, *The New York Police: Colonial Times to 1901* (New York: Oxford University Press, 1970).

8. Theodore J. Lowi, *The End of Liberalism: Ideology, Policy, and the Crisis of Public Authority* (2d ed. New York: W. W. Norton & Co., 1979).

sumption that police always act with strict adherence to the law.⁹ Writing in 1972, a committee of the American Bar Association acknowledged that existing methods of review and control of the police were inadequate.¹⁰ The committee cited incomplete citizen understanding of the discretionary nature of most police work and of the amount of discretion exercised by police as a basic obstacle to developing effective review and control systems. It also pointed to other factors that contributed to the complexity of the policing process; the opportunities for abuse inherent in vague criminal statutes, the report said, limit the public's capacity to understand how police might be made accountable to the community. A clearer explanation of the complexities of criminal procedure and policing to the public would encourage police compliance with legal norms.

The committee also recognized the need to strengthen the role of police administrators in guiding and controlling police conduct. The most deep-seated and powerful police restraint is, of course, self-control. The committee wisely observed that cultivating self-control means more than publicly adopting administrative policies. There must also be a commitment by administrators and superior officers to uphold those policies as well as systems and procedures designed to ensure that the working police officer complies with them.¹¹ Public attention is often drawn to the role of nonpolice institutions in

9. Perhaps the most widely read is the report from the President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, D.C.: Government Printing Office, 1967). See especially chapter 4, "The Police," and chapter 5, "The Courts." Several of the research reports submitted to that commission for consideration in preparing its final report still deserve a reading. See, e.g., *Field Surveys I-V*, which are reports on police practices in several American cities in the 1960s (Washington, D.C.: Government Printing Office, 1965-66).

Who Is Guarding the Guardians? A Report on Police Practices (Washington, D.C.: U.S. Commission on Civil Rights, 1981) summarizes the conclusions of several task forces on the police, including police-related discussion from the National Commission on the Causes and Prevention of Violence (*Rights in Conflict* (Washington, D.C.: U.S. Government Printing Office, 1968)) and several reports from the violence commission itself. Chapter 4 lists the external controls that may be used to hold police accountable. They include city governmental bodies and officials, state and federal prosecutors, federal agencies, and private police-watching groups, including quasi-governmental civilian review boards. We argue here that another private police watcher, the local media—both newspaper and broadcast outlets—should be added to that list.

Several books catalog the role of police administrators in assuring that officers on the street are well chosen, well trained, and themselves well policed. One of the earliest and still very comprehensive is V. A. Leonard, *Police Organization and Management* (2d ed. Brooklyn, N.Y.: Foundation Press, 1964). An excellent issues-oriented overview is Louis A. Radelet, *The Police and the Community: Studies* (3d ed. Encino, Cal.: Glencoe Publishing Co., 1980). Bibliographies of materials concerning police administration are available from the International Association of Chiefs of Police, 13 Firstfield Rd., Gaithersburg, Md. 20878. On the problems of hiring, see John H. McNamara, *Uncertainties in Police Work: The Relevance of Police Recruits' Backgrounds and Training*, in David J. Bordua, ed., *The Police: Six Sociological Essays* (New York: John Wiley & Sons, 1967); and Thomas C. Gray, *Selecting for a Police Subculture*, in Jerome H. Skolnick & Thomas C. Gray, eds., *Police in America* (Boston: Little, Brown & Co., 1975). On the potential and problems of self-policing through internal investigation and control, see Note, *The Administration of Complaints by Civilians Against the Police*, 77 *Harv. L. Rev.* 499 (1964), and the discussion of internal police controls in George E. Berkley, *The Democratic Policeman* (Boston: Beacon Press, 1969). For a discussion of the potential of self-regulation of police agencies as compared to the effectiveness of judicial oversight of police practices, see Carl McGowan, *Rule-Making and the Police*, 70 *Mich. L. Rev.* 659, 676 (1972).

10. See the American Bar Association's publication from the Project on Standards for Criminal Justice, *Standards Relating to the Urban Police Function* (Tent. Draft, 1972).

11. *Id.* at 125-32.

controlling police functions, but—to stretch the old phrase—accountability begins at home.

When internal controls over police conduct prove ineffective, external controls are likely to be demanded. Several cities have set up citizen review boards. In these, citizens are either elected or appointed to engage in fact finding. Such boards usually recommend discipline of officers who they find have acted outside the law.¹² In other cases, citizens have brought lawsuits designed to redress police misconduct and, incidentally, to require that internal police procedures be redesigned or better enforced. By suing the police in civil court, they demand police compliance with constitutional law as well as police liability under civil tort law.¹³ Responsibility for holding police accountable broadens from the model of checks and balances among political institutions (e.g., courts incidentally checking the police as part of their general enterprise of criminal litigation) to the ideal of citizens' cooperating with powerful institutions (e.g., citizens directly urging courts or other institutions to investigate and redress police abuse).

12. The general opinion of criminal justice professionals is that civilian review boards have not delivered the benefits of police accountability that 1960s reformers believed they would. We lack objective impact studies of how police behavior was affected in those cities that set up review boards. Implementation is a problem in any administrative reform, but we could hypothesize that accountability would have been fostered more effectively in those cities that gave their review boards independent investigatory and subpoena powers. Alternatively, these boards may have deterred police misconduct in certain closely knit, homogeneous cities, where the review boards were composed of representatives from leading powerful civil institutions (e.g., religious leaders, bank presidents, school teachers, police administrators), but not in cities with diverse ethnic and economic class populations that set up boards with identical review frameworks. Now that a decade has passed since most of these boards began to operate, the literature cries for a solid study assessing their impact on police practices. The rationale for instituting these boards is outlined in Paul Chevigny, *Police Power: Police Abuses in New York City* (New York: Pantheon Books, 1969), and discussed in Albert J. Reiss, Jr., *The Police and the Public 180-207* (New Haven: Yale University Press, 1971). Evidence about impact of the boards is discussed in Edward J. Littlejohn, *Civilian Police Commission: A Deterrent to Police Misconduct*, 59 U. Det. J. Urb. L. 5 (1981). One of the few recent studies that attempts to assess empirical impact indicators of police review boards is Note, *Complaint Review Boards in Florida: Who's Complaining?* 7 Nova L.J. 353 (1983).

13. We are speaking here of lawsuits prosecuted by private citizen plaintiffs alleging that police have violated their civil rights. Such a cause of action arises from 42 U.S.C. § 1983, which reads: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." *Monroe v. Pape*, 365 U.S. 167 (1961), and *Monell v. Department of Social Servs.*, 436 U.S. 658 (1978), assured citizens that neither abusive police acts nor policies encouraging them would be ignored by the courts. An introductory hornbook to the burgeoning law of civil rights actions is Chester J. Antieau, *Federal Civil Rights Acts*, 2 vols. (2d ed. Rochester, N.Y.: Lawyers Co-operative Publishing Co., 1980). See also National Lawyers Guild, *Police Misconduct: Law and Litigation*, ed. Michael Avery & David Rudovsky (New York: Clark Boardman Co., 1980).

A state tort claim attached to a section 1983 claim for denial of federal civil rights against police officers and their supervisors can be brought into federal court under pendent jurisdiction. For example, a lawsuit alleging wrongful death at the hands of a police officer could be pursued in most state courts, of course, since wrongful death is a well-recognized common law tort. The state claim becomes part of a federal lawsuit if appended to a section 1983 claim for denial of life and due process (violations of the Fourteenth Amendment) and for denial of the right to be free from assault and bodily injury (violation of a right arising from the Fifth and Fourteenth amendments). A common factual nexus between other torts (such as false imprisonment or invasion of privacy) and a federal civil rights violation often exists. A complaint alleging violation of civil rights under section 1983 and also tortious activity under state law asserts two claims and two wrongs, and a plaintiff may recover compensatory or injunctive relief for each of them.

If the public is to have the capacity to review police behavior and elicit the aid of powerful institutions, including media as well as courts, citizens must appreciate the potentialities and limits of police departments—and how police officers can reasonably be expected to carry out their duties. The media can supply the information from which such knowledge grows.

Even citizen review boards are useless unless participants draw on a well-informed and realistic base of public opinion about proper police standards. Surely accountability is fostered when one powerful branch of government exerts power over another in an effort to uphold democratic values as the traditional separation-of-powers model prescribes. But accountability is even more carefully preserved when, in addition to governmental checks and balances, the political structure encourages citizen involvement in the police oversight process.

Actions like filing complaints or lawsuits induce accountability, but few citizens challenge police actions directly, and then only when they are most grievously harmed.¹⁴ For most of us, monitoring police accountability simply requires that we be aware of the quality of police performance in our communities, that we be competent to evaluate it, and that we urge scrupulous police adherence to high public service standards. Though the force of an informed citizenry is less obvious in the political arena than, for example, in dramatic litigation, ultimately it is the base on which other police accountability devices must build. Little of this monitoring is possible without the aid of a powerful private institution: the media. Here is the prime example of police accountability accomplished by citizens' cooperating with a powerful institution.

Indeed, the First Amendment protects a vigorous free press (and, since the 1930s, a powerful broadcast industry)¹⁵ for much the same reasons that the

14. Perhaps because few citizens are willing to invest the time and expenses of litigation in order to challenge simple routine police misconduct. It is difficult to estimate compensatory damages appropriate for redressing constitutional violations that may be real, but are nevertheless of short duration, difficult to prove, and likely to be compensated by only small monetary awards even if the plaintiff prevails. Illegal detentions for short periods, misdemeanor arrests made with less than probable cause, petty harassment of minority group members—these and other police practices may be degrading and unconstitutional, yet challenging them is seldom worth the costs of bringing suit unless a class action can be organized. Though civil litigation against police has increased markedly in the last ten years, most reported cases involve improper use of deadly force, brutal beatings, or false arrests and imprisonment causing plaintiffs to lose jobs and wages. Virtually all cases resulting in large damage awards against police officers reported over the past three years by a national law enforcement support group, for example, have involved death or severe physical harm to the plaintiffs. See in general 1979–1982 *Legal Liability Reporter* the journal published by Americans for Effective Law Enforcement in South San Francisco, California.

15. In this essay, we use the term *media* to refer to both broadcast and print outlets. Where distinctions between them are important for the themes discussed, we note these in the text. The reader who has an interest in the history of the broadcasting industry and how its unique powers and regulatory scheme impinge on First Amendment values may wish to read R. H. Coase, *The Federal Communications Commission*, 2 *J. Law & Econ.* 1 (1959); the reply to Coase by Nicholas Johnson, *Towers of Babel: The Chaos in Radio Spectrum Utilization and Allocation*, 34 *Law & Contemp. Probs.* 505 (1969), for historical and policy overviews; and Lee Loevinger, *Free Speech, Fairness, and Fiduciary Duty in Broadcasting*, 34 *Law & Contemp. Probs.* 278 (1969), on First Amendment issues. These and other works illustrating the constitutional and regulatory problems arising from the broadcast industry are excerpted in Douglas H. Ginsburg, *Regulation of Broadcasting: Law and Policy Towards Radio, Television and Cable Communications* (St. Paul, Minn.: West Publishing Co., 1979).

