

## **"Just the Facts Ma'am": The Supreme Court Says "No" to Media Ride-Alongs**

By

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### **Abstract**

A recent decision by the United States Supreme Court restricting the scope and presence of the press during the execution of search/arrest warrants comes at the height of popularity of real-life crime TV. This paper explores this landmark court case within the context of our nation's voyeuristic thirst for real-life drama. Also discussed is the growing reciprocal relationship between law enforcement and the various media. While video for popular programs are often obtained at a cost of citizens' right to privacy, the authors of this paper argue that public display nevertheless plays an important function for our understanding of the criminal justice system.

### **Introduction**

On May 24, 1999, the United States Supreme Court ruled that it is a violation of the Fourth Amendment of the United States Constitution to permit members of the media to accompany and record law enforcement officers during the execution of an arrest warrant in a private residence (Wilson v. Layne, Deputy United States Marshal, et al. 141 F. 3d 111). This was a particularly interesting case as it highlighted the inherent conflict between the First Amendment right to a free press and the Fourth Amendment's century old principles of respect for the privacy of the home. In the end the court ruled that the First Amendment does not grant reporters and photographers an absolute right to go anywhere at any time in pursuit of a story. The constitutional decision in this case, as authored by Chief Justice Rehnquist, to limit the scope of media "ride-alongs" is also important as it again sparked national debate on the boundaries and responsibilities of the media in general in our society. Today, practically every forum, whether newspapers or video games, music or movies, is under the microscope by concerned citizen groups, parents, politicians, researchers, the clergy and many others.

This paper takes a look at this historic Supreme Court case and explores the ruling's broader significance within the context of our nation's voyeuristic thirst for real-life crime drama, particularly as found in reality-based TV shows in the genre of *COPS*, *Real Stories of the Highway Patrol*, and *Court TV*. While some of these programs, as this latest constitutional ruling suggests, may infringe on a citizen's right to privacy, we argue that these programs nevertheless play an important role for our understanding of the legal system and law enforcement practices.

To open the discussion we demonstrate how the traditional "professional model" of policing, and its more recent transformation towards a community-based approach, have served as a catalyst for many of the popular crime-related programs found on television and in film. Briefly, while the professional model of policing in the United States, which became the preferred crime fighting model during the mid 20<sup>th</sup> century, may have served to reduce political corruption and enhance public perceptions of law enforcement, over time it created a cultural separation between the police and the public. Television shows common during this era included programs such as *Dragnet* and *Adam 12*. Here, police were often viewed in patrol cars as impersonal, disconnected robots interested in "just the facts". We suggest that the recent rise in crime-based dramas like *NYPD Blue*, *Homicide: Life On The Street*, *New York Undercover*, and reality TV shows including *COPS* and *Real Stories of the Highway Patrol* are related to the decline of the professional model in favor of more open policing strategies, such as community policing, which include a reciprocal relationship between the media and law enforcement.

#### **"Just the Facts Ma'am": Television during the Era of the Professional Model of Policing**

There is no doubt that the media provide powerful and long-lasting images. In the United States, the public's understanding of the police role is in many ways directly correlated with Hollywood's latest crime movie or television's latest cop drama. Some citizens, when pressed to articulate the activities and functions of the police, draw upon their personal experiences and/or vicarious tales of friends, family and other acquaintances. Others, not surprisingly and perhaps not even cognizant of the origin of their knowledge, will describe the police from various crime-related media stimuli acquired over time -- (images as disparate as the calm, almost robot-like Sgt. Joe Friday to the renegade, unaccountable, and lethal Dirty Harry may come to mind.) Somewhere in the middle are those who will draw from both direct and indirect exposures. While media memories are sure to play a role in our perceptions of the men and women in blue on "Hill Street," it may also be argued that part of the public's lack of clarity of the police is partly by design -- a conscious effort by those who developed the modern day policing models. A brief look at the last century of policing philosophy will help to clarify this point.

