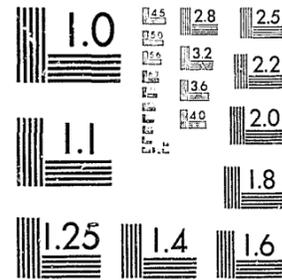


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M. CHERIF BASSIOUNI
Project Director
Professor of Law
DePaul University College of Law
FINAL REPORT 79-NI-AX-0060

T A B L E O F C O N T E N T S

TERRORISM, LAW ENFORCEMENT AND THE MASS MEDIA

ACU

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prepared by E. Charles Brabandt, III

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M. CHERIF BASSIOUNI

Project Director

Professor of Law
DePaul University College of Law

Secretary-General
International Association of Penal Law

Dean
International Institute of Higher Studies in Criminal Sciences

U.S. Department of Justice
National Institute of Justice

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PREFACE

While attention has focused on terror-violence originating from "below" or from individuals acting against the state, terror-violence from "above" or state-sponsored terror-violence is by far the more harmful and dangerous variant. But whether originating from "above" or "below," terror-violence seems to invariably rely upon the mass media to disseminate terror-inspiring effect or a given political message. The seizure of the United States Embassy in Iran on November 4, 1979, and the holding of sixty-three United States hostages clearly demonstrated the role of the media in the unfolding of terrorist-initiated crisis and the susceptibility of the media to becoming instrumentalized and manipulated by such perpetrators. To some extent, this represents the price democratic societies must pay for the maintenance of a vigorous and independent press that is so essential to democratic processes. But the problems of media coverage of terror-violence can however be minimized, by the media's conscientious search for balance in reporting, by awareness of the inherent symbiotic relationship that exists between the occurrence of newsworthy facts and the inevitable dissemination of those facts, by application of appropriate self-restraint to avoid becoming the instrument of those attempting to use the media to accomplish their objectives and by improved cooperation with public bodies.

The media has with respect to terror-violence dual responsibility: to avoid unduly magnifying the terror-inspiring effect of acts perpetrated by individuals against society, while divulging and disseminating the facts in instances of state-sponsored terror-violence. To resolve these difficult and at times conflicting

responsibilities requires wisdom, discipline, and determination on the part of the media community. But they also need the cooperation of law enforcement, the legal profession, and government in order to attain those desired objectives.

The relationships of terror-violence and the media has been the subject of numerous reports and conferences in recent years. My own involvement in International Criminal Law in the last fifteen years lead me to organize and chair in 1973 under the auspices of the International Institute of Higher Studies in Criminal Sciences at Siracusa, Italy, the first major international conference on "terrorism," which resulted in a book, International Terrorism and Political Crimes (1975). Subsequently, I participated in many conferences on "terrorism" in the United States and elsewhere, as well as in research involving some of these issues and problems conducted by The American Society of International Law in 1977-78 under contract with the Department of State and funded by The Law Enforcement Assistance Administration.

This project had its origins when the Inter-Agency Committee on Combatting Terrorism expressed interest in my undertaking a study of this problem and organizing a conference for its discussion. The purpose of the project was not to sharpen the already existing conflicts between the media and law enforcement communities, but rather to highlight their respective problems and concerns in order to enhance cooperation between them and improve the efforts of prevention and control of terror-violence. In addition to my own report, which attempts an overall analysis of the subject, the study has benefited by specific reports dealing with the media, law enforcement, and constitutional issues.

I was fortunate to obtain the assistance of James Hoge, Editor-in-Chief, The Chicago Sun-Times; Patrick Murphy, President, Police Foundation; and Lawrence Gunnels and David Maher, Senior Partners in the Chicago law firm of Reuben and Proctor. Their reports, included in this volume, and the summaries they presented at the conference were invaluable and are gratefully acknowledged.

Participating in the conference were some sixty experts representing a diverse body of authoritative opinions drawn from the media, law enforcement, psychiatry, psychology, government, law and the military. The participants, whose names appear below, displayed a unique cooperative spirit and made insightful contributions. The summary of the conference discussions were prepared so as to include recommendations and policy guidelines. This issue-oriented approach was preferred to a transcript in order that the issues could be more sharply focused and the various recommendations synthesized in a more relevant and usable manner. Hopefully this attempt aptly captures the spirit of the discussions and reflects all views presented. The communications and studies sent by some participants and which have been included in this volume are gratefully acknowledged.

I gratefully acknowledge the grant received from the Law Enforcement Assistance Administration, United States Department of Justice, which made this project possible, and in particular the assistance given by Perry Rivkind and Steve Gremminger of L.E.A.A. Though the project was conducted under my direction, the assistance given by several persons deserves special mention: E. Charles Brabant who was my research assistant on the project; Linda Johnson who performed countless administrative tasks in

preparing both the conference and manuscript; Michael Berbaum and Richard Moreland for contributing an impressive social science bibliography containing important references to psychological studies on the role of the media in relation to terror-violence.

Finally, my appreciation to DePaul University and the College of Law for providing facilities and assistance.

M. C. Bassiouni

Chicago, January, 1980.

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C O N F E R E N C E O N

TERRORISM, LAW ENFORCEMENT, AND THE MASS MEDIA

DePaul University - College of Law

Chicago, Illinois

October 27, 1979

PARTICIPANTS

9:00 - 10:15	Opening Remarks and Summary of Report	M. CHERIF BASSIOUNI Professor of Law DePaul University Project Director
	Summary of Report	JAMES HOGE Editor-in-Chief The Chicago Sun-Times
		PATRICK MURPHY President The Police Foundation
		LAWRENCE GUNNELS Senior Partner Reuben & Proctor
10:15 - 10:30	Break	
10:30 - 12:30	Discussion	
12:30 - 2:00	Luncheon	4th Floor Dining Room
	Remarks	NORVAL MORRIS Professor of Law University of Chicago
2:00 - 4:00	Discussion	
4:00	Adjournment	

Professor RICHARD ARTHUR
Assistant Professor of Speech Communications
The University of Wisconsin
(Milwaukee)

Mr. WILLIAM B. ARTHUR
Executive Director
National News Council
(New York)

Lieutenant Colonel BARR
Office of the Joint Chiefs of Staff
Department of Defense
(Washington)

Mr. GEORGE BEVERIDGE
Senior Assistant Managing Editor
Ombudsman
The Washington Star
(Washington)

Professor LEE BOLLINGER
The Law School
University of Michigan
(Ann Arbor)

Captain FRANK BOLZ, JR.
Commander, Hostage Negotiation Team
New York City Police Department
(New York)

Mr. ROBERT BUCKLEY
F.B.I.
(Chicago)

States Attorney BERNARD CAREY
States Attorney for Cook County
(Chicago)

Mr. PAUL R. CONRAD
Executive Director
Allied Daily Newspapers
(Seattle)

Professor ANTHONY D'AMATO
Professor of Law
The School of Law
Northwestern University
(Chicago)

PARTICIPANTS

Lieutenant Colonel RONALD DUCHIN
Office of the Joint Chiefs of Staff
Department of Defense
(Washington)

Mr. LOUIS FIELDS
Assistant Legal Adviser
Department of State
(Washington)

Dr. LAWRENCE FREEDMAN
Director
Institute of Social and Behavioral Pathology
The University of Chicago
(Chicago)

Mr. JACK FULLER
Editor
The Chicago Tribune
(Chicago)

Ms. GEORGIE ANNE GEYER
Columnist
Los Angeles Times Syndicate
(Washington)

Mr. GREGORY GORDON
UPI, Justice Correspondent
(Washington)

Mr. STEVE GREMMINGER
Law Enforcement Assistance Administration
Department of Justice
(Washington)

Major CHRISTOPHER GROSE
Lloyds of London
(U.K.)

Mr. LAWRENCE GUNNELS, Esquire
Senior Partner
Reuben and Proctor Law Firm
(Chicago)

Mr. Cullen Hanlon
F.B.I.
(Chicago)

PARTICIPANTS

Professor DONALD H. J. HERMANN
Professor of Law
College of Law
DePaul University
(Chicago)

Mr. JAMES HOGE
Editor-in-Chief
The Chicago Sun-Times
(Chicago)

Dr. DAVID G. HUBBARD
Director
Aberrant Behavior Center
(Dallas)

Professor NORBERT JACKER
Visiting Professor of Law
College of Law
DePaul University
(Chicago)

Professor WALTER B. JAEHNIG
Assistant Professor of Journalism
Indiana University
(Bloomington)

Professor WAYNE KERSTETTER
Professor of Criminal Justice
University of Illinois, Chicago Circle Campus
(Chicago)

Professor JOHN LANGBEIN
Professor of Law
The Law School
University of Chicago
(Chicago)

Ms. KATHRYN C. MCCULLOUGH
News-Press
(Miami)

Mr. MICHAEL MAGUIRE
Foreign News Editor
The Chicago Tribune
(Chicago)

Mr. GEORGE MANDICH
F.B.I.
(Chicago)

PARTICIPANTS

Professor HAROLD MENDELSON
Professor of Mass Communications
Department of Mass Communications
University of Denver
(Denver)

Professor NORVAL MORRIS
Professor of Law
The Law School
University of Chicago
(Chicago)

Mr. DON MORRISON
Senior Editor
Time Magazine
(New York)

Ms. LICIA MOUAT
Bureau Chief - Chicago
The Christian Science Monitor
(Chicago)

Mr. PATRICK MURPHY
President
The Police Foundation
(Washington)

Professor JERRY NORTON
Associate Professor of Law
The Law School
Loyola University
(Chicago)

Dr. FRANK OCHBERG
Director
Department of Mental Health Services
of the State of Michigan
(Lansing)

Professor BRUCE OTTLEY
Assistant Professor of Law
College of Law
DePaul University
(Chicago)

Mr. JOHN OTTO
F.B.I.
(Washington)

PARTICIPANTS

Mr. FRANK PEREZ
Deputy Director
Office for Combatting Terrorism
Department of State
(Washington)

Mr. ROBERT L. RABE
Assistant Chief of Police
Inspectional Services Bureau
Metropolitan Police Department
(Washington)

Sir RICHARD RAYNSFIELD
Lloyds of London
(U.K.)

Brigadier General RODERICK RENICK
Deputy Director
Office for Operations and Readiness
Department of the Army
(Washington)

Mr. FRED RICE
Chief, Patrol Division
Chicago Police Department
(Chicago)

Mr. PERRY A. RIVKIND
Assistant Administrator
Law Enforcement Assistance Administration
Department of Justice
(Washington)

Mr. JIM RUDDLE
NBC News
(Chicago)

Mr. MARK SABLEMAN, Esquire
Reuben & Proctor Law Firm
(Chicago)

Mr. STEPHEN SCHILLER
Executive Director
Chicago Crim Commission
(Chicago)

Ms. JILL SCHUCKER
Office of Public Affairs
Department of State
(Washington)

PARTICIPANTS

Professor JACK G. SHAHEEN
 Assistant Professor of Communications
 School of Fine Arts & Communications
 Southern Illinois University at Edwardsville
 (Edwardsville)

Dr. HEIDI SOMMER
 Department of Psychiatry
 University of Southern California
 (San Diego)

Professor MICHAEL SOMMER
 Professor of Journalism
 School of Journalism
 California State University
 (Northridge)

Mr. RICHARD SPATES
 Special Assistant
 Department of Mental Health Services
 of the State of Michigan
 (Lansing)

Professor HERBERT A. TERRY
 Assistant Professor and Chairman
 Department of Telecommunications
 Indiana University
 (Bloomington)

Dr. PIO ULIASSI
 Consultant
 Department of State
 (Washington)

Mr. J. MARSHALL WELLBORN
 Assistant General Counsel
 National Broadcasting Co., Inc.
 (New York)

Major EMIL YATASKO
 U.S.A.F.
 Special Operations School
 (Florida)

PARTICIPANTS

Professor M. CHERIF BASSIOUNI
 Project Director
 Professor of Law
 College of Law
 DePaul University
 (Chicago)

Mr. E. CHARLES BRABANDT, III
 Research Assistant
 J.D. Candidate (1980)
 College of Law
 DePaul University
 (Chicago)

Ms. LINDA JOHNSON
 Administrative Secretary
 College of Law
 DePaul University
 (Chicago)

SUMMARY OF THE CONFERENCE DISCUSSIONS

-- prepared by E. Charles Brabandt, III

1. Professionalism

The importance of upgrading police professionalism was emphasized (Murphy), as well as the need to better prepare police departments to manage terrorist events (Murphy). Fortunately, terrorist incidents in the United States have been confined to major metropolitan areas, though the response of even the largest police departments met with criticism, particularly with respect to media relations (Hoge). Most police departments lack resources and personnel to deal with a major terrorist incident and the media attention drawn to such events. The fragmentation and insularity of local police departments indicate the need for increased federal and state assistance and responsibility (Murphy). This was highlighted by the danger that the nature of terror-violence may undergo a "mutation" (Ochberg) involving sudden and dramatic changes in its means, methods, targets and objectives. Attacks with high technology weapons or against sensitive installations would vastly increase the numbers of potential victims, and the importance of intelligent contingency planning for such eventualities should be anticipated (Bassiouni, Morris, Ochberg). In particular, it was suggested that special teams be created with the capability of quickly moving anywhere as required to manage a given crisis (Bassiouni).

Professionalism among media organizations must also be upgraded (Terry, Ochberg, Morris). The statement that major media organizations accept the moral and journalistic responsibility not to allow media presence at the scene of a terrorist event affect the situation or endanger lives (Wellborn) led some participants to recount instances where irresponsible media coverage or conduct enhanced risks to victims and law enforcement personnel (Hubbard, Rabe, Bolz). It was observed that the greatest problems arise with the electronic media, particularly the larger organizations with live broadcast capability (Rabe, Bolz). In addition, the actions of unprofessional individuals or organizations seeking exclusives create acute ethical dilemmas for media personnel attempting to act responsibly (Gordon) and generate competitive pressures on them to do the same (Bassiouni, Ruddle).

The paradoxical and conflicting roles of the media in its international responsibilities to uncover and report terrorism employed by states while not permitting itself to be used by individual terrorists was underscored (Bassiouni, Schucker). This dual role was particularly highlighted with respect to the UNESCO declaration on the role of the media in developing nations (Bassiouni, Schucker). With respect to domestic incidents of terrorism, the media's legitimate function in informing the public must be accommodated with the necessity for restraint in those instances where improper reporting may cause increased violence

while the incident remains unresolved.

2. Police-Media Relations

Police-media relations in the context of terror-violence are at a level of antagonism, as opposed to cooperation, for a variety of reasons. Media demands for information during an ongoing crisis adds to the psychological tension experienced by law enforcement officials in what is already a tense situation (Bassiouni). Police officials are frequently restricted in what information they are able to release so as not to prejudice the right of defendants to a subsequent fair trial (Otto, Carey). Although promises of prosecutorial immunity are not binding, public disclosure of such grants during negotiations may disparage police integrity following prosecution (Carey).

Precisely because official sources are considered too slow, incomplete or otherwise inadequate, media representatives may seek out unreliable sources and attempt direct contacts with terrorists (Bassiouni). Irresponsible media actions and reporting have enhanced risks to both the victims of the act and law enforcement personnel. Because the police consider the protection of lives during terrorist events to be their overriding priority (Rabe), the media thus come to occupy an adversarial position vis a vis the police. Some police departments are prepared to seize telephone lines, turn off electrical power, or use jamming devices to prevent harmful media intervention (Bolz). During the Hanafi Muslim incident in Washington,

police felt compelled to call a fake news conference away from the site so that soldiers could enter the District Building undetected to protect thirty persons trapped on the fifth floor (Rabe). The result has been an escalating cycle of mutual distrust between the law enforcement and media communities, as evidenced by the lively debate that ensued at the conference, which only further induces the media to circumvent police controls and obtain information by their own devices.

Self-serving statements by both the media and law enforcement representatives were deplored as leading to polarization and conflict, as opposed to cooperation (Sommer, Ruddle, Murphy, Hubbard, Ochberg). Representatives of the media community must recognize that a problem exists, and that they are often used by terrorists to attain their objectives, before progress toward a satisfactory solution can be made (Rabe). On the other hand, police must be made aware of the real benefits of full cooperation with the media and the negative consequences stemming from a lack of coverage or distorted coverage (Hoge). It was generally agreed that with more dialogue and preplanning many problems arising during terrorist episodes can be avoided (Morris). In particular, the historical cooperation between the law enforcement and media communities that has existed in domestic kidnapping incidents since the Lindberg case (Bassiouni, Otto, Bolz) should augur cooperation during terrorist events.

3. Recommendations for Promoting Cooperation

The need for better police-media relations was deemed indispensable, with the emphasis on promoting understanding and open channels of communication before a terrorist event occurs (Maguire). Informal contacts that existed in the past between police officials and media editors have dispelled (Maguire), leveling the need for an institutional substitution. That institutional substitution could be a permanent public information officer (Bassiouni, Schucker), provided that such a person does not become merely a public relations officer which would reduce his effectiveness (Schiller). The credibility of such an officer, his immediate presence at the scene, personal liaison with the media, prompt and accurate information and reasons why information cannot be given were deemed essential elements (Hoge, Maguire, Schiller, Schucker, Kerstetter, Bassiouni). Although budgetary and structural constraints would have to be overcome (Murphy), it was generally agreed that deployment of public information officers by the police would facilitate media access to essential and accurate information, discourage media pursuit of unreliable sources and improve police control over incidents of terrorism in a way that would best promote media cooperation (Schucker, Hoge, Bassiouni).

Additional recommendations included special accreditation for media representatives, the use of more

experienced newsmen, especially those having prior experience with terrorist episodes; and adequate debriefing after an incident to exchange views and better prepare for future incidents (Schucker). Emphasis was placed on the need to demystify terrorism and deal with it as with other violent crime (Fields, Schucker, Bassiouni). The attention of the public and the press must be focused on the fact that the actual harm caused by terrorism is relatively insignificant in comparison to the public impact resulting from its dissemination, which is the factor that gives terrorism the exaggerated dimensions it has (Fields, Bassiouni).

4. The Legal Framework

The discussions focused on the legal issues arising from media dissemination of vital tactical information likely to cause clear and present dangers to the life and well-being of the victims and law enforcement personnel at the scene of ongoing terrorist incidents. The interventions ranged from no prior restraints whatsoever under any circumstances (Gunnels, Sommer, Wellborn) to narrowly defined statutory guidelines or prior restraints for the duration of the risk pending (Langbein, Hermann, Norton, Kerstetter, Bassiouni).

That there should be no dissemination of information which could foreseeably endanger lives was suggested as a workable statutory standard of media conduct during ongoing incidents (Langbein). This was objected to as providing an

insufficient level of press protection which would not pass muster under the first amendment (Gunnels, Sommer) and which in any case would prove impractical as a basis for prior restraints in view of the delays incumbent in affording the media its due process rights to notice and a hearing (Gunnels). Doubts were expressed whether newsmen would obey a prior restraint if issued (Gunnels, Sommer). This drew the response that newsmen are not above the law and cannot selectively choose which laws they will abide by, nor should they be reluctant to see some legal regulation of those unprofessional individuals they admittedly call exceptional (Langbein). Furthermore, the first amendment does not facilitate others in the commission of crime when it is foreseeable that a course of conduct will endanger the lives of others (Langbein). Concern was expressed, however, that the unhappy precedent of government restraint upon the press may persist long after the cause for restraint has ended (Norton).

General agreement was made on the establishment of legal sanctions after the fact based on traditional tort theories (Sommer, Carey), though damage awards must be substantial to prevent this remedy from merely becoming factored into the cost of doing business (Hermann). In addition, criminal sanctions imposed on the basis of after-the-fact determinations were suggested as a useful means to deter irresponsible media conduct, stimulate professionalism, and promote the development of appropriate standards (Langbein, Hermann, Norton, Kerstetter).

5. Self-Imposed Media Guidelines

General agreement by all participants was reached on the need for voluntary self-restraint by the media in handling terrorist incidents. The promulgation of media guidelines to be promoted with greater receptivity among media organizations was urged by all, though it was stated that problems frequently arise from unprofessional individuals and not from established media personnel (Bassiouni, Wellborn, Ruddle). Further, it was noted that voluntary guidelines would be most useful and understandable if they are written in sufficient detail to give genuine guidance rather than mere exhortation (Norton, Morris). Many of the existing guidelines could be of little benefit to media reporters or editors caught in the middle of a fast-breaking story. Although detailed guidelines can never be complete, indications are that if individuals are trained to anticipate problems and direct their responses along pre-planned lines, they are more likely to handle a problem correctly, even though the precise problem was never foreseen (Norton).

More emphasis on research, on verification of information before reporting, and on coordination among the media was urged (Murphy). Coordination between media organizations and law enforcement agencies was suggested through institutional research activities and joint efforts to draft workable solutions to matters of mutual concern (Morris). The need for more institutions and continuing effort generally was emphasized (Morris).

6. Additional Study

The development of an authoritative body of scientifically assessed data derived from case studies and an adequate literature on the subject was deemed essential to intelligent action in this area (Hubbard). Especially needed is empirical data pertaining to terrorists' motivations, their expectations regarding media conduct at the scene and coverage of their actions, and their use of the media in planning and executing types of action likely to produce extraordinary coverage (Hubbard, Bassiouni). Various proposals were made for continuing research in this area, including further opinion research (Sommer) and expanded simulation training (Ochberg).

7. International Cooperation

It was noted that the present system of international extradition based on bilateral treaties and riddled by some significant exceptions has become excessively ponderous and almost an impediment to the effective control of international terrorism (Bassiouni). A more uniform system of extradition, recognition of foreign penal judgments, admission of testimony taken abroad, transfer of criminal proceedings and other forms of international cooperation in penal matters is sorely needed (Bassiouni). This was substantiated by the observation that even skyjackers motivated by psychopathological conditions are aware of and frequently deterred by international treaties and

cooperative understandings among governments (Hubbard).

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At the luncheon Perry Rivkind spoke on behalf of L.E.A.A. praising the project and the conference for the high quality of the reports presented, the caliber of the persons present, the high level of discussion and the seriousness and concern displayed by all.

Norval Morris, Professor of Law and Criminology at the University of Chicago, spoke at the luncheon meeting. He reflected on some of the reasons for the relatively low incidence of hostage-taking, hijacking, and terrorism in this country as compared with its luxuriant rates of crime generally. He then discussed a variety of problems in the relationships between the press and the police in their respective confrontations with terrorist activity and concluded by recommending a series of steps to follow-up this conference possibly leading in time, to the establishment of a permanent Institute on the Media and the Law. Such an institute would gather data, publish studies, frame standards, provide training programs and generally function as a resource to the press, police and courts on these difficult areas of overlapping professional concerns.

Steve Gremminger, at the close of the conference, expressed L.E.A.A.'s appreciation for the project, the conference, its participants, and organizers.

P A R T I

PRINCIPAL REPORTS

Terrorism, Law Enforcement and the Mass Media:
Perspectives, Problems, Proposals

-- M. CHERIF BASSIOUNI

The Media and Terrorism

-- JAMES HOGE

The Police, the News Media, and Coverage of Terrorism

-- PATRICK V. MURPHY

Constitutional and Legal Issues Relating to News Media
Coverage of Terrorism

-- LAWRENCE GUNNELS and DAVID W. MAHER

TERRORISM, LAW ENFORCEMENT, AND THE MASS MEDIA:PERSPECTIVES, PROBLEMS, PROPOSALS

By

M. CHERIF BASSIOUNI

Professor of Law, DePaul University
 Secretary-General, International Association of Penal Law
 Dean, International Institute of Advanced Studies in Criminal Sciences
 with the assistance of
 E. CHARLES BRABANDT, III
 J. D. Candidate 1980, DePaul University

"TERRORISM," LAW ENFORCEMENT AND THE MASS MEDIA:PERSPECTIVES, PROBLEMS, PROPOSALS

By

M. CHERIF BASSIOUNI*

I. "TERRORISM" IN PERSPECTIVE

A. INTRODUCTION

B. THE EMPIRICAL CONTEXT OF NON STATE-SPONSORED INDIVIDUALLY PERPETRATED TERROR-VIOLENCE

1. Incidents: Where and How Many
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* Professor of Law, DePaul University College of Law; Secretary-General International Association of Penal Law; Dean, International Institute of Higher Studies in Criminal Sciences. With the assistance of E. Charles Brabandt, III, J.D. Candidate, DePaul University College of Law, 1980; A.B., University of Michigan.

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I. "TERRORISM" IN PERSPECTIVE

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"What is terrorism to some is heroism to others."

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--M. CHERIF BASSIOUNI

A. INTRODUCTION

"Terrorism is a term used to describe a strategy of violence designed to inspire terror within a particular segment of a given society." In the public's mind it is most commonly associated with acts committed by ideologically motivated individuals in order to achieve a power outcome. It is nevertheless also committed by individuals who do not have such motives, as well as by individuals acting for and on behalf of states in time of war and peace.

The dramatic nature of "terrorism" acts committed by ideologically motivated individuals in the last decade has caused such concern throughout the world community that it has come to be regarded as "le mal du siecle." Oddly enough, however, the phenomenon in all of its complexities has seldom been studied in depth and neither jurists nor scholars of other disciplines have developed data about such persons, their motivation, or factors affecting their decisions. Above all there is no agreed upon analytical methodology for the appraisal of such conduct with a view to formulate appropriate measures for its effective prevention and control. On the contrary, much has been done to obscure the problem, as evidenced by the continued indiscriminate use of cliches embodied in such terms as "terrorism" and other convenience short-hand labels. Interestingly, the world community's attention seems to focus only on individually perpetrated and ideologically motivated acts of terror-violence, often ignoring

the other forms of common crimes perpetrated with terror-inspiring methods as well as the more brutal and damaging aspects of state-sponsored terror-violence. One need only compare the interest generated by the kidnapping and assassination of Italy's Aldo Moro with that of the events in Cambodia and Viet-Nam in the last two years⁹ to reach that conclusion. The exception that proves that rule was the Iranian seizure of the United States Embassy in Tehran in October, 1979, and the holding of 63 hostages when state-sponsored terror-violence received more coverage than any other single event in the history of media coverage of a terroristic incident.

The very word terrorism has come to acquire an ominous meaning triggering an almost pavlovian reaction of fear or at least apprehension in the general public's perception. Even seasoned law-enforcement and media personnel bristle with excessive professional reactions to the word and its multiple implications. But to a large extent the problem lies in part in the label and what that label has come to mean in the common perception of the generalization to illustrate the point. INTERPOL in 1977 held a training conference in St. Cloud for law enforcement officers of various countries and one rule among the participants was never to use the word "terrorism." At first the participants were at a loss for a substitute, then gradually they referred to instances as: murder, bombing, kidnapping, hostage-taking, robbery, extortion, mailing of letter-bombs, hijacking, etc. Each term thus referred to a specific crime, and each crime was among those which law enforcement deals with on a regular basis. Toward the end the subliminal connotation of the word "terrorism" lost much of its conditioned frightful effect. But the question remains why that very word, "terrorism," ever acquired such pervasive and deep-seated fear-inspiring meaning in the perceptions of the general public?

The answer to that question may someday be conclusively answered by researchers when they unravel the mysteries of the social-psyche, but in the meantime a tentative and partial answer is the media's impact.

If one considers the nature of the acts falling within the meaning commonly attributed to "terrorism," and the extent of their harmful social impact, in comparison to other common crimes (let alone other social ills), then one must reach the conclusion that in "terrorism" it is the psychological impact that is more significant than the very act of violence committed; and in respect of the impact it is more media-created than intrinsic to the act. That explains in part the reason for the choice of a given target and the means by which a given act is accomplished, namely to attract the media's attention and thus insure the dissemination of the act, the message of the perpetrators and with that the terror-inspiring effect. This is not to say that these very factors i.e., the target and the harm caused, do not have an intrinsic importance, nor that these acts do not feed upon the public's eagerness to know of such events, but it is the sensationalism of the event that breaks through the hum-drum of everyday monotonous happenings that is the principal attention-gathering factor for the masses.

All of the above and other factors and reasons contribute to the newsworthiness of certain acts that are intrinsically common crimes, whose harmful effect is of very limited significance in comparison to other crimes or socially harmful conduct, and whose overall statistical relevance in relationship to common crimes is simply minimal. Notwithstanding these observations, the general impression in the public's perceptions is that individual "terrorism," as opposed to state-sponsored "terrorism," is a serious and dangerous phenomenon affecting society in a manner warranting exceptional action. Insofar as such acts require

special crisis management capabilities, this is correct. Beyond that, however, the phenomenon is more impressionistic than quantitatively 0 8 harmful to the stability of the world community and those countries in which it occurs.

As to the present, however, it may therefore be useful to consider some empirical data relating to individual international terrorism as opposed to state-sponsored terrorism, and to place it in a factual and empirical context in order to appraise its significance. This will then lead to considerations relating to its terror-inspiring effects and their causes. Finally, the study will deal with considerations relating to problem solving of a practical nature in the relationship between media and law enforcement.

B. THE EMPIRICAL CONTEXT OF NON STATE-SPONSORED INDIVIDUALLY PERPETRATED TERROR-VIOLENCE

Most of the data that follows has been extracted from an official, non-classified study by the United States Central Intelligence Agency's National Foreign Assessment Center.¹⁰ The study dealt only with individual "terrorism" having an international element, where the attacks or threats, victims, objectives or ramifications transcend national boundaries, thus excluding those incidents of a wholly internal nature.¹¹ As reliable as this source may be considered, a caveat mentioned in the study bears recognition:

[T]he [data] should be treated with caution. The sharp rise in recorded terrorist incidents over the past decade may reflect not only a real increase in such activity but also more comprehensive and systematic reporting by the press. On the other hand, many incidents probably have not been reported... Moreover, the number of incidents under review is so small that inadvertent omissions or erroneous classification could have a numerically significant impact.¹²

The conclusions drawn from this raw data and presented here, however, are not from the Report but from its authors. The following statistical categories were analyzed:

1. The number of incidents of international terrorism and their geographic distribution.
2. The number of casualties and their nationalities.
3. The categories of criminal acts comprising individually perpetrated terror-violence, and the trends in those activities.

1. Incidents: Where and How Many

Between 1968 and 1978, there were less than 3100 recorded incidents¹³ of terror-violence in the categories of: hijacking, kidnapping (of diplomats, business persons and political figures), hostage-taking (of innocent civilians), political assassinations, bodily harm (to diplomats, political figures and business persons in the context of kidnapping, attempted assassination, and intended injury), bombings (of public places or private residences of political figures, business persons and diplomats), and related crimes.

The total number of reported terrorist incidents in 1978 was 353.¹⁴ This represented a rise from 279 incidents in 1977, yet remained below 1976's 413 incidents. The 1978 figure indicates a continuation of a high level of terrorist activity that has characterized the 1970's, relative to the overall level of recorded incidents during the later 1960's. The 1978 increase is attributable, at least in part, to the expansion and exportation of Middle Eastern terrorist activity to Western Europe.¹⁵ Geographically, terrorist activity in 1978 continued the trends of the last several years: the most active arenas for terrorist operations remained the industrial democracies of North America and Western Europe, and the

politically-charged atmospheres of Latin America and the Middle East. These regions were the scene of over 90 percent of all terrorist incidents in the decade spanning 1968-1978.¹⁶

While the number of incidents in North America declined to a level about one-half that of just two years ago,¹⁷ the tallies over the decade indicate a fairly consistent level of terrorist operations in the region. In the 1960's most incidents involved airplane hijackings,¹⁸ which were claimed to be for ideological reasons. The evidence indicates, however, that some hijackings were committed by psycho-pathological persons,¹⁹ while others were committed by common criminals whose sole purpose was personal gain. Among the many other incidents claimed to be for ideological reasons, few can be truly characterized as ideologically motivated, and even fewer had a specific political goal, though it is clear that the objective was frequently the dramatization of a particular claim or grievance.

An analysis of incidents in Western Europe over the same eleven year period reveals an entirely different trend. The number of 1978 incidents in Western Europe was 166.²⁰ Although still less than the record 179 incidents in 1976, it represents a marked increase over the level of incidents during the late 1960's and early 1970's. For comparison, the average number of incidents in Western Europe during 1968-1971 was about 35 per year, which roughly corresponds to the level of incidents in North America, both then and now. Increased activity in Western Europe over the years 1972-1978 has dramatically raised that level to an average of about 150 terrorist incidents per year, with never less than 100 for any given year during that span.²¹ It is noteworthy that terrorist events in Europe are

essentially related to internal political transformation. The Italian Red Brigades and their German counterpart (including the Baader-Meinhof group) are in that category. But other incidents derive from groups with a different ideological claim, such as the Basque, Irish, Corsican and Croatian separatist movements. While the former may find some common ideological grounds because of their Marxist beliefs, the latter are essentially nationalistic and have no affinity among themselves or link to the former.²²

Consistent trends are more difficult to discern from the reported data on terrorist activity scattered throughout the rest of the world. Except for regions where terrorist incidents are rare and comprise only a small part of global international terrorism,²³ there appears to be no reliable pattern. The explosiveness of the political climates of Latin America and the Middle East has fostered terrorist activity in these regions at a level disproportionate to the size of their respective populations. Yet even though the situation in these regions has remained more or less constant, there have been marked fluctuations in the level of terrorist activity from year to year.

Latin America witnessed 61 incidents of terrorism in 1978, in comparison to 46 such events in 1977, 105 in 1976, and 48 in 1975.²⁴ The Mid-East was somewhat more consistent with 61 incidents reported in 1978,²⁵ apparently on the up-swing of a four year cycle of rising and subsiding terrorist activity. But whereas Middle Eastern terrorist activity is almost exclusively related to the Palestinian-Israeli conflict,²⁶ in Latin America it is essentially of internal political origins, despite some exportation to other countries in the region for broader ideological reasons. The significance in the

distinction between the two regions is that while terrorism in the Middle East is related to, and limited to, a known conflict with a likelihood of its disappearance with the finding of a just and peaceful solution, in Latin America its multiplicity of sources precludes that prospect and may, in fact, even indicate its continued increase. The aggregate of reported Mid-Eastern incidents in eleven years is 492, or only 16 percent of all world-wide incidents.²⁷ This may be deceiving, however, as the arbitrary, fine line between incidents of local and international nature may be drawn to exclude some events of non-international consequence. It is interesting to note here that with respect to Palestinian acts of terror-violence within Israel and those related to the Palestinian-Israeli conflict, the quantum of harm produced is much less in any one year or since 1948 than that produced in the Irish conflict or in a country like Argentina in the past decade. (Yet the public's general perception is different; in fact one feels as almost automatic reaction to associate "terrorism" with "Palestinians," an effect discussed below as the "predictability effect" pp. _____).

2. Victims: Who and How Many

Between 1968 and 1978, international terrorism produced 2,102²⁸ dead and 5,078 injured persons. In contrast, it is noteworthy that in the United States alone there are every year approximately 50,000 casualties of automobile accidents and 10,000 homicides. Deaths and injuries due to terrorist incidents in 1978 amounted to about 450 fatalities and over 400 injuries world-wide.²⁹ This represented a doubling of fatalities from the previous year's level while injuries remained constant. Although it is not clear whether the high levels of the mid-1970's will recur in the near future, nevertheless the number of victims remains at levels significantly higher than those of the late 1960's and early 1970's.³⁰

Comparing the nationality of the victims³¹ with the regional distribution of incidents produces an interesting result. While the percentage of Middle Eastern and Western European victims corresponds

to the level of terrorist activity in each region, no such correlation may be found in Latin and North America. While Latin America has been the site of 26.6 percent of all terrorist incidents over eleven years,³² it has suffered only 13.9 percent of the victims.³³ Conversely, only 9.7 percent of all incidents occurred in North America during the same period,³⁴ but its nationals comprise 41.9 percent of total casualties.³⁵ This discrepancy is accounted for, at least in part, by the fact that North American nationals are frequently the victims of Latin American terrorist events.

3. Criminal Acts: What Kinds and What Trends

For statistical categorization, government analysts reduced the kinds of terrorist incidents to ten workable varieties: kidnapping; barricade-hostage; letter-bombing; incendiary bombing; explosive bombing; armed attack; hijacking; assassination; theft, break-in; and sniping.

Bombing, both incendiary and explosive, has been by far the most popular among terrorists, accounting for over 60 percent of all world-wide incidents over eleven years.³⁶ Letter-bombing, having reached a 1972 peak of 92 incidents, has dwindled to five incidents in 1978.³⁷ Except for assassination, which appears to fluctuate greatly year to year,³⁸ the remaining types of criminal acts have been utilized consistently by terrorists in their operations.

From the analysis made above and other studies, this writer's projections for the near future find the following trends in international terrorism:³⁹

1. relatively wide fluctuations in the nature and intensity of violence attendant with terrorist attacks;

2. the composition and character of the groups engaged in international terrorist activity will continue to change, tending to increase in number;
3. regional patterns of victimization and location of operations will remain unchanged;
4. representatives of affluent countries, particularly government officials and business executives, will continue to be the primary targets for assassination and kidnapping and;
5. the majority of incidents will continue to involve bombings and incendiary attacks, though present tactical technological limitations may be overcome by certain individuals or groups and give rise to the use of heat-seeking missiles and other similar "stand-off" weapons.

It may be concluded from the foregoing that the actual harm resulting from international terrorism in its present manifestations is not quantitatively significant when compared to other crimes, or even to traffic fatalities, nor is it a threat to civilization or to the survival of some states as has sometimes been proposed. However, the number, frequency and intensity of terrorist acts within the national context are far more significant than those characterized as "international." For example, Italy has suffered an estimated 4800 kidnappings in the last five years, and the number of persons killed in bombings in the Irish conflict in the last five years is estimated at more than two thousand, while those killed in the Basque

conflict in Spain exceeds 200 in the last two years, and political kidnappings and assassinations in some South and Latin America since 1970 are in the thousands in Brazil in 1979 some 976 persons were found assassinated. If one is to also include in this category the consequences of major internal conflicts such as in Lebanon where between 1977-79 an estimated 70,000 casualties have occurred, or the conflict in Cyprus which between 1976-78 is estimated to have produced 15,000 casualties, then the quantitative significance of this aspect of the phenomenon increases significantly. Furthermore, if one is to add to consider the consequences of state-sponsored terrorism as have occurred in Biafra and Bangladesh where each conflict took an estimated toll of one million lives, and the estimated three million Cambodians killed by the Pol Pot regime of Democratic Kampuchea between 1977-79, and the untold number of persons killed or expelled from Viet-Nam and Cambodia (during that same period and still continuing) the quantitative consequences become staggering. Thus internal rather than international terrorism is what produces the greatest quantitative harm, and state-sponsored rather than non state-sponsored individual or small group terror-violence produces exceedingly more harm and is more threatening to the stability of world order. Nevertheless, the public perceives individual "terrorism" in its international manifestations as the more serious threat, and some states regard internal individual "terrorism" as the more threatening factor to their existence and effective functioning. Both reactions tend to produce inordinate overreactions which bring about repressive state measures that in some cases may threaten democratic institutions where they exist and affect the way of life that exists in democratic systems. In non-democratic systems such measures may simply become a means for oppression and even state-sponsored terrorism.

The relevance of terror-violence, whether non state-sponsored individual or state-sponsored, is not in its numbers but in its ancillary

effects. Thus one cannot overlook the seriousness of the psychological and political impact of terror-violence on any society, which among other things, affects the quality of life, destabilizes social, economic and political institutions, precipitates a climate of fear and unrest, and finally is a cause in the disruption of minimum world public order. Suffice it to recall that during the Iranian seizure of the United States Embassy and 63 hostages in October 1979, the United States did not rule out the use of military force which many advocated even at the risk of triggering untold consequences to lives and other economic and strategic interests. This confirms the fact that an act of "terrorism" of limited quantitative harm can produce enormous consequences. The "numbers game" is always a dangerous one and before concluding this section the reader must bear some observations in mind.