Fourth, Fifth, and Sixth amendments protect the criminally accused: Government should not intrude too far in the daily lives—here, the intellectual lives—of citizens. If we move from Fourth and Fifth amendment controls on police to the idea of accountability implied by the First Amendment, we see police accountability in a broader, arguably murkier, but perhaps more fundamental sense. It involves the capacity of a free people to hold institutions accountable because they know the nature of the work those institutions do. It thus involves self-government.

Commentators have offered several theories of the values that the First Amendment must uphold. *Checking* and *self-government* are two. *Checking* implies that one powerful institution or branch of government can monitor and hold other powerful institutions accountable to the public trust; the assumption is that abuse of authority would probably occur but for this watchdog. Usually, the concept is applied to checks and balances among the branches of government, but under First Amendment theory it can also apply to media organizations. The media are seen as a powerful institution; indeed a common euphemism for them is “the fourth estate.” Sociologist Gaye Tuchman claims that both “newswriters and news organizations insistently present themselves as the fourth branch of government [in the sense that they believe] . . . they act as gadflies to insure that government serves the people.”¹⁶ Media can *check* the police as they do other powerful public organizations; that checking value is an important rationale in First Amendment commentary.

In contrast, under the *self-government* conception, the First Amendment protects media because a democratic polity must offer its citizens a wide range of information if they are to make informed, educated judgments about public affairs. This is a *facilitative* function of the First Amendment, not a *restrictive* one.¹⁷ It assumes not only that one branch of government or

16. Gaye Tuchman, *Making News* 157 (New York: Free Press, 1978).

17. The notion that the First Amendment is an admonition to the media to explore the broadest range of public concerns and topics permeates case law. Its origin undoubtedly is Meiklejohn's metaphor for the mission of the press: Media must offer the public “a marketplace of ideas,” from which a self-governing citizenry may “buy” the most compelling, reasoned, and true arguments. (The metaphor was originally formulated by Justice Holmes, who said that free speech resulted in “the power of a thought to get itself accepted in the competition of the market.” *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting). Note that Meiklejohn's analysis of the “marketplace” was not a pluralist assertion that all citizens should stubbornly hold their own opinions and that the marketplace of political decision making would establish a homeostatic balance among all the opinions. Rather, each citizen would debate and reason with others; the “market” is manifest when together citizens agree that one idea or policy is preferable to others. Alexander Meiklejohn, *Free Speech and Its Relation to Self-Government* 86–87 (New York: Harper & Bros., 1948). Meiklejohn said that “the welfare of the community requires that those who decide issues shall understand them,” and in the modern era the media are powerful providers of the raw material necessary for achieving understanding. *Id.* at 25.

One example of a “facilitative” approach to the First Amendment is the FCC's fairness doctrine. Paradoxically, that policy requires that broadcasters be regulated (i.e., that they be restricted) in order to facilitate more speech. The fairness doctrine requires that television and radio stations investigate and report on important public issues and that they cover as many contrasting viewpoints as possible regarding those issues. Stations must even donate free air time to citizens who wish to offer opinions that may not have been presented in regular station programming on a particular issue. *Cullman Broadcasting Co.*, 40 Op. F.C.C. 576 (1963). The Supreme Court recognized that the First Amendment contains a facilitative func-

a private institution will check others but also that ultimately all branches of government are accountable to the people themselves. In this light, citizens depend on a free press to help them formulate opinions and make decisions about government.

Yet, as many police studies have hinted, the institution of policing involves a network of arrangements and processes that may not be fully understood by the police themselves or by the courts, to say nothing of the general public.¹⁸ The question then becomes, how is the public to understand the realities of this complex institution so that police can be held accountable to the public under a set of realistic expectations?

In part, that understanding can come about through scholarly research on the police. Those familiar with this research recognize that a substantial literature about policing has emerged since the 1960s, both from scholarly research and from task force inquiries such as the ABA study discussed above.¹⁹ But members of the general public are scarcely conversant with this body of literature, and they draw their perceptions of police—aside from direct citizen-police contact—from the mass media.

How well do the media report on the police? A complete answer would require systematically sampling and examining media coverage of police and crime, analyzing its content, and developing measures for evaluating its quality and estimating its impact. We are convinced that the mass media are

tion when it held that the valid object of the fairness doctrine was “to enhance rather than abridge the freedoms of speech and press protected by the First Amendment.” Proving that the doctrine restricted station owners’ economic interests was not sufficient to prove a First Amendment violation if the restriction served to facilitate *more* speech. *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 375 (1969).

The fairness doctrine does not require broadcast reporters to include every minority opinion or every possible interpretation of any given issue of “public importance,” but it does require a broadcast outlet to cover what in its “reasonable discretion” are all sides of a “controversial issue.” *National Broadcasting Co. v. FCC*, 516 F.2d 1101, 1102 (D.C. Cir. 1974), *cert. denied sub nom. Accuracy in Media v. National Broadcasting Co.*, 424 U.S. 910 (1976). That case illustrates the implications of the fairness doctrine for investigative journalism.

For a discussion of the fairness doctrine and the First Amendment as applied to broadcasting, see the report on the symposium, *Broadcasting and the First Amendment: The Anatomy of a Constitutional Issue*, Report on a Center Conference, *Center Mag.*, May/June 1973, at 19. See especially the interchange between Harry Kalven, Jr., (at 36) and Antonin Scalia (at 38). For an essay that supports the *Red Lion* “facilitative restriction” on the ground that broadcasters would probably not be diligent in fulfilling their fiduciary duties to the public in news and public affairs programming without some minimal government regulation, see Lee C. Bollinger, *Freedom of the Press and Public Access: Toward a Theory of Partial Regulation of the Mass Media*, 75 *Mich. L. Rev.* 1 (1976).

18. Egon Bittner, *The Functions of the Police in Modern Society: A Review of Background Factors, Current Practices, and Possible Role Models* (Chevy Chase, Md.: National Institute of Mental Health, Center for Studies of Crime and Delinquency, 1970); Kenneth Culp Davis, *Discretionary Justice: A Preliminary Inquiry* (2d ed. Chicago: University of Illinois Press, 1971); Joseph Goldstein, *Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice*, 69 *Yale L.J.* 543 (1960).

19. E.g., see Kenneth Culp Davis, *Police Discretion* (St. Paul, Minn.: West Publishing Co., 1975); Herman Goldstein, *Policing a Free Society* (Cambridge, Mass.: Ballinger Publishing Co., 1977); William Ker Muir, Jr., *Police: Streetcorner Politicians* (Chicago: University of Chicago Press, 1977); Arthur Niederhoffer, *Behind the Shield: The Police in Urban Society* (Garden City, N.Y.: Doubleday & Co., 1967); Jonathan Rubinstein, *City Police* (New York: Farrar, Straus & Giroux, 1973); Jerome H. Skolnick, *Justice Without Trial: Law Enforcement in Democratic Society* (New York: John Wiley & Sons, 1966); James Q. Wilson, *Varieties of Police Behavior: The Management of Law and Order in Eight Communities* (Cambridge: Harvard University Press, 1968).

influential in shaping perceptions of police, but nobody has figured out exactly how to measure that influence. The problem is rather like trying to measure the media's impact on attitudes toward the Vietnam War. We may be convinced that the effect was considerable, but we cannot say precisely what it was or describe exactly how it worked.

We have not undertaken a systematic study of media impact here. Nor have we explored as participant observers the complex relationship between the police and the media in the depth that it deserves. Instead, we have conducted an exploratory analysis of the adequacy of media coverage of police by interviewing a sample of 25 articulate police chiefs and 6 carefully chosen journalists. We have also considered the role the media might play according to different versions of First Amendment theory.

On the basis of this exploration, we arrive at a scarcely surprising, perhaps inevitable, conclusion: that the public is too often exposed to reports about events (crime, protest, or scandal) associated with policing and too little introduced to the institution of policing and the administrative issues implicit in the policing process. Our conclusions are comparable to findings of other studies of newspaper crime reporting that strongly suggest that most crime incidents go unreported by the media and that what is reported by the newspapers is "disproportionately weighted in favor of more violent, sensational crime."²⁰ In short, we argue that were the media to report more carefully about policing as process and institution and less about disjointed and sensational events, citizens' ability to hold police accountable would be more consistent with the values justifying freedom of expression as projected by First Amendment theorists.

POLICE ACCOUNTABILITY AND FREE EXPRESSION

Vincent Blasi has written a history of the various values embraced in First Amendment jurisprudence, concentrating especially on freedom of the press.²¹ His ideas can be illustrated by describing how public institutions like police departments interact with print and broadcast media.

Blasi isolates values he claims to have been the theoretical underpinnings of First Amendment case law and of the Founders' concept of a free press. He says that during the twentieth century, First Amendment justifications have been grounded in fostering and nurturing (1) individual autonomy, (2) cultural and political diversity, and (3) vigorous self-government.²² From these values, Blasi carves out a rationale for a fourth, which he claims was probably the most important to the Founders—the checking value. He says: "One basic value seems highly relevant to these newer claims, yet has not been accorded a central place in our articulated theory of the First Amend-

20. Duané H. Swank, Herbert Jacob, & Jack Moran, *Newspaper Attentiveness to Crime*, in Herbert Jacob et al., *Governmental Responses to Crime: Crime on Urban Agendas 78-79* ([Washington, D.C.]: Department of Justice, National Institute of Justice, 1982). This study reports a content analysis of newspaper crime reporting in nine cities for the period 1948 to 1978.

21. Vincent Blasi, *The Checking Value in First Amendment Theory*, 1977 A.B.F. Res. J. 521.

22. *Id.* at 544.

ment. This is the value that free speech, a free press, and free assembly can serve in checking the abuse of power by public officials.”²³

None of these values should be considered mutually exclusive. Rather, they supplement and amplify each other. Blasi matches each of the preceding values to the checking value and notes that when contradictions arise (as in the autonomy value’s insistence on free speech as an end in itself, compared to the checking value’s consequentialist approach), the Supreme Court should assume the responsibility of disentangling the threads of thought as they become exposed in different fact patterns.