The American models of policing have witnessed significant changes over the last century (Kelling & Coles, 1996)<sup>1</sup> In many ways, these models have followed closely the approaches of policing advanced by the British, with some important exceptions. For example, whereas the commissioner of the Metropolitan Police reported to the Home Secretary (i.e., a member of the Prime Minister's cabinet) and thus was removed from London politics, in America the control over the police was municipal and widely partisan. Thus early in the 20<sup>th</sup> century, American urban police were used as adjuncts to the city's political machine, resulting in widespread corruption and dishonesty. The police in its earliest incarnation in the United States suffered from a lack of professionalization and public support. One example is a 1904 commission of the Chicago Police Department that recommended terminating all police officers and starting anew since the corruption was beyond control (Skolnick & Fyfe, 1994). Immediately following the Great Depression, reformers within the police field designed and implemented the "professional" model, also known as the "reform" model. Over the ensuing years, police chiefs like August Volmer, O.W. Wilson and William Parker argued that the police should be independent from political interference, competent through stricter training requirements, and modeled in a more paramilitary fashion (Fyfe, Greene, Walsh, Wilson, & McLaren, 1997).

Coinciding with and highlighting these top-down philosophical changes was the adoption of new technologies that would forever change the nature of policing. Two of the most significant were motorized patrol vehicles and the two-way radio (Sparrow, Moore, & Kennedy, 1990). No other inventions had a greater impact on the relations between the police and public. The shift of officers from foot and equestrian patrol to radio equipped cars began slowly. First, cars were used by supervisors and later by officers to drive to and from their beats that they had traditionally patrolled on foot. However, the use of the radio resulted in assigning one or two officers to cover areas of many square miles and still expecting these officers to arrive at a call within minutes. Reformers believed that a visible police presence in the form of motorized patrol cars would deter crime, meaning that the more times a police car passed a point, the less chance there would be of a crime occurring at or near that location.

However, a serious and often overlooked result of the use of the motorized patrol was the separation between the police officer and the public. The hierarchy of the police department thought the separation given by the use of cars was an added benefit -- fewer interactions among police and public would curtail corruption. Certain departments were more forthright by establishing rules forbidding informal contact between police officers and the general public. Within their patrol manuals instructions like "police officers shall not make any unnecessary conversation with the public" became a standard operating procedure (Sparrow, Moore, & Kennedy, 1990: 42).

The professional model of policing achieved wide acceptance as it had a number of benefits for law enforcement, including independence, professionalism, and crime control. Over time, however, this model fostered a culture in which the public would eventually question the tactics and functions of the police in their communities. This evaluation also led to a general dissatisfaction and mistrust by many of the relationship between the police and the public.

Television programs popular during the reform era were indicative of this underlying law enforcement philosophy, and they also served to reinforce the public's perception of police culture. Television shows such as *Dragnet* and *Adam-12* portrayed officers as highly professional, detached crime fighters (the epitome of reform era policing that sought to "get the facts, just the facts") who always found the "bad guys." Former Los Angeles Police Chief William Parker, during an interview in the early 1960s, said "the television program *Dragnet* was one of the great instruments to give the people of the United States a picture of the policeman as he really is. It was most authentic. We participated in the editing of the scripts and in their filming. This program showed the true portrait of the policeman as a hard-working, selfless man, willing to go out and brave all sorts of hazards and working long hours to protect the community" (Skolnick & Fyfe, 1994: xi).

#### **A Gentler Police: The Decline of the Professional Model and the Start of Reality TV**

Aware of their increased insulation from the public and the growth of dissatisfaction with traditional, institutionalized patrol policies and rigid investigation procedures, law enforcement agencies throughout the United States began to dismantle the traditional professional model of policing in favor of more citizen-friendly and prevention-based approaches. But these changes did not necessarily come easily or voluntarily. Ironically, history has shown that the structured organizational controls and policies that were necessary to overcome the corruption and political influences characteristic of the spoils era (e.g., Eliot Ness and the "Untouchables") were some of the same reasons for the failures of the police in the 1960s and 1970s.

America was in the midst of reflection and socio-political turmoil in the 1960s and 1970s. It was during this cultural context that the police were responding to a Baby Boomer generation symbolized by recreational drug use and peaceful protests; a civil rights movement in search of basic and equal rights for racial minorities and women; and a society torn between patriotism and protest over the war in Vietnam. It became increasingly clear by the late 1960s that there existed a chasm between the *professional* police response and the public. Soon, trust in law enforcement was eroding rapidly and being replaced with a growing suspicion, frustration, and anger.