The empirical data presented hereinabove is mostly from areas of the world where a "free press" exists, and thus explains, at least in part, why some 90% of the reported acts of international terrorism occur in the so-called "western-world." It does not mean that terror-violence does not occur elsewhere, only that we do not know about it. The data presented covers "reported" cases and thus we do not know about the unreported ones. The Data is based on an arbitrary judgment as to what is considered international and what is not, and therefore it does not indicate the extent of "national terrorism" as has been alluded to throughout this Part, which in countries like Italy, Spain, or Argentina is significant in the number of incidents and the harmful effect produced by them. It must also be noted that nowhere in available data known to this writer is there an indication of the correlation between media-coverage and its' incitement to a given incident or act, or where media-coverage has directly

contributed to the dangers inherent in a given incident. The reader should be further cautioned about the significance of the data and the manner in which it is presented. It is not the intent of this writer to convey the impression that because "terrorism" however defined causes a quantitatively lesser amount of human harm than other types of crime or social activities that there ought to be reduced concern about the phenomenon; what is sought to be conveyed is a sense of perspective about it, and to lay a foundation for the proposition that the media's created impact plays a more significant role in the public's perception than is otherwise recognized. That role, discussed below, is not exclusively due to improper or improvident media-coverage of such incidents, but to certain psychological phenomena which have been insufficiently addressed (see pp. ____). Thus a given key-word when used in the print or electronic media may at a given point in time (that is after its repeated usage) bring to mind not only what it has come to stand for, but also a projected prediction about the event it is associated to without regard to the actual facts of the case in question. Such an effect tends to increase the various effects created by psychology of terror-violence by their ready recall and projected impact. Finally, it should be borne in mind that very little data or research is available on the subject of "terrorism" and the mass-media, starting from the motivation of the perpetrators to the impact generated by the media in the public's perception of the phenomenon. To that extent therefore it is difficult to determine what legislative policy should be developed and what specific ways and means are necessary to control it, though common sense is still a good guide.

C. CLASSIFICATIONS OF PERPETRATORS
AND THE LEGAL CONTEXT OF THEIR ACTS

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Although no sharp distinctions can be truly drawn as to the motivation of terror-violence perpetrators it can be said for purposes of analysis that there are four basic classifications: (1) common criminals motivated by personal gain; (2) persons acting as a consequence of a psycho-pathological condition; (3) persons seeking to publicize a claim or redress an individual grievance; and (4) ideologically motivated individuals. To a large extent, it is this last category which more than the others seems to fascinate writers, terrify the public and mesmerize the media. These actors, however, engage in no more than common crimes, yet somehow their claim of adherence to higher political or ideological values seems to confer upon them a special status which can seldom be justified by the very principles of criminal responsibility.

It must nevertheless be noted that distinctions no matter how tenuous have to be drawn before any judgments, no matter how tentative, are made. Assuming the validity of the distinctions made above, the ideologically motivated offender is one who, having an ideological or political motive, seeks to accomplish a given result by means which are unlawful, presumably because no other effective legal means are available to accomplish his goal. This premise becomes, therefore, the cornerstone of the entire rationalization process for the resort to violence which sometimes even transcends what Machiavelli suggested as "the end justifies the means," when the unlawful means employed are deemed necessitated or compelled by the existing conditions. It follows logically that the contemporary ideologically motivated offender frequently claims to be acting in "self-defense," by reason of

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"necessity," or even under "compulsion," and in instances the perpetrator becomes the "victim" of a "system" which left him no other alternative. Such, however, may be the rationalization of those who still give the "system" some color of legitimacy. Others who simply regard the "system" as "unlawful" claim that their resort to violence is equivalent to the means that a duly constituted authoritative process would use against outlaws. By this logic the tables are simply turned around, and the conclusion of the rationalization is flawless. Thus, "what is terrorism to some is heroism to others." Indeed as values change, or their perception differs, so does the concept of what is, and what is not unlawful terror-violence. Suffice it to recall that war in defense against aggression and opposition to foreign occupation are deemed justifiable, though violence in these cases is still subject to certain rules which exclude certain targets and means of violence.

Ideologically motivated actors frequently perceive themselves as "justice-makers." Their action, even when abhorrent to them, is deemed to be necessitated or dictated by circumstances beyond their control, or conditioned by the limitations imposed upon them by virtue of their inherent weakness. This is evidenced by the gradual transformation process which such individuals undergo before resorting to such forms of violence. Within this category of ideologically-motivated actors the process is almost always the same, it is:

1. awareness and recognition of existing condition of oppression (whether real or imaginary);
2. that such conditions are neither natural nor unavoidable, but changeable by action;
3. that action designed to bring about change is not forthcoming (and that no one is doing anything or much about it);

4. that the only effective action is the resort to violence (the last resort);
5. that such action does not have to be successful, but that it is likely to set in motion a series of events contributing to or leading to change (thus dissemination of the cause is more important than success of the action);
6. that the very action will create a snow-ball effect and enlist others in the movement for change;
7. that the individual's self-sacrifice produces a greater gratification than the guilt of committing an act of violence (thus violence without guilt);
8. that the cause is larger than the need for rationalization of the act of violence (the self-gratification merges with the higher purpose);
9. the ethnocentricity of the values opposed to the desired change justifies the same arrogant ethnocentricity of values of the actor (thus polarization of values without a mechanism for reconciliation by virtue of evolutionary and participatory social change leads to violence);
10. the lack of social mechanism for the resocialization of such actors who drift out of social norms stigmatizes them, seals them out, and prevents their drifting back into society, which ultimately leads them to hardening and increased violence.

Clearly individuals who are thusly motivated have a determination and willingness to take risks and to bear personal sacrifice to an extent that transcends the more calculating common criminal who is motivated by personal gain (which he hopes to enjoy, but makes it difficult to distinguish such a person from psycho-pathological individuals who may manifest the same characteristics. This may explain why the media and the general public depict and perceive such actors more frequently as "crazies" (see pp. _____).

There are probably three observations that need to be made at this point. The first is that societies and the organs of states which are so prompt and peremptory in their denunciation of "terrorism" when committed by individuals against the constituted political order in no way react equally when it is the political order which does the same and much worse against individuals.⁴⁸ The disparity of treatment is in fact so great that it cannot escape note. The second is that certain social injustices have historically been corrected only through a process of violence. Indeed throughout the history of decolonization, violence has frequently been the triggering mechanism which brought about the political change. In some cases, violence even had to reach the proportions of war, though limited, to accomplish the political result.⁴⁹ The third, in part a consequence of the first two, is that acts of terror-violence have a tendency to become self-legitimizing. For example, at its inception anti-colonial violence was invariably condemned and repressed, gaining grudging recognition as its tempo increased, until finally the terrorists became acclaimed heroes, honored even by their former foes. Wherein then lies logic, or law? Nowhere unfortunately, and the lessons of the colonial period have not been lost on the leaders of contemporary urban guerrillas to whom the process is the same and the distinctions nonexistent. They use the

same strategies and aim at parallel results: the social, political and economic transformation of the constituted public order. Their claims frequently grounded in some basic validity, they proceed by the curious logic that they must destroy to build. The paradox, however, is that frequently their goals are in fact met, for either reforms or changes occur or repressiveness sets in and justifies their worse claims. Little wonder that the saying of Mao Tse-Tung "Truth comes out of the barrel of a gun" has been so well assimilated by urban guerrillas.

Individuals who engage in acts of terror-violence, as indicated above, invariably commit common crimes. All of the acts described above, or known in the annals of such behavior fall in the categories of: murder, assault, battery, kidnapping, robbery, theft, extortion and the like and thus constitute a crime in violation of the criminal laws of every state in the world. There is therefore no basis for any assumption that such acts are in need of special national legislation, unless research demonstrates some special needs (for example, if it were demonstrated that the targets of terror-violence are indicated and their vulnerability described by media coverage, then legislation could be passed to deal with that contingency).

In the case of terror-violence in the context of war, whether of an international or non-international character (a war of national liberation), such acts are proscribed by the laws and regulations of armed conflicts and no need exists for added international legislation. Beyond that the various categories of acts of international terrorism are all subject to international conventions prohibiting them and national legislation punishing them. Yet it is difficult to explain why the world community continues to clamor for more international conventions on the subject of "terrorism" in time of peace when existing conventions cover piracy, hijacking, kidnapping of diplomats, and

civilian hostage-taking. What is needed, however, but infrequently mentioned by the media, is effective enforcement and implementation of these conventions, particularly greater cooperation between states in the areas of extradition and judicial assistance and cooperation in penal matters. That is the weak link and, curiously enough, the one to which little attention is given by the world community and by most states in their laws and practices.

D. THE FUTURE OF NON-STATE SPONSORED
INDIVIDUALLY PERPETRATED TERROR-VIOLENCE

War, as it was known in the conventional sense of World War II, seems to have outlived its historical usefulness since the existing balance of terror produced by nuclear weaponry has rendered war an unlikely occurrence. As to limited wars, they still go on, and they are likely to continue, though changing world attitudes will reduce the frequency of their occurrence and the significance of their intensity. However, violent interaction is likely to increase in occurrence and intensity in the context of two types of internal social conflicts. The first is in the context of states which consist of multi-racial, multi-religious, multi-national, multi-tribal, or multi-linguistic groups, wherein the social, economic and political structures and processes of these states do not permit the peaceful coexistence of such distinct groups in equality and the pursuit of their aspirations in a free and open context. This has been evidenced in the conflicts of Cyprus, Lebanon, Ireland, and Basque Spain to name only a few countries, but other instances are likely to follow. The second category of increased violent interactions predicted is in the context of fairly homogeneous societies in which certain social, economic and political inequities exist, and where the structures and processes of the constituted order are unable, incapable or unwilling to evolve in a

way susceptible of accomplishing needed changes or in a way which satisfies internal dissidents. This is the case with Italy's extreme left and right, Germany's Baader-Meinhoff Group, and the Red Liberation Army, whose synonyme exists in Japan. In these cases, terror-violence is one of the means resorted to by those unwilling or unable to work within the system to achieve peaceful evolutionary transformation.

In the two contexts of social conflicts described above, the challenge is directed to the very essence of democracy or, at least, to the ability of democratic institutions to meet the needs and demands of legitimate rising expectations. The ability of such institutions to permit, if not to foster, peaceful evolutionary change when times demand it is at the very heart of the question of whether terror-violence will become the alternative. It bears witness to the admonition of the late President John F. Kennedy who addressing a meeting of the Organization of American States in Punta del Este, Uruguay, 1961 said: "Those who make peaceful evolution impossible, make violent revolution inevitable."

If the needed change is effectively met, then violence will usually be avoided. Certainly the grounds for justification or rationalization of violence will disappear, and without any broad-based popular tolerance for such acts, which is indispensable to its continued manifestations, violence will wither away. An illustrative example is provided by the historically recent experience of the United States. No greater injustice exists in its history than slavery and its sequel of racism about which little corrective action was taken until the middle of this century. By the 1960's violence became the last resort for blacks.⁶⁰ But the system responded positively instead of repressively which would have compounded the problem. The judiciary, uncharacteristically, yet with statemanship and foresight, stepped in to close the gap between the social needs and

their fulfillment.⁶¹ Its sweeping decisions on equality in fact legislated morality and implemented the law which thereafter became a national effort involving all the country's structures and processes, public and private, and the need for violence was eliminated. The challenge was met, though the task is yet incomplete; but there is no question that the peaceful, evolutionary processes of society served their intended purpose and eliminated the need and basis for any further resort to violence. Democracy and its institutions survived all the better.⁶²

In those states, however, where social values change without corresponding response by the social system and social needs remain unanswered by social institutions and structures the gap between need and fulfillment becomes fertile ground for the seeds of violence, and out of it terror-violence is likely to grow. It is therefore in that context, more than any other, that acts of terrorism, whether national or international in their scope and effect, are likely to increase dramatically in the next decade. In that climate of social transformation, and occasional upheaval, the mass media will encounter its most strained times, just as law enforcement will face its more difficult episodes. Conflict and clash between these two institutions will be a likely consequence, and only a great deal of cooperation between them can prevent exacerbation of the situation.

To some extent one may consolingly conclude that if war in its various forms dwindles in the 1980's to be replaced by the comparatively limited, yet increasing harm of terror-violence in the two contexts described above, it may even be a welcome relief from the fate which befell prior generations. But there is no telling what other toll this new form of urban violence may exact.⁶³ There is no question that its incidence will increase, and new and more dramatic acts are likely to

occur, with greater harm and impact than we have known so far. But worse, the quality of life may be so much eroded by its manifestations, consequences, and the public's reaction to it, that historians may well be justified to refer to "terrorism" as the modern scourge.

Never have contemporary democracies faced a greater and more enigmatic challenge than the increased violence whether termed terroristic or common criminality which has become so characteristic of urban industrialized societies.⁶⁴ The dangers are obvious. But while the expected reactions of organized societies are likely to tend toward repressive measures, the consequences are yet to be imagined. The processes of violence on the quality of this civilization is probably a greater threat than can yet be perceived by our complacent attitudes toward it. As the world community seeks to "thicken the veneer of civilization"⁶⁵ by promoting concern for human rights,⁶⁶ the counter-vailing forces of violence and repressiveness could develop into an escalating cycle likely to endanger the few gains attained since the end of World War II.

The vigilance of jurists as keepers of the law, without which no civilization has ever endured, must therefore be increased. And along with the legal profession, those entrusted with the powerful tool of the mass media must bear a greater share of this social responsibility.⁶⁷ For in societies which cherish freedom of the press, the media must not allow itself to become the instrument of, or the inducement for, terror-violence as is discussed below. And in those societies that repress the press and engage in terror-violence as a means of government, the media must react against it and rally opposition thereto.⁶⁸ (Which is one of the basic values protected by the First Amendment to the Constitution of the United States as discussed below). It is therefore between these two moral and social imperatives that media managers must

find the wisdom and balance in directing the impact of mass dissemination. Their role and that of law enforcement, both in the public interest, can best be served by increased cooperation and understanding of their respective obligations and difficulties.

II. PROBLEMS IN MEDIA COVERAGE OF

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NON STATE-SPONSORED TERROR-VIOLENCE INCIDENTS

It has become far more alluring for the frantic few to appear on the world stage of television than remain obscure guerrillas of the bush.

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--J. BOWYER BELL

A. INTRODUCTION

The media in all its forms is the indispensable communications link of the industrial society. As such it is as much a part of that society's needs as energy. From its economic utilitarian function to its socio-political value-oriented role, (including all other aspects of information gathering and dissemination, educational and cultural etc.) the media is the social ligament of modern societies without which such societies would cease to function as they do. With the constant developments in electronic technology, the delivery of such services increases in speed and covers not only this planet but extends well beyond it. In fact, it takes seconds for any given communication to reach the opposite side of the globe from its point of origination. With speed and reach, and easy access by millions of people to the electronic voice and image, media and their reliance thereon, the medias' psychological impact is even more pervasive and influencing. These facts have not escaped those who by certain strategies of violence seek and obtain the type of media coverage and dissemination more likely to achieve some of their socio-political objectives than through any other means. It seems more than coincidental that the escalation in global terror-violence incidents since the 1960's corresponds to innovations in technology that enable the media to disseminate information faster and to vastly augmented audiences. This may be explained by the fact that there is a symbiotic relationship between "terrorism" and the

media, with perpetrators of acts of terror-violence relying on the media to serve their terror-inspiring purposes and the media utilizing such incidents as necessary or rewarding news items to cover. ⁷⁰ The problems addressed herein are therefore more peculiar to the electronic than the print media.

Irrespective of whether the acts of terror-violence are committed by individuals against a state or state-sponsored acts of terror-violence committed against individuals, that strategy invariably involves the use and instrumentalization of the media. In that respect terrorism from "below" (non state-sponsored) and terrorism from "above" (state-sponsored) share the same means and methods to disseminate or prevent (as the case may be) the dissemination of their terror-inspiring message. As such it may be more advantageous at times for the purposes of "terrorism" from "above" to reduce media exposure of repressive violence, while "terrorism" from "below" usually seeks maximum exposure. In the case of the serious state-sponsored violations of human rights - such as the use of torture, arbitrary arrests, detentions, etc. - the state may well use all of its powers to prevent the dissemination of such news. But in other cases involving a different state goal, such as the Iranian seizure of the United States Embassy and 63 hostages in October 1979, the action was intended to focus maximum world attention on the action and on the underlying reasons which were advanced by various Iranian spokespersons as motivating the action. With respect to individual acts of terror-violence the goal will more often than not be to propagandize their claims or achieve maximum publicity for a variety of purposes.

Ideologically-motivated terror-violence from "below" is "the weapon of the weak." ⁷¹ It is employed by those too few or too powerless to achieve their objectives through conventional socio-political processes.

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Media technology, however, has made terror-violence an attractive strategy to bring about social or political transformation for two reasons: first, it has enhanced the power of those opposed to the socio-political system in the face of an increasingly vulnerable society;⁷² secondly, it has provided in the media⁷³ a device by which an individual or a small group of individuals can greatly magnify their power and influence on society within a short period of time and with relatively little effort. That the media have come to serve - willingly or unwillingly - the purposes of those who engage in terror-violence was captured by the National Task Force on Disorders and Terrorism where⁷⁴ it states:

Acts of terrorism have gained immediacy and diffusion through television, which conveys the terrorist message to millions worldwide. The modern terrorist has been quick to exploit this advantage; he has become a master of the medium in a way that shows government as a poor rival. Formerly, in countries where free speech and communication were jealously guarded rights, it would have been unthinkable for violent subversives to have seized control of the organs of mass communications. Today it is commonplace consequence of terrorist action. In many ways, the modern terrorist is the very creation of the mass media. He has been magnified, enlarged beyond his own powers by others.

The problem may in part be explained by the fact that the media's own public function condemns it to be the medium of the terrorist's message; that message is conveyed explicitly and implicitly by virtue⁷⁵ of media coverage of terrorist incidents. At times, however, the type and extent of coverage, and a variety of other media techniques by which violence in general, or a particular incident, may become more enhanced. However balanced the coverage is, some problems of pervasive influence remain, which are of course compounded when the coverage is unbalanced or suffers from other improprieties (see below pp. _____). As

stated above however the media is largely condemned to further in part the objectives of terror-violence strategy because of its role in society.

The mass media performs (in summary) five basic functions, viz.:⁷⁶

1. Informational, by providing increasing numbers of people with a flow of news concerning events occurring within a given society and in the world;
2. Judgemental, by providing the public with "standards of judgement" - which are conveyed explicitly, or implicitly by selection and treatment of subjects and material - to aid in interpreting the information given;
3. Educational, by transmitting the social and universal heritage from one generation to the next, and by defining and clarifying social goals and social values;
4. Inter actional, an open forum for free exchange of ideas and opinions, by furnishing a basis from which both individual and collective judgements can be formed;
5. Entertainment, which in addition to being amusing, may relieve tension and provide learning situations.

While the relationship between terror-violence and the media has received increasing examination,⁷⁷ specific solutions to the problems it creates have thus far been limited. The remainder of this section seeks to contribute to understanding some of the problems presented by media coverage of terror-violence incidents. The next section will seek to develop some specific proposals to limit the effects of such problems in order to enhance the prevention and control of terror-violence within the framework of constitutional principles and subject to the rule of law.

Terrorism is "[a] strategy of unlawful violence calculated to inspire terror in the general public or a significant segment thereof in order to achieve a power-outcome or to propagandize a particular claim or grievance."⁷⁸ Implicit in this definition is a psychological element: though the harm caused by ideologically motivated terror-violence is relatively limited, as indicated above, such acts produce and are calculated to produce a psychological impact exceeding the actual harm caused.

Since ordinary sporadic acts of violence would be of limited utility in producing the desired objectives of the perpetrators of terror-violence, they must enhance the attention-gathering and impact of their action by its extraordinary and sensational nature. Public attention and dissemination are therefore, essential objectives of the perpetrators of ideologically motivated terror-violence. Since the mass media have the capacity to disseminate news concerning occurrences of terror violence, they have the capability of creating the social impact desired by the perpetrators. As such, the perpetrator is dependent upon the mass media to disseminate the socio-political message and the terror-inspiring nature of the act performed. This terror-inspiring quality is not necessarily inherent to the act, but rather is derivative of its impact, which is largely determined by the coverage it receives from the media.⁷⁹

Ideologically motivated perpetrators of terror-violence usually operate on three levels, each with its own goal, which are:⁸⁰

1. the primary stage in which the "tactical objective" is an attack against a suitable target;
2. the secondary stage in which the "strategic objective" is the dissemination by the media of the ideological claim or the terror-inspiring effect of the act;

3. the final stage in which the "ultimate objective" is the achievement of the desired power-outcome.

The tactical, strategic and ultimate objectives of the ideologically motivated perpetrator are interrelated in his reliance upon the media to attain his ends. First, the strategic objective of the terrorist influences his choice of tactical targets and means to be employed. Thus the acts undertaken by the ideologically motivated perpetrator are likely to be directed against highly visible targets and conducted in the most dramatic manner so as to draw media attention and thereby maximize the media-created impact of the event.⁸¹ Since media coverage is a factor in the perpetrator's planning and execution of such acts, the media unwittingly further such objectives in that the event has been staged by the perpetrator to induce a certain type and content coverage and, by virtue of that coverage, implicitly or explicitly do produce a social impact which would not otherwise exist.⁸² Secondly, in addition to seeking maximum exposure, the media-conscious perpetrator attempts to manipulate the instruments of mass communication to publicize his particular grievance or ideology in a manner that conveys the desirability or inevitability of his ultimate objective. Such manipulation is consistently varied, but is generally chosen so as to inter alia: 1) demonstrate the vulnerability and impotence of the government; 2) attract broader public sympathy by the choice of a carefully selected target that may be publicly rationalized; 3) cause a polarization and radicalization among the public or a segment thereof; 4) goad the government into repressive action likely to discredit it; 5) present the violent acts in a manner that makes them appear heroic.⁸³

In his Minimanual of the Urban Guerrilla, Carlos Marighella expounds the terrorist strategy of media manipulation as such:⁸⁴

The war of nerves or psychological war is an aggressive technique, based on the direct or indirect use of mass means of communication and news transmitted orally in order to demoralize the government.

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In psychological warfare, the government is always at a disadvantage since it imposes censorship on the mass media and winds up in a defensive position by not allowing anything against it to filter through.

At this point it becomes desperate, is involved in greater contradictions and loss of prestige, and loses time and energy in an exhausting effort at control which is subject to being broken at any moment.

Nowhere is it more apparent than in that statement that the media is as much a victim of strategy of terror-violence as is society in general and its Institutions in particular. The best example perhaps is the Iranian seizure of the United States Embassy in Tehran in October, 1979 and the holding of 63 hostages at that time which demonstrates how the media was aimed at as the "strategic goal" of the perpetrators. Their use and manipulation thereof proved the point beyond the shadow of the doubt.

C. THE "CINEMATOGENIC" LINK

BETWEEN TERROR-VIOLENCE AND THE MASS-MEDIA

Terrorist organizations, whether state-sponsored or anti-state groups, rely heavily on the stereotypes of the media. So close is the interaction between the media and terror-violence that groups engaged in search conduct conform to certain media stereotypes in their internal organizational structure, chain of command, and even in the attitudes of its participants. Other indications appear in the choice of targets and in the conduct of certain actions, including its manner time and place, which so frequently correspond to media-created perceptions of what is expected in such spectacles. The cinematogenic nature of contemporary terroristic behavior attests to the symbiotic relationship

that exists between the media and terrorism. Though no empirical data exists to substantiate these observations, there are sufficient facts to support the general proposition.

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The media's portrayal of individuals and events is based on a value judgement as well as on certain expectations of patterns of behavior. These factors are, from a policy perspective, all too often ignored and not sufficiently appraised in terms of their impact on perpetrators and would-be perpetrators of terror-violence. It is noteworthy therefore to point out certain outcomes of this "cinematogenic effect."

1. The perpetrator's patterns of behavior seek to meet media expectations in that they conform to certain patterns which have stereotyped in factual or fictional portrayal.
2. Response to stereotyped portrayals provides a framework and rapport between perpetrators and media personnel who cover the event, and those who decide on the type of coverage to give it.
3. Conformity to stereotype provides a sound basis for predictability of behavior and responses on the part of the perpetrators, the media and the general public.

In addition to the above, fictional media stereotypes provide models of behavior which are also associated in the mind of the public with certain values. Thus conformity thereto, and sometimes by an easy distortion thereof, the perpetrators may assume roles likely to attract sympathy. In any event conformity to stereotype cinematogenic roles tends to make the behavior more tolerable (see immunization effect).

D. THE MEDIA-ENHANCED IMPACT OF TERROR-VIOLENCE

In the context of democratic societies which guarantee freedom of the press four categories of problems associated with media coverage of terror-violence incidents are readily identifiable. First the reporting of acts of terror-violence may encourage, by contagion imitation or otherwise, other perpetrators to engage in such conduct. Secondly, excesses or deficiencies in media coverage enhances the climate of intimidation sought to be generated by the terrorist; not only does this unnecessarily aid the perpetrator's objectives, but it engenders pressures for counter-productive governmental repression and causes undesirable social consequences. Thirdly, media coverage may immunize, or dull the sense of approbium of the general public. As is discussed below, each of these factors also has a potential counter-effect. Lastly, media reporting practices and policies may endanger hostage's lives and interfere with effective law enforcement response; these problems generally arise during contemporaneous, on-the-scene coverage of ongoing incidents, and will be treated in detail later.

In a different perspective, however, it should be noted that media coverage and media portrayal operate as a safety-value or release factor. That applies to instances where media coverage is a way of securing the release of hostages, which has been the case, as well as when media coverage co-opts the need for terror-violence by the dissemination of certain claims which would otherwise become exteriorized through violent action.

1. The Psychologically Projected Prediction

This is the psychological reaction by which prior information is brought back by new information and then a projected prediction of harmful effect results. The effect of psychological prediction is based on the frequency of information on such incidents which makes the fact more readily available to human consciousness (irrespective of any specifics like what the actual harm was) and through its repeated recall increasingly more available to subsequent recall and more significant. Thus a given key-word when used in the print or electronic media may at a given point in time (that is after its repeated usage) bring to mind not only what it has come to stand for, but also a projected prediction about the event it is associated to without regard to the actual facts of the case in question. Such an effect tends to increase the various effects created by psychology of terror-violence by their ready recall and projected impact.

2. The Contagion Hypothesis

The theory that media attention given terror-violence acts encourages further incidents can be labeled the contagion hypothesis. Although this hypothesis would not appear entirely susceptible to empirical verification by research, at least with respect to ideologically motivated individuals, concern over this contagion effect has been repeatedly expressed,⁸⁵ and it retains a certain intuitive reasonableness. Public success by a particular "terrorist" group, for instance, may encourage that group to repeat attacks in order to maintain public attention on its goals or ideology. In addition, publicity generated by one "terrorist" group, (such as that accorded the Italian Red Brigades by virtue of its kidnapping of Aldo Moro) may goad less successful groups

into action or spur increased or more daring action. The 1979 CIA
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report on terrorism predicts that:

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West German terrorists, having suffered reverses during the past year, are likely to feel greater pressure to remind their domestic and international sympathizers that they remain revolutionary leaders by engaging in operations at home or overseas.

The contagion hypothesis, however, may also operate with respect to perpetrators motivated by non-ideological reasons. Since the mass media have the ability to "confer status upon an individual or an
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event merely by presenting them," the spotlight of media attention may be an irresistible lure to violence for certain psychopathic individuals. The common criminal, motivated by personal gain, may imitate successful techniques made known to him by media coverage of prior terrorist incidents. Although many examples have been
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recorded of criminal education through media presentation of crime, one incident stands out:

Of Rod Serling's programs, "Doomsday Flight" probably is the most memorable. A caller hides an altitude bomb aboard an airliner and demands a ransom. If the company refuses to pay, he will not divulge the location of the bomb, and the plane will be destroyed as it descends for a landing. In the end, the pilot saves the plane by selecting an airport located at an elevation above the critical altitude. "Doomsday Flight" gained notoriety because of the immediate reaction it created. Before the hour-long program was over, one airline received an identical bomb threat; four similar threats came during the next twenty-four hours and another eight during the following week. Exported to other countries, the show made one Australian criminal \$500,000.00 richer thanks to Quantas Airlines' desire to protect 116 passengers en route to Hong Kong, while BOAC officials faced with a similar threat demonstrated familiarity with the script by arranging a landing at Denver instead of London.⁸⁹

Although "Doomsday Flight" was fictional, instruction in criminal techniques may also result from regular news reporting. For example, after media

reporting of a skyjacking in which the perpetrator successfully
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escaped by parachute, subsequent skyjackers routinely included a parachute as an item in their demands. The same contagion impact through education and emulation can also affect psycho-pathological individuals as Dr. David Hubbard reported in his well-known study, The Skyjacker: His Flights of Fantasy (1971).

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The contagion hypothesis has been and continues to be the object of researcher's attention, but no conclusive data has so far been reached (See Bibliography, pp. 287). There is however a good case to be made for the reasonable and qualified hunch based on some research, though be it inconclusive, about a rule of imitation which the theory of contagion implies, particularly when the imitation carries the promise of reward.

It is noteworthy that the Sommer study (pp. 220) indicates that 93% of the Chiefs of Police surveyed "believed live television coverage of terrorists acts encouraged terrorism." No research presently corroborates that conclusion, but the fact remains that if such belief exists on the part of law enforcement, could it also exist on the part of the perpetrators of acts of terror-violence? Clearly more research is needed in this respect even though it would prove quite difficult. There is probably no other area within this study that deserves more attention than the contagion theory briefly set forth herein and to which some psychological studies have been devoted (See Bibliography pp. 287). In that respect while one cannot ignore the conclusion of the negative influence of contagion, a contrary effect also occurs that is the "cathartic" effect or

influence that media-coverage has on some potential perpetrators. 040
In other words media-coverage either of a given event, or of a given social grievance can well dampen the motivation of certain individuals to engage in terror-violence in order to attract attention to that very social grievance. The counter-effect of contagion is deterrence which is produced by the portrayal of failure of "terroristic" acts due to the effectiveness of law enforcement. Thus one influence can well counter-act the other. There is however no quantitative analysis no matter how much research is done that can ultimately establish an empirical foundation for the predictability of the outcome of competing or contravailing motivating influences on individual behavior. Some educated guesses can however be made, and a tentative conclusion is that media coverage does have some contagious consequences.

3. The Climate of Intimidation

Perhaps the most pervasive problem associated with the media reporting of terror-violence is the climate of intimidation it engenders, a general fear of victimization that despoils the quality of life and may destabilize social institutions. While intimidation is usually one of the strategic objectives of terror-violence, isolated incidents could scarcely produce such an ubiquitous psychological impact. It is the repetitive dissemination of the terror-inspiring nature act and the manner in which it is done that accomplishes that.

In its social role, the media acts in part as mediator between man and his environment. As society increases in complexity and events affecting one's welfare occur increasingly outside one's immediate experience, the objective world retreats ever farther "out of reach, out of sight, out of mind."⁹¹ Man's reliance on the mass media correspondingly increases as he attempts to construct for himself a more or less trustworthy picture of his surroundings and what affects him. By providing messages from the outside world, the media influences

the way people view the world and, consequently, their behavior in response to it. That type of influence of the media is classically illustrated by the public panic caused by the 1938 radio broadcast of Orson Wells' "Invasion from Mars."⁹² As Professor Harold Mendelsohn has written,⁹³ "the mere fact that the so-called invasion was presented in the form of a radio broadcast gave it an authenticity per se which was sufficient for many listeners to accept uncritically and to base behavioral action upon." Similarly, a degree of public anxiety is a necessary by-product of media reporting of news events during times of stress.⁹⁴ Such media-created anxiety, however, is "functional rather than dysfunctional" only when it:

Readies individuals to cope with realistic dangers in realistic ways.

It is where the mass media offer false standards of judgment by which readers, listeners and viewers may misinterpret the news that the dangers lie. Whether through ignorance, guile, vested interest of irresponsibility - where some sectors of the mass media create dysfunctional anxiety, we have a serious problem on our hands.⁹⁵

The outcome of this effect is to enhance the perceived power of the "terrorist" in his own eyes, in that of the peer group, in analogous groups, in other individual susceptible of emulation, and in the public's perception. When such enhanced power is perceived, and is combined with the apparently high level of social vulnerability (vulnerability of targets plus weakness or ineffectiveness of law enforcement), the outcome in the social-psyche is intimidation. With recurrence of incidents producing the psychological projection prediction syndrome discussed above, the impact increases. Finally as the process unfolds a certain level of tolerance may well set in, the immunization effect discussed below. Beyond a certain level of tolerance however social

reaction may well be the exact opposite of immunization, and in fact **641**
a resolve to combat that type of conduct may well emerge which is one
of the conditions needed to combat terror-violence. The only caveat
to the above conclusion is that it may cause overreaction which would
be counterproductive.

4. The Immunization Effect

This effect is manifested in three ways. The first derives
from continuous media-coverage of violence in general and terror-
violence in particular. Its effect is to heighten the public's
level of tolerance and acceptance of violence and terror-violence
as a fact of life. When in addition such coverage is glorified
or associated with certain "rewards" (i.e. status symbol, social
prominence, sex-appeal, financial success, political importance,
etc.), the rejection of violence is eroded, and instead a gradual
tolerance for it pervasively creeps into the social-psychology.
Thus as moral opposition is reduced, immunization to the phenomenon
increases. The increased acceptance of violence as a tolerable
social fact increases its contagion effect. The second immunization
effect (as stated above) is the portrayal of terrorists as
"crazies," or as individuals and organizations that are beyond the
social means of control. Thus the avowed aberrant nature of the
perpetrators and their modus operandi is perceived as so much outside
the accepted frame of reference that it explains the occurrence of
such acts and society's inability to prevent it or control it. The
result is an immunization effect, as society explains away the
phenomenon by considering it alien to it. The third effect derives
from the conceptualization of the act of terror-violence and its
harmful effect. Perhaps a more descriptive way to explain it is by
reference to the Iranian hostage-taking of 1979-1980, where the 63
then 50, persons seized, were almost never

described as individuals. There was an almost complete depersonali-
zation of the incident. No longer was it a matter of a person with a **042**
face, a name, a family, a life, but the concept of "hostages" which
acquired the connotations of a pawn on the chessboard of world
politics. Thus the public's outraged reaction was more directed
at the political significance of the act, than its human harmful
effect. In time a slow immunization effect crept pervasively into
the public's perception of the problem as to the human dimensions
of the tragedy, while focussing more attentively on its conceptual and
political dimensions.

As society becomes more "immune" in the ways described above
two consequences become likely:

1. The level of violence increases to overcome the
dulled perceptions of the public in order to elicit
the terror-inspiring effect desired, and
2. More persons may resort to violence in general and
terror-violence in particular as a result of
lessening of the social approbium attached to it,
or the increased level of social acceptance or
tolerance of such conduct and its perpetrators.

In any event it does increase the "contagion" and "intimidation"
effects discussed above.

Public immunization is not however a foregone conclusion of media
coverage of terror-violence. In fact, the exact opposite is quite
likely of the media's portrayal can very well increase public opposition
and reaction to such behavior, and galvanize social values. Thus
"terrorist" must strike a careful balance between enough "balanced"
media coverage to produce immunization, and not media "outraged" coverage
which could trigger opposing social reaction. It is in this respect

that the media and the public need to clarify the values embodied in the media's social roles and functions.

5. The Combined Effect of "Contagion," "Intimidation," and "Immunization" and Media Coverage Impact 043

To the extent the media abuses - or allows the terrorists to abuse - its social mediating role, the "terrorist's" powers are usually represented by the media and perceived by the public disproportionately to his actual capacity to harm. Thus the climate of "intimidation" is enhanced while at the same time stimulating emulation through "contagion." Although the media are becoming more accurate, responsible, and self-critical than in their often sensationalist past,⁹⁶ still there are several exigencies and limitations inherent to the media, their purpose, and type of organization which are bound to create the effects of contagion, intimidation, and immunization. Daily, the media prepare the public for its role as the "victim" of terrorist attacks; the media's portrayal of fictionalized violence provides the back-drop for the public's reaction to terror-violence. Commercial and competitive factors influence the type and extent of coverage of terror-violence incident will receive and color the public's perception of the "terrorist's" message. Finally, there are factors peculiar to the dominance of broadcasting - particularly television - over the print media that must be examined.

The portrayal of violence in literature and the mass media has been a cause for concern for some for over 100 years.⁹⁷ The popularity and pervasiveness of television and the movie industry in shaping the attitudes of its audience has made that medium the subject of recent scrutiny by individuals, citizens groups,⁹⁸ and the Congress.⁹⁹ Some researchers, notably Dr. George Gerbner, Dean of the Annenberg School of Communications, have concluded that heavy viewers of televised violence are far more likely to distrust others, and view the world with alienation and

fear.¹⁰⁰ Others, including the Surgeon General of the United States,⁰⁴¹ have reported that viewing of televised violence by children encourages antisocial tendencies and aggressive behavior.¹⁰¹ Although the causal connection between the level of violence on television and its psychological and behavioral impact upon viewers has not been established to the satisfaction of all,¹⁰² the Subcommittee on Interstate and Foreign Commerce nevertheless concluded that "an excessive amount of televised violence is a source of sufficient societal concern to warrant congressional attention and scrutiny."¹⁰³ In a vigorous dissent, it should be noted, six members of the fifteen member Subcommittee chastised the majority for its hesitancy; they concluded that the available evidence unmistakably established the adverse effects of viewing televised violence and that affirmative steps to reduce its presentation should be taken.¹⁰⁴

Despite the important stake society has in the performance of media functions, the media are also private business enterprises in pursuit of profits. Although bigness and profitability have had some positive effect upon the quantity and quality of news reporting and upon the media's independence,¹⁰⁵ commercial factors may also lead to abuses. Since profits are obtained from selling time or space to advertisers at rates determined by circulation or audience size, the media can be said to be engaged in the business of selling attention. "Terrorist" events are often dramatic and are great attention getters; that such events are newsworthy cannot be doubted. But when news reporting becomes a commercial product whose relative media emphasis is determined by its attention-getting potential, excessive coverage may be afforded violent, dramatic events disproportionate to their actual significance. The line between informing and entertaining in news reporting has always been a thin one, but the consequence of serving up acts of terror-violence as mass entertainment¹⁰⁶ is to augment the "terrorist's" audience and, consequently, the impact of his message.

The competitiveness of news organizations, their fear of being "scooped" by the opposition and their quest for even larger audiences and prestige, encourages escalation in reporting techniques. Reporters do not simply report the news; they are often subjective participants - actors, script-writers, and idea men.¹⁰⁷ They are looking for the best ways to cover the story, to scoop the opposition, to establish and promote personal reputation, and to advance careers. Terrorists are aware of this and manipulate the media. While direct media contact and interviews with a terrorist make for a more exciting story, such reporting techniques may afford the perpetrator an unedited platform and excessive publicity. Hand-held micro-wave minicams enable terrorist incidents to be broadcast live into the viewer's home, where television's visual impact, immediacy and realism may foster the climate of intimidation. The subjective portrayal of terrorist personalities as glamorous or heroic figures, an image terrorists seek to inculcate, elevates them to positions of prominence disproportionate to their actual power. When commercial and competitive factors displace judgment in the coverage of terrorist incidents, the media may lose control over the situation, and itself become a hostage to the terrorist.

An instance occurred in Indianapolis in February, 1977. Anthony Kiritsis kidnapped mortgage company executive Richard Hall and held him captive in an apartment believed booby-trapped with explosives. The 62-hour siege was covered by an army of national and regional reporters, and live television transmitters were positioned to be ready for any break in the story.¹⁰⁸ Kiritsis demanded live coverage of a statement to the press as a condition of his surrender. The media readily acceded out of a desire to save Hall's life and to

better cover the dramatic incident. But instead of surrendering, Kiritsis emerged with a shotgun wired to his captive's neck and proceeded to deliver a diatribe riddled with obscenities.¹⁰⁹ One station interrupted the live coverage after about ten minutes, fearful that thousands of viewers might, at any moment, witness a live execution with color cameras at close range.¹¹⁰ "We had a man here who was holding live television hostage as well as he was holding Mr. Hall hostage," an executive of the television station explained.¹¹¹ "He was controlling us, manipulating us, and we didn't want to be a party to that. We elected to reassert control of the airwaves." Two local stations, however, continued to broadcast the ordeal, with one news director later conceding, "We should have controlled it more than we did. The event controlled us."¹¹² Unfortunately, the intense climate of media competition and the instantaneous decisions that often accompany live broadcasts are not conducive to calm, reasoned decision making. The potential for disastrous consequences is immense.