Blasi’s discussion of the fundamental rationales for each of the values²⁴ leads him to urge the contemporary Court to give primary weight to the checking value. “[W]hen a value that was [so] important in the original process of adoption [of the First Amendment] seems also to loom large in a clause’s recent impact on the society, there is good reason to inquire whether that value should not figure prominently in the contemporary theory of the clause.”²⁵

“The central premise of the checking value is that the abuse of official power is an especially serious evil.”²⁶ The reasons for this are several, Blasi says. “First and perhaps most important, the potential impact of government on the lives of individuals is unique because of its capacity to employ legitimized violence.”²⁷ Public officials at the top of bureaucratic hierarchies hold proportionately more power than almost any private citizen. Accordingly, they should be more carefully monitored to prevent abuse of power. That this observation applies well to police—the only state agents permitted daily to employ coercion and even deadly force against the citizenry—is obvious. The premises that justify the checking value thus suggest the police chief as the quintessential public official whose actions should be checked by print or broadcast media.

A second reason for protecting media inquiry into officialdom is that no other institutions enjoy the capacity to do this job. Theoretically, as we have noted, one government entity is checked and balanced by another government branch and, ultimately, by public opinion. But intragovernmental checking is often sporadic and, Blasi argues, is particularly likely to break down at the local level. There, government is compact enough to become monolithic.²⁸ Again, this idea seems particularly relevant to the police, who represent perhaps the most decentralized American public service system other than local public education.

Third, “the moral quality of official power” is accompanied by a need for a checking institution. “[Because] the investiture of public power represents a form of moral approval, public servants are probably more likely than

23. *Id.* at 527.

24. *Id.* at 544–67.

25. *Id.* at 528.

26. *Id.* at 538.

27. *Id.*

28. *Id.* at 539.

those who wield private power to lose their humility and acquire an inflated sense of self-importance, often a critical first step on the road to misconduct.”²⁹ Police departments—and individual officers—are especially likely to adopt norms of aggressiveness and to lack a sense of public *service*. The checking function rests on the requirement that there be an institution as well organized and powerful as the government to serve as its counterforce;³⁰ on the local level, the media are often the only institution that meets this description.

If the ultimate checking in a democratic state is grounded in the force of public opinion, that opinion must be stirred and nurtured. The free press is expected to do this. However, the idea that public awareness and opinion are tools to hold police accountable to their public missions may go deeper than merely encouraging checking by the media. The concept goes to the broader idea of the nature of self-government.

Before citizens can check the police, they must know what the police department does, and why. The most meaningful criticism is informed criticism, and obviously this is in the best tradition of a democratic society. Under a self-government analysis, the checking function is important, but it is checking done by citizens after they have absorbed the product of a free press. Ultimately, checking is done by the media as intermediaries, as carriers of information, not as political actors. The media alert the citizens to misconduct, and the citizens act on the information.

Therefore, under self-government analysis, the first responsibility of the media is to offer an adequate description of government processes and institutions. Using that information, citizens can debate and agree among themselves as to what their good government should be. They must be able to determine what conduct they consider proper before they can ascertain whether public officials have acted improperly. Under the self-government conception, then, media would both explain political institutions and criticize them.

The self-government value was articulated by Alexander Meiklejohn in *Political Freedom*.³¹ Blasi and Meiklejohn both compete and overlap in their visions of the role or significance of the First Amendment in contemporary America. Blasi’s checking value focuses especially on the misconduct of government officials, while Meiklejohn’s self-government value is concerned with, and thus supports, special protections for a much wider range of communications. Meiklejohn envisioned American society as an informed, participatory, active citizenry enlightened by the press and other forms of communication and applying that enlightenment to an interest in the affairs of state. By contrast, Blasi entertains a more technocratic, bureaucratic, even elitist vision of government. Meiklejohn’s is the vision of democratic partici-

29. *Id.* at 540.

30. *Id.* at 541.

31. Alexander Meiklejohn, *Political Freedom: The Constitutional Powers of the People* (New York: Oxford University Press, 1965).

pation rooted in social contract theory as symbolized by the New England town meeting; it is a community of people assembling “to discuss and act upon matters of public interest—roads, schools, poorhouses, health, external defense, and the like.”³² Meiklejohn’s citizen is a committed and involved participant in day-to-day governmental affairs.

By contrast, Blasi’s citizen is more apathetic and self-indulgent, almost an apotheosis of the disenchantment, even narcissism of the 1970s. “I choose to spend little of my time,” Blasi writes, “thinking about the general welfare writ large or even about discrete political issues. I would rather think about Mozart, or Jane Austen, or the White Mountains, or the Michigan football team.”³³ Government, for Blasi, should neither demand, nor even invite, the active, continued involvement of citizens but rather should facilitate the luxury of citizens’ concerning themselves almost exclusively with private pursuits. Citizen participation in government seems to be confined to exceptional times (e.g., during the advent of irreversible totalitarianism or when specific abuses of governmental power become evident).

Like James Madison, Blasi prefers a republic to a pure democracy. He quotes Madison favorably in his contention that a republican form of government will result in the refinement and enlargement of public views “by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice, will be least likely to sacrifice it to temporary or partial consideration.”³⁴ By contrast, Meiklejohn’s visions are derived from the social contract theories prominent in the thought of Locke and Rousseau. There is among citizens “a pledge of comradeship, of responsible cooperation in a joint undertaking.”³⁵ Meiklejohn’s entire thesis rests upon the assumption that “at the bottom of the American plan of government there is, as Thomas Jefferson has firmly told us, a ‘compact.’”³⁶

In this aspect of the debate that Blasi has framed to contrast himself with Meiklejohn, Meiklejohn’s position provides a better basis for formulating the more general relationship that should obtain between police and the media. This is largely because Meiklejohn’s political theory is closer to the reality of how the press influences the political agenda. Thus, Gaye Tuchman’s study of news making concludes that news organizations both circulate and shape knowledge by disseminating information that “people want, need, and should know.”³⁷ Citing other studies as well as her own, she finds that the “news media play an important role in the news consumers’ setting of a political agenda. Those topics given the most coverage by the news media are likely to be the topics audiences identify as the most pressing issues of the day.”³⁸ This observation fits nicely with Meiklejohn’s conception that the

32. *Id.* at 24.

33. Blasi, *supra* note 20, at 562.

34. *Id.* at 561 (quoting James Madison, Federalist No. 10).

35. Meiklejohn, *supra* note 31, at 18.

36. *Id.* at 17.

37. Tuchman, *supra* note 16, at 2.

38. *Id.*

most important public official in a democracy is “the citizen as ruler.”³⁹ Free speech ought to be protected to afford the citizen the most information and, by implication, information of the highest quality.

Meiklejohn’s emphasis on quality raises a somewhat controversial point. It has been argued that Meiklejohn’s vision of the role of free expression in a democracy focuses too much on the intellect and rationality of the citizenry. Laurence Tribe suggests, for example, that Meiklejohn’s focus does not embrace protection of the emotive aspects of free expression.⁴⁰ Tribe makes this point by contrasting Meiklejohn’s conception of the First Amendment—and Holmes’s as well—with Justice Harlan’s opinion in *Cohen v. California*⁴¹ holding constitutionally protected the act of wearing a jacket bearing the words “Fuck the Draft” in a courthouse corridor. Our own reading of Meiklejohn suggests nothing in his writings that would interpret the First Amendment as limiting such protection. On the contrary, even though Meiklejohn may seem rather high-minded, old-fashioned, and metaphorically inaccurate (by analogizing the nation to a New England town meeting, for example),⁴² one should distinguish between his preferences and aspirations for free speech and the standards he would use in considering abridgment of a communicative forum. Meiklejohn would almost certainly protect emotive expression, although he would prefer rational discourse. When considered this way, as an *affirmative, facilitative* theory of free expression rather than a *nonabridgment* theory, Meiklejohn’s ideas suggest ways of evaluating whether the media are living up to obligations implicit in the First Amendment. Since government depends on an informed citizenry, the media under a Meiklejohnian view, has a civic obligation to provide the relevant and necessary information for self-government.

THE CONTEMPORARY POLICE/MEDIA RELATIONSHIP

Do the media fulfill their obligation to inform the citizenry about the police as a public, bureaucratic organization? What can be done to aid them when and if they do not?

To begin our inquiry, we wanted to root our theoretical interests (i.e., knowing how modern American police and news media representatives inter-

39. Meiklejohn, *supra* note 17, at ch. 1.

40. Laurence Tribe, *American Constitutional Law* (St. Paul, Minn.: West Publishing Co., 1968).

41. 403 U.S. 15 (1971).

42. Analogizing free expression through various media to a town meeting is perhaps metaphorically accurate in some instances and inaccurate in others. A citizen absorbing media discussion of public issues has little opportunity to talk back, to discuss issues actively. In a town meeting, though, the ideas offered in the “marketplace” are tested on the spot. A television viewer or newspaper reader usually passively absorbs information about national affairs and trends, perhaps discusses them with friends and family, and actively “votes” only on election day, when issues and candidates tend to be generalized and attenuated—i.e., not specifically responsive to particular political questions. However, on the local, municipal level, the town meeting metaphor for media discussion of governmental functioning may be more accurate. Citizens often interact with police officers, but they do not often meet and discuss issues with members of Congress. If a particular issue concerning police functioning becomes important in local media, viewers or readers could presumably discuss the issue directly with members of city council, police administrators, and other citizens.

act and assessing the quality of that relationship) in some empirical ground. When the media are interested in particular crime stories, of course, reporters often deal with individual officers. But the police chief is continually and routinely involved with the media. Using a series of prepared questions, we interviewed 25 police chiefs, asking them to describe their relations with news media and to give their opinions of how the media were reporting about police. Ideally, we should have conducted a major research study involving a sample of police chiefs classified according to standard demographic variables. Such a study would have included participant observation of the reactions of chiefs and rank-and-file officers as they handled media relations in different situations.

We were unable to undertake any such massive study. We did, however, elicit cooperation from the Police Executive Research Forum (PERF) to interview 25 chiefs from their membership. Who are these PERF chiefs? To qualify for PERF membership, a chief must have a college degree, be committed to supporting research about the police role in society, and be willing to develop and implement standards to improve police performance. Members must subscribe to the idea that "the principles embodied in the Constitution are the foundation of policing." Each member also must be the chief of police in a city with a population over 100,000. Thus, the approximately 75 PERF chiefs, although scarcely typical of U.S. police chiefs, are involved daily with most of the urban crime issues facing contemporary American police.

All the police chiefs in this sample had substantial experience in police management, and most had worked up through the ranks from patrol officer to chief of either their home departments or of departments in other cities. Nevertheless, these chiefs seem to be somewhat out of the ordinary. When we asked each why he had been offered the chief's position, several major themes ran through the answers.

One was responsiveness to community needs and aspirations. "I was more community oriented," answered one chief. "The city officials who were hiring a new chief knew that I was tuned into communicating with the Asian and Hispanic communities and that I was able to balance proactive with reactive policing." Another commented that he was well experienced and had a reputation for "people-oriented public service," while a third commented on his ability "to communicate with all neighborhood groups."

PERF chiefs also emphasized their administrative skills. Some focused on sheer management ability, while others stressed their capacity to work with department personnel and particularly with the unions. "I was picked," said one, "because the chief who was here before me was a political liability. He had had lots of union trouble, and it was thought that I would calm things down and introduce progressive management." A third and minor theme involved prior scandal in the department and the need to reform an organization that had been publicly exposed as corrupt.