Television, music, and other forms of media at the time were a significant driving force that helped

to escort change in law enforcement policy. Horrifying images of racial beatings in the South and the violent responses of law enforcement to wartime protestors were regular images on the evening news. The music of Bob Dylan, Arlo Guthrie, and a long list of other artists turned folk lyrics into symbolic social commentary. The culmination of these events of the 1960s led to a Presidential inquiry and the now widely recited 1967 report of the President's Commission on Law Enforcement and Administration of Justice. This report recommended many changes. Among the most notable and relevant to this discussion included: 1) seeking increased communications between the police and community; 2) increasing the responsiveness of the police to community concerns; 3) fairly and objectively dealing with complaints against police officers; 4) increasing the numbers of minorities in the ranks; 5) creating mechanisms to facilitate increased citizen input to the police; and 6) facilitating community involvement on issues related to crime deterrence and apprehensions.

Some of the specific strategies that have emerged over the last 20 years to reduce the police-citizen gap have included: 1) community education campaigns; 2) community-oriented policing and problem-oriented policing; and 3) increased media collaboration and the presentation of real-life crime on prime time. Many of these newer strategies have been widely popular and successful at disseminating information and educating the public. They have also helped to increase police and citizen interactions and communication as well as decrease the mystery surrounding law enforcement. Nevertheless, as we now know, the Supreme Court has called into question the third leg of this tripod (i.e., the role of reality TV in policing).

Of the more widely recognized community education programs, some have targeted our nation's children and youth. These include the familiar McGruff "take a bite out of crime" Dog and the DARE program which is sponsored by the Office of National Drug Control Policy. Other efforts have included crime prevention seminars with the elderly and other civic groups and the coordination of voluntary crime watch groups in neighborhoods, apartments, and commercial establishments. A second strategy, which is related to community campaigns, has involved increasing police presence in communities. Officers are now commonly seen on foot and bicycle patrol. Some communities have also set up police satellite units in high-crime areas and actively work with police to alleviate social disorder. Research has demonstrated that these police-community partnerships have not only helped to reduce criminal activity in high-crime areas, but also to reduce fear among citizens, increase public participation, and spark a general optimism among community members.

A third method that has rapidly gained in popularity has been collaboration between the police and the mass media. This can be seen in the increasing number of reenactment dramas and reality-based TV shows. Some of the most popular of the former programs include *Manhunter* and *Unsolved*

*Mysteries*, where crime scene reenactments are presented. Most recently, this genre has given way to real life programming where video cameras are used to capture police work in action. Some of the more common of these programs include *Real Stories of the Highway Patrol* and the popular program *COPS*.

The history of *COPS* in the United States can be traced to an earlier version found on British television. From January to March 1982, the British Broadcasting Company aired a documentary series entitled *Police* that showed at length ordinary police officers doing ordinary police functions. Creator Roger Graef believed people were fascinated to see what police work was really like because they had no idea.<sup>2</sup> The show was a huge success running second only to *Dallas* during the three months it aired. One episode made international news as it provoked a public outcry in Great Britain. It dealt with the treatment of a woman who went to her local police station to make an allegation of rape. The show featured the interview of the alleged victim by a detective who appeared insensitive by asking tough cross-examination questions. This particular episode stirred powerful emotions and a public outcry for police education and sensitivity. Today in Britain the police are provided with sensitivity training and victims of abuse are interviewed in less hostile environments, such as counseling centers and hospitals. One could argue that such a public outcry is only possible in this type of forum since viewers become eyewitnesses, reliving and internalizing images which are hard to reproduce in a non-visual medium.

On March 11, 1989, the FOX network premiered *COPS*, an American version of the BBC's *Police* (Brooks & Marsh, 1995). The premise of the show is to follow police officers in the office, on stakeouts, on raids, on the streets, and, to a lesser extent, at home. The series focused first on the members of the Broward County (Fla.) Sheriff's Department, then moved to other locations, mostly in the United States. *COPS* is a four time Emmy Award-nominated series and received the American Television Award in the category of Best Reality Show in 1993. The success of the series, with its relatively low production costs, led to a proliferation of similar programs such as *American Detective*, *FBI: The Untold Stories*, *Real Stories of the Highway Patrol*, *Secret Service*, and *True Detective*.