Balanced routine coverage of trends in violence, law enforcement policies and capabilities, outcomes of cases and their effects on victims is essential to adequately and accurately warn and inform the public of the danger posed by terrorism. Follow-up coverage is essential to aid the public in understanding what has happened, to combat irrational fears aroused by the event, and to prepare the public to react to future incidents.¹¹³ Coverage of the law enforcement and judicial response may also help deter future perpetrators by publicizing the consequences of participating in such acts.¹¹⁴ The capacity of some media, particularly television, however, may be insufficient to carry any but the most current stories. An

imbalanced presentation results, with terrorist incidents thrust upon the public's consciousness without adequate standards of judgment with which to assess the phenomenon.

The special relationship of television to terrorism was the subject of a recent British conference under the auspices of the Institute for the Study of Conflict. In its special report,¹¹⁵ the unique role of television was noted:¹¹⁶

Television in the mass media form has acquired over the last 20 odd years an infinitely more powerful and penetrating means of communication than anything hitherto known to us. If a person reads a newspaper or a book, only the sense of sight is being employed and his reactions are entirely self-induced. Radio employs the sense of hearing and reactions to what is said are already to a very large extent affected by the manner of presentation. With television not only are the senses of sight and hearing fully occupied, but every emotion is closely caught and involved in what is happening on the live screen in the opposite corner of 15 million living rooms. This is a captive audience not necessarily in possession of the independent criteria by which to form judgments.

Terrorists have a special affinity for gaining access to television, "for they appreciate its potency, its immediacy and its vast potential audience."¹¹⁷ But television, it was noted, is restricted in its ability to present an unbiased picture. Since terrorist groups operate clandestinely, their atrocities are often not presented;¹¹⁸ they can determine when, and even to some degree how, they are covered and thus manipulate the image transmitted. But "[t]here is virtually no limitation upon the television reporting of abuses, real or alleged, in pluralist and representative societies."¹¹⁹ Thus "television seems inevitably one-sided, and its bias inevitably on the side of the revolutionaries and against established authority."¹²⁰

One participant voiced the concern that "you see a vast amount of incidents and episodes covering terrorism and conflict but you do not get the issues, what it is about, what the consequences are going to be."¹²¹ Others argued that in a state of undeclared war waged by terrorists against an open and democratic society, the powerful weapon of the media should be employed in defense of society and denied the terrorist.¹²² Because of its power and impact, because of the involuntary nature of viewing which does not provide the same degree of choice as the print media,¹²³ and because of its operation by parliamentary authority, the study concludes that television "has a special duty to uphold, or at any rate not to undermine, constitutional authority and the forces of law and order."¹²⁴

It must be noted in appraising the three effects of contagion, intimidation, and immunization and their interaction, that each one of these effects has also a potential counter-effect. The counter-effect of contagion is deterrence, and it is manifested by the portrayal of effective, prompt and legally proper law enforcement action. The same is true of intimidation: whenever that type of effective law enforcement is portrayed, it is "terrorists" and potential actors of terror-violence who are intimidated. Finally, immunization can turn into the exact opposite as the media can spur the public into reactions which could even become frenzied. Suffice it to recall that totalitarian regimes who engage in violent repression and disseminate news of such repression effectively deter opposition.

The distinction between the social effects of terror-violence and those effects generated by the intervening factor of media coverage and dissemination can hardly be assessed. The presumed effects (discussed above) that the media can generate is subject to so many variables that one can only for purposes of highlighting the range of these variables wonder about how to assess high and low frequencies of impact. In

this area as in others covered by this study more research is needed, though common sense and ordinary human experience amply warrants the justifiable concern created by the perceived climates of contagion, intimidation, and immunization (discussed above) to which the media certainly in some ways contributes to in the public's perception. 049

E. PROBLEMS OF CONTEMPORANEOUS COVERAGE AND RELATIONS BETWEEN THE MEDIA AND LAW ENFORCEMENT

While the preceding sections dealt with certain general aspects of motivation and the impact of media-coverage on perpetrators and the public's perception of terror-violence, this section deals with a narrower and more specific problem. The absence of conclusive research on the subjects touched upon above leads this writer to this problem-area because it is susceptible of tangible assessment. But the reason for focusing on this problem-area is because it has been perceived as one in which concrete solutions can be offered.

Coverage of terrorist attacks in progress provides the opportunity most conducive to fulfilling the perpetrator's objectives of obtaining publicity for their cause and riveting the attention of a given society on their exercise of power in open defiance of the government and the law. It is also the occasion of greatest conflict between the interests of law enforcement authorities and those of the media. The media perform several important functions, among which is that of a rumor-control, by disseminating accurate information to the public of dangers present at the site. While the importance of the media in this capacity cannot be ignored, experience has shown that contemporaneous coverage of a "terrorist attack consistently gives rise to three general areas of conflict between police and media. It is in this context, therefore, that the public interest represented by the media must be balanced with the public interest represented by effective law enforcement response.

The first area of conflict involves media dissemination of information tactically useful to the terrorist while an attack is underway. When a "terrorist" barricades himself and his hostages within a building, he is isolated within the confines of his area of control. To remedy this situation, "terrorists" have equipped themselves with radio and television receivers which allow them to listen to news broadcasts. Thus the media may unwittingly serve as the intelligence arm of the terrorist when it broadcasts the latest operational activities of the police, the presence of hidden persons who could become hostages, escaping hostages, the bargaining strategy of police negotiators, or any deceptions or tricks planned by law enforcement officials.¹²⁵ Not only is such information critically helpful to the terrorist in determining possible escape routes or repelling impending police assaults, but it unnecessarily jeopardizes the lives of hostages and law enforcement personnel. During the October, 1977, hijacking of a Lufthansa jet, the media directly contributed to the death of a hostage when it broadcast that the pilot was passing intelligence information to the police through his normal radio transmissions; the terrorists had access to the radio news reports and executed the captain.¹²⁶ But the problem is not one of broadcasting alone: since incidents may last for many hours, even days, tactical information divulged by newspaper accounts can also be communicated to the perpetrator and unnecessarily assist him.

In March, 1977, Hamaas Abdul Khaalis led the takeover of three Washington, D.C. buildings by the small Hanafi Muslim sect. Khaalis was a zealot bent on avenging the 1973 murder of his five children by the Black Muslims. A local television reporter outside the

B'nai B'rith building filmed a basket being lifted by rope to the fifth floor, where eleven people had evaded capture and had barricaded themselves in a room. Although apparently initially ignorant of their presence, the gunmen probably were informed of the television reporter's "scoop" by their fellow Hanafis who monitored the news reports outside.¹²⁷ Fortunately, the gunmen did not break through the door, and the potential hostages were later freed by police after a tense, nine-hour ordeal.¹²⁸ Obviously, this information should never have been publicized; nor should information be released about police tactics, their negotiating strategies, or their apparent sincerity in dealing with the terrorists. The release of such information only endangers more lives while failing to contribute to the public interest.

A second area of conflict is media interference with effective law enforcement response by exacerbating the situation and impeding the negotiating process. The "terrorist" has indicated by the drastic nature of his act that he is willing to risk many lives, including his own, to accomplish his objective. Law enforcement authorities, on the other hand, operate under the practical handicap of minimizing the harm to persons and property threatened. Consequently, police often attempt to establish a psychological environment that will induce a perpetrator to surrender. Direct media contact with a perpetrator while an attack is underway has many troublesome consequences, including:¹²⁹

1. tying up scarce telephone lines;
2. goading, either unintentionally or intentionally to

- obtain a scoop, the terrorist into action to prove himself under the spotlight of attention;
3. inciting the terrorist by the use of certain inflammatory questions or phrases;¹³⁰
4. resulting in a media representative becoming a party to the negotiations, thereby isolating trained professional negotiators from the bargaining process; and
5. altering the psychological environment in which the terrorists operate, by unnecessarily upsetting them, interrupting the pattern the police have attempted to inculcate, or giving them the comfort of company.

Direct contact by media representatives untrained in the delicate problems involved in hostage situations may unnecessarily jeopardize lives. A media representative has even advised gunment not to give up their hostages so as to retain their bargaining position with the police.¹³¹ Additionally, not only does media publicity hinder negotiations by subjecting the police to public pressure, but media publicity is frequently given even though it could itself serve as a valuable negotiating item.

The Hanafi incident provides numerous examples of the adverse effects of direct communication by media personnel. Telephone calls by the media to the gunmen were so numerous that police negotiators had difficulty in contacting the perpetrators. A local radio broadcaster asked Khaalis during a live telephone interview

whether he had set a deadline, although the police and other experts had thought the absence of a deadline was encouraging. ¹³² Another media contact enraged Khaalis by identifying his sect with the Black Muslims, though in fact the Hanafis had broken off from the Muslims and Khaalis held them responsible for the death of his children. Khaalis threatened to execute one hostage in retaliation for the reporter's remark and was mollified only after the newsman, following ¹³³ police advice, apologized for his unfortunate choice of words. Although direct media contact makes for a more exciting story, such incidents indicate that the public interest would best be served by allowing only trained professionals in law enforcement and psychology to handle the situation.

The third area of conflict arising between media and law enforcement interests during contemporaneous coverage is one of "crowd control." Having a number of reporters, with their obtrusive equipment and lighting, at the site may physically interfere with the free movement of law enforcement personnel and attract crowds that burden police with crowd control problems. The questioning of law enforcement officials may distract decision makers at a critical moment. The presence of media personnel and their conduct at the scene may have an important bearing on its outcome. For example, the obvious presence of many media representatives, especially television with its lights and cameras, may encourage the terrorist to remain barricaded to increase coverage, or he may demand a press conference to gain direct personal or political publicity. A news event may be transformed into a spectacle attracting even greater numbers of people, compounding the risks and burdens to the police.

Police chiefs view the problems posed by contemporaneous coverage ¹³⁴ to be serious ones. According to the 1977 Sommer survey, ¹³⁴ 93 percent of the police chiefs responding believed live television coverage of terrorist acts encourages terrorism; 46 percent considered live television coverage to be "a great threat" to hostage safety, while 33 percent deemed it "a moderate threat." None believed that terrorist acts should be televised live. Thus law enforcement authorities, to avoid these and other problems surveyed above, may seek to exclude media personnel from the scene, unless a reconciliation of interests is achieved. ⁰⁵⁴

In the final analysis, however, this problem-area can easily be solved by law-enforcement's curtailing media access to the scene of on-going terror-violence events. The dangers in that solution is that the media's absence from the scene means that its facts will be "hearsay," and law-enforcement its only source. The public would hence lose its ability to check on law-enforcement's conduct.

There are also situations of contemporary coverage that do not involve law-enforcement. Such was the case in the Iranian hostage-seizure of 1979-1980. There in fact the United States and world media covering the incident had no law-enforcement to deal with, only the perpetrators of the seizure and other sources of information.

A review of that incident indicates that the very incident seemed to have been done in order to obtain media-coverage. This was evident from the "staging of the news," from demonstrations to statements by hostage-takers and hostages which seemed clearly geared to maximize the media effect. ^{134a} The ultimate goal in the hostage-taking was clearly a power-outcome (or multiple power outcomes of an internal and external nature). Thus, the hostages were depersonalized, and the event shrouded

in terms of political power-plays. The saturation coverage rewarded the perpetrators and had the "contagious" effect of dragging it on (though admittedly, this is a speculative conclusion on the part of this writer), while at the same time triggering other violent reactions elsewhere (during that period of time United States embassies were attacked in Dacca, Bangladesh; Benghazi, Lybia; Islamabad, Pakistan. Though it was said that it was in reaction to another event, namely the November, 1979 seizure of the Grand Mosq of Mecca by Muslim extremists, it was Khomeini's charge that the United States was behind the incident that caused it). The "intimidation" effect was also obvious as the United States feared to engage in action likely to affect the life and well-being of the hostages and gradually the public's mood with respect to the Shah's trial shifted (the apparent object of the perpetrator's action), a sign of the partial success of the action gained only through media coverage.

But in this incident a new problem developed for the media: should it use material prepared by the perpetrators of an act of terror-violence without any control over its content? In other words how much will the media allow itself to be instrumentalized in order to satisfy the needs and competitiveness of its organization? This became known as "the Galegos interview" after the name of the interviewed hostage, U.S. Marine Corp. William Galegos. Under a portrait of Khomeini, Galegos spoke of the absence of ill-treatment of the hostages and along side him was one the perpetrators called "Mary" who delivered an unedited six minute propaganda speech. The entire broadcast lasted 30 minutes, fully aired on prime time by N.B.C. with excerpts on the evening news (of note is the fact that the filming was done by an Iranian crew chosen by the perpetrators).

N.B.C. came under much attack by the media for accepting to relinquish its responsibilities while giving the privileges of unbridled mass dissemination to the perpetrators of terror-violence (see Time Magazine, December 24, 1979, p. 42). Encouraged by this event, the hostage-takers offered N.B.C. another film on December 26, 1979 of the clergymen visiting the hostages on the occasion of Christmas, but that film was turned down (see International Herald Tribune, Thursday, December 27, 1979, p. 2). The contagion effect did therefore catch, and the lesson is not likely to be lost on potential terrorists in the future, that is to seek direct and unedited access to the public via the electronic media.

One cannot help conclude these observations with reference to the other significant incident of terror-violence which took place during that same period, the seizure of the Grand Mosq of Mecca with hundreds of hostages held in it, in November, 1979. This was clearly a super-spectacular, which for the Islamic world, consisting of some 750 million people, is of much greater significance than the seizure of the U.S. Embassy and 63 U.S. diplomats. But the Saudi-Arabian government's first action was to seal-off the area to the media. The result was limited coverage of the incident, with few specific details as it was unfolding, but no access to the media by the perpetrators and no occasion to disseminate their terror-inspiring message. Though that incident lasted over a week of prolonged and intense fighting (no one is quite certain when it all ended) 156 persons were killed, and much damage was done to that holy shrine. Contemporaneous coverage was reduced significantly and the perceived result was that it created no effect of intimidation or contagion, and that it was well under law-enforcement control and without further danger to society. One cannot help but speculate as

to the outcome of the Iranian hostage-taking had the media given only limited factual coverage to the incident without further ado?

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Surely in this incident there were no problems of lack of cooperation with law-enforcement, only a big question as to the media's exercise of its responsibility.

Contemporaneous media coverage provides, however, two specific and positive advantages to law enforcement. First, media coverage is frequently the most effective bargaining tool that a negotiator has in dealing with "terrorists." The importance of that role played by the media should not be underestimated. Second, media coverage can provide law enforcement with some tactical and intelligence information which it otherwise would not have. This has been the case in the 1979-1980 Iranian hostage-taking where practically the only source of information that the United States could obtain was from media coverage, which may well have been one of the reasons for expelling United States newsmen in January, 1980. It certainly was the reason for such expulsion of United States newsmen from Afghanistan in January, 1980. Thus the problems created by media coverage may well be off-set by the directly related benefits it provides, not to speak of other benefits to society which derive from the media's informational and watch-dog roles.

F. CONCLUSION

The temptation for any writer on this subject would be to draw a list of the ills and woes of the mass-media, the ways and means in which it accordingly abuses its privileged role in society and is, in turn, abused and instrumentalized by terrorists and ill-perceived by law-enforcement. But such a simplistic approach would tend to highlight differences and polarize position which is not this writer's intention. What is sought in this study is to focus on the problems discussed above in order to increase the awareness and sensitivity of media and

law-enforcement to the issues they face, with a view to develop cooperative and voluntary mutual action.

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The media's all pervasive influence is all too well established to require argumentation. Its occasional abuses whether intended or induced by perpetrators of acts of terror-violence are equally well established. The media's services to society are equally well recognized and its privileged role in society derives from certain democratic values which imply a high level of responsibility. That responsibility, in order to preserve these values, is best left to be administered by the media itself.

Law enforcement's indispensable role and services to society is equally well acknowledged. Yet it is ill-equipped to deal with the improbable and unusual, which is the very stuff of "terrorism," and is consequently unprepared (in most cases) to deal with such situations. Its legitimate apprehension of such incidents and the knowledge that the margin of flexibility for counteraction is limited makes it less tolerant or understanding of any person or institution that would make its task more difficult. Law enforcement's difficult and dangerous tasks, particularly in the context of terror-violence events, make it less tolerant of media's detached appraisal and criticism, and downright hostile to its interferences and occasional abuses. That feeling is heightened when the media's coverage tends to enhance terror-violence in any one of the effects discussed above. The result is increased animosity between media and law-enforcement personnel which when exacerbated incurs only to the benefit of "terrorists." As that spiral of distrust and animosity between media and law-enforcement increases, cooperation between these institutions and their personnel decreases, and their respective public service is reduced to the detriment of society. The only conclusion possible is that improved understanding of the problems discussed above, would hopefully lead to increased cooperation and the reduction of these problems.

III. PROPOSED SOLUTIONS IN LIGHT OF THE FIRST AMENDMENT

[F]reedom of the press is not an end in itself but a means to an end in a free society. The scope and nature of the constitutional guarantee of the freedom of the press are to be viewed and applied in that light.

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--FELIX FRANKFURTER

A. DEFINING THE ISSUES

Assuming that the various influences and pressures to which the electronic and print media are subject contribute in certain instances and ways to a distorted public perception of terrorism and its manifestations,¹³⁶ what are the possible consequential public reactions? Although this country has not yet been plagued by terrorism perpetrated by non-domestic groups to the extent of some West European nations, an increase of terror-violence effecting the United States cannot be ruled out. There exists the additional threat that terrorist groups may acquire chemical, biological, and nuclear technologies, with the attendant potential for even more spectacular and destructive incidents. The consequential social and psychological impact in either eventuality cannot at present be precisely determined. Yet indications exist that in response to a media-enhanced perception of danger to our system and to individual security,¹³⁷ the community may overreact. It is not unusual in traumatic times to turn to repressive governmental measures, and in so doing,¹³⁸ enact restrictions which are likely to also apply to the press. The Federal Republic of Germany, a country that has recently been the scene of terror-violence activity, has recently enacted legislation attaching criminal sanctions to media glorification of

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terrorist violence. Some in the United Kingdom have expressed the need for additional legislation making it "a criminal offense for broadcasting organisations to transmit material which encourages or is likely to encourage terrorism or violence for political ends."¹⁴⁰ Any such attempts at regulation in the United States would have to be subject to the freedom of speech guarantees of the First Amendment to the United States Constitution. The question arises, however, whether government, in response to public pressure, could implement restrictions on the media consistent with, or in circumvention of,¹⁴¹ the First Amendment as it is presently construed, or for that matter whether that construction may change with new exigencies.

Possible media regulatory schemes could take a variety of forms: (1) most drastic would be government-imposed prior restraints upon media reporting of terrorism; (2) content regulation may present itself in criminal or civil sanctions attaching subsequent punishment to media dissemination of information having a harmful effect; (3) time-manner-place regulations may be enacted which, though not designed to control the content of media reporting, may incidentally limit its unfettered exercise;¹⁴² and (4) access restrictions could be imposed curtailing the media's access to ongoing terrorist attacks, with the consequential effect of limiting their coverage of such incidents. Each of these schemes would raise constitutional issues that must be separately analyzed with regard to the respective doctrines and interests involved. A fifth option, however, is also available: self-restraints voluntarily adopted by the media. Not only would this alternative avoid constitutional objections and potentially restrictive first amendment "clarification,"¹⁴³ but it would furnish a basis for cooperation instead of confrontation in media-law enforcement relations.

In the final analysis, media self-regulation affords the best opportunity to successfully frustrate the publicity objective of terroristic crime¹⁴⁴ while safeguarding the public function the media have assumed.

Before commencing our analysis, however, three initial observations regarding the first amendment should be made. First, despite the seemingly categorical command of the First Amendment,¹⁴⁵ absolutism for that amendment has never been adhered to by a majority of the Supreme Court.¹⁴⁶ Entire areas of expression have been deemed to fall outside the scope of constitutional protection,¹⁴⁷ while even within the ambit of protected speech, judicially created exceptions have been recognized.¹⁴⁸ Secondly, the framers of that amendment could not¹⁴⁹ foresee the rise of the electronic media in this century to a position of dominance over the other media, with all the social and political significance this entails. Our conclusions with regard to a first amendment analysis may have to be modified in light of the special legal status of broadcasting. Finally, the first amendment omits "any mention of the fact that the press was to be responsible as well as free."¹⁵⁰ But the concept of media responsibility continues to develop as the theoretical foundation of press freedom shifts from the individual to society;¹⁵¹ today publishers and broadcasters speak less of their individual right to disseminate than of the "public's right to know."¹⁵² Under the influence of the Commission on Freedom of the Press,¹⁵³ Professor Barron,¹⁵⁴ the Federal Communications Commission¹⁵⁵ and others, a new theory linking freedom with responsibility for its exercise may be emerging. This new standard is echoed in the Report of the Task Force on Disorders and Terrorism where it writes:¹⁵⁶

A heavy and difficult responsibility rests with those who, in our society, enjoy freedom of expression, for by its incautious or unintelligent exercise they may well be contributing to its eventual demise at the hands of unprincipled extremists.

The representatives of the media must make an urgent, searching reappraisal of their own values and responsibilities. Only by facing realistically the choices of potential harm, both to principles and to the community interest, can a proper balance be struck.

If terrorism in this country reaches endemic proportions, certain adjustments may become inevitable. The Task Force concluded that "[c]oping with terrorism will invariably mean some inconvenience for the community, the curtailment of some freedoms, and modifications upon the exercise of others."¹⁵⁷ Thus the challenge posed by terrorism is to diminish this form of criminal activity by means that minimize the intrusion upon individual freedoms. Among these freedoms, freedom of expression is one of the most cherished for at least three reasons;¹⁵⁸ and it has an important role in individual autonomy and fulfillment; it is an essential device by which to ascertain truth;¹⁵⁹ and it has a special value for a system of self-government and representative democracy by furnishing a basis for understanding matters of public concern.¹⁶⁰ In analyzing possible solutions, including the extent to which government may intervene to correct distortions and imperfections arising during media coverage of terror-violence, we do not wish to suggest that normal political and social evolution should be abated, nor that the values implicit in free expression should be lightly abrogated. But the first amendment does not exist in a vacuum; the right to security for both the individual and the collective is also of paramount importance. It would be anomalous, to say the least, if certain abuses

proceeded to undermine the very system of constitutional self-government that a free press was designed to facilitate. If an irresponsible media acting without restraints contributes to the destruction of that system of government which guarantees it the freedom it has, then what would be left to protect that freedom?

So the inquiry towards practical and concrete solutions must continue. Perhaps the solution ultimately lies within the larger problem of accomodating, within more comprehensive constructs of freedom and welfare, individual rights and social responsibilities. A manufacturer, for example, is free to pursue profits subject to such limitations as refraining from polluting the environment, producing harmful products, or engaging in predatory tactics to curtail competition. But the question in all such cases is one of delicate balance and degree. The media enjoy an extraordinary and valuable privilege under the first amendment; hopefully they will take an active role in the difficult process of defining their correlative responsibilities. "If," as Professor H. H. A. Cooper has written: ¹⁶¹

the media indeed contributes to the terrorist problem, it is not too much to hope that it can also contribute to its solution. It cannot do so if its own attitude is that the news is the news, nor can it do so if the attitude of those, in either the public or private sector, who become media managers, is one of hysterical distrust bordering on paranoia. The terrorist has simply seen the chink in modern society's armour and is seeking, not unnaturally (*sic*) to exploit that knowledge...What the media needs is a sense of proportion, and this cannot be acquired by government fiat anymore than an individual can do so by such means... Protection comes best through alertness against danger. If the media can truly see itself as a part of the problem it is well on the way to becoming an important part of the solution.

B. CONSTITUTIONAL CONSIDERATIONS

Despite the existence of a communicative or publicity objective, terroristic criminal acts, by themselves, clearly fall outside the sphere of constitutionally protected expression. Such acts are not properly "speech" at all, but rather "conduct" causing harm without ¹⁶² time or opportunity for more speech in response. Since acts of terror-violence do not conform to the first amendment's purposes, they may be proscribed subject only to minimal due process scrutiny. Media reporting of terrorist attacks, on the other hand, generally constitutes expression protected by the first amendment, since such coverage aims at informing and provides a basis for public awareness and discussion of terrorism.

A distinction can be made between two basic types of governmental abridgment of speech and the press freedoms. First, content-based abridgments occur when government regulation is aimed at the "communi- ¹⁶³ cative impact" of the message; such regulation is presumptively unconstitutional unless the government shows that the content of the message presents a "clear and present danger," the message necessary to further a compelling state interest, or otherwise falls within some ¹⁶⁴ narrow recognized exception to first amendment protection. The second form of abridgment occurs when the regulation is directed not at the message conveyed, but rather at its "noncommunicative impact" or ¹⁶⁵ harmful effect; this form of regulation is constitutional "so long ¹⁶⁶ as it does not unduly constrict the flow of information and ideas." Although the first amendment does not provide an absolute bar against government restriction in either case, the significance of the distinction is that while the government must bear the burden of justifying content-based regulation, a balancing of the competing

interests involved ordinarily suffices for regulation that is content-neutral.

1. The Clear and Present Danger Doctrine

The formulation of first amendment jurisprudence by the United States Supreme Court began with a series of cases¹⁶⁷ involving subversive advocacy during World War I. In Schenck v. United States,¹⁶⁸ Justice Holmes, writing for an unanimous Court, made it clear that the protection afforded speech is not absolute but "depends upon the circumstances in which it is done. The most stringent protection of free speech would not protect a man falsely shouting fire in a theatre and causing panic."¹⁶⁹ He went on to enunciate the clear and present danger test: "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."¹⁷⁰

Subsequent cases transformed the clear and present danger doctrine into a means to expand the area of protected speech by infusing the test with the requirement of immediacy¹⁷¹ between the pertinent speech and harm it threatens. In Brandenburg v. Ohio,¹⁷² the Court stated its most recent reformulation of the test: "The constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."¹⁷³

The clear and present danger doctrine remains an essential element of first amendment jurisprudence, perhaps even forming, as has been suggested,¹⁷⁴ a framework for the Supreme Court's analysis of most

expression attacked for its content. Speech otherwise constitutionally protected may be suppressed under the doctrine if the following requirements are met: (1) the harm sought to be avoided must be specific; (2) the expression sought to be suppressed must be likely to cause that harm; and (3) the harm must be imminently or immediately threatened. Although it has been persuasively argued that the clear and present danger doctrine would not permit regulation of violence televised for entertainment purposes,¹⁷⁵ the doctrine would appear to provide a basis for regulating media reporting of terrorist incidents in at least three instances: first, where the terrorist attacks are perceived as a "demonstrated risk of specific threats to the social order"¹⁷⁶ and no opportunity or time exists to respond to the information disseminated; second, in those rare circumstances where a media representative's remarks could be construed, in the context in which they are uttered, as an incitement to lawless action; and third, where media dissemination of specific information immediately jeopardized the lives of hostages.

2. Prior Restraints

Near v. Minnesota¹⁷⁷ was the first case involving press censorship to come before the Supreme Court. Chief Justice Hughes wrote for the majority that since "the chief purpose of the first amendment's guarantee is to prevent previous restraints upon publication,"¹⁷⁸ a statute providing for the enjoinder of "malicious, scandalous and defamatory"¹⁷⁹ newspapers and periodicals was an unconstitutional infringement of press freedom. But the Chief Justice also indicated that:

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the protection even as to previous restraints is not absolutely unlimited. But the limitation has been recognized only in exceptional cases...No one would question but that government might prevent actual obstruction to its recruiting service or the publication of the sailing dates of transports or the number and location of troops. On similar grounds, the primary requirements of decency may be enforced against obscene publications. The security of community life may be protected against incitements to acts of violence and the overthrow by force of orderly government. The constitutional guaranty of free speech does not "protect a man from an injunction against uttering words that may have all the effect of force."¹⁸⁰

Forty years later in the Pentagon Papers Case,¹⁸¹ the Supreme Court rejected by six to three the government's effort to restrain the publication of classified materials on the Viet Nam War. The Court held that the government had failed to meet its "heavy burden of showing justification," since "[a]ny system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity."¹⁸² Although the decision was initially evaluated as a decisive victory for the press, subsequent analysis of the nine separate opinions rendered indicates a contrary conclusion. Of the six Justices who formed the majority, only Justices Black and Douglas urged that the first amendment constitutes an absolute bar against prior restraint. Although espousing a similar position, Justice Brennan refused to dismiss the possibility of an appropriate prior restraint where there is "allegation and proof that publication must inevitably, directly and immediately cause the occurrence of an event kindred to imperiling the safety of a transport already at sea..."¹⁸³ For Justice Stewart prior restraint could be constitutionally permissible where disclosure "will surely result in direct, immediate, and irreparable damage to our Nation or its people."¹⁸⁴ Likewise, Justice White, in concurrence, and Chief Justice Burger, Justice Harlan and

Justice Blackmun, in dissent, could not subscribe to a doctrine of first amendment absolutism. Perhaps Justice Blackmun captured the issue when he wrote:¹⁸⁵ "[t]he First Amendment, after all, is only one part of an entire Constitution...What is needed here is a weighing, upon properly developed standards, of the broad right of the press to print and of the very narrow right of the Government to prevent."

Thus, despite the strong presumption of unconstitutionality, prior restraints may be constitutionally permissible where it can be demonstrated that specific harm of a grave nature would surely result from media dissemination of certain information. Although general reporting of terrorism would lack the contextual immediacy required to justify suppression, the same may not be true during contemporaneous coverage of ongoing incidents, particularly in hostage situations. Numerous scenarios can be imagined in which prior restraints may be justified to save lives, as for example where the perpetrators condition the hostages' lives upon the media's dissemination of, or abstinence from disseminating, a particular statement or viewpoint. Even though such demands could be tantamount to editorial control, if the media refused, citing its first amendment freedom, an injunction compelling compliance may nevertheless issue.¹⁸⁶

3. Criminal and Civil Sanctions

In the Pentagon Papers Case, several Justices indicated in their opinions that the inappropriateness of prior restraint in that case would not immunize the press from subsequent criminal prosecution.¹⁸⁷ Since criminal sanctions prompt self-censorship by exposing the media to possible subsequent punishment, and the defense of first amendment protection remains available during the trial,¹⁸⁸ the content regulation

involved in criminal sanctions would not appear to bear as heavy a presumption of unconstitutionality as prior restraints. Nonetheless, it has been established that "First Amendment protection reaches beyond prior restraints."¹⁸⁹ To sustain constitutional attack, a criminal sanction punishing publication of "lawfully obtained, truthful information" after the event requires (1) "the highest form of state interest," and (2) demonstration "that its punitive action was necessary to further the state interests asserted."¹⁹⁰

It seems possible that a narrowly drawn criminal statute punishing media dissemination during terrorist incidents of information unnecessarily assisting the perpetrators or jeopardizing the lives of hostages may withstand constitutional scrutiny. The state interest in public safety during terrorist attacks is certainly a compelling one, and the difficulty of showing the required close "nexus" between the regulatory means chosen and the interest asserted would not appear insurmountable in the context of ongoing incidents. Since the precedents¹⁹¹ dealing with content regulation by criminal sanction are few in number and distinguishable from the situation under discussion here, the constitutional validity of such criminal provisions would largely depend upon the factual context in which it is challenged and upon the precision with which it is written, so as to withstand overbreadth, vagueness, and possibly equal protection analysis.

Civil actions against the media by the victims of terrorist incidents are a likely future development under the theory that media coverage contributed, in whole or in part, to the harm they sustained. The immediacy of broadcasting would be of special importance in this regard. Three cases to date indicate this new direction,

though in only one has a final decision been rendered. In Weirum v. RKO General, Inc.,¹⁹² a radio station was found liable for the wrongful death of an individual killed when his car was forced off the road by two teenagers pursuing a traveling disc-jockey; the disc-jockey had been giving away money pursuant to a contest in which the station gave hints over the air as to his location. In Niemi v. National Broadcasting Corporation,¹⁹³ the complaint alleged that the prime time telecast of "Born Innocent," a program depicting the rape of a young girl with a plumber's helper, proximately caused a similar sexual assault four days later on the nine-year-old plaintiff. A California appellate court reversed and remanded the case following the trial court's dismissal for lack of deliberate incitement of the attack. The third case, Kane v. National Broadcasting Corporation,¹⁹⁴ has yet to be heard, but evidently was brought under the same theory as Niemi. It remains to be seen, however, whether negligence actions based on the media's alleged irresponsibility and recklessness will be deemed violative of the media's first amendment rights. It is conceivable, however, that in appropriate circumstances involving coverage of ongoing incidents, a medium may be held liable for "incitement to violence," or even for intentional infliction of harm under the legal principle that an individual intends the reasonably foreseeable consequences of his actions.

4. Regulation Independent of Content

Time, manner, and place restrictions are characterized as general regulatory statutes which further valid governmental interests wholly unrelated to the content of the expression regulated.¹⁹⁵ Regulation of the time, place and manner of protected expression is

subject to a weighing of the respective interests involved and is constitutionally permissible, even though the indirect result is to constrict the flow of information or ideas,¹⁹⁶ provided that the governmental purpose could not be achieved by less restrictive alternatives.¹⁹⁷ On this basis, government may seek to impose limitations on the use of live coverage during ongoing terrorist incidents, on the use of certain obtrusive lighting and equipment, or even perhaps on the contemporaneous reporting of certain details presenting a clear and present danger to life and effective law enforcement management. Although limits on the mode of presentation of terrorist incidents would arguably not prohibit media dissemination of the information in alternate forms, the extension of time, manner, place regulations to media coverage of terrorist incidents would raise more complexities than can be explored here.

Access restrictions to the scene of ongoing terrorist attacks would raise the issue of the media's news gathering rights under the first amendment. In Branzburg v. Hayes,¹⁹⁸ the Court held that newsmen summoned before grand juries conducting good-faith criminal investigations cannot claim even a qualified testimonial privilege, even though the identity of confidential sources would be revealed by compelling their testimony. Although recognizing that "without some protection for seeking out the news, freedom of press could be eviscerated,"¹⁹⁹ the Court rejected the claim that the burden on news gathering outweighed the public interest in obtaining the information and noted that:

It has generally been held that the First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally...Despite the fact that news gathering may be hampered, the press is regularly

excluded from grand jury proceedings, our own conferences, the meetings of other official bodies gathered in executive session, and the meetings of private organizations. Newsmen have no constitutional right of access to the scenes of crime or disaster when the general public is excluded...²⁰⁰

Subsequent to Branzburg, the press presented new demands for affirmative rights of access to, inter alia, government reports, congressional galleries, and official press conferences.²⁰¹ In Pell v. Procunier²⁰² and Saxbe v. Washington Post Co.,²⁰³ the Court rejected challenges to prohibitions on personal interviews between newsmen and inmates of state and federal prisons. The Court held that since the restrictions did not "deny the press access to sources of information available to members of the general public,"²⁰⁴ no violations of the media's first amendment rights were involved. Thus following the direction sent by Branzburg, the Court concluded that "newsmen have no constitutional right of access to prisons or their inmates beyond that afforded the general public,"²⁰⁵ and that the first amendment guarantee of press freedom does not "require the government to accord the press special access to information not shared by members of the public generally."²⁰⁶ Based on these developments, therefore, it seems likely that the media could be denied access to scenes of terrorist events, since the public typically is banned from those sites.

5. Reconciliation With Other Substantive Interests

Assuming that a conflict may arise during media coverage of terrorist incidents between the public's right to know and the media's right to inform on the one hand, and the public's interest in the preservation of life and effective law enforcement on the

other, how should these conflicting interests be accommodated? Perhaps some clue toward a solution is suggested by analysis of other areas of law involving reconciling the first amendment with other substantive interests, more particularly: (1) the civil law of libel; (2) the free press/fair trial issue; and (3) national security.

Libel laws protect the individual's interest in his good name and reputation, an interest that the Court has described as "a basic concern."²⁰⁷ Although originally classified as wholly outside the sphere of protected speech, New York Times v. Sullivan²⁰⁸ established that libel "must be measured by standards that satisfy the First Amendment."²⁰⁹ In order to give sufficient protection to first amendment guarantees, the court has adopted a bifurcated analysis of such actions. While private individuals may recover for negligently inflicted defamatory falsehoods, public officials and public figures may only recover upon showing that the defendant made the falsehood with "actual malice," that is "with knowledge that it was false²¹⁰ or with reckless disregard of whether it was false or not." Thus, since the defendant's state of mind is a crucial element in any libel action, the constitutional interest in free and open discussion must be balanced with the plaintiff's need for discovery. In Herbert v. Lando,²¹¹ the Court rejected the claim that the first amendment precluded direct inquiry into the editorial process pertaining to an allegedly defamatory telecast. The Court maintained that such a privilege would completely foreclose establishing liability in such circumstances,²¹² and that even "[i]f such proof results in liability for damages which in turn discourages the publication of erroneous information known to be false or probably false, this is no more

than what our cases contemplate and does not abridge either freedom of speech or of the press."²¹³

The fair trial/free press issue entails accommodating the first amendment rights of the press with the sixth amendment right of a criminal defendant to "a speedy and public trial, by an impartial jury."²¹⁴ The Court had recognized that adverse publicity can endanger the ability of a defendant to receive a fair trial as far back as Sheppard v. Maxwell,²¹⁵ which established that the trial judge has the affirmative duty to minimize the effects of prejudicial pretrial publicity. Nebraska Press Association v. Stuart,²¹⁶ however, was the first case in which the Court examined the conflict between first and sixth amendment interests. But Nebraska Press involved the appeal of a lower court order prohibiting the reporting of prejudicial news, thus triggering the strong presumption against the constitutional validity of prior restraints. A unanimous Court held that the gag order violated the first amendment by preventing the press from publishing information already in its possession, though it refused to preclude the possibility that some threats to fair trial rights "would possess the requisite degree of certainty to justify restraints."²¹⁷ Although it would seem that "once a public hearing is held, the press may report it with impunity,"²¹⁸ there is no correlative right of media access to closed hearings. The Court recently held in Gannett Co., Inc. v. DePasquale²¹⁹ that the public generally, and the press in particular, have no constitutional right of access to pretrial hearings where the parties in the litigation agree to closure in order to assure the accused's fair trial rights. Furthermore, the decision suggests that any denial of access that is temporary rather than absolute would have

a lower burden of justification since the press retains the opportunity, though delayed, "to inform the public of the details of the pretrial hearing accurately and completely."²²⁰

A recent U.S. District Court decision, United States v. The Progressive,²²¹ suggests a new approach in accommodating the first amendment with national security interests. "The Progressive," a magazine with a circulation of 40,000, intended to publish an article allegedly revealing "The H-Bomb Secret," which it argued was obtained from sources in the public domain. The government contended that technical details and concepts contained in the article had never before been published in conjunction with one another and that their disclosure presented an "immediate, direct, and irreparable harm to the interests of the United States,"²²² for which §2274 of the Atomic Energy Act of 1954 permits suppression. In granting a preliminary injunction prohibiting publication, the court noted that although the article probably did not "provide a 'do-it-yourself' guide for the hydrogen bomb," its publication could enable a "medium size nation to move faster in developing a hydrogen weapon."²²³ The court noted the "disparity of risk" between a mistaken ruling that would "seriously infringe cherished First Amendment rights" and a mistaken ruling that "could pave the way for thermonuclear annihilation for us all. In that event, our right to life is extinguished and the right to publish becomes moot."²²⁴ If the decision holds up on appeal, it could indicate that when the harm threatened is serious enough, though speculative, the close causal relationship ordinarily required between publication and the harm in order to justify a prior restraint may be somewhat less stringent.

6. The Special Status of Broadcasting

The broadcasting industry is regulated by the Communications Act of 1934,²²⁵ which empowers the Federal Communications Commission to grant renewable three year broadcasting licenses on the basis of a "public interest, convenience, or necessity"²²⁶ standard. Section 3(h) provides that licensees "shall not...be deemed a common carrier,"²²⁷ while Section 326 declares that the FCC has no "power of censorship, nor power to interfere with the right of free speech."²²⁸

Although broadcasters have strenuously argued that the first amendment has equal applicability to their medium under section 326, the Supreme Court has declined to recognize any "unabridgeable. First Amendment right to broadcast comparable to the right of every individual to speak, write or publish."²²⁹ Judicial precedent²³⁰ lends support to government regulation of broadcasting in three ways. First, FCC licensing procedures permit consideration of past and prospective programming in determining whether the renewal or grant of a license is consistent with the public interest, convenience or necessity.²³¹ Second, statutory prohibitions and FCC rules include: (1) a ban on obscenity and profanity;²³² (2) the equal time provision which requires that when one candidate for public office is permitted to use broadcast time, all candidates for that office must be offered equal opportunities;²³³ (3) the fairness doctrine which requires licensees "to afford reasonable opportunity for the discussion of conflicting views of issues of public importance";²³⁴ and (4) standards against deliberate distortion or bias in news programming and documentaries.²³⁵ Finally, the FCC encourages industry self-regulation by issuing policy statements, letters of advice, and reprimands.