It is not surprising that in an organization like PERF, virtually all the chiefs interviewed felt that their superior educations had made them attractive to the selecting authorities. Several chiefs objected to being labeled *reformers*,

instead viewing PERF as oriented toward high-quality police services and themselves as interested in the opportunity for collegial discussion of major police problems and changes. "PERF chiefs," said one, "are exploratory and willing to take risks. I am traditional and conservative but a risk taker." Most of the chiefs interviewed stressed the importance of innovation in policing and tied innovation to informed research on the policing process. One characterized the typical PERF chief as "someone interested in informed research who is also willing to use it as a guideline for policy change."

In summary, the PERF chiefs enjoyed more years of formal education and were influenced by that education to maintain a greater commitment to research, innovation, and management skills. At the same time, words like *compassion*, *community responsiveness*, and *openness* often dotted their responses to our questions. For these chiefs, the police were not so much a paramilitary organization as an urban service agency that needed to be constantly developing and expanding its professional skills.

The chiefs had joined PERF because of its devotion to research and professionalism, so it is unlikely that they represent the usual police attitude toward such outside observers as the media or social researchers, who seek entry into the departments for nonpolicing reasons. In fact, several mentioned that in contrast with themselves, rank-and-file officers commonly were hostile to the media. Chiefs offered various explanations for this rank-and-file hostility (as well as for the hostility from some chiefs), but one common explanation was that police perceive the media as too liberal. We pressed for the source of this perception—How did political liberalism manifest itself in reporting? One chief offered an interesting interpretation—that the press is "usually reporting incidents involving low-income people—but of course that's the area that gets the most police activity and protection. There's not much you can do about it. But the rank and file see this as a liberal bias." Gary Hayes, executive director of PERF and himself a former police officer, elaborated on rank-and-file hostility as follows:

Part of it, I guess, is the perceived liberal bent of the press and the more conservative nature of policing. But also the media will report about the blemishes, and that's resented by the rank and file who want to retain the ideal of "my department right or wrong." They want respect in the department and of the department. After all, policing is their profession, and we all want respect for the work we spend our lives doing.

The remarks of police chiefs, then, may not represent rank-and-file attitudes. By the time police officers rise to the level of chief, especially of major urban police departments, they have, by necessity, developed political acumen and sophistication. They are more likely to appreciate the role of the press and are sensitive to its significance as well.

When questioned, the chiefs we interviewed stressed the importance of good media relations. When asked to rank on a scale of 1 to 10 the importance of communication with the media as compared to other duties of the police chief, the median score given by the 25 chiefs was 8.5, with 6 ranking

media communication a 10, the highest rank possible. No chief responded with a ranking below 7. To test police chief responsiveness to media, we asked chiefs the following: If three office phones were ringing and your secretary told you that the calls were from the mayor, a member of city council, and a reporter, which call would you answer first? One chief chuckled at the question and gave an answer that expressed the consensus of the group. "I'd pick up the mayor's call first," he said, "but I'd also figure that the mayor was calling me about what I was going to say to the reporter."

Police chiefs we interviewed saw the media as a conduit of communication between the police and the community. Accountability was never far from their minds. Although chiefs are not politicians who run for office, they must have the support of various interest groups, including elected officials, community leaders (particularly from varied ethnic groups), and other high-ranking public administrators. When we asked chiefs what other interest groups could affect police policies, they mentioned unions of public workers (including, of course, police unions and "fraternal" organizations) and the internal organization of the police department itself. Favorable media coverage of police activity can smooth relations within the department.

When we asked chiefs what bothered them most about media reporting, they responded with stories of interference with ongoing investigations and insensitivity to the legitimate privacy interests of victims. Thus, several chiefs were critical of reporters who had investigated crime stories and then published the facts without considering the potential effect on the police department's investigation. One chief ruefully recounted the tale of a rape/murder suspect whose name was released to the local media because the department believed local townspeople should be alerted to the danger. The police believed that the suspect had fled to another state but that he would return. The department thus specifically requested that the national wire services not broadcast the local information because the suspect might change his plans if he knew that the investigation had focused on him. The wire services broadcast anyway; as a result, the chief believes, the alleged criminal was not apprehended. "They had a bureaucratic response to a human issue," the chief said. "They followed their procedures without looking at the individual facts of this case. When police make bureaucratic decisions in that way, it's wrong. It's wrong from the wire services, too."

Most of the chiefs felt that—in the interest of victim privacy—names of youth-arrestees and rape victims and addresses of witnesses should be withheld from the media. Most chiefs also reported that their departments had worked out arrangements with local media management representatives to retain confidentiality in such situations. But others mentioned that if the crime being covered lent itself to sensationalism, reporters would press for information and grisly details that the police wanted to withhold.

Chief Mack Vines of Charlotte, North Carolina, noted that television stations, especially, were pressured to report ugly details of crime stories because "they have to show the smoke coming out of the gun and the lady screaming" for visual impact. Vines summarized the attitudes of most of the

chiefs when he said that the general media policy of his department is to release any information requested but that occasionally the media's relentless push for sensational facts—those appearing to invade privacy needlessly or to be in bad taste—created friction between line officers and reporters.

The cameramen want pictures of the bodies, and the officers on the scene say the family doesn't want to see that on tv or on the front page. I say wait, it's up to the media to be professional and in good taste here. The police don't have to shoulder all that responsibility. But sometimes we really do have darned good reasons to keep information private, at least for a few days. The media people yell and say the public has a right to know. I say, "Bring me one public who absolutely must see this right now."

The theme of friction between the media and the police is surely not new. Police chiefs themselves, as well as rank-and-file officers, have often shown marked hostility to the media—at least when the media are perceived as outsiders bent on destroying the social fabric of the local community. Indeed, some of our most important First Amendment law developed as a result of cases involving police and media. The most famous case, of course, is *New York Times v. Sullivan*,⁴³ which constitutionalized the law of libel. That case held that the First Amendment protects media criticism of local police activity, shielding media organizations and personnel from defamation actions brought by public officials as long as the defendant media organization did not engage in a "reckless disregard of the truth" when it published the story.

The famous outcome of the case aside, *Sullivan* can be interpreted from a different perspective as the high-water mark of hostility between southern officials—notably police—and northern media who were reporting on impediments to the civil rights movement. Justice Black's concurring opinion highlighted the political and social realities behind this libel suit:

In fact, briefs before us show that in Alabama there are now pending eleven libel suits by local and state officials against the Times seeking \$5,600,000, and five such suits against the Columbia Broadcasting System seeking \$1,700,000. Moreover, this technique for harassing and punishing a free press—now that it has been shown to be possible—is by no means limited to cases with racial overtones; it can be used in other fields where public feelings may make local as well as out-of-state newspapers easy prey for libel verdict seekers.⁴⁴

Given the PERF chiefs' commitment to research, education, and community responsiveness, it is scarcely necessary—but nevertheless interesting—to note the startling contrast between these chiefs and the 1960s southern police chiefs and other officials who sued the media as part of a political battle over desegregation. However unrepresentative of the average police official southern police of the 1960s or PERF chiefs of the 1980s may be, times have changed for the better. Not only would we be surprised to find PERF chiefs

43. 376 U.S. 254 (1964).

44. *Id.* at 295.

overtly hostile to the media, but we would expect them to be especially responsive to media's questions regarding police organization and process.

For instance, when asked whether television and newspaper reporters in their cities spent too much time reporting crime, a clear majority of the 25 chiefs responded that the coverage was appropriate and accurate. Whatever criticisms they had were limited and well directed. Various chiefs criticized certain features of press coverage of crime; they also made distinctions between newspaper and television reporting.

Chief Jim Keane of Santa Monica, California, for example, averred that the Los Angeles newspapers rarely took a serious interest in crime and policing in his city. There is no local television station in Santa Monica and, he added, "it takes an atrocious murder to get the Los Angeles TV people out here." Chief Ray Davis of Santa Ana, California, made a somewhat different reference to the Los Angeles media. He thought that the suburbs or the smaller cities surrounding large cities were overly influenced by the large city's television news operations and newspapers.⁴⁵ He was especially concerned that residents of his city were subjected to a distorted image of crime news, which in turn increased their fear of crime. That fear of street crime tended to reduce pedestrian traffic and thus initiated a self-fulfilling negative cycle: the emptier the streets, the more frightening they are; the more frightening they are, the emptier they get. The cycle continues until the streets are desolate, forbidding, and perhaps subject to serious crime at *this* point, even though originally they may not have been terribly dangerous.

Commissioner Charles P. Connolly of Yonkers, New York, echoed these observations as follows: "We don't have any local television," he said. "We get New York City television in Yonkers, and people in our city think that the sensational crime is happening in Yonkers, when it is really taking place in New York City." Chief Hubert Williams of Newark, New Jersey, offered a similar observation about New York City television's impact on his city. "They report as many tragic and sensational events as they can," he said. "This adds to the fear of violence by the public. The perception of the reality of Newark is seriously distorted by the media."

The chiefs criticized television more than the press, even though they recognized that local news programs generally cannot report as completely as

45. To an extent, this problem can be addressed by encouraging suburban and rural areas to develop strong local broadcast and print outlets concerned with reporting mostly local news. Decentralization in licensing broadcast stations has in the past been a policy of the FCC; in addition, increasingly popular cable television, which usually produces some local programming, may portray the reality of the local scene more accurately than media from neighboring cities do.

If citizens of lesser populated areas form such inaccurate perceptions of local social and political realities, local self-government arguably is harmed. New Jersey, for example, was for quite some time entirely devoid of locally owned and operated television stations. The citizens relied entirely on New York City and Philadelphia television stations for broadcasts about news and politics, but as might have been predicted, those stations carried very little coverage of New Jersey politics or news events. One incisive commentary says of this situation that "the result is that special interests can apply pressure on individual state legislators without having to worry about countervailing public pressures. A governor can't 'go over the heads' of the legislators or the lobbyists; there's nowhere overhead to go—at least not in New Jersey." Frank Mankiewicz, *The Political Costs of a TV Wasteland*, Wash. Post, Jan. 2, 1976.

do newspapers because the TV format offers little time to analyze news. Nevertheless, chiefs were not reluctant to praise broadcast media when they thought it deserving.

We wanted to know what they considered particularly meritorious sorts of media coverage and also what coverage they felt was inferior or had even made them angry. Television shows received both high and low marks. For example, during a police strike in one city, at least nine television reporters had focused on the chief. He singled out one reporter as having behaved in an exemplary fashion.

He came in to talk to me, discussed the problems, developed questions, and then brought the camera in. He understood which questions were pertinent. The others just walked in cold. They asked questions cold, and I gave answers cold. I got the feeling that they didn't even know why they were there. There's nothing worse than having reporters fail to do their homework before interviewing.