So why the fascination with real life drama? Scholars and researchers from a wide range of disciplines, from sociology to biology, psychology, and philosophy, have tackled this issue. While the forums of real life dramas change, the voyeuristic appetite has remained ever present. Writing in the latter part of the 1700s, the German philosopher Friedrich Schiller argued that the human lust for gore lies at the bottom of our most ordinary pleasures:

It is a universal phenomenon in human nature that what is sad, what is terrible, and even what we dread captivate us with an allure in itself irresistible. We find the sight of misery and horror repugnant and yet with the

same force we feel ourselves drawn to it. This excitement expresses itself even more vividly in the case of objects actually observed. Think of how immense a procession of people accompanies a criminal to the scene of his torments! This need must accordingly be based on the original disposition of the human mind and must be explicable by some universal, psychological law (Hinderer, Dahlstrom, & Vonschiller, 1993: 1).

The authors of this paper suggest that reality TV, in addition to being entertaining, has helped to reduce the distance between the police and the public. Furthermore, these types of programs have given law enforcement in the United States an openness and accountability to the viewing public. Reality TV ensures that the behaviors of the police are on target with society's values and norms, as was demonstrated in Britain's highlighted case involving the female rape victim. But, as quickly as reality TV has gained in popularity, the High Court has ruled that the collaboration between the media and police may have crossed over the boundaries of the Constitution. What follows is a case analysis of the recent Supreme Court decision eliminating media ride-alongs and the recording of police raids in private residences.

#### **Case Analysis**

At 6:45 AM, on April 16, 1992, a team of United States Marshals and Montgomery County Police officers executed a search warrant and entered the home of Charles and Geraldine Wilson. The purpose of this action was to apprehend Dominic Wilson, the son of Charles and Geraldine Wilson. Dominic had violated the terms of his probation, which had been imposed as a result of prior felony convictions on charges of robbery, theft, and assault with intent to rob.

Charles and Geraldine were still asleep when the officers entered the home. Charles ran into the living room to confront the officers, and the police, believing Charles to be Dominic, subdued him while Geraldine watched in a nightgown. After confirming Charles was not Dominic and conducting a protective sweep, the police left the house.

This may sound like an ordinary execution of a search warrant. However, one vital fact must be mentioned: a reporter and a photographer from *The Washington Post* accompanied the team. The US Marshals invited the pair of reporters to accompany them as part of a media ride-along policy.<sup>3</sup> Here is how media ride-alongs usually work. Police inform the news media of their plans, usually on a confidential basis, in advance of a raid or execution of a warrant. The media then accompany law enforcement officials and record the event, giving the media dramatic material while also giving publicity to the police.

During the execution of the warrant in the present case, the photographer took numerous pictures while the reporter observed the confrontation between the police and the Wilsons. Neither reporter was involved in the execution of the warrant. The Wilsons sued the US Marshals who executed the arrest warrant

and the Montgomery County Sheriff's Department under federal law (42 U.S.C. § 1983), contending that the officers' actions in bringing members of the media to observe and record the execution of the warrant violated the Fourth Amendment.

The Fourth Amendment to the United States Constitution states "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation and particularly describing the place to be searched and the persons or things to be seized." The protections afforded by this amendment may be traced to England, where in 1604 the observation was made that "the house of every man is to him as his castle."

The warrant obtained by the marshals did not mention the reporters nor was their presence an aid to its execution. For example, the Court has ruled that when the police enter a home under the authority of a warrant to search for stolen property, the presence of *third parties* for the purpose of identifying the stolen property *is* constitutional.

The District Court denied the officers' motion for summary judgment, a motion to dismiss the case. The Court of Appeals declined to decide whether the officers' actions violated the Fourth Amendment, but ruled the officers were entitled to qualified immunity, an action that holds employers responsible for any judgement against employees. The Supreme Court ruled against the police, maintaining that such a media ride-along violated the Fourth Amendment. The police filed a brief containing three central arguments, each of which the High Court summarily dismissed. This dismissal came despite the fact that twenty-four news organizations sided with law enforcement officers and filed with the court a "friend-of-the-court brief," expressing that the news media were critical in providing a "watchdog role" for the public and serving as protectors, *not violators*, of the Constitution.