Various rationales exist for the differential first amendment treatment afforded broadcasting: public ownership of the airwaves, the unique power of the medium, spectrum scarcity, and the medium's pervasiveness and intrusiveness.²³⁶ In Red Lion Broadcasting Co. v. FCC,²³⁷ Justice White, writing for a unanimous Supreme Court, observed that while broadcasting is "affected by a First Amendment interest,"²³⁸ since "there are substantially more individuals who want to broadcast than there are frequencies to allocate,"²³⁹ "Government is permitted to put restraints on licensees in favor of others whose views should be expressed on this unique medium... It is the right of viewers and listeners, not the right of the broadcasters, which is paramount."²⁴⁰ In FCC v. Pacifica Foundation,²⁴¹ in upholding the FCC's authority to proscribe the broadcast of an indecent monologue, the Court employed a new rationale based on two characteristics of broadcasting: its "uniquely pervasive presence"²⁴² and the presence of unsupervised children in the audience.²⁴³ Although the holding in Pacifica was a narrow one and has met with criticism,²⁴⁴ there can be no doubt that it provides a new justification for affording broadcasting limited first amendment protection, particularly when new technologies may soon obviate the scarcity rationale.²⁴⁵

C. PROPOSED SOLUTIONS

While intended as an agenda for discussion and not as print for government action, the preceding analysis indicates that potential government regulators would not lack the means for imposing at least some restrictions on media reporting of terrorist incidents, particularly in hostage-taking situations. Court orders may be sought restraining

media personnel who demonstrate a clear and present danger to the lives of hostages and law enforcement personnel by disseminating such information as: (1) possible escape routes for hostages; (2) the location of potential hostages whose whereabouts appear to be unknown to the terrorists; (3) the deployment and tactics of law enforcement personnel to capture the terrorists and free the hostages; and (4) the strategies of police negotiators and speculation as to their sincerity in dealing with the terrorists. While the constitutional validity of specific proposals for direct media regulation would depend on whether the circumstances are sufficiently extraordinary or the state interest sufficiently compelling, indirect regulation - such as access restrictions or FCC action - would probably confront lesser constitutional objections.

The legal and constitutional issues presented by media reporting during terrorist incidents have not yet been tested in the courts; perhaps it is best that the principles remain somewhat indefinite. Since a vigorous and independent press is essential to the functioning of democratic government, it is often desirable that the media occupy an adversarial role vis a vis civil authority. But democratic institutions work best when there is provision for flexibility and observance of continence and forbearance on each side. Any head-on collision over first amendment freedoms would merely shift the problem to a higher conflict of values,²⁴⁶ thereby obscuring the real issue involved - to effectively prevent, control, and respond to acts of terror-violence. Consequently, the public interest can only suffer, and the terrorist's objective be aided, should media-government relations become characterized by active enmity.

Any comprehensive solution to the problems presented by the media's vulnerability to terrorist manipulation must take into consideration at least five competing interests, viz.: (1) the public's basic right to know and be informed through a free press; (2) the safety and well-being of hostages; (3) the public's need for effective law enforcement response; (4) the deterrence and prevention of future terroristic crime; and (5) the need to respect the privacy of victims.²⁴⁷ Although absolute priorities among these interests and simple hard and fast rules are frequently precluded by the wide-variety of factual settings in which terror-violence occurs, the outside parameters toward a solution are clear. An absolute ban on media coverage of ongoing incidents is clearly unacceptable despite the fact that any coverage represents a concession to the publicity objective of the terrorist;²⁴⁸ such a ban would promote exaggerated word-of-mouth rumors, impair the public credibility of both the media and civil authority, and may encourage potential terrorists to devise even more spectacular attacks that cannot be ignored. On the other hand, concern for human life should outweigh mere competitive urge. While the public must be informed about occurrences of terrorist attacks, the public's right to know may be satisfied in certain instances by less than full disclosure of all particulars concerning those incidents. It is only by cooperation and understanding between the media and the police that the publicity objective of terroristic crime can be successfully frustrated.²⁴⁹

Since the media and law enforcement both perform in the public interest, it would seem that voluntary cooperation, based on affirmative duties, should be possible. Both media managers and law

enforcement officials, however, must exercise judgment, restraint and sensitivity with respect to the obligations and difficulties of the other, in addition to their own. As the Task Force on Disorders and Terrorism recommends, law enforcement officials should endeavor to maximize the media's access to reliable, accurate information, since generally "it is more-and more balanced - coverage rather than less coverage that will best promote both crime prevention and public confidence in law enforcement."²⁵⁰ Thus police should establish a media information center as near to the site of an ongoing incident as practicable. Such a center would facilitate the release of official information, and provide a centralized location where media personnel can verify information as well as be apprised of the detrimental potential of specific reportage. The media, on the other hand, must recognize that "in a relatively small number of situations involving extraordinary violence, where emergency conditions exist or where a criminal objective would be furthered by press coverage, arguments in favor of temporary, limited, but effective regulation of the media should be given weight."²⁵¹ It is generally recognized, however, that necessary or appropriate restraints in the timing, content, or techniques of coverage are best left to the determination of those who make news decisions.

The role of the news media in terrorist incidents has come to the attention of the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary. In its Staff Report on "Federal Capabilities in Crisis Management and Terrorism," the need for voluntary self-restraint on the part of the media was recognized:²⁵²

Government officials, law enforcement officers and media representatives generally understand the need to develop voluntary flexible guidelines for news coverage of a terrorist incident. The development

of voluntary guidelines would foster a mutual understanding between the media and law enforcement, thereby serving both the media's pursuit of the news and law enforcement's duty to maintain order and preserve human life and property.

The media have demonstrated increasing awareness that during terrorist incidents they must balance their responsibility to provide full and fair coverage with their responsibility not to exacerbate the threat to life and impede effective law enforcement management. After the Hanafi Muslim incident, The National News Council offered to become a clearinghouse for internal guidelines prepared by news organizations. ²⁵³ Among the first to formulate written guidelines for coverage of terrorist/hostage situations were four major news organizations - CBS News, the Louisville Courier-Journal and Times, the Chicago Sun-Times and Daily News, and United Press International. Other organizations subsequently followed, some no doubt prompted by a solicitation of media views in October, 1978, by Representative Don Edwards, Chairman of The Subcommittee on Civil and Constitutional Rights. Most guidelines share a number of characteristics. First, they adopt a flexible approach emphasizing case-by-case determination of the newsworthiness of the event, the use of balance and restraint, and the avoidance of sensationalism. Most attempt to avoid affording the terrorist an unedited platform, often suggesting that the demands be paraphrased. The guidelines suggest that media personnel avoid becoming participants or intermediaries in terrorist situations. Most provide for greater control over coverage by senior news executives, particularly with regard to the use of live broadcasts. None of the guidelines, however, prohibit media personnel from directly contacting the terrorists for

interviews or by telephone. Curiously, most of the guidelines reiterate the basic principles of professional journalism - accuracy, balance, common sense - suggesting, as one commentator has remarked, "an embarrassing question: Shouldn't journalists ask themselves how these basics sometimes get shoved aside, ignored or forgotten when they're most necessary?" ²⁵⁴ Furthermore, the guidelines adopted so far do not attempt to resolve the essential problem posed by media coverage: how to avoid the media becoming the inducement for or instrument of terroristic crime?

A comprehensive solution might involve the following recommendations:

1. Timing: the media should delay reporting details that could inflame or aggravate an incident, particularly information that could provide terrorists with valuable intelligence. Such information need not be forever suppressed, merely delayed until after the danger has passed.
2. Balance: the amount of coverage afforded an incident should be in proportion to its objective news values. Incidents should be placed in context, including factual background reports of terrorism generally and appropriate follow-up coverage of the consequences to the victims and perpetrators. Information about the perpetrators should be balanced with information about the official response to them. Glamorization and excessive publicity should be avoided, particularly with respect to propaganda demands and live interviews. The media should avoid reporting speculation and unverified casualty figures and rumors.

Disclosure of "how-to" aspects and specific law enforcement strategies and tactical capabilities should be minimized when necessary to prevent aiding terrorists in planning future attacks.

3. Cooperation: media personnel should attempt to cooperate with police and other news organizations in order to minimize abuses arising from unrestrained competition. Reporters and equipment should be pooled when practicable to minimize obtrusiveness and burdens on law enforcement personnel. In cases of extraordinary violence, a metropolitan committee of editors and news directors should be constituted with authority to promulgate additional restraints as may be required. Media supervisory personnel should make themselves available to law enforcement officials, and public information police officers employed, in order to facilitate dissemination of accurate information.
4. Non-intervention: media personnel should avoid becoming a party to the negotiation process and curtail direct contact with perpetrators during on-going incidents; provision may be made for media contacts with the perpetrators after resolution of the incident. Direct media contacts, in any case, should be undertaken only by qualified news personnel upon the express authorization of senior news executives and after consultation with appropriate authorities so as not to interfere with police communications, incite the perpetrator by particular questions or phrasing, or vitiate police efforts to minimize harm to persons or property.

5. Education: media coverage should emphasize that: (a) resort to terroristic violence is contrary to social values and has a low probability of success; (b) police must operate under the drastic practical handicap of minimizing harm to persons and property in relation to terror-violence; (c) that police personnel take the same risks as those taken by terrorists; and (d) that society is not helpless with regard to terror-violence, but rather acts within a certain legal framework. Access to the media should be provided for the voices of reason among dissident groups so as to minimize the need to resort to violence. Various tertiary institutions should promote responsible media coverage, including continuing professional education of media personnel, professional codes and associations, and periodic conferences between law enforcement officials and media policy makers to facilitate the frank exchange of views and concerns.

The "Galegos interview" of N.B.C. during the Iranian hostage-taking crisis discussed above raises the more specific question of the media's control, over the content and realization (in the area of the electronic media). This has now become another area for self-regulation, though in that actual event it has been unsuccessful with respect to N.B.C., but successful with respect to A.B.C. and C.B.S.

Some of these proposals are not alien to the traditional exercise of self-restraint now practiced by the United States media. Cooperation between the media and civil authority has precedent in kidnapping cases since the 1931 Lindbergh case and during war-time since W.W.II. Other proposals may require

alteration of journalism's traditional role as an impartial reporter of events without regard to their consequences. Such claims to impartiality, however, do not insulate the media from becoming the instrument, though unwillingly, of terroristic crime. As Professor Jaehnig explains:

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The problem lies in journalism's moral neutrality posture, which prohibits the development of an ethnic oriented toward the maintenance of the community, its standards, values and culture. Traditions that prescribe an inflexible "watchdog" role for the press, or emphasizes the publication of terrorist rhetoric when the community itself feels intimidated, appear self-defeating. Clearly judgments must be made by journalists that differentiate between wars of ideas fought within legitimated institutions of the community, and struggles fought outside these institutions and which rely upon violence rather than verbiage, intimidation instead of intellect. As one journalist argues: "When hate propagandists and apostles of violence attack the democratic body politic, the journalist must be more than a passive channel of communication. He has got to be a crusader for a climate of reason in which ordered liberty and due process can work."

Thus the time is ripe to discuss a more active role for the media in handling terror-violence coverage. The media's failure to take the initiative would only exacerbate existing conflicts and invite the search for more restrictive alternatives.

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FOOTNOTES

1. Bassiouni, Prolegomenon to Terror Violence, 12 CREIGHTON L. REV. 745, 751 & n. 22 (1979).
2. See id. at 752; Bassiouni, An International Control Scheme for the Prosecution of International Terrorism: An Introduction, in A. EVANS & J. MURPHY, LEGAL ASPECTS OF INTERNATIONAL TERRORISM 485 (1978) [hereinafter cited as LEGAL ASPECTS].
3. Id.
4. During war, see, e.g., WRIGHT, HISTORY OF THE U.N. WAR CRIMES COMMISSION (1947); TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL AT NUREMBERG (1947); War Crimes Prosecution, in M.C. BASSIOUNI & V.P. NANDA, A TREATISE ON INTERNATIONAL CRIMINAL LAW (1973) [hereinafter cited as INTERNATIONAL CRIMINAL LAW]. For war related acts of terror-violence, in addition to above, see E. DAVIDSON, THE TRIAL OF THE GERMANS (1966); L. DAVIDOWICZ, THE WAR AGAINST THE JEWS 1933-1945 (1975). For wars of independence, e.g., Biafra and Bangladesh, and for internal political control, see A. PARRY, TERRORISM FROM ROBESPIERRE TO ARAFAT (1976); R. CONQUEST, THE GREAT TERROR: STALIN'S PURGE OF THE THIRTIES (1973); MacDermot, Crimes Against Humanity in Bangladesh, 7 INT'L LAWYER 476 (1973); I.C.J. Report of Democratic Kampuchea, 20 I.C.J. REV. 19 (June 1978); R. GAUCHER, THE TERRORISTS: FROM TSARIST'S RUSSIA TO THE O.A.S. (1978); S.T. HOMER, VIET CONG REPRESSION AND ITS IMPLICATIONS FOR THE FUTURE (1970).
5. Friedlander, Terrorism and International Law: What is Being Done?, 8 RUTGERS-CAMDEN L.J. 383, 384 (1977). Although there are numerous studies on the subject, they do not seem to have made their way or impacted upon decision-makers and the general public. There is no established methodology of analysis which would provide consistency

and uniformity.

6. See M. MCDUGAL & F. FELICIANO, LAW AND MINIMUM PUBLIC ORDER (1961); McDougal, Lesswel & Chen, A Framework for Policy-Oriented Inquiry, 63 AM. J. INT'L L. 237 (1969).
7. There has been an inordinate magnification of the problem by the mass media and by some political figures and public officials in response to the relatively limited harmful effect of terrorism as described herein. As a result, the efforts of the world community ever since the proposed 1937 Convention on the Prevention and Punishment of Terrorism, 19 LEAGUE OF NATIONS OFF. J. 23 (1938), have been aimed at a substantive international convention on "Terrorism" without a clear definition of the term or understanding of its meaning and content. See Zlataric, History of International Terrorism and its Control, in M.C. BASSIOUNI, INTERNATIONAL TERRORISM AND POLITICAL CRIMES 474 (1975) [hereinafter cited as INTERNATIONAL TERRORISM]. For the U.N.'s continued efforts in that direction as well as in the search for the "causes" [sic] of terrorism, see 28 U.N. GAOR, Supp. (No. A/9028), U.N. Doc. A/C. 6L. 850 (1973); Frank & Lockwood, Preliminary Thoughts Toward an International Convention on Terrorism, 68 AM. J. INT'L L. (1974); Baxter, A Skeptical Look at the Concept Terrorism, 7 AKRON L.J. 380 (1974); G. GUILLAUME & G. LAVASSEUR, TERROURISME INTERNATIONAL (1977); A.F. PANZERA, ATTIVITA TERROURISTICHE E DIRITTO INTERNAZIONALE (1978).
8. Consider the diversity of meanings given the "political offense exception" in extradition. See M.C. BASSIOUNI, INTERNATIONAL EXTRADITION AND WORLD PUBLIC ORDER 370-428 (1974); I. SHEARER, EXTRADITION IN INTERNATIONAL LAW 166-98 (1971).
9. MacDermot, supra note 4.
10. NATIONAL FOREIGN ASSESSMENT CENTER, CENTRAL INTELLIGENCE AGENCY, INTERNATIONAL TERRORISM IN 1978, R.P. 79-10149, (March, 1979) [hereinafter cited as CIA Report]. See also Mickolus, Statistical Approaches to the Study of Terrorism,

- in Y. ALEXANDER & S. GINGER, TERRORISM: INTERDISCIPLINARY PERSPECTIVES 212 (1977). 087
11. CIA Report, supra note 10, at 7.
 12. Id.
 13. Id. at 1 (Fig. 2).
 14. Id. at 7 (Table 1).
 15. Id. at 1.
 16. Id. at 2 (Fig. 3).
 17. In 1978, nineteen incidents occurred in North America; over the eleven year period the average was twenty-six incidents per year. Id. at 7 (Table 1).
 18. See Evans, Aircraft Hijacking, in LEGAL ASPECTS, supra note 2, at 67.
 19. See D. HUBBARD, SKYJACKER: HIS FLIGHTS OF FANTASY (1971).
 20. CIA Report, supra, note 10, at 7 (Table 1).
 21. Id.
 22. No comprehensive study is known to this author on the corollary between such movements. However, the legal literature and general information on this subject is abundant with respect to any one of these organizations and movements and supports this conclusion. See generally Y. ALEXANDER, INTERNATIONAL TERRORISM: NATIONAL, REGIONAL AND GLOBAL PERSPECTIVES (1975); S. SARKESIAN, REVOLUTIONARY GUERRILLA WARFARE (1975); A. BURTON, URBAN TERRORISM (1976); WILKINSON, POLITICAL TERRORISM (1975).
 23. During 1968-1978, terrorist activity in the U.S.S.R. and socialist Eastern Europe represented 0.4 percent of total world-wide incidents, while Sub-Saharan Africa was 3.7 percent, Asia 5.6 percent and Oceania 0.6 percent. CIA Report, supra note 10, at 7 (Table 1). On the question of hijacking in the U.S.S.R. and Eastern Europe, see Zwirboul & Chupilov, La Capture Illicite d'Aeronefs, 47 REVUE INTERNATIONALE DE DROIT PENAL (3-4) 295 (1976), and the reports

of Buchala (Poland), Flawski (Poland), Dolensky (Czechoslovakia), Antoniou and Iliescov (Rumania), Filipovic (Yugoslavia) in that issue.

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24. CIA Report, supra note 10, at 7 (Table 1).
25. Id.
26. E.g., M.C. BASSIOUNI, THE PALESTINIAN'S RIGHT OF SELF-DETERMINATION AND NATIONAL INDEPENDENCE (A.A.U.G. Information Paper No. 22, Dec. 1978).
27. CIA Report, supra note 10, at 7 (Table 1). The statistics "exclude the assassinations and cross-border operations associated with the Arab-Israeli conflict, unless those incidents either victimized noncombatant nationals of states outside the principal area of conflict or became the object of international controversy." Id. at 7.
28. Id. at ii (Fig. 1).
29. Id.
30. Injuries for the years 1968-1971 averaged about 200 per year and fatalities at about 60 per year. Id. For the years 1974-76, injuries averaged about 845 per year and fatalities at about 375 per year. Id.
31. In a substantial number of cases the nationality of the victim is that of the state wherever the incident took place, but no exact data is available.
32. CIA Report, supra note 10, at 7 (Table 1).
33. Id. at 4 (Fig. 5).
34. Id. at 7 (Table 1).
35. Id. at 4 (Fig. 5).
36. Id. at 6 (Fig. 6).
37. Id. at 8 (Table 3).
38. In 1968 and 1969, less than ten assassinations were perpetrated by terrorists. In 1973, 18; 1976, 48; 1977, 23; and 1978, 29. Id. at 8 (Table 3). However, this does

not include political assassinations which do not have an international element.

39. Id. at 1, 5.
40. See also Jenkins & Rubin, New Vulnerabilities and the Acquisition of New Weapons by Non-Government Groups, in LEGAL ASPECTS, supra note 2, at 221.
41. See Bassiouni, supra note 1.
42. See Bassiouni, supra note 1, at 755-56; THE MEDIA AND TERRORISM 6 (1977) (A Seminar Sponsored by The Chicago Sun-Times & Chicago Daily News) (Remarks of Bassiouni). See generally F. HACKER, CRUSADERS, CRIMINALS, CRAZIES: TERROR AND TERRORISM IN OUR TIME (1977).
43. See Bassiouni, supra note 1, at 759-65; Paust, Internal Law and Control of the Media: Terror, Repression, and the Alternatives, 53 IND. L.J. 621 (1978); Cooper, Terrorism and the Media, 24 CHITTY'S L.J. 226 (Sept. 1976).
44. M.C. BASSIOUNI, THE LAW OF DISSENT AND RIOTS 57 (1971).
45. See Bassiouni, Ideologically Motivated Offenses and the Political Offense Exception in Extradition: A Proposed Judicial Standard for an Unruly Problem, 19 DEPAUL L. REV. 217 (1968); Pisapia, Terrorismo: Delitto Politico o Delitto Comune? LAGIUSTIZIA PENALE 1 (V-VI, Maggio 1975).
46. N. MACHIAVELLI, THE PRINCE AND THE DISCOURSES 66 (1950). See also Friedlander, Terrorism and Political Violence: Do the Ends Justify the Means?, 24 CHITTY'S L.J. 240 (Sept. 1976).

47. On international controls see Bassiouni, Methodological Options for International Legal Control of Terrorism, 7 AKRON L. J. 396 (1974); Friedlander, Sowing the Wind: Rebellion and Violence in Theory and Practice, DENVER J. INT'L L. & POL. 89, 92 (1976). As to the laws of war see supra note 52 and M. C. Bassiouni and V. P. Nanda, A Treatise on International Criminal Law Vol. I (1973), the Four Geneva Conventions of August 12, 1949, the 1977 Additional Protocol thereto particularly the enforcement provisions of Protocol I, Articles 73-79 commented in Bassiouni, The Repression of Breaches of the Geneva Conventions Under the Draft Additional Protocol to the Geneva Conventions of August 12, 1949 8 RUTGERS-CAMDEN L.J. No. 2 (1977).
48. See note 4 supra.
49. This was the case with Algeria and Viet-Nam.
50. See Burton, Sarkassian, Jenkins and Wilkinson, supra note 22, and M.C. Bassiouni, The Law of Dissent and Riots (1971).
51. This conclusion was reached after an examination of the laws of 53 countries relating to terrorism in connection with a study by the American Society of International Law on this subject whose outcome is published in LEGAL ASPECTS, supra note 2.
52. The Four Geneva Conventions of August 12, 1949, apply to both types of conflict and prohibit acts of terror-violence, as does the 1909 Hague Convention on the Customary Laws of Armed Conflicts. See Bassiouni, supra note 1, at 750 & n. 17.
53. The 1958 Geneva Conventions on the Law of the Sea, U.N. Doc. A/CONF. 13/L. 52-55 (1958).
54. The 1963 Tokyo Convention, the 1970 Hague Convention, and the 1971 Montreal Convention. For their discussion, see Evans, Aircraft and Aviation Facilities, in LEGAL ASPECTS, supra note 2, at 3; Evans & Lee, in INTERNATIONAL TERRORISM, supra note 8, at 219-84. See also 47 REVUE INTERNATIONALE DE DROIT PENAL (pts. 3-4) (1977).
55. The 1972 O.A.S. Convention and 1974 U.N. Convention. For their discussion, see Murphy, The Role of International Law in the Prevention of Terrorist Kidnapping of Diplomatic Personnel, in INTERNATIONAL TERRORISM, supra note 7, at 285; Murphy, Protected Persons and Diplomatic Facilities, in LEGAL ASPECTS, supra note 2, at 277.
56. Ad-Hoc Committee on The Drafting of An International Convention Against The Taking of Hostages, U.N. Doc. A/AC. 188/L.2 (1977); A/AC. 188/L.3 (1977). The "International Convention Against the Taking of Hostages" was adopted 13 December 1979, U.N. G.A.O.R. (XXXIV), A/34/819.
57. See generally M.C. BASSIOUNI, supra note 8; 39 REVUE INTERNATIONALE DE DROIT PENAL (1968).
58. See, e.g., 2 INTERNATIONAL CRIMINAL LAW, supra note 4. See also 45 REVUE INTERNATIONALE DE DROIT PENAL (1-2) (1974).
59. H. ARENDT, ON REVOLUTION (1965).

- 60. M.C. BASSIOUNI, THE LAW OF DISSENT AND RIOTS 25 et Seq. (1971).
- 61. Bassiouni, Le Role du Juge aux Etats-Unis, 46 REVUE INTERNATIONALE DE DROIT PENAL 37 (1976).
- 62. Bassiouni, Supra notes 60 and 61.
- 63. Paust, Response to Terrorism: A Prologue to Decision Concerning Private Measures of Sanction, 12 STANFORD J. INT'L L. STUD. 79 (1977); Paust, Private Measures of Sanction, in LEGAL ASPECTS, supra note 2, at 575-612.
- 64. Crime Prevention and Control Report of the Secretary-General on Crime Trends in the World, U.N. Doc. A/32/199 (1977).
- 65. Bassiouni, The Veneer of Civilization Thickens, 21 DEPAUL L. REV. 271 (1971).
- 66. See, e.g. L. SOHN & T. BUERGENTHAL, INTERNATIONAL PROTECTION OF HUMAN RIGHTS (1973); 21 DEPAUL L. REV. (1971) (Symposium issue on Human Rights); A.H. ROBERTSON, HUMAN RIGHTS IN EUROPE (1978); D. PONCET, LA PROTECTION DE L'ACCUSE PAR LA CONVENTION EUROPEENNE DES DROITS DE L'HOMME (1977); P. GRAVEN, PROBLEMS DE PROTECTION INTERNATIONALE DES DROITS DE L'HOMME (Vol. I, 1969) & LE DIFFICILE PROGRES DU REGNE DE LA JUSTICE ET DE LA PAIX INTERNATIONALES PAR LE DROIT (Vol. II, 1970).
- 67. Salomone, Terrorism and the Mass-Media, in INTERNATIONAL TERRORISM, supra note 7, at 43.
- 68. Paust, supra, note 43.
- 69. J.B. BELL, TRANSNATIONAL TERROR 89 (1975).
- 70. Bassiouni, Prolegomenon to Terror Violence, supra note 1, at 760. Dr. Frederick Hacker, a California psychiatrist with experience as a terrorism negotiator, has remarked that: "If the mass media did not exist, terrorists would have to invent them. In turn, the mass media hanker after terroristic acts because they fit into their programming needs: namely, sudden acts of great excitement

- that are susceptible, presumably, of quick solution. So there's a mutual dependency." Hickey, Terrorism and Television, TV GUIDE, July 31, 1976. Walter Laquer has called the media the "terrorist's best friend." Id.
- 71. B. CROZIER, A THEORY OF CONFLICT 129 (1974). See generally text accompanying notes 45-46 supra.
- 72. Industrialization has provided such vulnerable and attractive targets as aircraft, electric power plants, nuclear reactors, dams, fuel storage facilities, telephone exchanges, etc., while terrorists have obtained - through theft, purchase, and support from patron states - portable and sophisticated weapons of great destructive capability. See MEDIA AND TERRORISM, supra note 42, at 7. See also note 40 supra. The great modern threat is the theft or use of nuclear materials. See M. WILRICH & T. TAYLOR, NUCLEAR THEFT: RISKS AND SAFEGUARDS (1974).
- 73. The mass media include television, radio, newspapers, magazines, books, and films. For the purposes of this discussion, "media" refers primarily to the news organizations commonly associated with the first four media categories.
- 74. NATIONAL ADVISORY COMMITTEE ON CRIMINAL JUSTICE STANDARDS AND GOALS, REPORT OF THE TASK FORCE ON DISORDERS AND TERRORISM 9 (1976) [hereinafter cited as DISORDERS AND TERRORISM].
- 75. See, e.g., Id., at 236-38, 366-69, 387-90, 401-04, 414; J.B. Bell, A Time of Terror 110-16 (1978); INSTITUTE FOR STUDY OF CONFLICT, TELEVISION AND CONFLICT (London, 1978) [hereinafter cited as TELEVISION AND CONFLICT]; THE MEDIA AND TERRORISM, supra note 42; Alexander, Terrorism, the Media and the Police, 32 J. INT'L AFFAIRS 101 (1978); Hickey, supra note 70; Hickey, The Medium in the Middle, TV GUIDE, August 7, 1976; MORE, June, 1977, at 12-21; Seib, The Hanafi Episode: A Media Event, Washington Post, March 18, 1977, at A27; Revzin, A Reporter Looks at Media Role in Terror Threats, Wall St. J., March 14, 1977, at 16; The National News Council,

Paper on Terrorism (July, 1977) (unpublished). See also note 43 supra. 094

- 76. Bassiouni, supra note 1, at 752.
- 77. Id., at 758.
- 78. Id., at 754.
- 79. Id., at 759.
- 80. Id., at 760.
- 81. Id., at 757.
- 82. CARLOS MARIGHELLA, MINIMANUAL OF THE URBAN GUERRILLA, 103 (Havana Tricontinental, n.d.).
- 83. See, e.g., DISORDERS AND TERRORISM, supra note 74, at 23-24, 237. "There is considerable evidence that contagion and imitation are significant factors in the incidence of terroristic activity. Often, after the use of novel and seemingly successful terroristic techniques has been widely publicized, they have been imitated and embellished by other terrorists. Much quasi-terroristic activity may be explained this way." Id., at 23. See also text accompanying note 85 infra; Hickey, The Medium in the Middle, supra note 75. In a report prepared for the U.S. State Dept., the Rand Corporation stated: "It is hard not to conclude that terrorism judged on its own terms - as a way to get attention and arouse alarm - has been a success, and that highly visible success is likely to lead to further incidents of terrorism." Hickey, supra note 70.
- 84. CIA Report, supra note 10, at 5.
- 85. Mendelsohn, Socio-Psychological Perspectives on the Mass Media and Public Anxiety, JOURNALISM Q. 511, 513 (1963). Terroristic means may also be resorted to by frustrated, but normal, individuals unable to redress a particular grievance. After the Hanafi incident, Dr. Robert Jay Lifton, professor of psychiatry at Yale, remarked that when the press makes "the person of the terrorist something close to the total news of the week, the imagery of terrorism becomes much more active psychologi-

- cally for the average person. Therefore it must contribute to stimulating similar acts among people who feel frustrated and for whom other avenues are closed." N.Y. Times, March 19, 1977, at 33, col. 2.
- 86. For an enumeration of incidents, see R. LIEBERT, J. NEALE, & E. DAVIDSON, THE EARLY WINDOW 1-3 (1973). See generally Hendrick, When Television Is a School for Criminals, T.V.GUIDE, Jan. 29, 1977, at 4. After interviewing inmates at a Michigan prison, Hendrick reports that 90 percent admitted that they had "learned new tricks and improved their criminal expertise by watching crime programs," while 40 percent said they had attempted the televised crimes they had viewed. Id., at 5.
- 87. Krattenmaker & Powe, Jr. Televised Violence: First Amendment Principles and Social Science Theory, 64 VA. L. REV. 1123, 1134 (1978).
- 88. In 1971, D.B. Cooper skyjacked an airplane, collected a ransom, and successfully escaped by parachute. This technique was widely imitated. DISORDERS AND TERRORISM, supra note 74, at 23.
- 89. Bassiouni, supra note 1, at 759-60.
- 90. See generally Wright, Functional Analysis and Mass Communications, 24 PUB. OP. Q. 605 (1960); Mendelsohn, supra note 85, at 511-12; W. SCHRAMM, MASS COMMUNICATIONS (2d. ed., 1960); W. RIVERS, T. PETERSON, & J. JENSEN, THE MASS MEDIA AND MODERN SOCIETY 28-9 (2d ed., 1971); T. EMERSON, THE SYSTEM OF FREEDOM OF EXPRESSION 7 (1970).
- 91. W. LIPMAN, PUBLIC OPINION (1922).
- 92. For a study of the public reaction to the broadcast, see Cantril, "The Invasion from Mars," in W. SCHRAMM, THE PROCESSES AND EFFECTS OF MASS COMMUNICATION 423 (1954).
- 93. Mendelsohn, supra note 85, at 513.
- 94. Id., at 513-14.
- 95. Id., at 514.

96. See Grunwald, The Press, the Courts and the Country, TIME, July 16, 1979, at 74, [~~Appended as Appendix-B~~].² For an account of press sensationalism, notably that of William Randolph Hearst and Joseph Pulitzer, see J. TEBBEL, THE MEDIA IN AMERICA 279-303 (1974).
97. SUBCOM. ON COMMUNICATIONS OF THE HOUSE COMM. ON INTER-STATE AND FOREIGN COMMERCE, 95TH CONG., 1ST SESS., VIOLENCE ON TELEVISION 1 (Comm. Print 1977) [hereinafter cited as VIOLENCE ON TELEVISION]. We do not attempt here to analyze in depth the arguments, pro and con, of the adverse effects of televised violence. See notes 98-104 *infra*.
98. In addition to various church groups and the National Parent-Teachers Association, the American Medical Association adopted a resolution in 1976 that "TV violence is a risk factor threatening the health and welfare of young Americans, indeed our future society." AMA, Proceedings of the House of Delegates 280 (June 1976) (Res. No 38). The resolution encouraged all physicians to oppose TV programs containing violence as well as products and services sponsoring the programs. See Sex and Violence on TV: Hearings Before the Subcomm. on Communications of the House Comm. on Interstate and Foreign Commerce, 94th Cong., 2d Sess., 7 (1976) [hereinafter cited as 1976 House Hearings].
99. Prior to 1976, Senate investigations were conducted into the relationship between the media and the rising crime rate. See Juvenile Delinquency (television programs); Hearings Before the Subcomm. to Investigate Juvenile Delinquency of Senate Comm. on the Judiciary, 83rd Cong., 2d Sess., 84th Cong., 1st Sess. (1954-1955); Juvenile Delinquency (Effects on Young People of Violence and Crime Portrayed on Television): Hearings Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary (pt. 16), 88th Cong., 2d Sess. (1965); Violence on Television: Hearings Before the Subcomm. on Communications of the Senate Comm. on Commerce, 93rd Cong., 2d Sess. (1974).

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100. See G. Gerbner, L. Gross, M. Eleey, M. Jackson-Beeck, S. Jeffries-Fox, & N. Signorielli, Violence Profile No. 7: Trends in network television drama and viewer conceptions of social reality 1967-1975, at 9 (1975). Dr. Gerbner has monitored televised violence since 1968. See generally Gerbner & Gross, Living with Television: The Violence Profile, J. COM. (Spring, 1976). For a critique of Gerbner's methodology and conclusions, see Krattenmaker & Powe, supra note 87, at 1157-70.
101. See SURGEON GEN.'S SCIENTIFIC ADVISORY COMM. ON TELEVISION AND SOCIAL BEHAVIOR, TELEVISION AND GROWING UP: THE IMPACT OF TELEVIEWED VIOLENCE (1972). The Surgeon General subsequently testified that:
 broadcasters should be put on notice. The overwhelming consensus and unanimous...report indicates that televised violence, indeed, does have an adverse effect on certain members of our society....[I]t is clear to me that the causal relationship between televised violence and anti-social behavior is sufficient to warrant appropriate and immediate remedial action. The data on social phenomena such as television and violence and/or aggressive behavior will never be clear enough for all social scientists....But there comes a time when data are sufficient to justify action. That time has come.
Surgeon General's Report to Scientific Advisory Comm. on Television and Social Behavior: Hearings Before the Subcomm. on Communications of the Senate Comm. on Commerce, 92nd Cong., 2d Sess. 25, 26 (1972). (Statement of Dr. Jesse Steinfield, Surgeon General). On the relationship between televised violence and aggression, see also A. BANDURA, AGGRESSION (1973).
102. See, e.g., 1976 House Hearings, supra note 98, at 10-20 (Statement of Prof. Harold Mendelsohn); Krattenmaker & Powe, supra note 87, at 1134-70. But see note 101 *supra*.
103. VIOLENCE ON TELEVISION, supra note 97, at 7.
104. Id. at 17-19 (dissenting views of Reps. Waxman, Wirth, Mikulski, Markey, & Gore). The minority expressed the view that the FCC should initiate rule-making proceedings on whether licensees should be required to "carry certain percentages of certain categories of programming." Id. at 24.
105. See Grunwald, supra note 96, at 75. [Appendix-B].
106. For the proposition that coverage of terrorist incidents

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has become a form of mass entertainment, see DISORDERS AND TERRORISM, supra note 74, at 8; Arlen, Reflections on Terrorism and the Media, MORE, June 1977, at 12. A further problem may arise when spectacular and often tragic events are dramatized by the media for entertainment purposes, though indications are that the "networks have developed certain sensibilities and systems to counterbalance those inevitable competitive urges" and "are genuinely edgy about the risks of developing highly exploitable topics." Bedell, Is TV Exploiting Tragedy?, TV GUIDE, June 16, 1979, at 8.

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- 107. THE MEDIA AND TERRORISM, supra note 42, at 29 (Remarks of Fenyvesi).
- 108. Trounstine, We Interrupt This Program, MORE, June 1977, at 14.
- 109. Id. at 15.
- 110. Id.
- 111. Id.
- 112. Id.
- 113. DISORDERS AND TERRORISM, supra note 74, at 402-03.
- 114. Id. at 368-69, 402-03.
- 115. TELEVISION AND CONFLICT, supra note 75.
- 116. Id. at 14.
- 117. Id. at 15.
- 118. Id. at 26.
- 119. Id. at 5.
- 120. Id.
- 121. Id. at 10.
- 122. Id. at 11-12, 21-22.
- 123. Id. at 14.
- 124. Id.
- 125. Bassiouni, supra note 1, at 761.
- 126. Alexander, supra note 75, at 107.

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- 127. THE MEDIA AND TERRORISM, supra note 42, at 28-29. (Remarks of Fenyvesi).
- 128. Id.
- 129. Bassiouni, supra note 1, at n.31.
- 130. The volatility of many perpetrators to a particular question or term that does not comport with his ideological or psychological makeup was noted at the ISC conference:
Terrorists can behave like utterly normal men most of the time, perfectly balanced and intelligent, often with a far higher than average IQ. Yet in the commission of their crimes they become completely abnormal. Those who have had experience of conversation with them can discover that one particular word, a trigger word, perhaps the name of a President or the object of the terrorists' hatred, can turn a seemingly normal man into an irrational and abnormal one in front of your eyes.
TELEVISION AND CONFLICT, supra note 75, at 19-20.
- 131. Crisis Cop Raps Media, MORE, June 1977, at 19 (Interview of Lt. Frank Bolz, head of N.Y.C. Police Dept.'s Hostage Negotiating Squad.).
- 132. THE MEDIA AND TERRORISM, supra note 42, at 29 (remarks of Fenyvesi).
- 133. Id. See also Fenyvesi, Looking Into the Muzzle of Terrorists, QUILL, July-August 1977, at 17. For another account by a journalist held captive by the Hanafis critical of the media's interference with police management and hostage safety during the incident, see Siegel, Looking at the Media from the Other End of the Gun, in MEDIA AND TERRORISM: THE PSYCHOLOGICAL IMPACT 41 (1978) (Seminar Sponsored by Growth Associates).
- 134. Calif. State University, Northridge press release, August 17, 1977 (Project on Television Coverage of Terrorism; Dr. M. Sommer, Project Director) reported in EDITOR AND PUBLISHER, August 27, 1977, at 12.
- 134a. Tehran's Reluctant Diplomats, TIME, Dec. 4, 1979, at 64: Speaking to some 200 journalists assembled by the Ministry of National Guidance, Iranian Acting Foreign Minister Abol Hassan Bani-sadr said, "Diplomats cannot solve this problem. We want to solve it through 'newspaper diplomacy.'" The contents of this article go to describe what it refers to as "The most blatant use of television diplomacy" wherein its users were "playing the ratings game...." The substance of the article indicates how much the Iranians "managed" the news and relied on the fact that the hostage-taking crisis, which they created, was exploiting the media for what is obviously a political goal.

Clearly the hostage-taking, at times described as a non-government sponsored act, had a power-outcome goal which relied substantially on its media-created impact. See also Time Magazine December 17, 1979 p. 106 Vol. 114 No. 25 ... "Khomeini did not create U.S. television's imbalance between self-restraint and raut, but he has profited from it." ... "With such advantages, (use of the media) the Imam who rejects modernity Television's latest technology and the unaccustomed restraint of the press, does it for him."