Several of the chiefs complained that TV reporters did little homework. "They are not reporters," complained one chief, "they are personalities."

On the other hand, when asked to describe any particularly positive features of television reporting in their cities, several chiefs praised local "Crimestoppers" programs that they had instituted with the cooperation of local television affiliates. "Crimestoppers" programs, which run for a few minutes once a week or even daily (depending on the city), use local actors to vividly reenact serious unsolved crimes selected by the police department. "Crimestoppers" invites public participation in developing leads, clues, or any other information that might help the department solve the crime or apprehend suspects. However, these programs are not reports about crime or policing; they are collaborative police/media projects, and while certainly interesting and praiseworthy, they represent a noncontroversial and noncritical example of local television programming about crime. We would expect chiefs to approve of them and to hold more interpretive reporting in less esteem.

The chiefs were less critical of newspapers than they were of television. They recognized that they were dealing with different media and that there are different pressures, constraints, and opportunities in these media. Those chiefs whose smaller cities were served by larger cities' TV outlets perceived the local press as doing a better job reporting the realities of crime and policing in their cities than the broadcasters. For example, Chief Keane of Santa Monica, who criticized Los Angeles television's coverage of his city, praised his local newspaper's crime reporting. "Our local paper," he said, "even prints maps of crime patterns, and these are very informational to the public. The public has really taken to it."

Other chiefs, however, felt that newspapers sensationalized crime as much as broadcasters did. Reporters focused on crime, and particularly violent crime, in order to sell newspapers. One police chief was especially sarcastic about a leading New York tabloid: "If the United States had just dropped an

atomic bomb on the Falkland Islands,” he commented, “this publication would have a headline reading ‘Sexually Abused Child Thrown Downstairs; Police Do Nothing.’”

Another police chief described the following incident to illustrate how the media’s propensity to sensationalize distorts the realities of crime and the criminal justice process:

We had a burglary ring situation. One of the suspects was being held in jail, but he was being harassed because he had agreed to testify against his crime partners. So we took him out of the jail and kept him in a room in the police department building. About six months later, when the case came to court, it turned out that his wife had been permitted to visit him, and they had had sex while he was locked up in the police station. Instead of focusing on the burglary investigation, the media sensationalized this story into a big sex scandal. If you’d just read the headlines screaming “Sex in the Police Department,” you’d think it was the officers who were involved.

Chiefs who were more appreciative of the accuracy of newspapers as compared to television broadcasts attributed the difference to assignment policies of the two media. They thought newspapers assigned more experienced reporters to cover police matters or at least trained the rookies more carefully. Reporters who are stationed in the police department building or near it, they thought, tend to develop “good police sense.” Thus, several chiefs agreed, television reporters based in studios, with no training in police reporting, were not as adept at digging for facts or interpreting them for viewers. Richard Brzeczek, former superintendent of the Chicago police, asserted: “Tv reporters can’t handle substance. Print media people, if they stay on the police beat, develop incisive minds. But tv people don’t know the logical questions to ask or how to respond to an answer with the next logical point.”

A few chiefs attributed print media’s superiority to the relative lack of pressure on its reporters. They perceive the newspaper reporter as not quite as hassled to get a story out as the television reporter with a six o’clock film deadline. One chief seemed to speak for the group when he ranked television reporting as being about 70% accurate, while newspaper reporting earned a 90% accuracy rating.

Interestingly, the chiefs rarely criticized media outlets for being politically or ideologically partisan. When chiefs were asked whether they regarded the media in their cities as politically partisan, most responded that television stations were not, although newspapers generally supported Democratic or Republican candidates for office. When asked if the media subscribed to any particular ideological (as opposed to partisan) political positions, there was no consensus. Ideology, most chiefs said, could be inferred from editorial positions, which varied from city to city and from newspaper to newspaper.

Nor was there a strict correlation between ideology and support of the local police department. Indeed, police in cities with conservative newspapers (actually *very* conservative) seemed to elicit more editorial criticism (or to feel that they did) than chiefs in cities with liberal or middle-

of-the-road newspapers. A truly professional newspaper would not permit political allegiance to penetrate the reporting of any news, including crime and police news. Some of the police felt that their local newspapers did not, however, always draw a scrupulously distinct line between news and politics. By contrast, the chiefs rarely perceived television stations as partisan. Distortion of news reported by television was attributed to other causes, such as competition for audiences and advertising dollars.

On the surface, then, we found little hostility between police and media when police chiefs were asked to describe particular facets of their interchanges with media representatives. But, in the course of these interviews, several chiefs alluded to the "Watergate mentality" that supposedly characterized the media. It was clear that there was an underlying distrust and tension between media institutions and police professionals that had not necessarily been illuminated by our discussions of accuracy or ideology.

When we asked these chiefs to explain more fully what they meant by this annoying "Watergate mentality," they usually prefaced their remarks with the disclaimer that they indeed understood why a free press should be vigorous and unhampered in its reporting, even when sometimes overzealous reporters "get out of line." They asserted that this was the cost of democracy and free institutions. But many chiefs said that their rank-and-file officers saw the media as carping critics seeking out "warts" that did not really exist.

Media representatives who probed for scandal or misconduct stories, the chiefs said, were not regarded as responsible journalists but as outsiders who did not understand policing as an institution. Media critics would pick one particular part of the job, examine it, and splash it across the newspapers or the TV screens with no explanation of the constraints or institutional pressures that led officers to perform their jobs in certain ways. The chiefs thought rank-and-file officers disliked the media because the media reported that they did a bad job, and the officers wanted to take pride in their jobs and policing handiwork.

Most of the chiefs said that police regarded reporters with hostility until the reporters proved themselves by writing stories that officers thought were fair. The chiefs often remarked that rookie reporters particularly begin work with the "Watergate mentality," which annoys officers because the reporter seldom has any understanding of how policing is done or what can realistically be accomplished. The reporter assumes that the department is inefficient or corrupt, but does not know what this means in the context of a policing institution. One chief said, "They think that we are covering up, that we are not giving them the whole story. But after awhile, they learn that we have an open department, and they begin to accept us. We just have to break in the new reporters."

David Burnham, a *New York Times* reporter, has covered police in New York City and, lately, has covered federal administrative agencies in Washington, D.C., for that newspaper. He explained police hostility to the media as "a natural human instinct. It's not just cops, it's any institution. We all

want to protect our own jobs from outside criticism. If you came in here telling me how the *New York Times* does a really bad job, I'd dislike you. It's okay for an insider to criticize, but everyone guards against an outsider."

Burnham also thinks, however, that police officers tend to remember the "bad" stories and forget the "good" ones:

I've talked to a lot of police and they think they get negative press. But they don't remember all the positive stories about the arrests and good services the police provide and that the media cover. "NYPD Cleans Up Teenage Drug Ring," "Police Helicopter Successfully Rescues Stranded Hikers"—police are so used to seeing this, they don't even remember it.

Moreover, Burnham believes that the professionalism concept is the key to understanding police hostility toward the media:

Everybody wants to think he's doing a good job. It's your life; it's *you*. So a reporter can't come in and say, "I know you cops are all corrupt and brutal and I'm here to get the facts proving it." But if he appeals to their professionalism, the cops will tell him about their jobs and what's wrong with them because they see the reporter as helping them do what they want to do—a good job.

Burnham added:

Officers don't like to see graft or brutality or whatever in the department, even though they themselves might be part of it. I'm the reporter who broke the Serpico story, and even Serpico would never answer the question "What percentage of cops do you think are corrupt?" If he'd have answered honestly, he'd have had to say, "Well, most of them." But he'd never answer directly. He'd say, "I know that most of them want to do a good job." Which is very true. A reporter must appeal to that, and then he'll get a lot of cooperation, not hostility.

In general, the chiefs seemed to understand that the media's job was to find news. They did not object to reporter aggressiveness, but they cited incidents in which reporters were so overly aggressive that the significance of the event was lost. Chief Hubert Williams of Newark, New Jersey, summarized this common criticism when he said that "the media's mistake is to look at *events*, not at a *progression* of events." Williams added:

The news media usually report all the facts one time only, when the event first happens. They are not there at arraignment. They don't follow through to the trial, to assess the quality of the police evidence. They don't know the budgetary implications or the personnel problems—the whole series of things to know if you are going to talk about the efficiency of a police department.

Clearly, these police chiefs were not distrustful of or hostile to the media out of a blind antagonism to any institution that would try to evaluate police performance. What tension there was could be attributed to the chiefs' criticisms of how well the media performed the job that media representatives themselves set out to do. That is, if media oversight of police functioning is one important way to hold police accountable to the public, the chiefs

thought that the media were reporting too superficially to accomplish this. Rather than extensively reporting isolated facts dredged up for one story about some crime-related event, the media should engage in careful analysis of trends and policies.

The police chiefs we interviewed, then, were not necessarily hostile to reporters' covering department policies; the media could tie such reporting to controversial or sensational events as particular illustrations of the larger issues involved. In fact, the chiefs seemed to invite more careful media coverage of policing as an institution. For example, several cited racial confrontations and police use of deadly force as the incidents most likely to spark a media blitz. "The press keeps the pot boiling; they never let it simmer down," one chief said. "But things seem to have been getting better lately. Even though there have been shootings and there has been a lot of press looking at them, the reports have not been as one-sided. Before, the reports were all tied into racism, police review boards, and so forth."

On the other hand, another chief said, "The news media is not as sensitive to racial incidents and their consequences as they used to be." He added, "I get worried about that. The black community gets worried about that. I'm not sure whether the press is simply getting careless or whether new reporters no longer sense the import or meaning that a given incident might have in different parts of the community." Thus, although the chiefs clearly believed that event reporting was justifiable, and sometimes even important, they were concerned that the media fit such reporting into a larger picture.

This observation was expanded by the journalists we interviewed. For instance, in addition to reporting violent crimes or police-citizen confrontations as isolated events, discussion of police-related issues by public officials may also often be presented in that narrow manner. Both David Burnham of the *New York Times* and David Johnston of the *Los Angeles Times* called this high-class stenography; it simply reproduces what public figures say with no analysis. Such reporting neither examines the major institutions of society nor explains the processes of government.⁴⁶

Although the chiefs and journalists shared criticisms of how the press reported on the police, they naturally diverged on a key issue—the police department as a credible news source.⁴⁷ While the interviewed chiefs deplored emphasis on crime stories, they nevertheless sought to manage crime news so that their departments would appear in the most favorable light. Police chiefs are both *sources* and *critics* of crime news. Almost all departments in large cities employ full-time press officers who are expected to be accessible

46. David Burnham discusses police organization, management, and corruption in *How Police Corruption Is Built into the System—and a Few Ideas for What to Do About It*, in Lawrence W. Sherman, ed., *Police Corruption: A Sociological Perspective* (Garden City, N.Y.: Anchor Books, 1974).