The police argued in this case that the reporters from *The Washington Post* served a number of legitimate law enforcement purposes during their raid. Specifically, the police argued that the presence of third parties could lessen police abuses and protect suspects as well as the safety of the officers. The Court has ruled in the past that it is reasonable for law enforcement to videotape *themselves* in raids as a type of "quality control" effort. However, the Court wrote that media ride-alongs are much different. The reporters were working on a story for their own private purposes, meaning their presence was not for the protection of the police or the Wilsons. For example, the Court mentioned that the photographer retained the film and thus would not help the police monitor their own actions.

Next, the police argued that the presence of members of the media could help publicize the government's efforts to fight crime and provide accurate reporting on law enforcement activities. The

Court agreed with the importance of the press in informing the public about the administration of criminal justice. However, the Court ultimately reasoned that the possibility of good public relations for the police does not weigh enough by itself to justify the ride-along intrusion. In addition, the need for accurate reporting on criminal justice issues has no relation to the constitutional justification for the police intrusion into a home.

Last, the police argued that discretionary latitude regarding media presence should be permissible so long as it might "further their law enforcement mission." The Court ruled that media ride-alongs may further law enforcement goals in a general sense; however, it is not the same as furthering the purpose of a search. The Court said that such generalized law enforcement objectives cannot "trump" the 4<sup>th</sup> Amendment because it would result in a watered down version.

In sum, the Court drew a bright line distinction, ruling that it is not appropriate for police to bring anyone inside the home who is not necessary for the police to make an arrest or to conduct a search. Outside the home, in areas which are visible or accessible to the public, the Court ruling implied that the media could continue to observe police activities.

### Conclusion

Is the historically symbiotic relationship between police and the makers of reality TV shows forever changed by the Court's unanimous decision? The producer of *COPS*, John Langley, says it will be business as usual at his program. However, experts predict shows like *COPS* will have to alter their practices. Prior to the ruling, production and camera crews would accompany police through an entire raid and then obtain releases or permission from relevant individuals in order to use the footage. Under the new ruling, producers of reality TV, in order to go along with police inside a home, would have to obtain permission from the homeowner prior to the raid; so much for the element of surprise!

In certain respects the Court's decision was not surprising. Rather, it was the next logical step in this rather complex issue. Some critics claim that an early tip to the media about the impending raid on the Branch Davidian compound in Waco, Texas, also alerted cult members and increased casualties.<sup>4</sup> In addition, in early 1999 a federal judge in New York ruled against a "perp walk," another longstanding tradition in which the police parade a suspect in front of media cameras, saying this practice served no legitimate law enforcement function.<sup>5</sup>

The reality TV and police relationship was well-intentioned, but ultimately ran head on with the United States Constitution. Both the reality TV creators and police have benefited from their symbiotic relationship. The producers received real life drama that resulted in high ratings and high

revenue from advertisements with little financial overhead for the production of such shows. In addition, the police received free publicity, demonstrated how intense and dangerous crime fighting can be, and perhaps regained some public trust in the process.

A quarter century ago Egon Bittner observed that the police were one of the best known government institutions, yet were one of the least understood by the public they were meant to serve (Bittner, 1974). Efforts such as reality TV have done a great deal to reduce this police/citizen knowledge gap. Only now producers must struggle to balance entertainment value with the final word of the Supreme Court. This is the challenge for the next generation of policing shows: to further the knowledge of policing without trampling upon constitutional safeguards.

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#### Endnotes

<sup>1</sup> Changes include going from the "progressive era" to the "reform or professional model" and to the current era of "community or problem solving policing". These efforts are detailed in many accounts (see Brown, 1981; Goldstein, 1990; Guyot, 1991; Peak, 1997; Radelet & Carter, 1994).

<sup>2</sup> Roger Graef received unprecedented permission to record the actions of the Metropolitan Police.

<sup>3</sup> The federal government and many local law enforcement agencies have begun to develop and implement ride-along programs with local media outlets.

<sup>4</sup> In September, 1999 Attorney General Janet Reno announced that former Senator John Danforth will head a commission to investigate the activities of the FBI during the Waco, Texas standoff.

<sup>5</sup> The "perp walk" has been a part of the local police and media culture and is something defense attorneys have railed against for years.