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135. Quoted in W. RIVERS, T. PETERSON & J. JENSEN, THE MASS MEDIA AND MODERN SOCIETY 145 (2d ed. 1971).
136. For an analysis of the pressure and influences to which the media are subject, see text accompanying notes 97-124 supra. The relationship of the terrorists' strategic objectives to media coverage includes:
- 1) publicizing the claims of the perpetrators;
 - 2) disseminating specific information about the perpetrators' ideology;
 - 3) destroying or reducing confidence in the government or specific public authorities;
 - 4) extracting certain specific concessions;
 - 5) creating a general climate of public vulnerability;
 - 6) stimulating a feeling of general apprehension coupled with the feeling of ineffective police protection;
 - 7) projecting the perpetrators in a hero-like image;
 - 8) projecting the government, public authorities or specific decision-makers in negative images;
 - 9) conveying the general impression that the perpetrators or their followers can act at will;
 - 10) providing a basis for the public's justification or rationalization [sic] of the act;
 - 11) compelling the government or law enforcement authorities to engage in conduct or take measures which would be inimical to public sentiment;
 - 12) placing the government or public authorities in dilemmas which highlight their weaknesses, indecision, or tendency to act contrary to the laws or public sentiment;
 - 13) securing sympathy or new adherants to the movement, ideology in question or support for a specific claim.
- Bassiouni, supra note 1, at 762.
137. DISORDERS AND TERRORISM, supra note 74, at 415. After the Hanafi incident, Ronald Reagan called on broadcasting news directors to stop all live coverage of terrorist events and Andrew Young stated that "The First Amendment has got to be clarified by the Supreme Court in the light of the power of the mass media." N.Y. Times, March 19, 1977, at 33, col. 1. Former President Ford has called for an end to terrorism and attendant "lavish media attention." N.Y. Times, June 10, 1977, at 15, col. 6.

138. See 29 J. MIAMI L. REV 446, 451 (1975) (Media Law Conference).
139. F.R.G. Penal Code, §131.
140. TELEVISION AND CONFLICT, supra note 75, at 35. At the ISC conference, upon submitting the question of whether new legislation was needed, 15 participants voted in favor and 15 against with four abstentions. Id. at 38.
141. The Hutchins Commission wrote in 1947 that "[t]he primary protector of freedom of expression is government, but any power capable of protecting freedom is also capable of endangering it." Quoted with approval in 29 J. MIAMI L. REV, supra note 138, at 451.
142. See Konigsberg v. State Bar of California, 366 U.S. 36 (1961); Young v. American Mini Theatres, 427 U.S. 50 (1976).
143. See note 137 supra.
144. DISORDERS AND TERRORISM, supra note 74, at 185-86.
145. "Congress shall make no law...abridging the freedom of speech, or of the press...." U.S. Const., amend. I. The first amendment is applicable to the states through the due process clause of the fourteenth amendment, as first recognized in Near v. Minnesota, 283 U.S. 697 (1931).
146. See, e.g., Kovacs v. Cooper, 376 U.S. 77 (1949) (Frankfurter, J., concurring) (construing development of the preferred position notion in prior case law); Konigsberg v. State Bar of California, 366 U.S. 36 (1961); New York Times v. United States, 403 U.S. 713, 761 (1971) (Blackmun, J., dissenting).
147. In Chaplinsky v. New Hampshire, 315 U.S. 568 (1942), the Court established that certain areas of expression fall outside constitutional protection:
- There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting of "fighting" words - those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.
- Id. at 571-72. Subsequently, the areas of unprotected expression have been further limited. See, e.g., N.Y. Times v. Sullivan, 376 U.S. 254 (1964) (libel); Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748 (1976) (limited protection afforded commercial speech).

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- 148. See, e.g., the clear and present danger doctrine, text accompanying notes 167-176 infra.
- 149. J. TEBBEL, supra note 96, at 74.
- 150. Id.
- 151. W. RIVERS, T. PETERSON & J. JENSEN, supra note 135, at 89.
- 152. Id.
- 153. See generally COMMISSION ON FREEDOM OF THE PRESS, A FREE AND RESPONSIBLE PRESS (1947); W. HOCKING, FREEDOM OF THE PRESS: A FRAMEWORK OF PRINCIPLE (1947).
- 154. Barron, Access to the Press - A New First Amendment Right of Access to the Media? 37 GEO. WASH. L. REV. 487 (1969).
- 155. See text accompanying notes 232-237, infra.
- 156. DISORDERS AND TERRORISM, supra note 74, at 414.
- 157. Id.
- 158. Professor Emerson identifies four values & functions implicit in the first amendment: (1) "individual self-fulfillment;" (2) "process for advancing knowledge and discovering truth," (3) means "to provide for participation in decision making by all members of society;" and (4) "essential mechanism for maintaining the balance between stability and change." T. EMERSON, THE SYSTEM OF FREEDOM OF EXPRESSION 6-7 (1970).
- 159. "[The newspaper] industry serves one of the most vital of all general interests: The dissemination of news from as many different sources, and with as many different facets and colors as is possible....it presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection." Associated Press v. United States, 326 U.S. 1, 27-28 (1945) (Frankfurter, J., concurring) (quoting Hand, J., 52 F. Supp. 362, 372 (SDNY 1943)). For an exposition of Jefferson's well known view, see J. TEBBEL, supra note 96, at 79-80.
- 160. "A free press is indispensable to the workings of our democratic society. The business of the press....is the promotion of truth regarding public matters by furnishing a basis for an understanding of them...." Assoc. Press, 326 U.S. at 27 (Frankfurter, J., concurring).
- 161. Cooper, supra note 43, at 232.

- 162. Though the speech/conduct distinction has become somewhat outmoded and is of little utility in constitutional analysis, its persistence has been attributed to the Supreme Court's reluctance to rule "that the first amendment has any relevance whatsoever to political assassinations, radical bank robberies, or other violent modes of expression...." L. TRIBE, AMERICAN CONSTITUTIONAL LAW 601 (1978).
- 163. Id. at 580.
- 164. Id. at 581-84, 586, 602.
- 165. Id. at 580-81.
- 166. Id. at 582.
- 167. Schenck v. United States, 249 U.S. 47 (1919); Frohwerk v. United States, 249 U.S. 204 (1919); Debs v. United States, 249 U.S. 211 (1919); Abrams v. United States, 250 U.S. 616 (1919).
- 168. 249 U.S. 47 (1919).
- 169. Id. at 52 (citations omitted).
- 170. Id.
- 171. See Whitney v. California, 274 U.S. 357, 377 (1927). (Brandeis, J., concurring).
- 172. 395 U.S. 444 (1969) (per curiam)
- 173. Id. at 447.
- 174. Kattenmaker & Powe, supra note 87, at 1183-93.
- 175. Id. at 1193-6.
- 176. Id. at 1196.
- 177. 283 U.S. 697 (1931).
- 178. Id. at 713.
- 179. 1925 Minn. Laws, Ch. 285 §1-2.
- 180. 283 U.S. at 716 .
- 181. New York Times Co. v. United States, 403 U.S. 713 (1971) (per curiam).
- 182. Id. at 713.

- 183. Id. at 726-27. It should be noted that the troopship exception, strictly construed, does not require that the threatened harm be certain follow from the publication; what need be certain is merely an enhanced danger that the harm will occur. Disclosure of the sailing date of a troopship, for example, does not guarantee that the ship will be sunk by enemy action, but significantly increases the risk, always present, of its being sunk.
- 184. Id. at 730.
- 185. Id. at 745.
- 186. The Hanafis, for example, demanded that the movie Mohammad, Messenger of God cease being shown and United Artists complied. For an interesting elaboration of the scenario had the studio refused, see Bellows, Hijacking the 1st Amendment, MORE, June 1977, at 16.
- 187. 403 U.S. at 733 (White, J., concurring); 403 U.S. at 730 (Stewart, J., concurring). See also Near v. Minnesota, 283 U.S. 697, 720 (1931); "Subsequent punishment for such abuses as may exist is the appropriate remedy, consistent with constitutional privilege."
- 188. See L. TRIBE, supra note 162, at 727.
- 189. Smith v. Daily Mail Publishing Co., 99 S. Ct. 2667, 2670 (1979).
- 190. Id.
- 191. See, e.g., Smith, 99 S. Ct. 2667 (1979) (holding that state interest insufficient to justify statute punishing publication of juvenile offender's identity, particularly where no provision for punishment for disclosure by the electronic media); Beauharnais v. Illinois, 343 U.S. 250 (1952) (upholding criminal group libel law); Winters v. New York, 333 U.S. 507 (1948) (holding criminal statute punishing publications devoted to accounts of criminal deeds unconstitutional vague, refusing to decide the substantive first amendment issue).
- 192. 15 Cal. 3d 40 (1976).
- 193. 74 Cal. App. 3d 383, 141 Cal. Rptr. 511 (1977), cert. denied, 435 U.S. 1000 (1978).
- 194. 77 Civ. Ct. 1193 (SDNY).
- 195. See note 142 supra.
- 196. L. TRIBE, supra note 162, at 682.
- 197. See, e.g., Schneider v. State, 308 U.S. 147 (1939).

- 198. 408 U.S. 665 (1972).
- 199. Id. at 681 .
- 200. Id. at 684-85. See also Zemel v. Rusk, 381 U.S. 1 (1965), in which the Supreme Ct. rejected appellant's argument that the denial by the Secretary of State of his application for a travel permit to Cuba violated, among other rights, his first amendment right to the free exchange of ideas and information. Justice Warren, writing for the majority, noted that "[t]he right to speak and publish does not carry with it the unrestrained right to gather information." Id. at 17. A California court has stated:
Restrictions on the right of access to particular places at particular times are consistent with other reasonable restrictions on liberty based upon the police power, and these restrictions remain valid even though the ability of the press to gather news and express views on a particular subject may be incidentally hampered.
Los Angeles Free Press, Inc. v. City of Los Angeles, 9 Cal. App. 3d 448, 455, 88 Cal. Rptr. 605, 610 (1970).
- 201. See, e.g., Seattle-Tacoma Newspaper Guild, Local 82 v. Parker, 480 F.2d 1062 (9th Cir 1973); Borreca v. Fasi, 369 F. Supp. 906 (D. Haw. 1974); Lewis v. Baxley, 368 F. Supp. 768 (M.D. Ala. 1973); Consumers Union of United States, Inc. v. Periodical Correspondents' Ass'n, 365 F. Supp. 18 (D.D.C. 1973); Washington Post v. Kleindienst 357 F. Supp. 770 (D.D.C. 1972); McMullen v. Wohlgemuth, 453 Pa. 147, 308 A.2d 888 (1973), appeal dismissed for want of substantial federal question, 415 U.S. 970 (1974).
- 202. 417 U.S. 817 (1974).
- 203. 417 U.S. 843 (1974).
- 204. 417 U.S. at 835 .
- 205. Id. at 834 .
- 206. Id.
- 207. Herbert v. Lando, 99 S. Ct. 1635, 1645 (1979).
- 208. 376 U.S. 254 (1964).
- 209. Id. at 269.
- 210. Id. at 271-72.

- 211. 99 S. Ct. 1635 (1979).
- 212. Id. at 1646 .
- 213. Id. at 1647 .
- 214. U.S. Const., amend. VI.
- 215. 384 U.S. 333 (1966). See also Estes v. Texas, 381 U.S. 532 (1965).
- 216. 427 U.S. 539 (1976).
- 217. Id. at 569-70.
- 218. L. TRIBE, supra note 162, at 628.
- 219. 99 S. Ct. 2898 (1979).
- 220. Id. at 2912.
- 221. 467 F. Supp. 990 (E.D. Wisc. 1979).
- 222. Id. at 991 , 993.
- 223. Id. at 993 .
- 224. Id. at 995-96.
- 225. 47 U.S.C. §§151-609 (1970).
- 226. See Id. §§303, 307, 309.
- 227. 47 U.S.C. §153(h)(1970).
- 228. 47 U.S.C. §326 (1970).
- 229. Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 388 (1969). See also FCC v. Pacifica Foundation, 98 S. Ct. 3026, 3040 (1978); "of all forms of communication, it is broadcasting that has received the most limited First Amendment protection."
- 230. See Albert, Constitutional Regulation of Televised Violence, 64 VA. L. & R. 1299, 1318-19 & n.107 (1978).
- 231. See id. at 1319-27.
- 232. 18 U.S.C. §1464 (1976).
- 233. 47 U.S.C. §315(a) (1970).
- 234. Id.
- 235. See Albert, supra note 230, at 1335-37.
- 236. See Krattenmaker & Powe, supra note 87, at 1221-35.

- 237. 395 U.S. 367 (1969)(upholding constitutionality of the fairness doctrine).
- 238. Id. at 386.
- 239. Id. at 388.
- 240. Id. at 390.
- 241. 98 S. Ct. 3026 (1978).
- 242. Id. at 3040.
- 243. Id.
- 244. See Krattenmaker & Powe, supra note 87, at 1280-88.
- 245. See generally Brown, Television v. Progress, SATURDAY REV., Sept. 16, 1978, at 24.
- 246. Bassiouni, supra note 1, at 764.
- 247. See Mann, Personnel and Property of Transnational Corporations, in LEGAL ASPECTS, supra note 2.
- 248. DISORDERS AND TERRORISM, supra note 74, at 238.
- 249. Id. at 185.
- 250. Id. at 237.
- 251. Id.
- 252. STAFF REPORT OF THE SUBCOMM. ON CIVIL AND CONSTITUTIONAL RIGHTS OF THE HOUSE COMM. ON THE JUDICIARY, 95 CONG., 2D SESS., FEDERAL CAPABILITIES IN CRISIS MANAGEMENT AND TERRORISM 15-16 (Comm. Print 1979).
- 253. N.Y. Times, March 23, 1977, sec. 2, at 4, col. 2.
- 254. Czerniejewski, Guidelines For the Coverage of Terrorism, QUILL, July/August, 1977, at 23.
- 255. Jaehnig, Journalists and Terrorism: Captives of the Libertarian Tradition, 53 IND. L. & J. 717, 743 (1978).

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THE MEDIA AND TERRORISM

James Hoge
Editor in Chief
Chicago Sun-Times

For an editor or news director, the concerns about coverage of terrorism differ greatly depending on whether it occurred at home or someplace else. For example, the terrorist execution of an English Lord in Ireland is a news event and will compete for space on the managing editor's evening budget along with school board meetings and oil slicks in the Gulf of Mexico. A wide array of intangibles -- the rest of the day's news, the prominence the organization usually gives foreign news, the significance of the event and how spectacular it was -- will determine how the terror story will be displayed.

But terrorism in an editor's backyard is admittedly a different kind of story. It is not drastically different; civil rights marches, Nazi rallies, student riots, gang wars even gas lines might all be considered "special cases" that require more sensitivity, a more thoughtful reporting touch. But it is certainly one of the crucial stories where an editor and his reporters have to be particularly sensitive to a fundamental caveat of the news business: Don't become a part of the story. Rather than deciding how to display a piece of copy from a correspondent or wire service, now the editor is in the position of creating that copy from an evolving situation. Most often we are talking about a hostage situation where lives are at stake and it is conceivable that the actions of reporters could jeopardize those lives. What is important here is not just news judgment, but the procedure used to collect that news.

These two differing situations raise special but related questions. One is a strategic question; the newsman must ask himself, "Are we going to cover terrorism?" or, more specifically, "How much emphasis are we going to give it?" The second is a tactical question, something like, "How do we go about getting as much information as possible without adding to the dangers of the situation?"

At the very start I would offer brief answers to those questions. First, terrorism should be covered consistently and completely as a legitimate news event. As in any similar conflict situation -- such as wars, demonstrations, elections -- the rules of using balance and perspective should apply. Second, common sense and sound news judgment should be the guidelines that prevail when directly covering a terror situation. Protection of human life should be the highest goal. Some advanced preparation is necessary and communication with the authorities is essential.

But before expanding on this, let me try to place the entire question of terrorism into context. Political terrorism in the United States is not a major problem. It may become one, or it may not, but throughout our history there have been only sporadic, random outbursts of terror violence.

That pattern is worth keeping in mind when assessing the more alarmist spokesmen of the mini anti-terror industry that has sprung up in recent years.

It is also important to emphasize that terrorism is politically unsuccessful. As Walter Laqueur has written, "There is no known case in modern history of a terrorist movement seizing political power....Terrorism creates tremendous noise. It will continue to cause destruction and the loss of human life. It will always attract much publicity, but politically, it tends to be ineffective. Compared with other dangers threatening mankind, it is almost irrelevant."

Siding with Laqueur's analysis, I'm not willing to accept a number of the anti-terror industry's assumptions about the pervasiveness of terror violence. But disagreeing with Laqueur's further analysis, I'm also unwilling to accept that the media is always the unwitting accomplice to terrorism ("The media is the terrorist's best friend," Laqueur says) and that as a result media coverage of terrorism must be suppressed.

There is no empirical evidence in the U. S. -- or for that matter the world -- that the actions of the press have caused the spread of terrorism or the loss of a single human life in a terror situation. Indeed, a better case can be made for the fact that reporters on the scene, acting as a check on both terrorists and law enforcement officials, have actually saved lives.

Without trying to speak for "the media" but echoing a great many of my colleagues, I would emphasize from the start that I am opposed to mandatory controls on terror coverage and most voluntary ones.

I find the current situation analogous to loading a shotgun in preparation for killing a bumblebee you suspect might fly into your home. Most would agree that a loaded shotgun in the living room poses a far greater hazard than the admittedly painful sting of a bee.

As part of the context of this discussion, it is also important to remember the diverse composition and role of what is called "the media". If we're talking about the coverage of distant terrorism, we must include in the discussion everything from the metropolitan and rural dailies to the television and radio networks, local television outlets, the news magazines, special and general interest magazines and political journals. In the case of an immediate terror situation, "the media" includes everything from the local dailies and television

stations to suburban weeklies, radio newsmen and broadcast personalities such as disc jockeys or talk show hosts who, although they don't carry press cards, can become an obtrusive part of the situation. Needless to say, I will not attempt to speak on behalf of this group except in the broadest generalities.

One generality is that the media is present at terrorist incidents to report the news, not to participate in the functions of police or government. The media are not there to hinder the process, but only on rare occasion should they be expected to help.

These diverse outlets will perform the reporting function to greatly varying degrees. A recent terrorist takeover of a Chicago office was covered by student journalists, a collection of freelancers, yearling reporters from suburban papers, experienced police reporters and veteran foreign correspondents home on leave -- as well as a healthy contingent of out-of-town reporters and European and Japanese correspondents. It was a group that spoke with many voices.

Given such a conglomeration, most will file accurate reports, a few will not; most will conduct themselves properly; a few will not. Yet taken together, the story will come out and, with reasonable planning and cooperation, the press will not be the cause of major disruptions. It is less than perfect, but not as bad as the alternatives.

Which brings us back to the question of why this amalgam of organizations and individuals should be covering terrorism incidents at all and, if so, how extensively.

Media critics contend that the intent of the terrorist is to gain media exposure; that the terrorist is concerned only with the quantity not the quality of that coverage; that the incidents are portrayed as much more significant than

they really are and that coverage causes contagion, encouraging others to try the same techniques.

I would concede that, although there seems to be little or no empirical evidence to back them up, these criticisms are probably in part valid, at least in the short run. We've already found, for instance, that fictional violence on television sometimes spurs violence in real life so why shouldn't the portrayal of real violence? But I would say that in the long run, more convincing arguments could be made that media coverage has the opposite effect, at least on terrorism. It eventually focuses public scrutiny on the demands and actions of the terrorists and, as in Italy after the Aldo Moro kidnapping, promotes public outrage.

Look also at the problem of contagion. A sophisticated terror group may be prompted to act because they see another band of terrorists receiving media exposure. But in the long run, media exposure must cause the terrorist more harm than good. Given the amount of media attention to terror incidents, one might expect that there would be armies of terrorists roaming the globe and committing daily acts of violence in the media-saturated U. S. alone. But that is clearly not the case; terror violence, in the age of live television and instant communication, has continued to follow its traditional, sporadic pattern. At least one political scientist who has studied the question, Bernard Johnpoll of the State University of New York, concludes flatly that there is no evidence that publicity spawns terrorism.

Take for instance the case of the Symbionese Liberation Army and its kidnapping of newspaper heiress Patty Hearst in 1974. Yonah Alexander, a State University of New York professor who concentrates on international terrorism,

decried press coverage of the incident because "two years later, the media were continuing with renewed vigor to magnify the case out of proportion to its real significance, thus providing sensational mass entertainment and serving the publicity needs of the SLA as well." Yet what can one say of the SLA as a political force today? It received as much air time as any two candidates in the presidential primaries, yet today the SLA is extinct. Through the coverage, which varied in competence and seriousness of intent, emerged a picture of a band of social misfits with an unappealing message.

Yet to argue whether coverage of terrorism is advantageous or disadvantageous is really secondary to the most important question a newsman must ask himself and that's why cover terrorism? The reason is because it is news. It is not the world's most important story, but it is more interesting than many and contains most of the elements of news. Terror violence is different, dramatic, potentially violent, it frequently develops over a period of time, it can occur in exotic locations, it offers a very clear confrontation, it involves bizarre characters and there is political significance to the event. And it is of concern to the public.

When considering a foreign or national terrorism story (as opposed to a local one), most newsmen do not agonize over questions of "contagion" or whether they, too, are being "held hostage" by the terrorists. They use the same news judgment that would apply to a plane crash or a war or a natural disaster. All are not everyday stories and may call for different display in the newspaper or on the evening news. Then again, sometimes they will not be given any different treatment, depending on the nature of other news and the preference of the individual editor. The last thing I would presume is to

propose how extensively news organizations should cover terrorism. The question is better posed to a roundtable of 50 editors -- who just might come up with something resembling a consensus, but probably not. As suggested earlier, a lot of factors go into the display of any news story, and a story on terrorism is just another story. One editor's definition of proper play is another's example of excess. The hijacking that ended at Entebbe Airport on July 4, 1976 took place over a "slow news" summer weekend and took up more space than if it had occurred during an election week. The news business is an imperfect institution. It does not follow a systematic pattern of covering news because news does not occur systematically.

Then, too, there is the question of how much air time or column inches actually is devoted to terrorism. There is no empirical data available on amount of terror coverage, but other studies have shown that violent or extraordinary incidents, particularly on television, leave a greater impact on the viewer. A close parallel might be found in the something like the television coverage of the tumultuous 1968 Democratic convention in Chicago. NBC and CBS calculated that only 3% of their total convention coverage dealt with the street violence; at ABC, which only did excerpted coverage, it was 1.1% devoted to demonstrations. Yet the memory people have of the convention was of a mass, violent demonstration. "The stream was forgotten, the trickle remembered," wrote former CBS executive William Small in an analysis of the convention coverage. Can the press be responsible for how people perceive an event?

Perception was an important question in the debate over media coverage of the Vietnam war. Arguments have been made that because violence shown on television has a disproportionate impact, the U. S. War effort in Vietnam was

defeated by television. Even assuming that was correct, is that a justification for regulating coverage of the war? Television did not upend the war effort, but perhaps people's perception of what they saw did. Critics of the press claim that these excesses and lack of proportion amount to an abuse of the First Amendment by crying "Fire!" in a crowded theater. But the spirit of the First Amendment demands that the press shout "Fire!" if the crowded theater is burning. Once the warning has been given, people can do as they choose.

And finally, even if it were proven that news coverage of violence spawns more violence, or makes people think violence is more pervasive than it is, or makes them refuse to fight in a war because they've seen the horror of it, the newsman's reply would have to be that it's his responsibility to tell the public what's going on.

Another reason the media must be aggressive in its coverage of subjects such as terrorism is because a policy of benign neglect or selective coverage may soon allow the government to take such restraint for granted and eventually institutionalize it. News suppression is an important element in an authoritarian regime. As Johnpoll points out, "Although authoritarianism may make life safer for some, it is stifling and is eventually as terrifying as any Molly Maguire, Weatherman or Klansman."

That is the lesson that is being slowly perceived in West Germany when the rash of terror violence in the mid 1970s produced what has been called "an extreme reaction to extremism." Pressure for media restraint had been building throughout the exploits of the Baader-Meinhof gang but the cataclysmic event was probably the kidnapping of Hans Martin Schleyer on September 5, 1977.

Sweeping censorship laws were enforced with such absurd results as the cancellation in Bonn of a 19th century comic operetta because it depicted a farcical kidnapping. Germans soon found that much of the subtle repression was directed against left-wing liberal opinion rather than any extremist action. Leftists likened it to a "McCarthy period" and writers such as Heinrich Boll found themselves chilled by what one called "a general uncertainty as to what may or may not be articulated, written, learned or even taught." For its part, the press was remarkably docile, first agreeing not to cover the Schleyer kidnapping in detail and eventually minimizing all coverage of terrorist acts. This prevailing attitude of self-censorship has come to be known by the Germans as "scissors in the head" and prompted Boll to say: "I wonder if it's necessary to do away with democracy. People are so intimidated, the media have become so careful, that the laws don't actually have to be changed...even liberal newspapers have become so conformist and careful that it isn't necessary to do anything."

The further progression of this kind of situation can be seen in Uruguay where spiraling extremism by the government and the Tupamaros guerrillas ended in the destruction of the strongest democracy in Latin America and its replacement with a right-wing military dictatorship. For the guerrillas and the government, their war was mutually suicidal. The next step, of course, is the complete replacement of terror by dissidents with terror by the state. Shielded from any criticism by the press, Stalin and Hitler were able to conduct the most ruthless campaign of state terror. In Argentina, terror from both the right and the left is indistinguishable because the press cannot write about it. The situation is one of chaos with both the public and often the government

itself unaware of what's going on.

One of the tacticians of terror, Carlos Marighella, writes in his Minimanual of the Urban Guerrilla that the terrorist begins to make substantial gains when he induces government officials to shut off the media. Government, he says, "winds up in a defensive position by not allowing anything against it to filter through. At this point it becomes desperate, is involved in greater contradictions and loss of prestige, and loses time and energy in an exhausting effort at control which is subject to being broken at any minute."

To suggest such a scenario for the United States is as hypothetical as suggesting we are on the verge of a mass outbreak of terror violence. But if we are to deal with hypotheticals, then it's necessary to look at all the implications.

One of the greatest detriments even discrete restrictions on the press causes is a loss of media credibility in the minds of the public. If terror coverage were even voluntarily restricted, the public could legitimately ask, "If you're not giving us the whole story on this, what else are you holding back?"

A reputation for attempting to report the news completely and accurately is an important asset at all times and particularly so in times of public crises such as terrorist incidents. Then, citizens need reliable sources of information lest they be left with only rumors.

If an aggressively reported story causes someone harm, the newspaper's credibility may be intact but its respect damaged. But as press critic, Ben Bagdikian, asks rhetorically, "Should the reporter and editor be responsible for the ill effects of printing truthful news? If so, then each editor and reporter has to decide ahead of time what he wants the reader to think and do,

and only report those events that lead the reader to that end." This would eventually undermine media credibility as badly as government censorship. The most appropriate course is just to report the news, to encourage reporters and editors to give as clear a picture as possible of what's happening. Bagdikian cautions that when a reporter begins to filter what he sees through some concern for whether the reader will "react correctly," he has ceased being a reporter. And, I would add, people cease believing him.

But much of the foregoing discussion has presumed a strong probability that there is something dangerous about the coverage of terrorism -- or at least something dangerous in what is nebulously perceived as "too much coverage," I would turn that presumption upside down and suggest that coverage of terrorism can be beneficial and the proper response of government is to encourage more rather than less coverage. In saying this I would emphasize that I'm not talking about some abstract concept of freedom of the press, but a realistic service provided by the press.

It is an argument that finds considerable support from many outside the news business. H. H. A. Cooper talks of the "greater mischief" of "partial revelations, half-truths and frightening speculation" that occurs when there is not comprehensive media coverage of an extraordinary situation such as a terrorist siege. He reiterates that it causes a loss of confidence in the media and calls the authority of the government itself into question.

In Israel, where terrorism is much more than a hypothetical, there is a strong realization that press coverage is necessary. Although the country does have laws against live television coverage, it doesn't discourage other reporting of terror violence. As an Israeli army spokesman said in a Harpers

magazine article: "Whether we release the news or not, there is no vacuum of information, and this would only allow the other side to come out with their own distorted version." He added that journalistic silence would also jeopardize the government's credibility with the Israeli population.

Richard Clutterbuck, the British scholar who has often been very critical of the media, nonetheless offers a strong argument for robust coverage. In his Guerrillas and Terrorists, he writes, "In most countries, sadly, the media tell the people what the government wants them to be told...The overwhelming majority of the public detest political violence and terrorism and wish to help the police to defeat them. So, given the chance, the media will reflect that feeling."

Clutterbuck also cites the examples of law enforcement "using" the media as the terrorists are said to do. He describes a decision by the British Army to let any of its troops in Northern Ireland be interviewed by television and says the policy "paid tremendous dividends." Clutterbuck claims that the enlisted man, coming into the homes of the British viewers, refuted the image of the "fascist pigs" and the result was overwhelming British public support for the soldiers.

It should be noted that a broader point can be taken from this last. News that is not an act of God is an act of man. The media event has become a common tool and everyone "uses" the press -- politicians, businessmen, sports figures, terrorists. But this usage shouldn't be considered a justification for suppression. People in the press are aware of being used; sometimes they can do something about it and sometimes they can't. Just because certain events are created doesn't make them any less newsworthy. A President's steamboat trip down the Mississippi and an airline hijacking are both intended to gain media

exposure, the press knows it, but is required by the unwritten rules of journalism to cover both.

The public information function of the press also cannot be minimized. In 1970, the Columbia Journalism Review studied a situation greatly analagous to an ongoing terror incident: the 1968 Detroit race riots. The Review argued that crisis situations greatly increase the need for news, particularly as people seek to confirm rumors and clarify sketchy information. The Detroit case is an unusual one because in the winter of 1968, the metropolitan newspapers were on strike and their absence "helped create a panic." The Review wrote: "There were rumors in the white community that blacks were planning to blow up the freeway, kill suburban white children and destroy public buildings; in the black community, that white vigilantes were coming into the area to attack residents. Gun clubs sprang up in the suburbs; black leaders urged preparation." Finally, in a series of television appearances, the mayor calmed the situation down, at least temporarily. But the lack of adequate information contributed to the tensions that wracked Detroit for several years.

The other side of this was the Hanafi Muslim takeover of several Washington D. C. buildings in March, 1977. Discussing the situation, Leonard Downie, who managed the Washington Post's coverage, said, "It was our impression that once the first day was over and all of the media, broadcast and print, had given the public a rather full picture of what was going on that the city seemed to ease a great deal. The jams of traffic and gawkers were not that great around the three sites." Life in the city was back to normal, he said, people did not feel panicky because they knew what was going on. And this, Downie concluded, contributed to an atmosphere in which the takeover could be more easily and peacefully resolved.

There is also an argument to make for the ability of the media to stabilize a terror situation by acting as a check on the actions of both police and terrorists. At the Munich Olympics in 1972, when Black September gunmen held Israeli athletes hostage, there were more press assembled than at any terror incident in history. ABC alone had 400 staffers there. Yet there were few problems between press and police and after the initial attack, there was no violence. In fact, it was only when the drama moved to Furstenfeldbruck Airbase, where no media were present, that the West German police made several serious tactical errors that resulted in the deaths of 9 hostages, 5 terrorists and a policeman. It would be naive to call these examples conclusive evidence of the value of the press, yet they are stronger than most contrary evidence of the press disrupting a situation.

More coverage requires more cooperation by law enforcement officials. Some of the strongest arguments for more rather than less cooperation have come from law enforcement officials. Patrick V. Murphy, the former New York City police commissioner and now president of the Police Foundation, suggest "extreme caution" in any proposals to limit coverage of terror incidents. His reasoning is not based on the First Amendment, but rather the practical consideration that "very possibly, where extraordinary violence is concerned, more and balanced coverage is better than less coverage."

A number of Murphy's prominent colleagues, including former Washington, D. C. police chief Jerry Wilson, came to similar conclusions while studying the problem in 1976 for the Task Force on Disorders and Terrorism of the National Advisory Committee on Criminal Justice Standards and Goals. Sitting on a panel which had no journalists, the high-ranking law officers found that

the media had a greater ability to improve a terror situation than disrupt it, and that law enforcement units should provide the fullest cooperation. The report tells law enforcement officials to take great pains not to pressure the media or seem to be censoring it. "Civil authorities have everything to gain by working with the media rather than putting obstacles in the way of those whose task it is to convey the news to the public." The report quotes approvingly a Los Angeles police official: "We feel it is better to tell the truth. Even if the truth is not good, it's better than rumors which are generally horrible."

Most newsmen realize that -- to stretch the analogy once more -- when that burning theater is down the street from their newspaper, how they shout "Fire!" becomes the critically important question. Being required to cover a local terror incident is a rare circumstance that most newsmen will never face, yet if it does happen, it is a situation in which the press, too, is under intense scrutiny and must perform properly.

What we are mostly talking about is a hostage-taking situation. The legitimate criticism of the press in these instances has to do with its physical presence and possible intervention in the delicate negotiating process. Fears expressed, have to do with the media becoming the "intelligence arm" of the hostage-takers by telling of police movements and strategy; annoying law enforcement officers or terrorists with questions; making the event appear overly dramatic and more significant and publicizing the terrorists' propaganda demands.

In response, it must first be pointed out that although various newsmen are probably guilty to some extent of doing such things, as far as I know, media in the U. S. has not substantially disrupted any terror situation or done

anything that has resulted in the loss of a life. And that, for a newsman, would be the bottom line or responsibility: to get out as much accurate information as possible and not to deliberately endanger anyone's life.

For a newsman, a hostage story is a delicate situation that needs to be reported with caution. This means that an intelligent editor or news director will carefully review the information he is about to print or broadcast; that he will be in constant and clear communication with the police so he can quickly evaluate any requests they might make and decide if he considers them legitimate. It means he will take care in picking the reporters he assigns to certain aspects of the story. He should keep his people physically out of the way of the police, and as in a fire, have them respect police lines. He should also show restraint on such things as phoning terrorists or people trapped in an occupied building.

The hypotheticals could go on, but what they really come down to is common sense and good news judgment. There can be no absolutes and each response has to be tailored to the event. A good example of this common sense approach was provided by the Washington Post in its coverage of the Hanafi takeover. It was a confusing and for a time fast-moving situation. As metro editor Downie explained, the Post discovered early on that it was getting insufficient information from the authorities so some of the textbook rules had to be scrapped. They picked what Downie called a "calm" reporter to start phoning several of the buildings to assess what was happening in the early stages. Downie said the calls were as brief and infrequent as possible and that the Post told police when they were making them. Police were told they could cut the Post off any time they needed a line. Through the calls, the

paper obtained valuable information, some of which they forwarded to the police after making an independent decision that it was important. But soon after they started phoning, they discovered that Hamaas Abdul Khaalis, the Hanafi leader, despised the Post because of several articles it had written on the Hanafis. The phone calls from the Post stopped.

There were other on-the-spot decisions that had to be made. Downie said the Post realized the Hanafis were picking up the papers every morning and so editors made a decision not to publish any incendiary material that might set the Hanafis off. The paper found itself on several occasions being given deliberate misinformation by the police, such as a claim that the negotiations were not going well when in fact they were. The paper decided in those cases to say nothing at all about the subject, not wanting to embarrass the police at that point or print false information. In an effort to swiftly squelch rumors, the Post kept reporters in close touch with a police command center where a great deal of information came informally from government officials. They also rotated street reporters among the occupied buildings so each would be familiar with the entire scene. On balance, Downie said the Post carried out about half the requests that were made by the authorities.

Yet while the Post's coverage has generally been praised, the Hanafi siege featured a number of botched initiatives by the media. The first was a TV newsman who reported live that the police were sending supplies to a group that had evaded the gunmen in one of the buildings. Police got them out before the gunmen could react, but not before some tense moments. Another reporter, for a local radio station, asked Khaalis during a live interview if he had set a deadline for executing the hostages. It was a question police feared could have prompted Khaalis to act, but they were relieved when the terrorist did not

respond to it. A third reporter, a Washington TV anchorman, referred to Khaalis as a Black Muslim, when in fact it was the Black Muslims who had murdered Khaalis family. He threatened to kill a hostage in retaliation, until the TV man apologized. Then too, there were a number of non-newsmen -- disc jockeys and talk show hosts -- who phoned Khaalis, tying up the lines and increasing the risk of inciting him.

Such non-news media people ought not to become involved until the crisis is under control.

The one area where I would support some kind of government action would be in having law enforcement officials discuss terror situations with the media before they happen. I am talking here about informal discussions and not the kind of media-police committees that have been proposed by some. The key topic should be communications: to make sure that the police know what the media need and the media are aware of the police's capabilities.

I can't emphasize strongly enough how critical this problem is. Media and police communicate too little and our experience so far is that most of the blame belongs on the police. Even with a department as large and sophisticated as the Chicago Police Department, in two recent hostage incidents we found the information situation to be chaotic. During the takeover of the West German consulate by Croatians last summer, it was almost impossible for reporters on the scene to find a police spokesman to brief them. There was nothing resembling an information center and continuing rumors were unverifiable. But our reporters later told me that the worst chaos erupted when the takeover ended. Police lines that had been strictly maintained all day suddenly broke down as the mayor and top police officials emerged from the consulate. Reporters had to scramble among hundreds of curious bystanders to catch a few phrases from the officials. We

and some other news organizations managed to put the details and background of the incident together, but they came in bits and pieces from an array of confidential sources. The police added little. It was a similar situation during the recent hijacking of an American Airlines jet by a Serbian terrorist. Again, the police told us little and had no established lines of communication. The FBI proved only slightly more helpful.

The way to avoid such problems is to have police and media talk things out. Discussions should be on a technical level and might involve such things as the possibility of pool coverage in extreme situations; the establishment of a news center; an expanded role for police public information officers; procedures for the credentialing of reporters and the problems that arise in phone contacts with terrorists. There is a need for the police and the press to have some sense of the other's responsibilities. Neither the policeman nor the reporter are keeping a long, freezing vigil in front of an occupied building for laughs or to satisfy some voyeuristic impulse; both have a sensitive and equally important job and each should understand that. But I again stress that any such discussions are to be informal and non-binding. The police and the press are two very different institutions and need to interact with care. I would agree here with Patrick Murphy's assessment. He says that police should be as candid as they can in dealing with the press and suggests that it would be wise for the police to make the media aware of the problems that some reporting can cause. But he offers a caution that police keep requests for media self-regulation to a minimum. "That's not a very good role for the police to find themselves in, suggesting to news media executives how to control themselves."

What this presumes then is a heavy burden on the media to act responsibly.

It is a legitimate question to ask if they will. As far as terror situations have shown, on balance the press has acted responsibly. But the number of cases there are few. What might be more instructive is to consider briefly how the media restrains itself in general.

Two of the most important things a newsman must concern himself with in any story is balance and obtrusiveness. In both cases I would say the press rates high marks for effort and fair grades for accomplishment. The average journalist really believes that a story should contain both sides and that he shouldn't be too far on one of those sides. He also understands that his presence, particularly if he is accompanied by \$100,000 worth of television equipment, can often have a drastic effect on the story. Beginning reporters are made aware of these dangers early on. Similarly, the beginner learns that just by showing up, he can change the outcome of a story, such as when he sees a judge hand down a particularly harsh sentence because he knows the press is covering the story. Sometimes the reporter can make himself less obtrusive and sometimes he can't.

It becomes more important when the story involves potential violence. During the race riots of the late 1960s, television newsmen realized that rioters were often playing to the cameras. Some TV people exploited this, but many tried to minimize their presence. Recently they have been more successful at doing this just through technological improvements that have made cameras smaller and bright lights less necessary. They have also realized the danger of covering live many kinds of violence, including terror, and have greatly cut back on their use of it. The TV newsmen seem to have realized that live broadcasts deprive them of an important journalistic tool: the ability to edit.

They seem to be willing to sacrifice drama for control. Yet such moves have their price and not all television newsmen are willing to pay it. It is a competitive business and they cringe at comments such as this from a viewer who wrote to an Indianapolis station that cutoff live coverage of a hostage story: "You did the right thing. I switched the channel to find out what happened, but you did the right thing."

Far short of a hostage situation there are many stories that the media has to be exceptionally careful in covering. Chicago has had smoldering gang wars all summer. We have, to an extent, cooperated with police requests to tone down some of this coverage and to provide a balanced picture of the communities where the gangs operate. This action did not stop the killings, but in some cases it may have eased the tension. Similar care had to be taken during recent school desegregation stories -- and many have to be taken again as the issue returns. In ongoing kidnappings, the press has cooperated with the FBI to keep from jeopardizing a life. Even in a story like the recent gasoline shortage, the media had to use caution not to create a panic.