47. Reporters who develop a symbiotic relationship with their sources are eventually "captured" or co-opted. Yet this is difficult to avoid; a reporter needs good sources and also needs to learn as much as possible about the public organization under scrutiny. Sources within the organizations become the most important teachers, yet reporters run the risk of "becoming cops" (as their fellow reporters often say) because they adopt a police perspective on news. Herbert Gans, *Deciding What's News* 133 (New York: Pantheon Books, 1979).

to the media at all times. Police press officers, known as public information officers, collect facts about fast-breaking crime stories and make them available to reporters who need facts quickly. So even though the interviewed chiefs were not enamored of crime news, their departments often employ specialists to help the media produce it.

Of the chiefs we interviewed, 60% reported having full-time public information officers in their departments; 40% did not. The absence of a public information officer was justified by two seemingly inconsistent rationales. Under one, the chief acts as the public information officer. "I prefer to keep my fingers on the press relations," said the chief of a 315-member department. "I take the calls from the media and assign them out if necessary. This also keeps people from running off at the mouth about department policy." This might be designated the "direct chief control" rationale of media relations.

By contrast, we also encountered what might be called the "multiple spokesmen" idea. The Oakland Police Department, for example, according to Chief George Hart, used to have a press officer, but, as he puts it:

We broke out of that single-spokesman mold . . . all employees of the police department are expected to cooperate fully with the press, and to provide all the information requested. If anyone has a question about whether information should be divulged, they are supposed to refer it to their superior officer. Since we have had this policy, I have held my breath everyday, but we have had it for several years and it seems to work.

A third, less structured, model is also discernible. Here, the chief serves as the media relations officer and in addition permits anyone in the department to talk to the press at any time about anything.

Nevertheless, most chiefs prefer to employ designated public information officers (PIOs). Usually, the PIO is a full-time sworn officer assigned to press relations. For example, the Santa Ana Department has an unusually well-developed media relations program as part of its general theory that there is a relationship between effective policing—stressing crime prevention and fear reduction—and communication with the public. The community relations office works closely with the press, business, and various community groups. In conjunction with a local businessmen's support group, the department has mounted an outdoor billboard campaign. The police are portrayed as both humane and accessible. A Hispanic affairs office explains the law in a weekly column in the most widely read Spanish newspaper in southern California. In this department, the chief is also actively involved with the press and appears regularly on TV news shows. This department has even been praised as a model department on a segment of "60 Minutes." A Philadelphia station spent 14 days filming and reporting the department's success story.

Rarely do police departments have as highly developed a public relations program as does Santa Ana. Most do not blend the media-information role with a community-relations role, for example. In the absence of community effort on the scale of Santa Ana's, accepted wisdom is that the PIOs' distinct

journalistic skills set them apart from community relations personnel.⁴⁸ But the pros' duties are varied. Many police departments have developed standard media policies, often in consultation with local media representatives. Together they define the public information officer as the main departmental conduit of facts about criminal incidents. The press gets its "who, what, when, and where" from that officer. The PIO is also a ready resource when feature or documentary items are being prepared.

Also, though it was clear the chiefs did not perceive their public information officers as mere press agents for the chief's office, several mentioned that the media officer's job was to make the department look good. Chief Cornelius Behan of Baltimore County, Maryland, said, "It is the responsibility of the press officer to work with the troops and to get *them* on TV. We are open, and we want the lower ranks to talk, not just the bosses. It comes across as much more human. It reflects and builds the department better."

Other chiefs mentioned that the public information officer was always expected to present a good image of the department to the media. Apparently, fullest cooperation between the media specialist and reporters builds that image. Some media officers accommodated the needs of television crews by arranging to have cameras present when police made major arrests. Andy Goodman, former public information officer for the department in Berkeley, California, said, "Often the criteria the TV stations use in deciding whether something is newsworthy is whether they have pictures of it." Film footage or print columns describing the culmination of investigations or other successful police work bolsters the public image of the department.

Building good will through harmonious media relations requires media officers to discuss department operations in depth. "I spend about 60% of the time with a reporter educating him about the subject he's writing on," said Goodman. "The problem is that the news media is not expert enough to cover policing well, because they don't know enough about how the department works."

By contrast, public information officers know very well how media institutions work. Many have professional experience in news gathering and writing. Their counterparts on the reporting staffs of local newspaper and broadcast outlets are often young and inexperienced. Goodman notes:

Over the last 30 years, the most seasoned reporters were put on the crime beat. Now that journalism has changed its focus—toward economics and politics—the more mature reporters are given up to those areas. The people who replaced them are the rookie reporters. And at the same time this process was happening, the criminal justice system got more complicated. So between these two developments, the quality of police reporting was lowered.

Several of the chiefs interviewed indicated that the reporters assigned to police beats in their cities were comparatively inexperienced, though they believed that these reporters were generally well qualified for their jobs. Several

48. Mike Brake, *Establishing a Public Information Office*, FBI L. Enforcement Bull., Oct. 1978, at 22.

chiefs remarked that a green reporter “doesn’t know the right questions to ask,” and there was a consensus that reporters should be kept on the police beat for a long time so that they could become thoroughly familiar with issues and problems in the criminal justice area.

The combination of inexperienced reporters and full-time police media specialists raises a serious question: Can reporters become too dependent on the police department itself for a view of the criminal justice system? For example, a highly qualified and thoroughly engaging public information officer understands the deadline and audience requirements of various media personnel and provides them with information as they feel they need it. Crime stories, of course, are always reasonably newsworthy, and a public information officer can often be a useful conduit of information about such stories. The question becomes: Does the PIO’s usefulness undermine the reporter’s capacity to engage in objective and skeptical inquiry? Or at least, does the PIO’s ready storehouse of facts about particular crimes subtly divert inquiry away from the processes and procedures of policing?

In this respect, we find something of an irony. The more qualified the police media specialist, the less independence the reporter may exert. As reporters become dependent on the police department, they may lose the capacity to dig independently. There is a fine line here between the reporter who uses the police knowledge and information to undertake deeper reporting about the policing process and the reporter whose need for fast-breaking crime stories leads to dependence on the police department as the primary source of information.

However, some chiefs intimated that even when reporters were not content with simply reporting a significant fact or event and a quote or two from police officials in response to it, their media coverage of the bigger picture nevertheless often seemed misguided. Several chiefs cited reporters’ naiveté regarding crime statistics as an example of media inadequacy. A segment of the press, these chiefs pointed out, through mistake, inertia, habit, or sheer laziness confuses describing the policing process with reporting crime statistics. Though it certainly is not “event reporting,” describing crime rates and their fluctuations was not considered incisive reporting. It can become an easy substitute for in-depth reporting of the policing process. Chief William Swing of Greensboro, North Carolina, criticized the repetition of such simplistic crime rate announcements. He said:

Every year our department publishes crime rates. Three months later the state police information network will publish the same reports, and the media prints it all again. In the middle of the year, the FBI issues a preliminary report. The press prints that. Then they print the final report, so they therefore have printed or broadcast the same set of figures on four different occasions. It’s confusing. I always tell the media people, don’t look at the crime *rates*, look at crime per capita. That doesn’t mean anything to the press. It sounds better to show a crime increase. It gets attention.

It would, of course, come as no surprise to criminologists that reporters are confused both about the accuracy and the significance of crime rates.

Few social problems command as much public attention or evoke as much public concern as crime does. Yet, students of crime statistics point out, it is extremely difficult to produce crime statistics that provide the definitive answers the public and policy makers would like to see.⁴⁹ Crime statistics ought to be able to tell us whether we have more criminality and more criminals than usual, how effective our social control machinery is, and what the risk of becoming a victim is. More generally, they can be used to gauge the moral health of our society. Radical criminologists have even argued for using crime statistics to examine a society's class relationships.⁵⁰ Unfortunately, we do not systematically collect and report crimes well enough to facilitate definitive interpretations of any of these issues.

Reporters who are not terribly well informed about the limitations of crime statistics will often perceive the police chief as a semi-oracular figure who interprets numerical changes. The chiefs themselves are more sophisticated and are well aware of the limitations both of the statistics and of their capacities to interpret them. For example, one chief described his discussion with a local reporter as follows:

There used to be a phone call every month that I dreaded. The reporter would say, "Crime is up 6% or down 3%. To what do you attribute this?" I felt like saying, "How the hell do I know?" But then, I wouldn't be a professional law enforcement leader, would I? So I had to make up answers. "I think it's because of this; I think it's because of that." But I'm guessing. I don't really know why the hell crime is down. I feel like saying, "There are 20 factors out there that have an effect on crime. The police department is only one." But the reporter doesn't call me anymore, and I'm thrilled.

Chief Ray Davis of Santa Ana, California, suggested a distinction between the real crime rate and the symbolic crime rate as interpreted by the media. "The crime rate," he said, "is only a matter of publicity. The media can make people afraid, even when there is no change in the crime rate." Reporting violent criminal events does not actually make people less safe, he contended, but it does make them *feel* less safe.

Chief Davis's observation is supported by a sizable literature on fear of crime, which suggests that crime "waves" do not necessarily reflect real increases in crime, but rather may result from media or police crime-reporting practices. A recent study of a Phoenix, Arizona, crime wave confirms the role of the Phoenix press in needlessly heightening fear of crime by exaggerating its rise in reports and editorials.⁵¹

49. An example of a news article that reported a change in the crime rate and then explained statistical interpretation, also advancing possible explanations for the change in rates, is Barbara Basler, *Serious Crimes Nearing Record* in *New York, N.Y. Times*, Nov. 18, 1980, at B1, col. 4. This includes quotes from Police Commissioner Robert S. McGuire and criminologists Alfred Blumstein and Marvin E. Wolfgang. Another quick and lively explanation of current crime statistics is Christopher Jencks, *How We Live Now*, review of *A Statistical Portrait of the American People*, by Andrew Hacker, *N.Y. Times*, Apr. 10, 1983, § 7 (Book Review), at 7.

50. Ian Taylor, Paul Walton, & Jock Young, *The New Criminology: For a Social Theory of Deviance* 11-14 (Boston: Routledge & Kegan Paul, 1973).

51. Mary Holland Baker et al., *The Impact of a Crime Wave: Perceptions, Fear, and Confidence in the Police*, 17 *Law & Soc'y Rev.* 319 (1983).

Several police chiefs reacted negatively to media's portraying police as society's principal crime reducers. Chief John Connolly of Yonkers remarked: "We now have to inform the public of the limitations of our role. Many people seem to think that the police are solely responsible for crime reduction. They don't want to hear about social or economic factors."

In sum, our interviews with these chiefs revealed a persistent connection between the superficiality of reporting on the police as an organization and media reluctance (particularly of broadcasters) to undertake institutional reporting. The media emphasizes crime event stories—especially those containing drama and violence. Here again, the chiefs did not complain so much about the media's accuracy in reporting these stories as about their superficiality. Several chiefs connected shallow reporting to an unwarranted—or at least unnecessarily inflated—fear of crime by the public.