All this does not precisely answer the question of whether the media will act responsibly. The realistic answer is that they will be responsible most of the time. But as these examples show, terrorism is just like a lot of other stories that most newsmen realize must be covered with care. Mostly that care is evident; sometimes it's not. Also, the sort of loose guidelines that various people used in covering civil rights marches or gang wars did not evolve until those stories became ongoing and a trial-and-error policy could be reached. If U.S. editors should find themselves covering terrorism on a routine basis, I suspect similar policies will become more prevalent, whether written or not.

This is not to say that news organizations haven't already addressed the problem of terror coverage in some detail. A number of outlets, including The Sun-Times, have taken the step of establishing some broad policy guidelines. Other major organizations have discussed whether a formal policy was needed and decided against it. A California State University study has found that overall, 38 per cent of newspaper and radio outlets have written guidelines while 52 per cent have not. Those that do have guidelines tend to have cited similar, almost identical, concerns. The first is that terror stories should be covered extensively despite any risk of contagion, since suppression creates greater problems. Next, that they must be evaluated on a case-by-case basis and that normal news judgment should be the prevailing standard. Also, that terror incidents should not be sensationalized beyond their innate sensation but rather placed quickly in perspective. And finally that journalists should not hamper the work of law enforcement officials and should stay in constant communication with them for both information and possible guidance on coverage.

Those organizations that have not adopted guidelines argue that no guidelines could cover every situation and what the generalities come down to is common sense and sound news judgment -- and neither needs to be put on paper. They see written guides as curtailing their flexibility.

Here is a brief rundown of what a number of major news organizations have done on the subject:

The National News Council is an independent media watchdog and research group consisting of media and non-media representatives. In 1977, the Council rejected the idea of any industry-wide guidelines with itself or a similar group as arbiter. It suggested that each news organization should consider certain

self-restraints "in specific areas and in specific cases." The Council picked out live television coverage and telephoning hostages as the two main areas that newsmen should consider carefully.

The New York Times does not have a written policy. Its executive editor, A. M. Rosenthal, has been among the most outspoken against one. In a 1976 interview, he said, "The last thing in the world I want is guidelines . . . from the government . . . from professional organizations or anyone else. The strength of the press is its diversity. As soon as you start imposing guidelines, they become peer group pressure then quasi-legal restrictions." The Times' policy, according to managing editor Seymour Topping, is still to treat each event on its news merit. "We try to cover it with intelligence and a sense of balance covering the journalistic and human aspects of it."

The Los Angeles Times, Washington Post and Chicago Tribune all say they use similar approaches. The basic philosophy is that there are no rules for a terror situation that do not apply to any other story.

The Associated Press also does not have written guidelines, but managing editor Burl Osborne says that more care is exercised in a terror incident. He said reporters are told to keep the story in perspective and to quickly find out why the incident is taking place. He said the AP has tried to write guidelines but found it impossible to cover every case.

Of the broadcast networks, ABC News also has not written formal guidelines. They found it impossible to write them to cover all situations. A spokesman said that informally, the main points ABC producers emphasize are never to put anyone's life in danger and not to interfere in the event, to take a "back seat and let it happen." The network says it relies heavily on the experience and judgment of individual correspondents.

NBC News relies on the section in its policy manual covering riots and civil disturbances. That calls for correspondents and cameramen to act with care not to exacerbate an event and to avoid being used or manipulated by those involved. There is a caution against sensationalizing the story beyond its already dramatic nature.

CBS News has had broad guidelines for network correspondents since 1977. They emphasize that there can be no "specific, self-executing rule" for handling terrorism or hostage stories, but call for "thoughtful, conscientious care and restraint" and "particular care in how we treat the terrorist/kidnapper." The standards call for the paraphrasing of demands unless they are free of rhetoric and propaganda; no live coverage of the terrorist "except in the most compelling circumstances," and only then with the permission of the president of CBS News; restricting telephone calls to the hostages or kidnapers; getting guidance from experts on what kind of reporting may exacerbate the situation; making sure law enforcement officers have easy access to CBS personnel if they need them; keeping the story in balance so it does not crowd out other news of the day.

In all cases, the network rules do not apply to the affiliates which make their own policy.

Similar but more detailed standards have been given by the CBS Television Stations division to its owned-and-operated units which tend to be the local outlets in big city markets. These combine the standards for terror coverage with those for riots and civil demonstrations. They include a long list of specific policies the newsmen might consider such as use of unmarked cars, smaller broadcast equipment and minimizing lights. Reporting guidelines include avoiding "coverage of i) self-designated 'leaders' if they appear to

represent only themselves or ii) any individuals or groups who are clearly performing." They emphasize not using inflammatory words and avoiding actions which will in any way influence the participants to do something differently.

Among the print media, the Louisville Courier-Journal and Louisville Times have standards which call for the paper to make sure experienced staff members are assigned to the story and the paper's top news officials are involved in making decisions. The standards suggest maintaining contact with law enforcement officials and avoiding any action that would interfere with police responsibilities. The guidelines conclude: "Although we cannot be responsible for the coverage by other news media, we can and will conduct a constant review of our own performance."

United Press International has brief guidelines that call for coverage that is "thoughtful, conscientious and shows restraint." UPI reporters are told not to become a part of the story, not to provide a platform for the terrorists and not to jeopardize lives. Finally: "In all cases we will apply the rule of common sense."

The Sun-Times, too, has written guidelines, which we begin, "Recognizing that circumstances vary in each story, the following standards are meant for general guidance." In the guidelines we state that we will publish regardless of the dangers of contagion, since the adverse effects of suppression are greater. We tell our reporters to obey all instructions by police, but to quickly report to senior editors anything that seems like an attempt to manage or suppress the news. Senior editors have the authority to withhold or defer what might be inflammatory information from the story but should consult with reporters and law enforcement authorities first. The last one really sums up

our philosophy: "The constant objective should be to provide a credible report without hampering authorities or endangering life."

What all the above comes down to is this:

There should be coverage of terror violence without even the suggestion of censorship or voluntary suppression -- both of which are far greater evils than terror. That coverage should be more rather than less extensive because the public is better served.

There is room for improvement by both the media and law enforcement. Greater coverage will mean law enforcement officials will have to be more forthcoming with information and more cooperative with the press. For its part, the press will have to be careful to act responsibly and be more diligent in pursuing stories related to the incident that may not be as provocative but can be equally important.

News organizations have to be continually aware of balancing stories and placing them in perspective. Reporting about things like the plight of the victims and the authorities are as important as that of the terrorist. Follow-up stories cannot be neglected.

Despite pronouncements by the press that terror should be treated on a case-by-case basis, a little advanced preparation could be in order. General standards, whether written or not, are often not communicated to front line editors and reporters.

But the most important aspect of prior planning involves communication between police and newsmen. There has to be an understanding of the other's responsibilities and constraints. There should be informal sessions between a wide range of officers and newsmen on a periodic basis. Certainly there should be conversations after a

local incident has occurred and quite possibly after some other locality has had one. The police and the press have to talk.

(END)

ADDENDUM

Quotations come from:

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The Police, the News Media, and Coverage of Terrorism

by Patrick V. Murphy
President
Police Foundation

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The assigned purpose of this discussion is "the practical problems of law enforcement and media relations with respect to terrorism coverage with particular emphasis on problems arising during ongoing terroristic events."

A vivid subject.

But in honesty I must note that, of the many concerns of American police leadership today, worry about how to handle police problems and the news media during an event of ongoing terrorism ranks probably about 97. Dealing with teenage vandalism, convenience store robberies, rush-hour traffic, newly formed and sometimes insurgent police unions, the fiscal crunch affecting all municipal services--these are a few of the real and pressing problems of the leaders of the 17,000 police agencies fragmented across the nation in bits and pieces of precious autonomy and insularity.

That figure means 17,000 police chiefs are scattered across the 50 states. Some occasionally may fantasize about what they would do with their personnel and the news media if a dramatic event of terrorism occurred within their jurisdictions. Life can be pretty routine, even boring, for most of the nation's 17,000 police chiefs and, however grave the event of terrorism, it would tend to enliven things for a while.

But almost none of the nation's police agencies is ever going to have to deal with "ongoing terroristic events." Indeed, the subject this paper addresses is as remote from what the American police usually encounter as what to do when the next meteorite falls on Truth or Consequences, N.M.

Still, meteorites do fall; ongoing events of terrorism do happen. Either is as good an excuse as any to note key aspects of American policing, since the status of American policing affects how the police will handle falling meteorites and events of terrorism, as well as the everyday occurrences which the police face.

I mentioned that American policing is fragmented among 17,000 or so agencies. This fragmentation is a principal factor inhibiting the growth and development of a superior American police service. Perhaps 16,500 of these agencies are so relatively small in terms of personnel and resources and, as a consequence of this smallness, the personnel so poorly trained and informed about best police practices, that the question is not what do the cops in five- or 10- or 20-member departments do when an event of terrorism occurs in their backyards; the question is what do they do when a routine felony occurs. How do they keep from bungling a homicide investigation? Or bank robbery? Or rape? Or a robbery or burglary?

The fact is, most American police departments are so small and usually suffer such poor training and education and expertise that routine criminal occurrences often are too much for them.

Another problem with American police is the insularity of its personnel. I know of only a few exceptions to the rule that police officers retire, after 20 or 30 years of service, from the same department they joined as young people. Because there is virtually no lateral movement among police agencies, an officer is stuck in the same department for an entire career, subject to the folkways of that particular department. The police officer has virtually no chance for the sort of professional growth that comes to others in many fields, who change jobs as a way of going up the ladder to better pay and promotions and of broadening experience and increasing expertise.

The result of this insularity is to breed a narrowness, a resentfulness, a cynicism that manifests itself in an us-against-them attitude on the part of cops.

A third problem of American policing is a stolid resistance to change and innovation, particularly when change and innovation may mean that authority is decentralized from top brass and middle management

to cops in the street so that the police can get closer to the communities they serve in a sustained, productive manner.

The police during the past 30 years, in part because of necessary adoption of the auto for patrol, have become remote from neighborhoods and from citizens. In practical terms, this has meant the police are not close enough to sources of information, to what is going on in communities. The information and confidence the police need from citizens so that they can control crime are not as ample as they once were.

When I was a young police officer patrolling the Red Hook section of Brooklyn, it was natural for me and my colleagues to know the community and to be aware of the good guys and the bad guys. But policing has become more impersonal, again thanks in part to the impersonality of motorized patrol.

There are other problems facing policing. I could mention a few more: the need to increase, more than has been accomplished, the number of women and minorities in policing; the need to test and introduce measures of productivity into police work; the need to turn policing into a profession (something it is not now) through education, research, and debate.

But I will limit my list to the three problems I have mentioned because they are related directly to the discussion of practical problems of law enforcement and dealing with the news media during events of terrorism.

Fragmentation means the police in many areas lack the coordination and staff, the training and skills, to deal with the wide range of criminal activities. Insularity means that the police in most departments are not as sophisticated and enlightened as they should be in dealing with human nature in some of its less edifying forms. Remoteness from citizens and communities means the police often lack sufficient intelligence about what is happening in their jurisdictions and so cannot anticipate criminal events as well as they should, nor deal with those events in an effective way once they occur.

For this discussion, terrorism is defined as "a strategy of unlawful violence calculated to inspire terror in the general public or a significant segment thereof in order to achieve a power-outcome or to propagandize a particular claim or grievance."

Put another way, terrorists become their own press agents through the use of criminal violence so as to press a claim, usually political or ideological. An explanation for the relatively infrequent occurrence of politically or ideologically inspired terrorist

sieges in the United States may lie in the fact that, with a little skill and planning, any damn fool promoting virtually any cause can, without resorting to violence, grab the media's attention and trumpet a belief. Thus, exercising First Amendment rights to cover anything and everything, the U.S. media may be helping law enforcement in keeping down the nation's level of terrorism. If so, I relish the irony.

As terrorists seek to be their own press agents, capturing media attention is their primary goal---not cash or property or the death or injury to an estranged lover or friend, as is common in crime. Terrorists plant bombs or lay siege for maximum public visibility. They endanger lives, even kill, to extort as much printed space and broadcast time as possible. The immediate purpose of their extortion may be a plane abroad or ransom, but this purpose is almost always secondary to the goal of propagandizing a belief or course of political action.

And by their action, terrorists, whether the police like it or whether the news media like it or not, change the rules of the game between the police and the news media, two frequent adversaries who ordinarily operate in an established manner. The police patrol the streets, enforce the law, investigate crimes, and capture criminals. The news media stand aside, observing this process and reporting its outcome. That's the way it's supposed to be, except that, sometimes,

the news media get the facts wrong or misplace the emphasis of a police matter and the police boil in resentment. Or, sometimes, the police lie to the news media or bungle a case and the news media catch on and write a tough story. To this mix of often strained relations add the police chief's realization that, at least in many localities, the news media--particularly the local newspaper--can make or break him.

But in events of criminal terrorism, particularly ongoing events such as are being discussed here, the accustomed pattern of police-news media relations is markedly transformed. The news media not only cover the crime the police are handling; the news media's power of dissemination is the object of the crime. Usual news media crime stories deal with the robbed bank, the burgled house, the slain lover--all objects of criminal acts. In events of terrorism, wittingly or not, the news media cover occurrences which are intended to elicit that very coverage--and the more the better, as far as terrorists are concerned.

Of course, a great deal of what the news media report is designed to capture coverage--prepackaged news conferences, politicians' travels, ribbon cuttings, and staged confrontations. But with terrorism, the device to gain attention is the threat of criminal

violence in any number of manifestations. And so police-news media relations are changed substantially and, as a consequence, the usual understandings between the police and media are less clear and the usual tensions more subject to strain.

When a felony unfolds, the police reflex is to stop its course or, if that is not possible, to limit its damage. When the felony involves terrorism, which almost always involves threat to life, the police instinct is, at the least, to save lives and to deny terrorists a full realization of their goal, which is as much publicity as they can gather. The media's instinct is to give the event of terrorism as much coverage as its presumed newsworthiness deserves. With the rules of the police-media game transformed, the police are apt to bridle at the media's intrusiveness and the media are apt to resist police attempts to limit their coverage.

Which observation recalls the subject of this discussion--the practical problems of law enforcement and the media in covering ongoing events of terrorism.

The discussion would be different if it could be said that the police in the United States were uniformly trained, educated, and able--ready at the first step of an event of terrorism to swing into action in a coordinated, professional manner. Lines of communication

would be clear; hostage negotiators and other specially trained officers would be near at hand to help defuse the passions of terrorists and calm down the situation; seasoned media liaison officers, skilled at handling both local and national media, quickly would set up a media center for the up-to-date, rapid dissemination of available information. The news media and the public would have before it a police operation working as smoothly as possible to save lives and to bring an end to the event.

But such cannot be said for American policing, now or for many years. The fragmentation of American policing forestalls the development of coordination, specialized training, and skills necessary to deal with terrorism in most local, hence tiny, police jurisdictions. The best that can be hoped for is state or federal intervention, as rapidly as possible, if terrorists strike within the jurisdictions of most police agencies.

Even many U.S. police agencies of workable size--that is, those with a minimum of 200 officers--are not prepared to deal with terrorism. As noted, police chiefs are concerned primarily with problems of a far more immediate nature. And although some larger departments are able to send managers to seminars and training sessions designed to guide the police in dealing with terrorism, the shelf life of that

training is often quite short. This year's chief of operations, a graduate of a seminar on terrorism, is next year's chief of traffic or personnel. A little occupational confession at this point: knowledge is power in policing, as it is in most other human endeavors. Cops don't usually will their successors the expertise and training manuals they picked up at special seminars or training institutes.

In sum, most police agencies most of the time are not adequately prepared to deal with events of terror, particularly the ongoing kind which involve delicate negotiations and demand a trained, calming hand.

Summing up the October 1978 testimony of Glen King, when he was executive director of the International Association of Chiefs of Police, the staff of the House Judiciary Subcommittee on Civil and Constitutional Rights said King indicated that "state and local police officials are better trained than they were five years ago. However, he indicated that significant training remains to be done if these officials are to respond effectively to a domestic incident of terrorism in the future." King's testimony, in my view, understates the matter.

So far, the nation has been fortunate in that most recent ongoing incidents of terrorism have occurred in large cities whose police agencies are of a size and sophistication that they can begin

to deal with these incidents. The incident which seems to be cited most in discussions of domestic terrorism--and certainly the incident which received the most thorough recent news coverage--was the 1977 Hanafi Muslim siege in Washington, D. C. Overall, the Metropolitan Police of the District of Columbia handled the incident very ably.

The department's ability could have been predicted. The Washington police, unique in having to serve the diverse constituencies of the nation's capital, have been tempered for 15 years through dealing with riots and massive antiwar demonstrations. The department is geared to expect the rare occurrence.

Suppose an incident similar to the Hanafi siege occurred in a New England village or a small midwestern city or an Arizona county? Or even an industrial city of a few hundred thousand? I question whether the police in these localities would be as close to being prepared for it as the police in Washington, New York, Chicago, or Los Angeles. And if I am correct, and almost all police jurisdictions are not ready to deal with terrorism itself, then how are these same agencies prepared to deal with the media covering an incident of terrorism? My answer is that they are not prepared, and for several reasons.

The first reason--to hark back to my observation about police fragmentation--is that policing in this nation is not consolidated into at most a few hundred agencies and so cannot afford the economy of scale that would mean not only skilled, quickly deployable units which would open negotiations with terrorists and seek to save lives but also police officers trained to deal with the media in all types of incidents which are, to the media, big stories.

Perhaps, in a department of 50 or 100 officers, one officer may be assigned to deal with the local media. But has he or she the savvy and experience to operate effectively when the national wire services and network radio and television crews descend on a big terrorist story? The lights, the cameras, the media's competitiveness, the pressure of deadlines and other demands of a harried press corps can overwhelm untrained police officers attempting to deal with the media and feed too easily into the unfolding terrorism at hand.

The second reason refers to my observations about the insularity of police personnel. Police officers, penned into one department for all of their careers, tend to become narrow in outlook and suspicious, particularly of the news media. In fact, it's fair to say, if not almost an understatement, that many cops don't trust and don't like reporters. And it's a sad fact that the resentment

and dislike of the police for the news media is a great impediment to effective policing. Police don't know how to tell their good stories; they don't inform the public, as much as they could, of their successes, their productive efforts to serve communities.

In what are typically the tense and delicate surroundings of a terrorist incident, police dislike and resentment of the news media easily surface, complicating attempts to deal with terrorists whose goal, after all, is media attention. I am certain also that some reporters' disdain for the police and schemes to outsmart them to obtain more extensive news coverage contributes to police-news media problems during such incidents. The point is, ideally the police should be sophisticated enough to deal with the media in an even-handed, fair manner. The insularity of policing works against achieving this goal.

The third reason the police are unprepared to deal with media coverage of terrorism is that we in policing waste time coming at the problem from the angle of how media coverage can be blinkered or curtailed. Like the rest of the police--and many citizens--I am outraged when a media personality chats on the phone with gunmen during a hostage situation, or when a disc jockey asks a terrorist if he has set a deadline on his demands. These are stupid, dangerous actions on the part of irresponsible members of the media.

But the police should not attempt to restrict the media's job of covering incidents of terrorism. Quite apart from the First Amendment rights which the media enjoy, there are practical reasons for this position.

First, it has been my experience that in event of extraordinary violence or the threat of such violence, extensive and balanced coverage is better than restricted news coverage. Once the news media are allowed to determine what is going on in a situation and report it in an accurate fashion, rumors and excessive fears tend to be dispelled.

As an example, had the media been restricted in the coverage of the Hanafi incident in Washington, D. C., the results could have been damaging. The Hanafi Muslims had captured three key positions, including City Hall, in the nation's capital. This drastic takeover in the heart of Washington easily could have been fertile ground for wild speculation and rumors about what occurred. But the media were allowed to do their job, and, despite the excesses of a few in the media, the stories were presented generally in a fair and balanced manner. The media, in fact, benefited the police through their work because their reporting kept citizens from becoming overly concerned and news reports assured citizens the police had the situation well in hand.

At a very helpful seminar sponsored by the Chicago Sun-Times in 1978, Leonard Downie, who coordinated the Washington Post's coverage of the Hanafi siege, said of coverage of the event: "It was our impression that once the first day was over and all of the media, broadcast and print, had given the public a rather full picture of what was going on, that the city seemed to ease a great deal. The jams of traffic and gawkers were not that great around the three sites, and I feel that's because people could watch what was going on on television. Tourists continued to come to town and continued to go to the White House. People went to work...saturation coverage allowed the city to relax, in a way, to know that information was coming to them..."

I agree with Downie's conclusion.

A second reason why the police should not attempt to restrict the news media covering events of terrorism is that police are not trained to run news operations any more than news people are trained to run police departments. If the media were to be formally restrained from covering one or another aspect of terrorist incidents, the police immediately would be in the business of censorship, something for which they are not, and should not be, prepared.

I extend these remarks to the point of saying that police should keep requests for news media self-regulation to a minimum. Many news organizations are aware of the operational problems involved in

terrorist incidents and already have issued their own self-imposed rules for the coverage of such events. These organizations should be congratulated for their thoughtful study and their attempts to achieve non-inflammatory, balanced coverage of terrorist incidents.

None of these observations means that the police should not explain, when asked by the media, the issues involved in dealing with terrorism.

The news media can create problems for the police during terrorist incidents in many ways. These ways include members of the news media:

- Attempting to negotiate with terrorists, thus depriving the police of their official responsibility for dealing with terrorists.

- Talking directly with terrorists, which reinforces the terrorists' sense of power and dilutes the influence of police negotiators.

- Casting doubt upon the veracity or reliability of what the police say and do.

- Disclosing tactical information which might endanger hostages and others under the threat of terrorist violence.

- Raising the anxiety of terrorists by disclosing, for example, that a police sharpshooter squadron may be on the scene or what the police may be planning to do to defuse a terrorist incident.

There is another area which I can only mention and on which neither I nor others in policing have much experience. The news media have a responsibility to balance coverage of terrorist incidents in such a way that they do not encourage imitation. This is a delicate issue. I realize that one news organization's interpretation of what is fair and balanced coverage is another news organization's sensationalism. But the fact remains--and it is one for debate among members of the news media--that incidents such as plane hijackings, bombings, and terrorist sieges, can carry with them an element of contagion.

There are several things the police can do in promoting responsible coverage of terrorist incidents. Police agencies, as a matter of course, should develop clear guidelines governing news media access to the scene of terrorist incidents and clear rules governing police lines and press identification passes. The media should be made aware of these guidelines and conditions before terrorist incidents and similar events occur. This step seeks to avoid the arguments and recriminations that can develop between individual reporters and police officers during the rush and confusion of violent incidents. Police departments, if they have the organizational capability, should have contingency plans for dealing with events which likely will draw national news media attention, particularly extensive television coverage, with the attendant lights, cameras, and technicians.

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The police should encourage meetings between news media personnel and police officials to discuss a wide range of issues involved in covering terrorist incidents. The Report of the Task Force on Disorders and Terrorism of the National Advisory Committee on Criminal Justice Standards and Goals makes a good point in suggesting frequent forums for the local exchange of police and media viewpoints.

From such forums, the media should be aware of the substantial problems terrorist incidents and similar occurrences create for the police. Of course, a good police department already has on the books some basic planning and training for emergency events. This planning and training is designed to ensure that police are in control of the scene of an incident as soon as possible and are able to work toward its nonviolent conclusion. Complicating the police administrator's job of dealing with the terrorist incident are not only the demands of the media, but also the sometime presence of elected city officials, city managers, and others in government who are natural targets for media attention. The media want to know what the mayor or city council member has to say about the terrorist event, just as they wish to interview as many police officials and officers as possible.

So perhaps the single most important thing the police officer in charge can do to help establish control at the scene of a terrorist

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incident is to make certain that police media liaison officers, practiced in dealing with reporters, have at hand at all times accurate information about the incident. The media should be made aware that the fullest and best information about the incident is available from these officers. In turn, the media liaison officers should be aware of what the media are reporting so that inaccurate or misleading coverage is called to the attention of the news media.

Finally, common sense on the part of both the media and the police should prevail. As noted, this nation has had relatively few terrorist incidents, particularly of the kind that go on for several hours or days. Neither the police nor the news media are as practiced in dealing with these incidents as they might be. But there is another sort of occurrence with which both the news media and the police have had a great deal of experience, and is relevant in this discussion. I refer to kidnappings.

Generally, the news media have been very cooperative with the police and federal officers in withholding information involving a kidnapping if that information might pose a threat to the life of a kidnapping victim. Now, of course, terrorist incidents are different in that they occur in an immediately public way and are designed to grab media attention. But if the media, using common sense in kidnapping

incidents, agree to withhold information to save the life of a victim, the media may be expected to withhold information of a delicate nature if the police have the credibility to show that that information, if released, can be fatal to victims of a terrorist incident.

I note a recent debate in the media about the actions of a New York television station in monitoring FBI radio conversations in connection with the kidnapping of a New Jersey woman. The television station deployed a camera crew to trail the victim's husband during attempts to deposit the ransom. Some members of the media defended the TV station's attempted coverage. But most members of the media who were interviewed in a recent issue of Editor and Publisher deplored it.

Benjamin C. Bradlee, executive editor of the Washington Post, said the television station's actions sounded like "an intolerable interference. We wouldn't do that. We have called off kidnapping stories when asked to do so by the FBI." Earl Moses, city editor of the Chicago Sun-Times, said that "our general policy is not to endanger the lives of any kidnapping victims. We've called off photographers in cases like that."

As noted, terrorist incidents can be very different from kidnapping incidents. However, the point is that if the news media are responsible and the police have credibility gained by not misusing

requests to delay reporting specific items of information, then common sense may prevail in coverage of terrorist incidents. The burden of using common sense lies equally with both parties. It is up to the news media to establish its own standards of conduct in terrorist incidents. It is up to the police to be very chary of issuing requests to the news media for self-regulation and not to damage their credibility by making unnecessary requests.

At the beginning of this paper, I mentioned that the police generally have become remote from the communities they serve. This point seems far afield from a discussion of dealing with terrorist incidents. But it is not.

To be productive in what they have to do, the police must have the trust of the people they deal with in everyday matters and when extraordinary events, such as terrorist incidents, occur. When the Hanafi siege struck in Washington, D. C., I wondered whether, if the police had some clue to the dissatisfaction of the Hanafis, the incident might have been forestalled. This observation is not meant as a criticism of the very fine Washington, D. C., police department. It is meant, rather, as a reflection on the importance for the police of having the trust of communities and receiving intelligence from those communities about pockets of discontent and the possibility of radical actions on the part of citizens who feel they have not been

fairly dealt with.

This is a tricky point. The police should not be snooping about the ideological and political beliefs of citizens, nor should they be poking into their private lives. But, at the same time, a police department which is close to the community it serves develops an intelligence base which can tip off the department to the possibility of criminal actions.

If, as some predict, there will be an increase of domestic-bred terrorism in the United States during the next years, the police can play an important role in forestalling events of terrorism by knowing their communities and enjoying their confidence.

In the meanwhile, they must be prepared to deal with terrorism in an effective way to save lives and protect property. And they must use their common sense in dealing with the news media during terrorist incidents. I believe the news media can be expected to respond in kind when they understand the problems the police face. The exercise of common sense is the best prescription for all police dealings with the media.

CONSTITUTIONAL AND LEGAL ISSUES RELATING TO
NEWS MEDIA COVERAGE OF TERRORISM

Lawrence Gunnels *
and David W. Maher **

A. Scope of the Issues

We have been asked to comment on the issues of law presented by news media coverage of terrorist events. The issues in essence are: May news media coverage of terrorist events ever be legally restricted? If so, what kind of restrictions may be permitted, and under what circumstances?

It must be stressed at the outset that these are strictly legal issues. Persons who expect the law to tell them or others how to behave (at least within the law's limits) expect far too much. Also, those who would shape the law to reflect their own pragmatic or idealistic views of how conduct should be governed misunderstand the purpose and role of the law. As the Supreme Court emphasized in a recent case, "we must not confuse what is 'good,' 'desirable' or 'expedient' with what is constitutionally commanded by the First Amendment."¹ The essence of the rule of law is adherence to overriding constitutional and legal principles, even when those principles may seem unsuited or impractical for some supposedly unique crisis or emergency.² This distinction between desirability and constitutionality is especially important in any meaningful discussion of a heated issue such as terrorism, which evokes

loud cries for severe and unprecedented controls.³ What follows, then, is a discussion of the constitutionality of controls on news media coverage of terrorist events. Only within these constitutional limits may the issue of desirability be properly placed in focus.

B. The Role Of The First Amendment In Our Constitutional Scheme

Any consideration of how the news media might be regulated in coverage of terrorist events must begin with the First Amendment, which states, "Congress shall make no law. . . abridging the freedom of speech, or of the press." Even in the most drastic circumstances that can be brought about by terrorists today or in the future, the Constitution requires any attempted or suggested controls on the news media to be measured against well-developed First Amendment jurisprudence.

That body of law has historically postulated several concepts of the basic role and purpose of the First Amendment. One view is that free speech is desirable because it permits maximum self-fulfillment. The focus is on the individual, and how he is best served by the freedom to speak his own mind and listen to all other speakers in an officially unfettered atmosphere. Thus, free speech is permitted even if there is risk that it might start an argument or cause a disturbance because, "our Constitution says we must take this risk. . . ; and our history says that it is this sort of hazardous freedom -- this kind of openness -- that is the basis for our national strength."⁴ A more frequently stated view of the First Amendment is that

free speech is an essential means for making American democracy work. Here the focus is on society, and the belief is that it becomes more cohesive and reaches better decisions when decisions are based on a fully informed public opinion. The Supreme Court articulated this view in 1936:

The newspapers, magazines, and other journals of the country, it is safe to say, have shed and continue to shed more light on the public and business affairs of the nation than any other instrumentality of publicity; and since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgment of that publicity afforded by a free press cannot be regarded as otherwise than with grave concern.⁵

Still a third strand of First Amendment philosophy values free speech for the reasons espoused in 1644 by John Milton: that only a free and open clash of ideas can lead to discovery of truth. In sum then, individual self-fulfillment, an informed public opinion, and the quest for truth are all ideal and highly valued goals of the First Amendment.

Because these goals of unfettered expression are so important, the First Amendment has come to occupy a "preferred position" in our legal system. It must be read, the Supreme Court has said, "as a command of the broadest scope that explicit language, read in the context of a liberty-loving society will allow."⁶ Any abridgments of First Amendment liberties, like abridgments of other specific commands of the Bill of Rights, are subject to "more exacting judicial scrutiny . . . than are most other types of legislation."⁷ Simply put, the First Amendment must be given broad scope and any attempted

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abridgments subjected to the closest scrutiny. This broad substantive scope and exacting procedural scrutiny of restrictions applies to every speaker and every situation. Those who would restrict news media coverage of terrorist events, no less than those who advocate censorship of allegedly obscene films, bear a heavy burden because of the special value our Constitution places on free expression and thought.

C. The Scope Of The First Amendment's Freedom Of The Press Guarantee

The Supreme Court in the last half century has listed several "well-defined and narrowly drawn categories"⁸ where limitations on speech may be permitted. Obscenity,⁹ malicious libel¹⁰ "fighting words,"¹¹ incitement of imminent lawless action,¹² and certain statements that will "inevitably, directly, and immediately" endanger national security¹³ are the enumerated categories of speech that may be restricted. But even these narrowly defined categories may give a deceptive picture of the extent to which government may restrict speech. The Supreme Court has never yet upheld a restriction on speech because of national security,¹⁴ and it is doubtful at best whether any "fighting words" statute could pass muster under modern standards prohibiting overbroad or vague statutes in the First Amendment area.¹⁵

The Amendment limits not only what kinds of speech may be regulated, but how it may be regulated. Certain kinds of regulation are permitted of any kind of speech -- for exam-

ple, general taxation statutes or health and safety regulations that affect speech and its content only incidentally if at all.¹⁶ (Thus, newspaper delivery trucks are not exempt from traffic laws.) Also, "time, place, and manner" restrictions are permitted on activities that involve both speech and non-speech elements, so long as the restrictions are narrowly drawn to meet a substantial governmental interest unrelated to the restriction of speech.¹⁷ Time, place and manner restrictions on speech are by far the most prevalent, but they are quite limited in effect. They must be imposed because of the government's strong interest in some end (such as maintaining order in public places) totally unrelated to speech. Then only an "incidental" restriction on speech is permitted, and it must be "no greater than is essential to the furtherance of [the government's substantial non-speech] interest."¹⁸

More direct and substantial restrictions on speech fall into two categories: (a) prior restraint and (b) subsequent civil liability or criminal punishment. Prior restraint, i.e., government restrictions on speech in advance of publication, can be imposed, if at all, only in the most exceptional circumstances.¹⁹ Some of the most respected jurists and constitutional scholars perceive the ban on prior restraints and censorship as the principal purpose of the First Amendment free press guarantee.²⁰ (Because it is a drastic measure usually discussed only in connection with specific hypothetical situations, usually of the "parade of horrors" variety, prior restraint will be

discussed in more detail in connection with terrorism later in this paper.) Subsequent civil liability or criminal punishment has been the nearly exclusive means of regulating unprotected speech such as obscenity, libel, and imminent incitements to violence. Tortious injury resting in whole or part upon publication, such as libel or invasion of privacy, are remedied and presumably deterred by civil actions for damages.²¹ Incitements to violence and publication or distribution of obscenity are punished as crimes after the publication occurs.²² Subsequent prosecutions are preferred to prior restraints for two reasons: (1) prior restraint is a much more drastic and oppressive remedy, and (2) prior restraint involves precisely the kind of direct government controls over speech that is least compatible with the freedom of thought necessary to a democratic government.

In the words of the Supreme Court:

Ordinarily, the state's constitutionally permissible interests are adequately served by criminal penalties imposed after freedom to speak has been so grossly abused that its immunity is breached. The impact and consequences of subsequent punishment for such abuse are materially different from those of prior restraint. Prior restraint upon speech suppresses the precise freedom which the First Amendment sought to protect against abridgment.²³

Thus, subsequent punishment or liability is the clearly preferred and almost universal kind of restrictions that the courts have allowed for regulation of unprotected speech.

Finally, any restriction on speech, even if it is theoretically permitted by the First Amendment (e.g., subsequent punishment or civil liability for one of the categories

of unprotected speech) must meet further procedural tests. In this light, the restriction on speech is viewed in its actual rather than theoretical operation.²⁴ The "procedural safeguards" seek to ensure that protected speech is guarded whenever unprotected speech is regulated. As Supreme Court Justice William J. Brennan noted in Speiser v. Randall, the line between protected and unprotected speech "is finely drawn."²⁵ Hence, whenever the government attempts to regulate unprotected speech, it must also "provide procedures amply adequate to safeguard against invasion of speech which the Constitution protects."²⁶ These procedural safeguards may take many forms. Whenever free speech might be inhibited because of the wide brush of a statute regulating speech, courts will look closely at how the regulation is applied. They will strike down laws that make presumptions that speech is unprotected;²⁷ they will look behind suspicious statutes for suppressive motives;²⁸ and they will strike in toto any statute so broad or so vague (even if clearly aimed at unprotected speech) that it might nonetheless chill protected speech because of its sweep.²⁹

The common thread uniting these various requirements of close procedural scrutiny is a policy to allow some "bad" speech rather than restrict or chill any "good" speech.³⁰ The Court has been so strongly determined to ensure that the "fine line" is not drawn in a way that would restrict protected speech that it has even created constitutional presumptions that help protect certain kinds of otherwise unprotected speech.³¹

In the landmark libel case of New York Times Co. v. Sullivan, the Court recognized that the heavy burden it was imposing on public official libel plaintiffs would allow some erroneous statements to go unremedied, but emphasized that such statements "must be protected if the freedoms of expression are to have the 'breathing space' that they 'need . . . to survive.'"³² The procedural safeguards ensure that there is enough "breathing space" around the "fine line" dividing protected and unprotected speech.³⁴ Because "the more important the rights at stake the more important must be the procedural safeguards surrounding these rights,"³⁴ procedures are especially important in any First Amendment case.

In sum, the First Amendment provides three distinct levels of protection from governmental interference or regulation of any speaker or publisher. First, only certain substantive areas of speech within very narrow and well-defined categories can be regulated. Second, only certain kinds of limitations may be placed on speech. Non-discriminatory regulation is permitted; time, place and manner restrictions are allowed when one activity involves both speech and action; civil liability or criminal prosecution is allowed for unprotected speech; and prior restraint is available, if at all, only in the most exceptional cases. Third, courts closely scrutinize all restrictions on speech, and approve only whatever procedures are essential to ensure that protected speech has the "breathing space" it "'need[s] . . . to survive.'"³⁵

D. Accommodating Conflicting Interests Involving The Press

Since freedom of expression and thought -- the quintessential values protected by the First Amendment -- inherently involve "uninhibited, robust, and wide-open" debate and "vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials,"³⁶ the First Amendment sometimes is viewed as a sort of "square peg in a round hole" of constitutional government. While other constitutional guarantees seek to preserve and promote order in society and government, the First Amendment roundly embraces the disorder of individual expression, thought, and debate. It has thus become fashionable to speak of the "conflict" between the First Amendment and other rights. It is widely claimed, for example, that there is a conflict between the First Amendment right of the press to write about criminal prosecutions and the Sixth Amendment right of a criminal defendant to a fair trial.³⁷ A similar clash between the First Amendment right to report about atomic weapons and a more compelling right to live has been suggested.³⁸ Now we face a hypothetical conflict between the First Amendment and the government's responsibility to stop or limit terrorism.

The "conflict" metaphor, however, is analytically unsound. By making us think in terms of a battle between the press and some other (usually sympathetic) group, the conflict metaphor suggests that one side must gain at the expense of the other side. The fundamental nature of constitutional rights, however, is that they do not collide with one another. In the words of Justice Hans A. Linde of the Oregon Supreme Court:

[T]here are often genuine conflicts among competing objectives and individual interests, and I do not minimize their importance. We can even speak of competing rights. But not of conflicting constitutional rights.

For what is a constitutional right? It is a claim that runs against the government -- usually not a claim that the government do something for you or me, but that it refrain from doing something to us. The constitution prescribes how government is to behave and how not. The constitution does not make rules for private persons.³⁹

However elementary these observations may be, they suggest a much more disciplined approach to apparent "conflicts" than the debate over supposed head-on conflicts between the First Amendment and its companions in the Bill of Rights. For if rights do not conflict, we need not sacrifice one right to preserve both. Justice Linde illustrated this conceptualization in the "free press -- fair trial" controversy:

If the Cleveland press has a right under the Sixth Amendment not to be censored, the government is constitutionally forbidden to censor it. If Sam Sheppard has a right under the Sixth Amendment not to be convicted by a prejudiced jury, the state is constitutionally forbidden to obtain or act upon such a conviction. Its obligation is to try him properly or not at all. The defendant has no constitutional right against the press.⁴⁰

In fact, while the public and legal debate has focused on the conflict metaphor, the law has nevertheless managed to avoid following to its conclusions what Justice Linde calls the "insidious logic" of the conflict language. The accommodations actually reached in the "fair trial -- free press" area illustrate how the apparent conflict can be settled at the expense of neither right. The trial publicity cases established that a

defendant's conviction could not stand if he were convicted by a jury in fact prejudiced by inflammatory publicity.⁴¹ For someone thinking in terms of the conflict metaphor the solution might seem obvious: gag the press. But that is constitutionally forbidden⁴² and a much simpler and equally effective solution has been worked out in most jurisdictions: the courts, prosecutors, police officer and defense counsel have restrained themselves from releasing prejudicial information and judges have sequestered juries (thus preventing them from hearing or reading about the case once wide news coverage begins of prejudicial statements made during the course of the trial).

This kind of accommodation, however, works only when the rights on both sides are well established. When the press has no rights -- for example, when it publishes unprotected libels or invasions of privacy -- the injured party may recover in civil liability. The more difficult cases are presented when the rights of the press are not established one way or the other -- for example, the right of reporters to keep the names of their sources confidential. In the confidentiality cases, a very clear conflict exists between the right of the press to gather and report the news (and its need to maintain sources' confidentiality to do so) and the right of prosecutors and litigants to subpoena "every man's testimony." The courts generally have tended to try to balance the interests at stake, recognizing a right of confidentiality in many cases, but denying it whenever the asserted judicial interest in the

reporter's testimony is truly compelling.⁴³ In a number of instances, the natural inconsistencies of such an ad hoc balancing test have been mitigated by use of the traditional First Amendment close scrutiny procedural tests, requiring special justifications and hearings before disclosure of sources is required.⁴⁴

Thus, apparent conflicts between the rights of the press and the rights of others in society are usually solved by requiring government to act in a way that will fully preserve and protect the rights on both sides. Real conflicts may and do arise, however, when the rights of the press in a particular situation are unclear; in those cases, the courts resort to the traditional purposes and safeguards of the First Amendment to determine whether the asserted rights are covered, and they use the traditional First Amendment tests and procedural protections to judge whether abridgment of speech can be constitutionally allowed.

E. The Problems Of News Coverage Of Terrorism

Terrorism has been defined as:

Certain unlawful acts of violence or . . . a strategy of unlawful terror-inspiring violence perpetrated or carried out by ideologically motivated persons and performed in such a way as to produce a psychological impact exceeding the actual effect of danger or harm caused, in order to achieve a power-related outcome.⁴⁵

Publicity is therefore essential to terrorism; by reporting the news of a terrorist hijacking, hostage situation, bombing or other incident, the news media -- theoretically at least -- play

into the hands of the terrorists and give their cause and their actions the publicity and "psychological impact" that the terrorists seek. However frightening as this may seem when the word "terrorism" is used, this is no more than the traditional role of the news media in our democratic society. The news media play into the hands of many and various persons or groups that desire publicity, from the Secretary of State announcing that peace is at hand to a soapbox fanatic announcing the world is coming to an end. Those who have some kind of power, legitimate or illegitimate, naturally receive more publicity because it is more important for the public to know about them. The effects of publicity about terrorism on the public, however unwelcome, are tolerable because the Constitution assumes that the public will disregard bad ideas, in any guise.⁴⁶ But the publicity also undoubtedly may influence and affect the terrorists.

One apparent concern with publicity about terrorism -- aside from the concern of those who would restrict publicity simply to make life easier for officialdom⁴⁷ -- is that publicity about one act of terrorism may beget, or to some extent encourage, other terrorist incidents. This is a legitimate public policy consideration. Another serious problem with the terrorists' symbiotic dependence on the news media concerns the psychological effect of publicity on the terrorists and their use of publicity for their own ends, particularly in a drawn-out hijacking or hostage situation. There are two concerns

here. First, the terrorists may be affected by publicity; they may act differently, less predictably, or more boldly, once they see themselves on television or the front page. Publicity may become a bargaining tool, a measure of success, or even an end in itself. Second, they may take advantage of the news to learn about potential hostages, escape routes, and police strategies while the police enjoy no similar inside view of the terrorists' situation.

In sum, then, law enforcement would seem to have no legitimate interest in censoring publicity about particular terrorists to deprive the public of newsworthy information. There are, however, three legitimate concerns about news media coverage of terrorists: (1) that the publicity might encourage future terrorists, (2) that it might so affect the terrorists themselves as to frustrate law enforcement, and (3) that it might disclose information that would help the terrorists continue their action or resist the police.

F. Regulation Of News Coverage Of Terrorism

What solutions have been offered to the legitimate problems involving news coverage of terrorism? Practically everything seems to have been suggested at one time or another, from prior restraints to news blackouts to voluntary press-police guidelines to a complete hands-off attitude.⁴⁸ The lack of agreement on what is the best approach from a totally pragmatic viewpoint is generally irrelevant to the legal discussion, but one argument is worth mentioning. Some of those who advocate

a hands-off policy suggest that any restrictions on publicity might have worse consequences than the normal publicity. If the news media acts as an arm of the state and reports half-truths or lies in order to mislead terrorists, they argue, the consequences of misunderstanding and mistrust after the terrorists inevitably find out the truth will be far worse than the consequences of accurate reporting.⁴⁹ In constitutional terms, this argument points out that whenever there are doubts, the First Amendment resolves them in favor of free expression.⁵⁰

Aside from the hands-off policy, the least restrictive proposal calls for voluntary cooperative restraints by the news media and adherence to suggested police-press guidelines. While such proposals seem vague and are unlikely to be enforced by editors wary of dangers of self-censorship as well as government censorship,⁵¹ they are clearly constitutional. Further, to the extent the law enforcement authorities make those voluntary restraints work by themselves in limiting the information released to the news media, they find a precedent in the fair trial -- free press accommodation. After some of the sensational (and unconstitutional) trials of the 1950's, prosecutors and police officials began measuring their words more carefully in public; as a direct result, the press had less truly prejudicial information to report and fairer trials could be held. Similarly, law enforcement officers faced with terrorist incidents could attempt themselves to limit dissemination of information that might be helpful or encouraging to terrorists.

Police tactics, strategies, and strength could be kept secret by police officers themselves, as could information about potential hostages and escape routes when that information is exclusively in police hands. This alone could stem much of the truly hazardous publicity without imposing any restraint on the press.

Indirect controls on the press -- laws that would give the press freedom to publish but make it liable in criminal law or tort if it published certain types of restricted information -- are a possible half-way solution between voluntary restraints and prior restraints. But any such indirect controls, particularly ones imposing criminal sanctions, would meet the strongest judicial scrutiny and would be most unlikely to survive.

Even in recent years, when a majority of Justices on the Supreme Court have been less sympathetic to the press than previously, statutes that have attempted to punish the press for publishing information thought injurious to the public welfare have been consistently held unconstitutional.⁵² The Court has held that the press cannot be punished for publishing the names of juveniles, rape victims, or judges undergoing disciplinary proceedings, so it seems clear that not even a suggested interest in preventing damage to an individual or group of individuals will pass constitutional muster.

Indirect controls are even less likely under more exotic theories based on tort or long-established crimes such as incitement and aiding and abetting. Neither criminal laws

nor traditional torts of libel and invasion of privacy could be used to punish any substantially true reporting of public affairs.⁵³ In any event, defamation and invasion of privacy are narrow and inelastic torts, so courts would be unlikely to expand them to the extent necessary to reach reporting of terrorism. Most of the traditional crimes such as aiding and abetting and solicitation would not apply on the simple ground that the press would not have the requisite criminal intent.⁵⁴ That leaves only a few crimes that have been used to punish speech -- crimes that have had a stormy and most unsuccessful constitutional history.⁵⁵ The incitement to violence theories on which various dissidents were convicted in the first part of this century are now largely discredited, and it seems likely that any new attempts to prohibit publicity about terrorists on the grounds that it incited more terrorism would necessarily fail.⁵⁶ Of course, an even stronger showing of imminent and serious harm would be required to go beyond punishing intentionally inciteful words and to punish reporting of them. An argument that might be made for punishment of reporting of terrorism is that other nations have already taken this path; however, repressive legislation from countries such as South Africa and South Korea, or even milder laws such as the West German prohibition of publicity that tends to "glorify violence" or incite to racial hatred are hardly inspiring to any true believer in our First Amendment and would be clearly unconstitutional.⁵⁷

Thus, if there are to be any restrictions on the press in the area of terrorism, then prior restraint may be suggested as the only available solution. But the prior restraint doctrine imposes extremely strict and virtually insurmountable substantive and procedural barriers under the applicable First Amendment precedents. In the leading case of Near v. Minnesota, Chief Justice Hughes carefully prescribed three narrow exceptions to the otherwise absolute ban on prior restraints: (1) publication of "the sailing dates of transports or the number and location of troops" when the nation is at war; (2) obscenity; and (3) incitements to acts of violence and the forceful overthrow of government.⁵⁸ In explaining the narrow scope of these exceptions, the Chief Justice returned to the general "if not universal" belief "that it is the chief purpose of the [First Amendment] guaranty to prevent previous restraints upon publication."⁵⁹ The thinking behind almost all of the other prior restraint cases is that government censorship is the very antithesis of freedom of the press:

[T]he press may be arrogant, tyrannical, abusive, and sensationalist, just as it may be incisive, probing, and informative. But at least in the context of prior restraints, the decision of what, when, and how to publish is for editors, not judges.⁶⁰

These same considerations impose procedural as well as substantive limits whenever a prior restraint is proposed. First, the government must bear the "heavy burden" of justifying the proposed restraint because any prior restraint "comes to this court bearing a heavy presumption against its constitutional

validity".⁶¹ Second, only the clearest proof will overcome this "heavy presumption" against a prior restraint. No publication may be suppressed because of "surmise or conjecture that untoward consequences may result."⁶²

This double legal barrier against prior restraints would unquestionably apply to news coverage of terrorism. First, it seems most doubtful whether any terrorist incident could fit within the Near exceptions. Reporting of terrorism is not obscenity. It could not be considered incitement of violence, for the reasons stated earlier. The only exception to the prior restraint doctrine even arguably open is the exception involving restraints necessary in wartime for the sake of national security. The rebuttal is that terrorism is not war⁶³ and that this exception applies only in times of actual war.⁶⁴ Some members of the Supreme Court, however, seemed somewhat willing in the Pentagon Papers case to extend the war exception to matters crucial to the "national security."⁶⁵ In any event, to remotely approach qualifying for the war exception, a terrorist incident would have to be truly "national" and not just a local or regional threat, and it would have to threaten the actual stability or security of the national government.

A hijacking or hostage situation, unless it involved the President perhaps or other leaders of the national government, would not qualify. A terrorist attack of a magnitude so far unheard of, such as an attack or threat with nuclear bombs known to exist, would in all likelihood qualify. The test is

simply that the situation must be equivalent to wartime before a prior restraint may even be contemplated. Next, however, any prior restraint of news even of the most extreme terrorist incident would have to overcome stringent procedural hurdles. Neither the threat to national security nor the necessity of restraining publication to avoid that danger can be speculative. The government bears the burden of proving both, and must prove "that publication must inevitably, directly, and immediately" cause the feared harm.⁶⁶ This proof must be brought out in a judicial proceeding where testimony and the evidence can be taken on contested facts such as the gravity of the harm and the effect of publication on national security.⁶⁷ Finally, any restraint, if permitted, must be as narrowly drawn as possible under judicial supervision.⁶⁸ So at most, the news media would be prohibited from publishing only certain details -- details analogous to "the sailing dates of transports or the number and location of troops."⁶⁹ All of these factors make unlikely the ultimate imposition of any prior restraint of news coverage of terrorism. Terrorist events are inherently unpredictable, so the need for restraint would almost always be speculative. National security is by nature such a broad and easy-to-misuse justification for prior restraint that the government's burden and the court's duty to be critical are especially strong. Finally, it is difficult to envisage a situation were a prior restraint could be judicially tested, approved and imposed under governing First Amendment standards and strictures in time to avert the consequences of terrorist actions.

In sum, by far the most preferable and practical way to handle restrictions on news coverage of terrorist events is through voluntary action by which government officials themselves control the information released to the media and public. Any indirect or subsequent restrictions on the news media seem legally doomed, and the seeking of prior restraints would be so difficult and time-consuming as to afford no viable or dependable solution to the problem.

FOOTNOTES

- * Partner, Reuben & Proctor, Chicago, Illinois. LL.B. Washington University 1960.
- ** Partner, Reuben & Proctor, Chicago, Illinois. LL.B. Harvard, 1959.
1. Houchins v. KQED, Inc., 438 U.S. 1, 13 (1978).
 2. E.g., United States v. Nixon, 418 U.S. 683 (1974); Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952); Marbury v. Madison, 1 Cr. 137 (1803).
 3. See, e.g., "Carter Says Coverage of Seiges is Problem for the News Media", N.Y. Times, March 15, 1977, at 16, col. 4 (call by U.N. Ambassador Andrew Young for new First Amendment interpretation regarding press coverage of terrorist activities and response by President Carter that solution should be left to media themselves).
 4. Tinker v. Des Moines School District, 393 U.S. 503, 508-09 (1960).
 5. Grosjean v. American Press Co., 297 U.S. 233, 250 (1936).
 6. Bridges v. California, 314 U.S. 252, 263 (1941).
 7. United States v. Carolene Products Co., 304 U.S. 144 n.4 (1938).
 8. Chaplinsky v. New Hampshire, 315 U.S. 568, 571 (1942).
 9. Miller v. California, 413 U.S. 15 (1973).
 10. Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974); New York Times Co. v. Sullivan, 376 U.S. 254 (1964).
 11. Chaplinsky v. New Hampshire, 315 U.S. 568 (1942).
 12. Brandenburg v. Ohio, 395 U.S. 444 (1969).
 13. New York Times Co. v. United States, 403 U.S. 713, 727 (1971) (Brennan, J., concurring).
 14. But cf., United States v. Marchetti, 466 F.2d 1309 (4th Cir.) cert. denied, 409 U.S. 1063 (1972) (contractual secrecy agreement signed by former CIA agent held enforceable).

15. See generally, Note, The First Amendment Overbreadth Doctrine, 83 Harv.L.Rev. 884 (1970); Note, The Void-For-Vagueness Doctrine in the Supreme Court, 109 U.Pa.L.Rev. 67 (1970).
16. Associated Press v. United States, 326 U.S. 1, 19-20 (1945); Grosjean v. American Press Co., 297 U.S. 233, (1936). Of course, if a purportedly regulatory statute is selective in its application or enforcement, and thereby attempts to regulate or inhibit the content of certain kinds of speech, it will be struck down. Speiser v. Randall, 357 U.S. 513, 518-19 (1958).
17. United States v. O'Brien, 391 U.S. 307, 377 (1968).
18. Id.
19. New York Times Co. v. United States, 403 U.S. 713, 714 (1971) (per curiam); Near v. Minnesota, 283 U.S. 697 (1931).
20. See Emerson, The Doctrine of Prior Restraint, 20 Law and Contemporary Problems 648 (1955). This view is backed by an often quoted passage from Blackstone:

The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraint upon publications, and not in freedom from censure for criminal matter when published.

4 W. Blackstone, Commentaries on the Laws of England, 151-52.
21. A statute that would have permitted prior restraints of libels of public officials was struck down in Near v. Minnesota, 283 U.S. 697 (1931), where Chief Justice Hughes stated:

The fact that the liberty of the press may be abused by miscreant purveyors of scandal does not make any less necessary the immunity of the press from previous restraint in dealing with official misconduct. Subsequent punishment for such abuses as may exist is the appropriate remedy, consistent with constitutional privilege.

Id. at 720.
22. Statutes that would have imposed prior restraints on language deemed obscene or likely to incite to violence have been held unconstitutional and courts have repeatedly stressed subsequent criminal prosecutions as the proper

remedy. See, e.g., Village of Skokie v. National Socialist Party, 69 Ill.2d 605, 373 N.E.2d 21 (1978); Rockwell v. Morris, 12 App.Div.2d 272, 211 N.Y.S.2d, aff'd mem., 10 N.Y.D.2d 268, cert. denied, 368 U.S. 913 (1961).

23. Carroll v. President and Commissions of Princess Anne Co., 393 U.S. 175, 180-81 (1968).
24. See New York Times Co. v. United States, 403 U.S. 713, 714 (1971) (Black, J., concurring).
25. 357 U.S. 513, 515 (1958).
26. Id. at 524.
27. Id. at 526.
28. United States v. O'Brien, 391 U.S. 367, 377-82 (1968).
29. Dombrowski v. Pfister, 380 U.S. 479 (1965).
30. See Schauer, Fear, Risk and the First Amendment: Unraveling the "Chilling Effect," 58 B.U.L. Rev. 685 (1978).
31. New York Times Co. v. Sullivan, 376 U.S. 254 (1964).
32. Id. at 271-72
33. In the recent case of Collin v. Smith, 447 F.Supp. 676 (N.D.Ill), aff'd 578 F.2d 1197 (7th Cir. 1978), invalidating city ordinances in the Village of Skokie, Illinois that were aimed at restricting planned demonstrating by the American Nazi party, the United States District Court for the Northern District of Illinois explained the rationale and effect of the "breathing space" theory:

[T]he government is not only prohibited from regulating protected speech directly, it is also prohibited from impinging too closely upon it and thereby damaging the vigor of debate. . . . [T]hat such an approach will often protect speech which could be prohibited if laws could be drafted and enforced with perfect clarity and precision is regarded as the price which must be paid for the full preservation of First Amendment values.

447 F.Supp. at 689.
34. Speiser v. Randall, 357 U.S. 513, 520 (1958).
35. Each of these protections apply to the news media through the "freedom of speech" and due process clauses of the constitution. Two recurring questions--probably contested

more hotly in the law journals that the courtrooms--are whether the constitution grants any special privileges to the press, or whether the Federal Communications Act imposes any special obligation on broadcasters. The Supreme Court's 1969 decision in Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969), seems to have made clear that special requirements such as the "fairness doctrine" may be imposed upon broadcasters only if they "enhance rather than abridge the freedoms of speech and press protected by the First Amendment." Id. at 390. That is, a government regulation of broadcasting content is permissible only if it serves to expand, rather than limit, speech over the public airways. The Supreme Court has yet to determine whether the First Amendment gives the press any special access privileges; but the long line of decisions recognizing the special role of the press as a proxy for the public at large have given the press what is probably a far more valuable position in society. See Blanchard, The Institutional Press and Its First Amendment Privileges, 1978 Sup. Ct. Rev. 225.

36. New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964).
37. Sheppard v. Maxwell, 384 U.S. 333 (1966); Estes v. Texas, 381 U.S. 532 (1965).
38. United States v. The Progressive Inc., 467 F. Supp. 990 (W.D. Wis. 1979).
39. Linde, Fair Trials and Press Freedom - Two Rights Against The State, 13 Willamette L.J. 211, 216-217 (1977).
40. Id. at 217.
41. Sheppard v. Maxwell, 384 U.S. 333 (1966).
42. Nebraska Press Ass'n v. Stuart, 427 U.S. 539 (1976).
43. See, e.g., Branzburg v. Hayes, 408 U.S. 665 (1972) (reporter held required to testify about source before investigating grand jury); In Re Farber, 78 N.J. 259, 394 A.2d 330, cert.denied 99 S.Ct. 598 (1978) (reporter held in contempt for refusing to testify about sources crucial to criminal prosecution); Morgan v. State, 337 So. 2d 95 (Fla. 1976) (reporter need not disclose source to grand jury investigating non-criminal matters); Baker v. F & F Investment, 470 F.2d 778 (2d Cir. 1972) (reporter need not disclose source relevant to civil trial).
44. See, e.g., Order, People v. Dohrn, No. 69-3808 (Cir. Ct. Cook Co. Ill. June 12, 1970).

45. Bassiouni, Prolegomenon to Terror Violence, 12 Creighton L. Rev. 745, 745 (1979).
46. In the words of Justice Oliver Wendell Holmes, the Constitution assumes "that the best test of truth is the power of the thought to get itself accepted in the marketplace of ideas." Abrams v. United States, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting). Publicity about terrorist incidents disseminated to the general public could hardly be restricted without rejection of both this assumption and the view that the press must inform citizens of how their government acts.
47. As one commentator suggested after reviewing restrictive "anti-terrorist" legislation in nations such as South Africa, "[I]n the name of 'national security' power elites demonstrate their own insecurity." Paust, International Law and Control of the Media: Terror, Repression and the Alternatives, 53 Ind. L.J. 621, 631 (1978). See also New York Times Co. v. United States, 403 U.S. 713, 724 (1971) (Douglas J., concurring) (government secrecy perpetuates bureaucratic errors).
48. See, e.g., Foreign Policy Ass'n, International Terrorism: 'Do Something' - But What? (1979) reprinted in Legal and other Aspects of Terrorism (Lowe and Shargel eds. 1979); Rabe, Terrorism and the Media, in Legal and other Aspects of Terrorism, supra, at 181.
49. See, e.g., Jaehnig, Journalists and Terrorism: Capture of The Libertarian Tradition, 53 Ind. L.J. 717, 731-32 (1978).
50. New York Times Co. v. Sullivan, 376 U.S. 254, 271-272 (1964).
51. See J. Reston, The Artillery of the Press, 30-31 (1966) (reporting that President John Kennedy told New York Times editors that he wished the Times had not followed his request to voluntarily withhold news of the planned Bay of Pigs invasion).
52. Smith v. Daily Mail Pub. Co., 99 S. Ct. 2667 (1979); Landmark Communications v. Virginia, 435 U.S. 829 (1978); Cox Broadcasting v. Cohn, 420 U.S. 469 (1975).
53. New York Times Co. v. Sullivan, 376 U.S. 254 (1964); Garrison v. Louisiana, 379 U.S. 64 (1964).
54. W. LaFare & A. Scott, Criminal Law 195-203 (1972).
55. See generally, T. Emerson, The System of Freedom of Expression 97-160 (1970).

56. See Brandenburg v. Ohio, 395 U.S. 444 (1969) (advocacy of violence or lawlessness constitutional unless violence is both likely and imminent). In Whitney v. California, 274 U.S. 357 (1927), Justice Brandeis laid out what is probably the majority view now on incitements to violence:

Fear of serious injury cannot alone justify suppression of free speech.... To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced[E]ven advocacy of violence, however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on.

274 U.S. at 376 (Brandeis, J., concurring).

57. See generally Paust, International Law and Control of the Media: Terror, Repression, and the Alternatives, 53 Ind. L.J. 621 (1978) (discussing laws of other nations). The West German law would be unconstitutional because it is too vague, Papachristou v. Jacksonville, 405 U.S. 156 (1972), and because more advocacy and glorification of violence is protected by the First Amendment, Dennis v. United States, 341 U.S. 494 (1951).
58. 283 U.S. 697, 716 (1931).
59. Id. at 713.
60. Nebraska Press Ass'n v. Stuart, 423 U.S. 1319, (1975) (Brennan, J., concurring).
61. New York Times Co. v. United States, 403 U.S. 713, 713 (1971) (per curiam).
62. Id. at 725-26 (Brennan, J., concurring).
63. See Pan American World Airways, Inc. v. Aetna Casualty & Surety Co., 368 F.Supp. 1098 (S.D.N.Y. 1973), aff'd 505 F.2d 989 (2d Cir. 1974) (holding that airline hijacking was not act of war).
64. New York Times Co. v. United States, 403 U.S. 713, 726 (1971) (Brennan, J., concurring).
65. Id. at 752-759 (Harlan, J., dissenting, with Burger, C.J., and Blackman, J.).
66. Id. at 727 (Brennan, J., concurring).
67. Freedman v. Maryland, 380 U.S. 51 (1965). The failure to recognize this elementary point was the most obvious flaw

in the recent unprecedented decision by U.S. District Judge Robert Warren of Madison, Wisconsin restraining The Progressive magazine from publishing an article. United States v. The Progressive, Inc., 467 F.Supp. 990 (W.D. Wis. 1979). While the Progressive case, involving an article entitled "The H-Bomb Secret: How We Got It, Why We're Telling It," hardly presents the news media in the best light, Judge Warren's refusal to engage in detailed fact finding and the poor effort made by the government to meet its heavy burden made it likely that the decision would be overturned or at least modified on appeal. See Brief for The Chicago Tribune et al. as amici curiae, United States v. The Progressive, No. 79-1429 (7th Cir., appeal pending Sept., 1979). Later events in The Progressive case suggested that Judge Warren had indeed misjudged the uniqueness and danger of the enjoined publications. See "U.S. Drops Efforts to Bar Publication of H-Bomb Articles," N.Y. Times, Sept. 18, 1979, at 1, col. 6. Heavy standards of proof and procedural safeguards seek to prevent just this kind of misjudgment "[w]here the transcendent value of speech is involved." Speiser v. Randall, 357 U.S. 513, 526 (1958).

68. United States v. Marchetti, 466 F.2d 1039 (4th Cir.), cert. denied, 409 U.S. 1063 (1972).
69. Near v. Minnesota, 283 U.S. 697, 716 (1931).

P A R T I I

COMMUNICATIONS BY CONFERENCE PARTICIPANTSPaper on Terrorism

The National News Council

Terrorism and the Media: A Matter of Balancing
the Rights of the Press and the Rights of Hostages

Robert L. Rabe

Terrorism and the Media: An Issue of Responsible Journalism

Robert L. Rabe

The Project on Media Coverage of Terrorism: A Summary
of National Surveys and Other Investigations

Michael Sommer and Heidi Sommer

Police and Press in Great Britain: The Problem of Terrorism

Walter B. Jaehnig

The National News Council

ONE LINCOLN PLAZA
NEW YORK, N.Y. 10023

(212) 595-9411

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July, 1977

PAPER ON TERRORISM

Washington had returned to normal after the Hanafi Muslim seige when The National News Council met at Drake University in Des Moines, Iowa, in March, 1977. News coverage of the event, however, was still receiving widespread attention.

The Hanafi Muslim episode had become "a media event," in the words of Charles Seib of The Washington Post. "The media," Seib declared, "were as much a part of it as the terrorists, the victims and the authorities. The news business did what it always does when it deals with violence, bloodshed and suspense: It covered it excessively." ¹

Even President Carter was drawn into the discussion when U. N. Ambassador Andrew Young criticized the media for glorifying such events. "The First Amendment has got to be clarified by the Supreme Court in the light of the power of the mass media," Young said. "I don't know if it protects the right of people literally to destroy the things we believe in." Young also said the news media should censor themselves. ²

When the President was called upon to respond to Young's

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suggestions, press secretary Jody Powell issued this statement:

" . . . The President does feel that the manner of coverage of these situations does merit discussion and sober consideration.

"He recognizes the complexity of the problem and frankly has no easy solution in mind. He sees this as a problem that should be addressed by the news media as a powerful and responsible institution in our society. He has no desire to seek legislation or to otherwise impose a solution and hopes those who make news decisions will themselves determine definable boundaries of legitimate coverage." ³

With this in mind, The Council examined the coverage, the issues surrounding it and suggestions for the establishment of guidelines for the news media. Electing neither to write guidelines nor to advocate them, The Council issued this statement:

The National News Council has considered the question of news coverage of terrorist action -- and the controversy which has arisen about the appropriate limits of such coverage.

At the threshold, The Council rejects as unthinkable any notion that such activities should not be reported because they are perceived as "contagious." The dangers of suppression should be self-evident: doubts over what the media have withheld and the motives for such a blackout; questions about other types of news which might also have been withheld ostensibly in the public interest; and the greater possible risks involved in wild and reckless rumors and exaggerated, provocative word-of-mouth reports.

Nevertheless, The Council suggests that each news organization consider certain self-restraints in specific areas and in specific cases. First, The Council urges a re-examination on a case-by-case basis of the dangers in the practice of live coverage which precludes full context or judicious editing.

Second, The Council asks all news media to consider the dangers in the practice of telephoning for interviews with the terrorists or hostages during the event. Such telephone interviews can tie up telephone communication between negotiators and terrorists, and can incite the terrorists to ultimate violence. The Council therefore urges appropriate discussion with authorities before any such calls are made either by electronic or print media reporters.

Some news organizations already are developing internal guidelines to deal with such situations. The Council offers to become a repository for such guidelines or internal memoranda and to circulate them to all interested news organizations.

Since then, at least two conferences on the coverage of terrorism have been held -- one by the Washington chapter of the Radio-Television News Directors Association (RTNDA) and the other by the Chicago Sun-Times and Daily News. These conferences drew together professionals from various fields with interest in terrorist acts, journalists, law officials, psychologists and legal authorities. Four news organizations are known to have adopted guidelines, which some others have said they plan to follow. Still others have vetoed the idea of guidelines, choosing instead to decide how to cover each event as it happens.

Following the intentions put forth in its statement, The Council has collected information on terrorism, the pros and cons of guidelines and the guidelines themselves. That information is assembled in this paper without judgment on the wisdom or acceptability of the suggestions made. They are

simply stated for the consideration of journalists who are concerned with improving the quality of coverage given to these events.

Perhaps it is necessary first to understand the terrorists and what motivates them.

Several persons have defined categories of terrorists. The most complete categories seem to be those of Cherif Bassiouni, professor of law at DePaul University in Chicago. The first is the separatist movement, a conflict between opposing groups within a country based on race, religion, ethnicity or language. The second type of terrorist aims to alter the economic, social and political structures of the state. The third type, which is prevalent in the United States, is violence to propagandize a claim or to redress an individual grievance.⁴

Within the third category are subdivisions. The terrorist may be out for personal gain, perhaps hijacking a plane for ransom. In this subdivision may fall the person who is trapped in the commission of a crime and takes hostages in an attempt to go free. Then there is the psychopath, an unbalanced personality who seeks recognition more than anything else. A third type is the person who is out to vindicate a personal claim; Anthony Kiritsis in Indianapolis, holding a shotgun to a bank president's neck because the bank had refused him credit, may be an example of this. Bassiouni, however, qualifies this category. It is difficult, he says, to separate this person from the psychopath.⁵

The fourth type, which may be the most difficult to deal with, is the ideologically motivated terrorist. This person wants to make a point, to gain power. Compromise may be unacceptable, and killing to help the cause, a trivial matter.⁶

What all of these types have in common, most experts agree, is a desire for publicity. This seems clear in the United States, where terrorists seldom, if ever, escape.

Brian Jenkins, a Rand Corporation expert on terrorism, explained the terrorists' motives this way:

"While terrorists may kill, sometimes wantonly, the primary objective of terrorism is not mass murder. Terrorists want a lot of people watching and a lot of people listening, not a lot of dead people.

"I see terrorism as violence for effect. Terrorists choreograph dramatic incidents to achieve maximum publicity, and in that sense, terrorism is theater."⁷

So where does this leave the journalists?

One television news director in Cleveland says his station may no longer cover terrorists at all. "We feel that the coverage we give such incidents is partly to blame, for we are glorifying lawbreakers, we are making heroes out of non-heroes. In effect, we are losing control over our news departments. We are being used."⁸

Most news organizations, however, seek a more moderate position. "I'm torn," says Richard Wald, president of NBC News. "I want to report, but I don't

want to help to overdramatize or dramatize."⁹

Guidelines are one way discussed to prevent excesses of coverage. But to some journalists, guidelines suggest censorship and inflexibility. They worry that guidelines would result in the suppression of vital information that may be embarrassing to authorities or contrary to community standards. The civil rights struggle in the South would never have been fully publicized under guidelines, they say. Besides, they argue, full coverage does more to calm than to inflame the community.

"The last thing in the world I want is guidelines," says A. M. Rosenthal, executive editor of The New York Times. "I don't want guidelines from the government and I don't want any from professional organizations or anyone else.

"The strength of the press is its diversity. As soon as you start imposing guidelines, they become peer-group pressures and then quasi-legal restrictions.

"I'm just viscerally against it. Besides, you have to judge each situation individually, on a case-by-case basis. You have to weigh the human dangers and then journalistic values of each case as it comes up. No policy could possibly cover every case."¹⁰

The Chicago Tribune uses a similar case-by-case approach with the highest authority available in the organization making the decisions.¹¹

The Gannett newspapers policy has been stated by John C. Quinn, senior vice president of news and information:¹²

"The issue is not whether such outrages against society should be covered; of course they must be. The crucial question is how that job must be done.

"The need and the ability to grab the reader with aggressive, exciting news coverage must be matched with cool, professional news judgment that recognizes in every story the specific significance at hand and its potential for serious repercussions.

"The news coverage performance that reflects the full meaning of a highly charged story in the tone as well as in the detail will indeed communicate to the community what the readers want and need to know without risking any temptation for anyone, including journalists themselves, to get caught up in the emotion of the moment."

Discussing a few do's and don'ts for the coverage of terrorism, Wald of NBC News says, "I don't know any really good rules to guide us in those situations, but what we do is this: We hire sensible people, promote smart bosses, tell them to be careful, and generally it works. They wind up being sensible and smart, and they don't do terrible things, and it works out okay. Every once in a while, it doesn't. It's the price we pay for the system we have."¹³

Although the Associated Press has not adopted guidelines, Executive Editor and Vice President Louis D. Boccardi says they are being considered:¹⁴ "We feel we have a responsibility to not contribute to or inflame a dangerous situation in which lives are at stake.

"Given the nature of the journalists' work, it may be that such a credo is the only suitable guideline.

"Perhaps there is a need for more specifics. That's what we're looking at."

Other organizations, while not adopting formal guidelines, have established temporary rules for covering specific acts of terrorism. WMAL TV¹⁵ and The Washington Post¹⁶ did that during the Hanafi Muslim seige in Washington.

Persons who favor guidelines seem to feel they are a way of establishing acceptable professional standards that can be flexible enough to cover any situation. Norval Morris, dean of the University of Chicago Law School, says the press and police should be able to reach agreement on extreme cases.¹⁷

Some persons not representing news organizations have suggested guidelines, both general and specific.

Psychologist Bassiouni makes two suggestions -- using pool coverage and creating a council to formulate and supervise voluntary restraints on media activities. Pool coverage is to prevent the problems created by the mass of reporters descending on a locality and to eliminate the competitiveness that sometimes leads to oneupmanship in the news media.¹⁸

Charles Fenyesi, editor of the National Jewish Monthly and a hostage during the Hanafi Muslim seige, agrees with the idea of a media council. A committee of editors could agree on "declaring and enforcing what might be called a news media emergency," he says. "A media emergency would mean the suspension of some of the rules of the profession. For instance, instead of aggressively

gathering news and scooping competition, protecting or at least not endangering lives should be our top priority. And whoever violates this rule would be held accountable and subject to disciplinary action by his employer."

Temporary delays in reporting have been suggested. "Nothing would be lost if the public didn't get information for 30 minutes, an hour or even a couple of days," says Dean George Gerbner of the Annenberg School of Communications in Philadelphia.

Dr. Preston Horstman, a psychologist with the Prince George's County (MD) police department, participated in the RTNDA conference in Washington. He made six recommendations for coverage:

- (1) Do not name the individual (terrorist); naming gives credit and strengthens what he/she is doing. Do not print the methods; this prevents imitation. Do not print anything the terrorists say. This takes away what they want to accomplish.
- (2) If media coverage is part of the demands, it should be done in as limited a manner as possible with as few people involved as possible. Take care not to be manipulated.
- (3) The act itself should be shown as a despicable act by losers.
- (4) The point should be made that no hostage situation has been successful.
- (5) No direct calls should ever be made to the terrorists; that draws out the process.
- (6) Continuing on-site coverage should not be used; it gives away intelligence to the terrorists.

In a two-part article on "Terrorism and Television," TV Guide listed proposals for television coverage gathered from experts on violence. They were essentially the same as Horstman's with two additions."²²

-- Keep air time in proportion to the objective news value of the terrorist act.

-- Give documentaries and analyses on the problems facing the country or community "and even access to the airwaves for the voices of reason among dissident groups, thereby reducing the likelihood of their resorting to violence to have their grievances heard."

Perhaps the most comprehensive study and guidelines around come from the 661-page report of the federal Task Force on Disorders and Terrorism. That report was published in December 1976, by the National Advisory Committee on Criminal Justice Standards and Goals, an arm of the Law Enforcement Assistance Administration. Throughout the report, the task force exhorts government and law enforcement officials to maintain open and honest relations with the press. Although the other guidelines discussed here have dealt only with coverage during the commission of the act of terrorism, the commission has three sets -- one each for on-going coverage, for contemporaneous coverage and for follow-up reporting.

News and Entertainment Media Responsibility for the Prevention of Extraordinary Violence

Factual and fictional depictions of incidents of extraordinary violence in the mass media are an important part of the background against which individual choices whether or not to participate in crimes of this nature are made. They also are a significant influence on public fears and expectations. So long as extraordinary violence is a fact of social life, the media cannot and should not avoid portraying and discussing it. But the special responsibility of the mass media in the prevention of extraordinary violence should dictate some guiding principles to govern the presentation of this material. In particular:

1. Factual journalistic coverage of extraordinary violence in the mass media should be as accurate and complete as the availability of information permits. Such coverage should:

- a. Give appropriate emphasis to the immediate and long-term consequences of extraordinary violence, for both victims and perpetrators;
- b. Include reliable information on the capacity of law enforcement agencies to deal with extraordinary violence; and
- c. Avoid unnecessary glamorization of persons who engage in crimes of extraordinary violence.

2. Editorials, features, and journalistic background pieces concerning extraordinary violence should attempt to place the phenomenon in total context, by reference to other problems of law enforcement and to related political and social issues.

3. Particular fictional presentations of extraordinary violence in the entertainment media, and the variety of mass entertainment that has criminal violence as its subject matter, should be crafted so as to:

- a. Avoid giving any general impression that participation in extraordinary violence is a common, glamorous, or effective means of resolving personal or political problems;
- b. Avoid conveying the impression that law enforcement responses to extraordinary violence are generally either incompetent or marked by the use of extreme force; and
- c. Present affirmative portrayals of private individuals and officials coping effectively with extraordinary violence and its consequences.

News Media Self-Regulation in Contemporaneous Coverage of Terrorism and Disorder

When an incident involving a confrontation between law enforcement officers and participants in mass disorder, terrorism, or quasi-terrorism is in progress, the role of the news media is an important and controversial one. The manner in which information about the incident is collected, and the form of its presentation to the public, will necessarily affect the conduct of the agencies and persons involved. In addition, these factors will be critical influences on the growth or spread, if any, of the incident. Finally, the approach taken by the media to news gathering and reporting on an incident-by-incident basis will have an important cumulative effect on public attitudes toward the phenomenon of extraordinary violence, the groups and persons who participate in it, and the official measures taken against it.

No hard rules can be prescribed to govern media performance during incidents of extraordinary violence. Whatever principles are adopted must be generated by the media themselves, out of a recognition of special public responsibility. But in general, the essence of an appropriate approach to news gathering is summarized in the principle of minimum intrusiveness: Representatives of the media should avoid creating any obvious media presence at an incident scene that is greater than that required to collect full, accurate, and balanced information on the actions of participants and the official response

to them. Similarly, the essence of an appropriate approach to contemporaneous reporting of extraordinary violence lies in the principle of complete, noninflammatory coverage; the public is best served by reporting that omits no important detail and that attempts to place all details in context.

Putting these general principles into practice, however, requires hard choices for the media, both at the organizational policy level and by the working reporter. In particular:

1. News media organizations and representatives wishing to adopt the principle of minimum intrusiveness in their gathering of news relating to incidents of extraordinary violence should consider the following devices, among others:
 - a. Use of pool reporters to cover activities at incident scenes or within police lines;
 - b. Self-imposed limitations on the use of high-intensity television lighting, obtrusive camera equipment, and other special news-gathering technologies at incident scenes;
 - c. Limitations on media solicitation of interviews with barricaded or hostage-holding suspects and other incident participants;
 - d. Primary reliance on officially designated spokesmen as sources of information concerning law enforcement operations and plans; and
 - e. Avoidance of inquiries designed to yield tactical information that would prejudice law enforcement operations if subsequently disclosed.
2. News media organizations and representatives wishing to follow the principle of complete, noninflammatory coverage in contemporaneous reporting of incidents of extraordinary violence should consider the following devices, among others:
 - a. Delayed reporting of details believed to have a potential for inflammation or aggravation of an incident that significantly outweighs their interest to the general public;
 - b. Delayed disclosure of information relating to incident location, when that information is not likely to become public knowledge otherwise and when the potential for incident growth or spread is obviously high;
 - c. Delayed disclosure of information concerning official tactical planning that, if known to incident participants, would seriously compromise law enforcement efforts;
 - d. Balancing of reports incorporating self-serving statements by incident participants with contrasting information from official sources and with data reflecting the risks that the incident has created to noninvolved persons;
 - e. Systematic predisclosure verification of all information concerning incident-related injuries, deaths, and property destruction; and
 - f. Avoidance, to the extent possible, of coverage that tends to emphasize the spectacular qualities of an incident or the presence of spectators at an incident scene.

Followup Reporting of Extraordinary Violence
by News Media

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Although contemporaneous news-gathering and reporting practices can have great impact on the course of an incident of extraordinary violence and the shape of its eventual resolution, the coverage that the phenomena of extraordinary violence receives during nonemergency periods is ultimately even more significant. From the followup reporting of particular incidents and their aftermaths, as well as from general and background reporting, the public at large receives the bulk of its information about disorder, terrorism, and quasi-terrorism—and about official response to these law enforcement problems. What constitutes responsible selection of objectives and means for ongoing, nonemergency coverage is difficult to define with precision. But it is clear that a media policy that emphasizes reporting an emergency to the near exclusion of followup coverage constitutes a disservice to the public. Bearing in mind the interests and characteristics of its audience, every news organ should make a serious, complete and noninflammatory presentation of information that will serve to put extraordinary violence in context, including:

1. Factual material documenting the aftermath of particular incidents, and emphasizing:
 - a. Effects of extraordinary violence on individual victims and the community at large;
 - b. Apprehension, trial, and sentencing of persons participating in extraordinary violence;

- c. Community reactions to law enforcement efforts in incident handling; and

- d. Official and nonofficial efforts to identify and address underlying grievances and precipitating social conditions.