On this score, Chief George Hart of Oakland commented:

The media doesn't look behind what leads to particular incidents. As a result, the public can get paranoid. There is no real counterbalancing; there is no real discussion about the limitations of public safety agencies, their parameters and their mission. So public knowledge of our capacity to affect these incidents as they are reported, or indeed about the whole criminal justice system, is abysmal.

ORGANIZATIONAL THEORY AND INSTITUTIONAL REPORTING

The interviewed chiefs' primary criticism of the media may be summarized as follows: The media are only superficially informed about the institutions and processes of criminal justice. They respond to the public's least laudable concerns for lurid details of crime and victimization. As regards First Amendment theory, we speculate that although such crime or disorder event reporting sells commercials and newspapers, it neither educates for self-government in the Meiklejohnian sense nor checks abusive governmental power in the Blaisian. It would seem to follow that journalists must develop awareness of the police as a complex bureaucratic organization in order to educate more broadly or check properly. They must break out of the prevailing assumptions concerning police and crime reporting, or at least supplement them with reporting about the process and structures of policing.⁵²

To say that most reporting about police is concerned with events (such as crime stories or accounts of crisis in the department itself) and not with discussion of institutional processes is not to imply that event reporting is

52. Of course, some reporting indeed does this. Our argument here is that it is scarce. We should note in passing two series we thought exemplary of "process reporting": Benjamin L. Weiser & Athelia Knight, *Street Cops*, a seven-part series in the *Wash. Post*, July 17, 1983, at A1, col. 1; and Amy Linn, Andrew Ross, & Scott Winokur, *With the Authority of Law: Police Violence in Richmond*, *San Francisco Examiner*, a five-part series, June 19, 1983. The American Bar Association recognizes such reporting with its yearly Silver Gavel Awards, given to those newspapers and television stations that presented the best justice-related reporting for that year. WBBM-TV in Chicago, for example, delved deeply into the crime-rate question in "Killing Crime: A Police Cop-Out," revealing that the police department there regularly masked the true crime rate by labeling many cases unfounded, or classifying a crime as a lesser offense than the offense for which the defendant was prosecuted. A list of the 1983 awards is in 69 A.B.A. J. 1775 (1983).

worthless. News of crime is and should be a matter of genuine public concern. Moreover, when unusual incidents occur within the police department, they are newsworthy because they break the pattern of daily organizational functioning—and reporting them in turn sheds light on the quality of routine operations. Our interviews with the chiefs, however, suggest that the media should supplement crime news and “Watergate” stories of corruption or misconduct with more thorough explanations of how policing institutions are designed and how they are expected to work. It is only with such background understanding that the public can evaluate the significance of singular events as they are reported.

Of course, this prescription may reflect our own biases. After all, we are sociologists and legal critics; we naturally want daily news coverage that gives us information about American social characteristics and analysis of government agencies from organizational perspectives. Sociologist Herbert Gans faced this problem when, as a participant observer, he researched the social dynamics of four powerful national media organizations. He concluded:

I have tried to avoid the temptation . . . of measuring journalism against and . . . [recommending that we transform it into] sociology. . . . If I could design my own national news media, electronic or print, they would be considerably more liberal versions of newspapers like *The New York Times* or *The Washington Post*, but far stronger on news analysis and explanation Personal preferences, however, cannot be used to justify public policies. These must be based on public values: in this case, the values of those who participate in and are touched by the news.⁵³

We do not say, and Gans would not say, that news about policing should exclusively involve searching analysis of police organization, function, and impact on the population policed. What we do say is that more reporting must fulfill this mission if the public value of accountability is to be upheld.

If the public—those who are touched by the news—want to know about crime events and police misconduct, of course it is important that there be event reporting. But there must be an intellectual framework into which citizens can fit the bits of information they get from event reporting and with which the events can be critiqued.⁵⁴ The media can help citizens form a full and adequate picture of the role, functions, and constraints of policing. The

53. Gans, *supra* note 47, at 303.

54. Gans points out that almost all reporting—descriptions of observable, empirical events or objects, termed “reality judgments”—implicitly contrasts the story’s findings with an assessment of how the event or object *ought* to appear. He says: “When a story reports that a politician has been charged with corruption, it suggests, *sotto voce*, that corruption is bad and that politicians should be honest.” Gans, *supra* note 47, at 40. He used observation and content analysis to isolate and describe what national media organizations assumed represented the deepest values and underlying sociocultural consensus of their readers and viewers. (They include ethnocentrism, altruistic democracy, responsible capitalism, small-town pastoralism, individualism, moderatism, social order, and national leadership.) Applying this approach to the “self-government value” embraced here, we presume that as long as value judgments will inevitably underlie reporters’ perceptions of their subjects, those values should be stated as explicitly as possible. Thus, if readers and viewers are to assess whether their public institutions are working well, descriptions of how they ought to work (from as many different shades of opinion as possible) should be presented with descriptions of how reporters find that they *do* work.

public value of democratic self-government is then fostered and upheld; citizens who have previously painted this policing portrait for themselves can measure their own city police department's performance by referring to the usual steady stream of event reporting. But event reporting without institutional understanding is necessarily shallow and sometimes misleading—thus undermining the self-government ideal.

If reporters wanted to expand their police stories to include the complex bureaucratic organization in which police work, they could draw on a well-developed body of organizational theory literature. In fact, police departments are near-perfect illustrations of “bureaucracy” as an ideal type, as described, for instance, by Max Weber.⁵⁵ Police departments are hierarchically organized, even according to rank, as befits a paramilitary organization. Assignments to higher ranks presumably result from formal procedures such as examinations or impersonal appointment by superiors. The authority of police is generally defined and externally regulated by a body of abstract and identifiable laws. The police are internally governed by rules and guidelines that arrange authority within the organization and define the responsibilities of different categories of police service. As with the pure type of bureaucratic official, police are not elected, but are appointed through an impartial competitive process. Police chiefs enjoy varying degrees of independence from elected officials, but are never themselves elected (although sheriffs are).

We do not intend to assert that simply knowing the theory of bureaucratic organization provides the reporter with a finely drawn agenda for in-depth reporting about police organizations. The theory of bureaucratic organization is neither so well developed nor sufficiently rigorous as to offer more than broad guidelines to the journalist. Nevertheless, organizational theory offers contours of analysis for news gathering and reporting. For example, every functioning bureaucracy is divided into specified activities that are both integrated with each other and regarded as duties. A social scientist—or a journalist—can inquire into whether the allocation of duties in a police department generally makes sense or makes sense in any particular application.

David Johnston's analysis of police expenditures in Los Angeles offers a prime example of this sort of reporting. Johnston, who described himself to us as “a police institution and politics reporter,” not a police reporter, maintains that police costs often consume one-third of a city's operating budget. Yet many news organizations continue to devote more time and attention to covering decisions by the local planning commission than they do to budgetary decisions by the police. Johnston further points out that budgetary decisions get little attention from mayors, city managers, or whichever officials are responsible for spending the taxpayers' money. The Los Angeles police, Johnston found, spend more money (\$6.7 million) annually responding to “false” burglar alarms than they do to investigating murders (\$5.5 mil-

55. Max Weber, *The Theory of Social and Economic Organization*, trans. A. M. Henderson & Talcott Parsons (Glencoe, Ill.: Free Press, 1947).

lion).⁵⁶ Johnston sees this as a major reason why the Los Angeles police solve about the same number of murders in the 1980s as they did in the mid-1970s, although the percentage of murders solved is lower. Johnston concludes: "To understand the police and examine how well they are spending the taxpayers' money is not all that hard. Plenty of sources of reliable information exist, including each police department's budget and statistical reports. For reporters used to covering the bureaucracies of city hall, there is an easy rule to remember. The police are basically bureaucrats with guns."⁵⁷

Note that Johnston's reporting is not about events in which police were participants. The traditional police story describes the "who, what, when, where" of a criminal or disorderly event. As we have said, event stories are not necessarily unimportant, but they may be misleading insofar as they invite readers or listeners to draw unwarranted inferences—about the possibility of becoming victims of crime, for example. But Johnston's sort of "police story" is different, and it is rarely undertaken by journalists.

The theory of bureaucracy further suggests any number of organizational or institutional stories that might be written involving the internal violation of police rules that affect police work-force budgets. David Burnham recalls his first story along these lines: "Well, the first police process story I did for the *Times* was about 'cooping.' That's when on-duty police officers sleep on duty. When I first heard of it, I said, 'Aw, bullshit.' But a friend, a whistleblower type, said, 'Come on, I'll show you.' We drove around; I got the story on my own time. The *Times* wasn't interested."

But cooping, it turned out, was totally institutionalized. Officers routinely kept alarm clocks in their cars. Sergeants knew about one "coop" in Brooklyn where a phone had been installed so someone could be called if needed. "The whole department knew," says Burnham, "so I wrote the story on my own time and got pictures, and *then* the *Times* loved it."

Burnham's observation underscores a more general tenet of the theory of bureaucracy—or, more properly, the theory of organization. Organization theory suggests that a dry and literal reading of legal rules and agency pronouncements explains relatively little about the behavior of such legal officials as police and other bureaucrats. In their study of OSHA, for example, Bardach and Kagan found that the way rules were interpreted and applied on the factory floor was far more influential in determining OSHA's behavior as an agency than the formal process by which the Administrative Procedure Act structures the regulations.⁵⁸ Students of organization repeatedly stress the significance of informal suborganizational entities and their associated norms. In his recent discussion of organization theory and administrative law, Peter H. Schuck writes, "No agency illustrates this better than a police

56. David Johnston, *Burglar Alarms—False Reports Drain Police Resources*, *L.A. Times*, Aug. 9, 1982, pt. 2, at 1-3.

57. David Johnston discusses this point in *Bureaucrats with Guns*, *Calif. Journalism Rev.*, Winter 1983, at 22.

58. See Eugene Bardach & Robert A. Kagan, *Going by the Book: The Problem of Regulatory Unreasonableness* (Philadelphia: Temple University Press, 1982).

department. Numerous studies," he continues, "have shown that the norms that pervade the peer subculture of police officers on the beat not only constrain but sometimes overwhelm the impact of the legal rules with which agency supervisors and courts seek to control their behavior."⁵⁹

The theory of organizations also suggests that police accountability will be heightened if the public appreciates the significance of a sense of purpose in police organizations.⁶⁰ Purpose involves a philosophy of the organization's overriding goals. Serious police journalism must be attuned to institutional goals, as is journalism about any public organization. David Burnham nicely summarizes his institutional approach to journalism along these lines:

My job as a reporter is to describe what happens when procedures prevent whatever institution I'm looking at from achieving its stated goals. The stated goals may be fabulous. Now what is it that gets in the way of achieving them? Corruption? Difficulty of the problem? Or whatever? That goal-examining approach fits whatever institution you're covering, whether police or—well, OSHA, which I'm covering now.

Finally, it is also possible to go beyond an assessment of goal achievement to a more comprehensive and comparative view of police as an institution. Not all police departments share the same vision of the police role in society. Such differences in philosophies of policing do not necessarily signify misconduct. Nevertheless, a philosophy might be misguided, counter-productive, or anachronistic. The philosophy of a police department embraces both the goals of policing and the reasons the particular police department is organized as it is. Do police leaders regard their departments as service organizations with expansive conceptions of the police role, or primarily as repressive enforcement agencies with narrowly legalistic conceptions? Do some departments aim for a middle ground, attempting to serve multiple, antagonistic constituencies and affecting a mixed, often conflicting policing style? What are the results of these approaches in actual public contact and service? For example, to what extent does a police department rely on aggressive patrol as its principal crime prevention technique? Are such techniques outmoded? Have others been tried?

All of these observations—involving questions of organizational philosophy, of the structure that results from it, of the impediments to fulfilling an institution's stated goals—should enrich public understanding of the police.

59. Peter H. Schuck, *Organization Theory and the Teaching of Administrative Law*, 33 *J. Legal Educ.* 13, 15 (1983). Schuck's article offers a nice introduction to organization theory that would be useful to the journalist as well as to the teacher of administrative law.

60. The concept of "organizational purpose" was explicated in 1938 by Chester I. Barnard in *The Functions of the Executive* (Cambridge: Harvard University Press, 1938), and expanded and developed by two more generations of organizational theorists and sociologists of organization. A more modern code word for "purpose" is "value," though that term is now used almost as a generic definition of any normative stance taken by an organization's leadership. To see it in its original formulation, see the discussion of "institutional embodiment of purpose" as "infusing the organizations with value" in Philip Selznick, *Leadership in Administration: A Sociological Interpretation* (Evanston, Ill.: Row, Peterson & Co., 1957). See also further development of this idea in Philippe Nonet & Philip Selznick, *Law and Society in Transition: Toward Responsive Law*, especially 110–12 (New York: Octagon Books, 1978), and especially in Philippe Nonet, *The Legitimation of Purposive Decisions*, 68 *Calif. L. Rev.* 263 (1980).

Searching and reporting about these questions and how they are answered by various police departments can thus heighten police accountability to the public.

CONCLUSION

Typifying the views of the police chiefs we interviewed, Gary Hayes, executive director of PERF, asserted that the public misses the complexities of major criminal justice policy issues because newspapers adhere to a practice of simplistic crime reporting. "The criminal justice system," he avers, "ought to be reported like economics has been in the past two years. The level of sophistication of public knowledge about economics has been raised phenomenally since the Reagan administration took office. Now the press reports in a much more sophisticated, informative way, and the public knows much more."

Yet fast-breaking crime stories remain the staple of the police reporter's beat. Known in the trade as "bang-bang" reporting, crime stories are high interest, factual, and stereotyped. Every crime story is a "whodunit." There is always a victim with whom the public can identify and an alleged perpetrator to be feared or reviled.

Police news is transformed into crime news; crime news reflects the most traditional assumptions of the treatment of news. These are spelled out neatly by sociologist Todd Gitlin: "News concerns the *event*, not the underlying condition; the *person*, not the group; *conflict*, not consensus; the fact that *advances the story*, not the one that explains it . . . in general, the archetypical news story is a crime story."⁶¹

In this context, the police department offers the reporter the fundamental facts to write the story as well as suggestions and opportunities for visual presentation of the facts. To the extent that any analysis of the facts is appropriate, the department or public information officer can offer that to the reporter as well. Finally, the department can provide statements by police and prosecutorial officials concerning the development of the case. This sort of reporting necessarily lends itself to dependence on public relations professionals as the *source* of news. Such dependence is heightened in the instance of crime stories because there is no question that such stories sell newspapers.

"Bang-bang" event reporting may be the average newspaper or TV reporter's primary, if not sole, responsibility. Few newspapers or broadcasters encourage reporters to delve more deeply into the structures and processes of policing. Why editors seldom assign institutional-process stories is too complex a question for a study of the relation between police accountability and the media to explore fully. But on a very general level, the same organizational theory that enhances our understanding of police bureaucracies can also go far in explaining why media organizations produce certain types of news. For instance, Gans sketched an "ideal type" of news bureaucracy

61. Todd Gitlin, *The Whole World Is Watching: Mass Media in the Making and Unmaking of the New Left* 28 (Berkeley: University of California Press, 1980).

after he had worked as a participant observer in several media organizations. Like other bureaucracies, he says, news-producing organizations strive for “power and efficiency.”⁶²

By *power*, he means that media organizations crave association with persons and organizations that can significantly influence public life. Reporters gravitate to these power sources to obtain reportable information quickly; a source is also preferred if it is associated with a public official or organization that is powerful and lively enough to produce a constant stream of potential story material.⁶³

Reporters operate under time constraints imposed by strict editorial deadlines. Therefore, they naturally rely on those sources that produce the most information for the least reportorial effort and those that are most likely to influence the events the story describes. Though Gans studied news gathering by national media organs, his observations also nicely describe the interaction between reporters and local police department public information offices. Reporters need the police; conversely, the police chiefs we interviewed knew they needed the reporters.

Police officials are well aware of the media’s hunger for readily available information, and they understand the importance of communication with citizens. The chiefs knew that self-government was at stake in media relations, and they wanted the public to have a favorable picture of the quality of service the police department offers. If reporters regularly use the police department itself as the primary source of news, crime-fighting stories and occasionally police reform stories will be the norm.

Since most news “concerns the routine activities (and routine conflicts) of public officials,”⁶⁴ and reporters turn to the public officials themselves as sources of information, it is tempting to conclude that the media cannot effectively check officialdom until they diversify their sources. Though this is one important implication of Gans’s work, he is careful to note that it is not a comprehensive prescription. “Journalists [first] choose stories rather than sources,” he says, “and their stories are hardly limited to handouts from the powerful.”⁶⁵

Once reporters set out to write about crime events or discrete incidents of police misconduct, an obvious source of information is the police department itself. But the initial choice of story shapes the news more than sources do. Were editors to assign stories that require explanation of public institutions—

62. Gans, *supra* note 47, at 282.

63. Because these power sources regularly offer news items related to highly visible individuals involved in public events, the news media often interprets public organizational behavior in terms of the officials who are the symbolic leaders of the organizations. This belief in turn evolves into an unspoken assumption that policies of complex organizations result from individual leaders’ wishes, not from a process of achieving organizational performance by group effort. “The news tends to treat group members as followers,” says Gans. *Id.* at 63. But a deeper analysis of public organizations would require an explanation of how policies are generated and implemented through group decision making and interaction. Consider, for example, how much air time and column space are expended in reporting about the president’s acts and pronouncements, yet how little describes how his policies are generated or implemented.

64. Gans, *supra* note 47, at 282.

65. *Id.*

in the self-government, institutional reporting mold—reporters would probably seek out a wider variety of information sources than they would for event reporting. For example, a story about police recruiting procedures would involve information and opinions from police administrators, psychologists, educators, and community representatives concerned about affirmative action. A story about deterring drunk driving would discuss police department arrest procedures, but only by explaining the local jurisdiction's sentencing patterns could the police data be interpreted adequately. Courthouse sources would have to supplement police sources.

Of course, journalists can aver that stories explaining government processes are not so different from event stories; they are simply more detailed and examine topics from several different angles instead of one or two. Editors may prefer stories that cover both events and organizational mission and functioning, but they hesitate to assign them because their staff usually has time to produce only meat and potato reporting. Furthermore, institutional reporting often resembles the feature stories that garnish newspaper and broadcast offerings, and presenting lengthy features consumes much column space and air time. Gans outlines these objections when he says that media organizations are constrained by efficiency judgments: "Journalistic efficiency exists to allocate three scarce resources: staff, air time or print space, and, above all, production time."⁶⁶

It is not altogether clear, though, that pure event reporting is the only efficient media approach to criminal justice issues. If some reporters specialized in writing about public institutions from an organizational perspective, they could become quite proficient at producing concise, pithy stories explaining police and crime—a welcome supplement to (and even partial replacement for) the steady diet of crime "whodunits."⁶⁷ Perhaps the demand for organizational efficiency in news outlets could be met by training at least one reporter to be the criminal justice specialist. This could also lessen problems associated with finding a wide variety of sources once the editor assigns a story. Such a reporter could cultivate many sources, become educated about the policing bureaucracy, and produce a steady stream of stories that explain crime-related events in much more depth than is usual in most contemporary reporting. But other institutional constraints prevent news organizations from developing this talent.

Partly, the problem is specialization itself. Rarely do newspaper or broadcast editors encourage reporter specialization. Perhaps it is too expensive. Perhaps specialists may get to know more about their subjects than the edi-

66. *Id.* at 283.

67. Though news personnel apparently assume that readers and viewers want the shock and "whodunit" that crime stories provide and that the broadcast ratings or newspaper sales will therefore be higher than blander competitors', we should perhaps be skeptical. If a crime event were reported simply and illuminated with broader explanations of how public bureaucracies respond to it, most news consumers would probably be well satisfied. At least, in the absence of empirical proof that consumers prefer only scandal and "whodunits," we can speculate that the aversion to institutional reporting is perhaps based only on "old editors' tales."

tors do, thus diminishing the authority of those in charge. It is evident, however, that—whatever the media’s responsibility for heightening police accountability—that result will not be achieved unless further specialization *is* encouraged. Undergraduate journalism curricula, institutes and seminars for working reporters, and encouragement of editors to use knowledgeable reporters could all be helpful.

While stories by hard-working reporters like David Burnham and David Johnston are models of institutional reporting, such stories are rare. Although few newspapers may enjoy the resources to train criminal justice specialists,⁶⁸ there surely must be more than the *very* few media outlets currently encouraging institutional reporting that could develop an appreciation for police organizational complexity and a capacity to explain it to the public.

Ironically, perhaps, police chiefs we interviewed seemed more sophisticated in their understanding of the media than most editors and reporters are about the institutional implications and processes of policing. Perhaps it is time for those who write and speak to catch up with their subjects. Not only does nothing in the First Amendment prohibit their doing so, but the values behind protecting freedom of the press—particularly the self-government value—invite active media exploration of the policing process so that citizens may judge its quality.

68. There are a few institutes that train working reporters to specialize in legal matters. Columbia University’s Graduate School of Journalism offers a year-long program for reporters from major metropolitan dailies to hone their legal reporting skills, including criminal justice reporting. Other universities offer specialized training for reporters to learn other fields. The Bagehot Fellowships are offered to reporters who want to improve their knowledge of economics. Perhaps similar training could be offered for reporters concerned with criminal justice matters.