2. Factual material not specifically tied to particular incidents, emphasizing such topics as:

- a. Local and national trends and tendencies in extraordinary violence;

- b. Available preventive security and law enforcement techniques applicable to extraordinary violence;

- c. Comparison of foreign and domestic experiences with extraordinary violence;

- d. Aims, characteristics, and records of terrorist groups;

- e. Background and recent history of quasi-terrorism and related forms of extraordinary violence; and

- f. Recent history and causative factors of mass disorder.

3. Editorial material analyzing options in public policy and private conduct, and where appropriate, recommending courses of action, in such topic areas as:

- a. Kinds and levels of preventive security;

- b. Law enforcement techniques;

- c. Community roles and responsibilities in emergencies; and

- d. Elimination of causes of extraordinary violence.

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The four news organizations that have submitted copies of their guidelines to The National News Council are CBS News, The Louisville Times and Courier-Journal, The Chicago Daily News and Sun-Times, and United Press International. Those guidelines, which follow, have in common a flexible approach and standards that might be considered simple professionalism. In general, they say:

- (1) The judgment of the newsworthiness of the event should be made on a case-by-case basis, using normal news judgment.

- (2) Coverage should be full, accurate and balance with no attempt made to sensationalize.

- (3) Journalists should stay out of the way of law enforcement officials but stay in touch with those officials for information and guidance on coverage.

The News Council again states its interest in receiving copies of guidelines adopted by news organizations or other information pertinent to the coverage of terrorism. Such material would be made available on request to other journalists and news organizations interested in responsible news coverage of terroristic acts when such occur.

CBS NEWS PRODUCTION STANDARDS

Coverage of Terrorists (4/7/77)

Because the facts and circumstances of each case vary, there can be no specific self-executing rules for the handling of terrorist/hostage stories. CBS News will continue to apply the normal tests of news judgment and if, as so often they are, these stories are newsworthy, we must continue to give them coverage despite the dangers of "contagion." The disadvantages of suppression are, among things, (1) adversely affecting our credibility ("What else are the news people keeping from us?"); (2) giving free rein to sensationalized and erroneous word of mouth rumors; and (3) distorting our news judgments for some extraneous judgmental purpose. These disadvantages compel us to continue to provide coverage.

Nevertheless in providing for such coverage there must be thoughtful, conscientious care and restraint. Obviously, the story should not be sensationalized beyond the actual fact of its being sensational. We should exercise particular care in how we treat the terrorist/kidnapper.

More specifically:

- (1) An essential component of the story is the demands of the terrorist/kidnapper and we must report those demands. But we should avoid providing an excessive platform for the terrorist/kidnapper. Thus, unless such demands are succinctly stated and free of rhetoric and propaganda, it may be better to paraphrase the demands instead of presenting them directly through the voice or picture of the terrorist/kidnapper.
- (2) Except in the most compelling circumstances, and then only with the approval of the President of CBS News, or in his absence, the Senior Vice President of News, there should be no live coverage of the terrorist/kidnapper since we may fall into the trap of providing an unedited platform for him. (This does not limit live on-the-spot reporting by CBS News reporters, but care should be exercised to assure restraint and context.)
- (3) News personnel should be mindful of the probable need by the authorities who are dealing with the terrorist for communication by telephone and hence should endeavor to ascertain, wherever feasible, whether our own use of such lines would be likely to interfere with the authorities' communications.
- (4) Responsible CBS News representatives should endeavor to contact experts dealing with the hostage situation to determine whether they have any guidance on such questions

The Courier-Journal and The Louisville Times

May 18, 1977

The following are guidelines for the newspapers' coverage in the event terrorists take and hold hostages in our area.

It will be our policy to cover the story fully and accurately. To do otherwise -- to withhold information -- could destroy our credibility and give life to reckless and exaggerated rumors in the community.

At the same time, our approach will be one of care and restraint. We will avoid sensationalism in what we write and how we display it, taking care not to play the story beyond its real significance.

We will make every effort not to become participants in the event. We will resist being used by the terrorists to provide a platform for their propaganda.

If terrorists demand that we publish specific information, we will agree to do so only if we are convinced that not to publish it would further endanger the life of a hostage. Our decision on whether to publish will be made only after consultation with the most senior editor available and, when possible, top police officials.

We will always be mindful of the dangers in telephoning terrorists or hostages for interviews during the event, realizing that such action could interrupt vital negotiations or incite the terrorists to violence.

We will assign experienced staff members to the story. We will involve the papers' top news officials when making decisions.

Insofar as possible, we will maintain contact with the responsible law-enforcement officials dealing with the situation. It will always be our aim to avoid taking any action that would interfere with the proper execution of duties by police or other officials.

Although we cannot be responsible for the coverage by other news media, we can and will conduct a constant review of our own performance.

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as phraseology to be avoided, what kinds of questions or reports might tend to exacerbate the situation, etc. Any such recommendations by established authorities on the scene should be carefully considered as guidance (but not as instruction) by CBS News personnel.

- (5) Local authorities should also be given the name or names of CBS personnel whom they can contact should they have further guidance or wish to deal with such delicate questions as a newsman's call to the terrorists or other matters which might interfere with authorities dealing with the terrorists.
- (6) Guidelines affecting our coverage of civil disturbances are also applicable here, especially those which relate to avoiding the use of inflammatory catchwords or phrases, the reporting of rumors, etc. As in the case of policy dealing with civil disturbances, in dealing with a hostage story reporters should obey all police instructions but report immediately to their superiors any such instructions that seem to be intended to manage or suppress the news.
- (7) Coverage of this kind of story should be in such overall balance as to length, that it does not unduly crowd out other important news of the hour/day.

The Sun-Times and Daily News Standards for Coverage of Terrorism

Recognizing that circumstances vary in each story, the following standards are meant for general guidance:

1. Normal tests of news judgment will determine what to publish despite the dangers of contagion, since the adverse effects of suppression are greater.
2. Coverage should be thoughtful and restrained and not sensationalized beyond the innate sensation of the story itself. Inflammatory catchwords, phrases and rumors should be avoided.
3. Demands of terrorists and kidnapers should be reported as an essential point of the story but paraphrased when necessary to avoid unbridled propaganda.
4. Reporters should avoid actions that would further jeopardize the lives of hostages or police.
5. Reporters should obey all police instructions but report immediately to their supervisors any such instructions that seem to manage or suppress the news.
6. Supervising editors and reporters should contact authorities to seek guidance — not instructions — on the use of telephones or other facilities, the reporting of negotiations or police strategies.
7. Editors, reporters and photographers should not become part of the story, should not participate in negotiations and should not ask terrorists about deadlines.
8. The senior supervisory editor should determine what — if any — information should be withheld or deferred after consultation with reporters and appropriate authorities.
9. The constant objective should be to provide a credible report without hampering authorities or endangering life.

GUIDELINES OF UNITED PRESS INTERNATIONAL

Genuine concern has been expressed by the news media. There is concern that spectacles such as the Hanafi siege in Washington may turn into a media event. There is concern that the media is being used as a forum by terrorists and kidnapers to express their views. There is concern about the definition, degree and perspective of the news media coverage.

Most editors agree that these happenings must be reported. Editorials have pointed to the Constitution, the credibility of a free press and the public's right to know.

Then where do we draw the line between legitimate news coverage and being exploited? The answer seems to be in individual news judgment and sense of responsibility.

There can be no clearly defined policy for terrorist and kidnapping stories. The circumstances vary in each case. UPI has established a set of guidelines which we feel are workable in most circumstances.

--We will judge each story on its own and if a story is newsworthy we will cover it despite the dangers of contagion.

--Our coverage will be thoughtful, conscientious and show restraint.

--We will not sensationalize a story beyond the fact of it being sensational.

--We will report the demands of terrorists and kidnapers as an essential point of the story but not provide an excessive platform for their demands.

--We will do nothing to jeopardize lives.

--We will not become a part of the story.

--If we do talk to a kidnapper or terrorist we will not become a part of the negotiations.

--If there has been no mention of a deadline we will not ask the kidnapper or terrorist if there is one.

--In all cases we will apply the rule of common sense.

¹Charles B. Sieb, "The Hanafi Episode: A Media Event," The Washington Post, March 18, 1977

²John Herbers, "Carter Says Coverage of Sieges is a Problem for the News Media," The New York Times, March 15, 1977

³Ibid.

⁴The Media and Terrorism: A Seminar Sponsored by The Chicago Sun-Times and Chicago Daily News, Field Enterprises Inc.: 1977, p. 6.

⁵Ibid.

⁶Ibid.

⁷Neil Hickey, "Terrorism and Television," Part I, T.V. Guide, July 31, 1976, p. 4.

⁸Philip Revzin, "A Reporter Looks at Media Role in Terror Threats," The Wall Street Journal, March 14, 1977.

⁹Richard Wald, Lecture at University of California, Riverside, March 21, 1977.

¹⁰David Shaw, "Editors Face Terrorist Demand Dilemma," The Los Angeles Times, September 15, 1976

¹¹Clayton Kirkpatrick, editor, The Chicago Tribune, Letter to The National News Council dated July 11, 1977.

¹²Ina Meyers, "Terrorism in the News," The (Mamaroneck, N.Y.) Daily Times,

¹³Wald speech.

¹⁴Louis D. Boccardi, executive editor and vice president of The Associated Press, Letter to The National News Council dated March 31, 1977.

¹⁵Sam Belman, executive director of news for WMAL-TV, in a letter to The National News Council dated May 31, 1977.

¹⁶The Media and Terrorism, pp. 17-22

¹⁷Ibid., p. 32.

¹⁸Ibid., p. 9.

¹⁹Ibid., p. 30.

²⁰"Terrorism and Censorship," Time, March 28, 1977, p. 57.

²¹Preston Horstman speaker; debate sponsored by R.T.N.D.A. Washington Chapter, March, 1977.

²²"Terrorism and Television," Part II, T.V. Guide, August 7, 1976, pp.12-13.

²³Disorders and Terrorism, Washington: National Advisory Committee on Criminal Justice Standards and Goals, 1976, pp. 366, 387-388, 401-402.

TERRORISM AND THE MEDIA

A Matter of Balancing the Rights of the Press
and the Rights of Hostages

by

Robert L. Rabe

Terrorism - an ugly phenomenon that has no place in a free society -- is calculated to shock and draw attention to any real or imagined grievance. By its very nature, it is meant to capture the attention of the public.

The basic goal of terrorism is not only to jeopardize lives and destroy property, but to break the spirit of the opposition. Hence, the terrorists need extensive coverage by the media to achieve this end.

To my knowledge, terrorism has never been defined statutorily as have murder, robbery, burglary, etc. Most definitions define terrorism as some form of social or political action, avoiding the issue of criminality. Therefore, even though we are lacking a specific criminal statute, a legal or quasi-legal definition, we must look at terrorism and hostage-taking for what it really is: a criminal act.

While the media is usually considered uninvolved and proper in reporting criminal activity, it must be called to task when terrorists use the media to obtain their objectives. In the latter role, the reporters become news makers rather than reporters of fact. This type of novice involvement not only contributes to a greater lack of objectivity, but could possibly bring about a change in the course of the news event as well.

The media, commonly referred to as the Fourth Estate, has been described as a powerful force, sometimes more influential than government itself. There are those in the media who claim not

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only the sacred right to publish anything remotely newsworthy, but a veritable duty under the guise of the First Amendment and the public's right to know.

Herein lies the dilemma faced by both media and law enforcement officials. Can such rights to report any and all news be claimed when there is an equal, if not a more compelling public interest -- that of saving the lives of the hostages? The inherent right of the public to be informed is somewhat limited by the need to deny terrorists the means by which they can communicate their message of propaganda and instill in the public the element of fear so necessary for terrorist operation or survival.

An inquiry into the media's First Amendment rights -- to gather and disseminate news -- must be examined against the rights or interests protected by the First Amendment, which states:

Congress shall make no law respecting an establishment of religion; or prohibiting the free exercise thereof; or abridging the freedom of the speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Obviously, there are First Amendment rights involved which may be affected. But, the Court, in an early case, Schenck v. U.S., 249 U.S. 47 (1919), compellingly acknowledged that "the most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing panic." More than two decades later, the Court reaffirmed that "when particular conduct is regulated in the interest of public order and the regulation results in an indirect, conditional partial abridgment of speech, the duty of the courts is to determine which of these two conflicting interests demands the greater protection under the particular circumstances presented" (Cox v. New Hampshire, 312 U.S. 569 (1941)). A review of another important decision, American Communications Association v. Douds, 339 U.S. 382 (1950), further reaffirmed that First Amendment freedoms, while fundamental, are not absolute.

Therefore, the answer is to balance the rights of both the press and the hostages. The task confronting both media and law enforcement officials today is one of weighing the probable effects on the free exercise of the right to speech and the press against the determination that hostage takeovers are evils of conduct,

criminal in nature, and pose a continuing threat to citizens and society. Stated simply, the right of access to newsworthy events, that is the right to freely gather news, the right to freely publish, and lastly, the right to disseminate the information that becomes news, must be balanced against the potential for the hostages' injury or loss of life.

As declared, First Amendment rights are not absolute, and specifically "[t]he right to speak and publish does not carry with it the unrestrained right to gather information," (Zemel v. Rusk, post.). Just as this government has both the right and duty to prohibit certain forms of speech as in libel and slander, the government, too, must expend every effort to protect the safety and lives of the hostages, even if the latter dictates limiting the rights of the press. The right to life is, of course, the most basic and paramount.

Several articles dealing with free speech and its relationship to government, indicate that it is recognized that speech can be limited under similar conditions, especially these conditions which were not unknown to the writers of the Constitution.

A useful analogy or parallel is further gleaned from the several cases dealing with the issue of press bans on interviews with federal and state prisoners. In Garrett v. Estelle, 556 F. 2d. 1274 (5th Cir. 1977); Pell v. Procunier, 417 U.S. 817, 834 (1974); and Saxbe v. Washington Post Co., 417 U.S. 843 (1974), the courts emphasized that the media does not have an absolute, constitutionally protected right of access to information not shared by members of the general public and frankly admitted that the government does not have an affirmative duty to make available to journalists sources of information not available to the general public.

I know of no authority which asserts that the public has a right to interview or talk with either the hostages or the hostage-takers during an incident -- and the press has no greater right.

As recent as June 26, 1978, the United States Supreme Court stated in Houchins v. KQED, Inc., 98 S. Ct. 2588 (1978), "We must not confuse what is 'good,' 'desirable' or 'expedient' with what is constitutionally commanded by the First Amendment. To do so is to trivialize constitutional adjudication." The Court further commented that "neither the First Amendment nor

Fourteenth Amendment mandates a right of access to government information or sources of information within the government's control."

I wish to make it clear that I am not advocating a total censorship or blackout of news coverage during terrorist incidents.

While the media represents a real potential for harm in a hostage situation, it also can be of tremendous value to the police and the community. I believe the exercise of the free press must be balanced in logic (and constitutionally) in the interest of the public safety and the need to protect the lives of hostages in eminent danger.

Perhaps this balance could be achieved through a principle similar to the Fairness Doctrine, which requires that both sides of an issue must be given fair coverage when discussions of public issues are presented on broadcast stations. This concept was instituted to prevent censorship by those persons controlling the media. Broadcasters can present one-sided views, omitting tempering factors, even though the facts being presented are based on truth. Every story has two sides, however, only one side may be told. The Fairness Doctrine is intended to assure that all facts are presented so that the public can form its own opinion.

However, for the public to form its own opinion, neither the public nor the news media on claim of the public's behalf, need to have direct access to the hostage-takers. While this may be considered a restriction on access, "there are few restrictions on action which could not be clothed by ingenious argument in the garb of decreased data flow. For example, the prohibition of unauthorized entry into the White House deminishes the citizen's opportunities to gather information he might find relevant to his opinion of the way the country is being run, but that does not make entry into the White House a First Amendment right" (Zemel v. Rusk, 381 U.S. 1, 16-17 (1965)).

It appears to me that even the right to speak and publish carries the obligation of fairness. I am proposing that an agreement, similar to that of the Fairness Doctrine, can be struck between the media and the law enforcement community during terrorist incidents. The media represents the eyes and ears of the community and can be influential in informing the public and disseminating accurate information. Speculative reporting such as probable actions of the group, their motives, their demands are not of immediate importance to the public. What is important is the continuing availability of police information officers to media representatives on the scene.

Through a free exchange of continuous updated information, the media can squelch many half truths and unsubstantiated rumors in regards to police operations and the relative safety of the hostages. In addition, with the police information officer always accessible to media personnel, it would be a relatively easy task to determine whether or not the broadcasting of certain information obtained from other sources could damage current negotiations. It would then be incumbent on the part of the police to advise the media as to why they feel it would be harmful. Obviously, the decision to use or hold the information will ultimately rest with the media.

In this manner, the media will get its story in full. The public will have the information it needs in the beginning as well as the full story of the incident after it has been concluded and the hostages released. But, the terrorists will not be able to use the media as a medium to gain public attention, instill fear or cause public panic like the man who yells fire in a crowded theater.

Such initial restraint on the part of the media would insure that the rights of all involved in terrorist incidents are protected while still enjoying their First Amendment right to freedom of the press. Perhaps it is time for a human life to become more important than sales and circulation.

TERRORISM AND THE MEDIA

An Issue of Responsible Journalism

by

Robert L. Rabe

Terrorism is an ugly phenomenon and has no place in a free society. By its very nature, it is meant to capture the attention of the public. In light of the disturbing increase in the number of terrorist acts, it has become apparent that terrorism and the violence it creates are no longer a means of last resort. It is calculated to shock and draw attention to any real or imagined grievance.

The viewing public is precisely that segment of people that the terrorist wishes to impress. The basic goal of terrorism is not only to jeopardize lives and destroy property, but also to break the spirit of the opposition. Hence, the need for extensive coverage by the media.

Let's look at terrorism for what it really is; a criminal act in violation of specific federal, state or local statutes, to which is added, a psychological reaction in the victim of intense fear. While the media is considered somewhat legitimate when reporting criminal activity, it is called to task when terrorists use the media to obtain their objectives.

The media, commonly referred to as the Fourth Estate, has been described as a powerful force, sometimes more influential than government itself. While the First Amendment states that Congress shall make no law abridging the freedom of speech or of the press, I believe this is not absolute. Reason must prevail.

Since the early 1950's, more potent medium than printed news has reached the hearts and minds of people -- that of television. Through some newsworthy event, an obscure person can become a household name overnight.

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The transmission of the terrorist message in a form and manner dictated by the terrorist is a purpose scarcely less important than the terrorist act itself. All the power of communication and publication stands ready to be harnessed by the terrorist. It is little wonder that those forces most closely associated with the dilemma of terrorism and the media - the law enforcement community and the media, should ponder their power and responsibilities in this area.

There are those in the media who claim not only the sacred right to publish anything remotely newsworthy, but a veritable duty under the guise of the public's "right to know." Leaving aside all other considerations of a "ratings and revenue" nature, we might ask this following question. Can such a right to report any and all news be claimed when there is an equal public interest -- that of saving the lives of the hostages? The inherent right of the public to be informed is somewhat limited by another public interest -- that of denying terrorists the means to communicate their message of propaganda and instill in the public the element of fear so necessary to their operation.

I wish to make it clear that I am not advocating a total censorship or blackout of news coverage during terrorist incidents. While the media represents a real potential for harm in a hostage situation, it can also be of real value to the police and the community. I believe the key is responsible reporting.

And what of the contagion of such detailed coverage of a terrorist incident? By glorifying terrorist activities with extensive news coverage, the event is projected as an attraction for others to emulate. If such is the case, terrorism has truly made the television media a pawn in the great game of propaganda. Let's look at an example. In the 1975 Baader-Meinhoff kidnapping of mayoral candidate, Peter Lorenz, control of the media was at the beckin' call of the terrorists for some 72 hours. Regularly scheduled programs were shifted and even cancelled in order to meet their timetable, and news coverage had to include prepared statements by the terrorists. In other words, the script for this drama was being written by the terrorists, not the news reporters. And this episode is a prime example of just how effective such criminals can be in using the media for their purposes.

This ability to capture the attention of the media has not only changed terrorists' tactics, but also their perception of their role and potential to reach the public. Terrorists' attacks are now often carefully choreographed to attract the attention of the electronic media and the press on an international scale. The Hanafi siege in Washington, D.C. is a primary example of this. The Metropolitan Police not only had to deal with the problem of local and national live coverage, but international news reporters calling directly into the hostage sites and interviewing the terrorists from such far off places as Ottawa, Canada; London, England; and Sydney, Australia, as well.

These theatrics have only become possible because a wider stage has been set by the electronic camera, and in turn, a larger captive audience becomes available. The electronic media can travel all over the world to wherever the news is breaking, and the viewing public would be critical if the media were to ignore such events. Therefore, what I am saying is that it is not the presentation of such news that gives rise to concern, but the manner in which it is presented. Naturally, media publicity tends to favor the terrorist side, since they are the ones making the news and providing the drama. However, this inclination, together with an intense desire to cover the story and present it better than the other competitive stations, gives rise to a real danger for the police. In such cases, frequently the media oversteps the boundaries of just reporting the news and becomes part of its own story, a participant in the event itself. Newsmen cease to be merely the recorders of the news and become part of the captivated audience the terrorists intend to reach. It may well be argued that there are two sides to every story and that the media would be remiss in their duty were they not afforded the opportunity to report a non-official side of such a story. Yet, surely even the media must question their role in such an activist intervention.

The role of the media is by no means confined, of course, to the simple reporting of newsworthy events. The media also plays an influential role in the formation of public opinion through analysis and comment. The very interest of such news for the public lies in the subjectivity of its presentation. The angle the media adopts in presenting it to viewers, make it distinctive and captivating to the audience. After all, this is why we read one newspaper over another or allow ourselves to be entertained by one radio or television station in preference to a competitor. When we find one sector of the press that is more diligent, more up-to-date perhaps, or even less selective in censoring itself when covering the news, then our natural inclination is to extend our preference in that direction on the grounds that we are so much the better informed. What really commands our loyal attention is the way that these relatively standard news events are reported to us. The slant that they are given provides us with a certain element of entertainment. This is the ratings and revenue game I mentioned earlier and the competition for such a viewer-audience is very intense. It would be irresponsible and impractical for the news media to ignore this reality. Were one sector of the press to ignore something newsworthy, it is certain that another would be only too eager to pay it the proper amount of attention.

Thus, an act of terrorism by its very nature gains the attention of the media and, through it, the viewing public for its message of fear. Herein lies the real dilemma for the police and the news media: what to do with a story once it breaks. It would be unrealistic to simply state that a terrorist message might not be carried. Imposing a partial or total news blackout is both idealistic and counter-productive. It would have the effect of masking from the people the reality of some of the problems this country faces. Therefore, we must deal with the reality that the news must be reported and the public informed.

Clearly, then, any practical solution is almost entirely dependent upon the voluntary cooperation of the media. Without a reasonable measure of mutual agreement between the media, no progress will be made. The representatives of the media must first perceive that there is a problem and, secondly, that they are part of it. Once this is achieved, the media can effectively move towards being part of a solution. For instance, while the act itself is the peculiar work of a terrorist, the accompanying propaganda needs the help and encouragement of the media. It is this propagandizing of terrorism rather than the straightforward, objective reporting of the incident which is one of the greatest concerns of the law enforcement community. If a proper distinction can be made between the two, an acceptable solution can be found. The problem lies in the channels through which the news is presented to the public. Much of the drama lies in its presentation. The peculiar appeal of television is found in its immediacy; the sense the public has in being present while history is being made; and, the thrill of being a participant from a safe distance. The television camera certainly does this, and it is apparently what the public wants. But the real question is whether or not what the public wants is good for it. Thus, there should be an element of professional discretion in reporting such events. The dilemma facing the news reporter is that he must report factually the horror of a terrorist incident without suppressing it to the point that partial revelations, half-truths, and unfounded speculations create the same degree of fear in the public as if the terrorist event had been totally presented. For this reason alone, a network of communication must be established between the police and the media in regards to what news is to be released, thus avoiding the breaking of news stories before the police are ready to release them. I think the media will find that the police are surprisingly cooperative in this regard, for we all realize that a legitimately acquired scoop will only in the rarest of instances prejudice the security and effectiveness of ongoing operations against the terrorist.

However, for its part, the media should not exaggerate a story for dramatic purposes, but should be content with the inherent drama it provides. In other words, members of the media ought to carefully consider whether they are reporting the news or being used as pawns by the terrorists in promoting their cause and spreading propaganda.

The media can also provide a substantial service to the police in their reporting of a terrorist event. Their factual reporting can squelch many half-truths and unsubstantiated rumors in regards to police operations and the relative safety of the hostages that might be running rampant in the community. In addition, if the terrorists wish to publicize their cause through the media, such a service may be used by police negotiations as a bargaining point in exchange for the safe release of hostages.

But coverage of the negotiations to release the hostages cannot be accomplished under the glaring lights of a mini-camera reporting live on the scene. Such a process promotes a circus-like atmosphere and does not lend itself to the mutual understanding and trust so necessary in delicate negotiations. This is where responsible journalism comes into play. News reporters must have enough professional integrity and maturity to realize this fact and have the courage to discipline and curtail their desire to report such events.

Police negotiators should not have to compete with the news media for the time and attention of the terrorists in establishing the proper atmosphere for negotiations. It is a very dangerous situation, indeed, when telephone lines of communication are constantly tied up by news reporters trying to get an exclusive or the latest breaking story. This prevents negotiators from establishing contact and doing their job. Reporters must come to realize that they are not trained in the delicate and sensitive art of hostage negotiations. When you have inexperienced reporters talking to highly volatile terrorists, one wrong word, one slip of the tongue, or one question improperly phrased by a reporter could cause a hostage to lose his life. This is why a police department spends so much time and money to train personnel in the psychological techniques of hostage negotiations. Therefore, direct telephonic communication between the news media and the terrorists must be curtailed and limited to those times when the terrorist himself initiates the request to speak to the media. And as I stated previously, this can be an important bargaining point for the safe release of hostages. It also allows the police the proper atmosphere in which to conduct negotiations free of outside distractions. Perhaps we should even go so far as to petition the Public Utilities Commission to authorize the local telephone company to cut established phone lines and enable the police to set up separate lines of communication directly to the terrorists.

Law enforcement agencies must also reevaluate their position in regards to news coverage by the press. There is a critical need for a police department's public information office to release timely, factual, and the most up-to-date information possible. This should be done on a regular basis from a central location, easily accessible to all news reporters. I would even go so far as to say that the police negotiator should be accessible to the public information officers in order for him to make periodic news releases.

However, one area in which members of the press must exercise care when reporting the news is that of police operations. To indiscriminately report all the latest police operations and maneuvers live over the radio and television as they occur, provides a distinct tactical advantage to the terrorists. They receive the latest intelligence data on police tactics, while the police do not enjoy a similar luxury of knowing the terrorists' operations. Besides, the operations that members of the press see and report may not be in actuality what they appear to be. For instance, during

one particular lull in activity during the Hanafi siege, a local reporter took it upon himself to report live over the radio and television what appeared to him to be boxes of ammunition being taken into the B'Nai B'Rith building in preparation for an all-out police assault, when in fact what was being taken in were boxes of food for the hostages. Just imagine what the repercussions could have been if the terrorists had been monitoring their radios and televisions at that precise moment. Imagine what a tactical advantage the terrorists have in knowing where and how many police sharpshooters are on the rooftops the same time the police are attempting to ascertain how many terrorists are involved. It is also apparent that there will be certain critical information that the police just cannot release, especially in regards to tactical operations.

Another reason the news media must limit their coverage of a terrorist incident is for purposes of protecting a criminal's constitutional right to a fair trial. Such factors as adverse pre-trial publicity and contamination of a crime scene by live coverage on the part of the press can become grounds for a mistrial or even the case being dismissed. There is also the possibility that the media could prolong the incident by bolstering the terrorists' ego. I would dare say that the Anthony Kiritsis incident in Indiannapolis was just such a case.

I wish to stress again, if I have already not done so, that on the whole, the law enforcement community has always received splendid cooperation from the majority of the news media represented at terrorist incidents. It was the actions of a small segment of the media that caused us the greatest concern for the safety and welfare of the hostages.

I believe the problem can be solved and I would like to propose that officials from both the law enforcement community and the mass media sit down together and make a sincere effort to develop mutual recommendations allowing the media and police to work more closely without jeopardizing the lives of innocent hostages, police officers, or reporters.

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THE PROJECT ON MEDIA COVERAGE OF TERRORISM: A SUMMARY
OF NATIONAL SURVEYS AND OTHER INVESTIGATIONS, 1977 - 1979

By

Michael Sommer
California State University, Northridge

And

Heidi Sommer
University of Southern California

Additional Free Copies May Be Obtained Upon Request To:

The Project on Media Coverage of Terrorism
Department of Journalism
California State University
Northridge, California 91330
(213) 885-3135

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POMCT Project #1, Data Released August 17, 1977SUMMARY

This study of the police chiefs of the nation's thirty most populated cities indicated the chiefs believed television reporters have generally not done a good job of covering terrorism and that live television coverage of terrorism encourages it.

More than half of the chiefs replied to a questionnaire about television coverage of terrorism mailed in May, 1977.

In April, 1977, the Gallup Poll found that Americans were divided about whether the media should give complete, detailed coverage to acts of terrorism. This survey sought to investigate "how the guys on the firing line, the police chiefs, felt." As expected, the police chiefs were not favorable in their reactions to television coverage of terrorist activities or about TV reporters who cover terrorism. Many had deep feelings about it and welcomed the chance to express them.

Among the major results of the survey reported in 1977:

- 93% of the police chiefs believed live TV coverage of terrorist acts encourages terrorism.
- None of the big-city police chiefs surveyed believed that coverage of terrorist acts should be televised live. 60% thought such TV coverage should be delayed or video taped, and 27% believed terrorist acts should not be covered by television.

- 46% of the police chiefs considered live television coverage of terrorist acts "a great threat" to hostage safety and 33% considered it "a moderate threat." Only 7% considered it a minimal threat.
- More than half of the police chiefs had generally unfavorable judgments of on-the-scene television reporters covering terrorists. 20% of the police chiefs believed television reporters covering terrorist acts were "poor" and 33% believed they were "average." Only 20% believed that TV journalists covering terrorists were good.
- 67% of the police chiefs said TV journalists should only communicate with terrorists with official consent. Another 33% believed that under no circumstances should TV journalists communicate with terrorists while they are engaged in criminal activity.

Many police chiefs felt quite deeply about the necessary relationship between the media and police agencies in a democracy and wrote extensive comments.

Wrote one police chief, "It is very important for the police agencies to realize the press also has a duty to perform and a right to perform that duty." "The media must report a breaking news story but it must be put in perspective," added another.

"It is a delicate subject of critical concern to the safety of the community. Mature self-governing guidelines by the media and understanding of media by law enforcement is needed," added another.

"Widespread publication of details of incidents can foster future incidents or be utilized to improve future attempts. Also, details of how officials successfully concluded an incident can be utilized by those inclined to perpetrate a future incident," wrote one police chief.

Wrote another, "We are of the opinion that televising terrorist acts only seeks to instill increased aggressive demeanor in the terrorist(s) and promotes hostile behavior in individuals monitoring such coverage who advocate deviant conduct."

Another said, "It appears to be a case of monkey see, monkey do. There are times when police outwit the hostage taker, sometimes lie to him, or trick him. Some of these tactics lessen police credibility and it becomes more challenging for the police negotiators to come up with new ways and means."

"On-scene liaison between police and media in keeping with a policy of department-wide openness and a program of on-going liaison promotes a climate of mutual trust and understanding wherein the police and the media can fulfill their respective obligations to the public," stated a police chief.

Asked whether live TV coverage of terrorist acts encourages terrorism, one police chief commented, "It's probably a necessary evil." Another believed that television coverage encourages terrorism, "especially live coverage of terrorists' statements and demands which are calculated to exacerbate and expand the incident." Another added, "I would like to see a study done on this."

Asked whether they believed on-the-scene television reporters covering terrorists rally are excellent, good, average, or poor, the police chiefs commented:

- "It's generally good but you certainly have both extremes."
- "The range perhaps runs from excellent to poor. All too often the 'spirit' of competition outweighs sound judgment or thought of the results."
- "The majority of the reporters . . . use good judgment and cooperate with the authorities, however when the mood of the reporters becomes competitive, their judgment decreases to a much lower level."
- "Hanafi terrorists in Washington, D.C. had the media furnishing intelligence from all TV angles, up to the minute. Phone lines used by media and conversations were highly dangerous. General opinion of police was that media was at its worst."

Should TV journalists communicate with terrorists while they are engaged in criminal activity? No, said the police chiefs, or at least not without official consent, and they

ded:

- "It gives an unnecessary power base and exposure to ne'er do wells."
- "It might be deemed appropriate for some situations. Without official consent, they might unknowingly work at odds or cross purposes with official action or non-action."
- "With official consent it is possible that the reporter might act in best interests of all or most of the parties."
- "Consent (should) only be given when this contact is negotiated by the terrorist or when other positive benefits would result from this contact."

POMCT Project #2, Data Released October 31, 1977

SUMMARY

The second POMCT study, this one of police chiefs and television news directors in the country's largest cities, indicated both groups agreed with the then newly written C.B.S. News guidelines for coverage of terrorist and hostage stories.

A questionnaire was mailed to police chiefs and television news directors in the nation's thirty most populated cities regarding their attitudes toward the C.B.S. News guidelines.

More than half of the police chiefs replied to the questionnaire about guidelines mailed in May, 1977. Thirty-five percent of the television news directors in the same cities replied to an identical questionnaire mailed in August, 1977.

Both the police chiefs and the television news directors appeared to agree with the C.B.S. News guideline against live television coverage of the terrorist act "except in the most compelling circumstances."

According to the National News Council, at the time four news organizations were known to have adopted guidelines for coverage of terrorism and some were considering their adoption. The survey indicated that on the one hand, some journalists disagreed about the wisdom of adopting guidelines and on the other hand, there appeared to be some sentiment to adopt them, especially in view of the frequency of terrorist acts then being reported by the nation's media.

The survey sought to establish, first, how the police chiefs, "the guys on the firing line," felt about guidelines on television coverage of terrorism and, in particular, about those of C.B.S. News, the first broadcast news organization to propose them. It also sought to find out how television news directors, the persons who would implement these or similar guidelines, felt about them.

The survey indicated that both groups strongly agreed with the guidelines. But what remained to be seen was whether, despite their favoring the guidelines, significant numbers of television news organizations would actually adopt these or similar ones.

C.B.S. News presented its seven guidelines in April, 1977.

In the Project's survey, police chiefs and television news directors were asked to comment about them if they wished to do so.

Among the major results of the survey reported in 1977:

- Seventy-three percent of the police chiefs and 87% of the television news directors agreed with the first C.B.S. guideline which recommends that journalists should avoid providing excessive platforms for terrorists and, unless succinctly stated, paraphrase their demands.

The first C.B.S. News guideline specifically states:

"An essential component of the story is the demands of the terrorist/kidnapper and we must report those demands. But we should avoid providing an excessive platform for the terrorist/kidnapper. Thus, unless such demands are succinctly stated and free of rhetoric and propaganda, it may be better to paraphrase the demands instead of presenting them directly through the voice or picture of the terrorist/kidnapper."

The survey revealed these attitudes toward this guideline:

	<u>Agree</u>	<u>Disagree</u>	<u>No Opinion</u>	<u>Other</u>
Police Chiefs	73%	7%	20%	0%
T.V. News Directors	87	5	5	3

Nearly half of the police chiefs expressed comments about the first C.B.S. News guideline. One police chief stated, "The media should not report the specific demands but only the fact that demands have been made and that they are being negotiated. When demands are made public before resolution of the situation, the terrorists may change their position because the demands may make them lose 'face.' The public is entitled to the facts after the situation has been resolved." Another police chief stated, "I think CBS would assume the reporter does not read more into a terrorist's statement than is actually discernible." One police chief wrote extensive comments about a terrorist incident in Beilen, Holland. He said, "The terrorists demanded publicity regarding 'A Free and Independent South Molucca' and prisoner release, else one person would die every thirty minutes. Three hostages are killed. The burden is on newspapers to do their wish or live with themselves afterwards."

Commenting on the same guideline, one television news director stated, "I don't think you can set firm guidelines for the news." Another indicated his disagreement with the guideline, remarking, "Sometimes yes, sometimes no." Yet another said, "Each situation is unique."

- Ninety-three percent of the police chiefs and 81% of the television news directors agreed with the second C.B.S. News guideline proposing no live coverage of a terrorist act. Significantly, this guideline was among two receiving the most agreement from police chiefs but also receiving the greatest percentage of disagreement from television news directors.

The second guideline states:

"Except in the most compelling circumstances, and then only with the approval of the President of CBS News, or in his absence, the Senior Vice President of News, there should be no live coverage of the terrorist/kidnapper, since we may fall into the trap of providing an unedited platform for him. (This does not limit live, on-the-spot reporting by CBS News reporters, but care should be exercised to assure restraint and context.)

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The survey revealed these attitudes toward this guideline:

	<u>Agree</u>	<u>Disagree</u>	<u>No Opinion</u>	<u>Other</u>
Police Chiefs	93%	7%	0%	0%
T.V. News Directors	81	13	3	3

The comments of police chiefs on the second C.B.S. News guideline included, "It's the best of a bad bargain. I would prefer coverage afterwards, but realistically one cannot expect the media to censor and delay news." One police chief stated, "The authorities should have the final say on live coverage. If the media does decide to have live coverage, then the authorities should be advised." While this guideline was the one about which the most television news directors, 13%, disagreed, few had comments to make about it. One stated, "I agree, but this sounds like double-talk."

• Eighty-six percent of the police chiefs and 84% of the television news directors agreed with the third C.B.S. guideline recommending that reporters be mindful of the need of authorities to communicate with terrorists by telephone and urging that reporters find out whether their use of such lines would interfere with the communications of the authorities.

The third C.B.S. News guideline states:

"News personnel should be mindful of the probable need by the authorities who are dealing with the terrorist for communication by telephone and hence should endeavor to ascertain, wherever feasible, whether our own use of such lines would be likely to interfere with the authorities' communications."

The survey revealed these attitudes toward this guideline:

	<u>Agree</u>	<u>Disagree</u>	<u>No Opinion</u>	<u>Other</u>
Police Chiefs	86%	7%	7%	0%
T.V. News Directors	84	5	3	8

One police chief commenting on the third C.B.S. News guideline stated,

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News persons should never communicate with terrorists unless requested to do so by authorities. Untrained persons, newsmen or others, should not talk to hostage takers." Another police chief stated, "The media should not try to contact terrorists. It's a police matter." Still another wrote, "Are you really going to kill all those people if your demands are not met?" Such questions gear up the hostage taker and he might be goaded into action to prove himself. The situation would worsen by the spotlight of attention. The terrorist might want to look big."

The comments of television news directors on the guideline included, "We should not be trying to call the terrorist in the first place." One wrote, "We must not tie up phones into places where hostages are being held." Another television news director wrote, "I agree with the guideline, but it remains the option of news judgment."

• Ninety percent of the television news directors and 86% of the police chiefs agreed with the fourth C.B.S. News guideline which recommends that C.B.S. News representatives contact experts dealing with the hostage situation to determine whether they have any guidance, but advises that such recommendations should be carefully considered as guidance and not as instruction.

The fourth C.B.S. News guideline specifically states:

"Responsible C.B.S. News representatives should endeavor to contact experts dealing with the hostage situation to determine whether they have any guidance on such questions as phraseology to be avoided, what kinds of questions or reports might tend to exacerbate the situation, etc. Any such recommendations by established authorities on the scene should be carefully considered as guidance. (but not as instruction) by C.B.S. News personnel."

The survey revealed these attitudes toward this guideline:

	<u>Agree</u>	<u>Disagree</u>	<u>No Opinion</u>
Police Chiefs	86%	7%	7%
T.V. News Directors	90	5	5

Several police chiefs commented on the fourth C.B.S. News guideline. One stated, "Any recommendation given by the authorities should be considered as an instruction and it should be carried out to the letter. The decision of the authorities is based on all available facts known at the time." Another police chief wrote, "Consultation with public safety authorities on the scene should be included if the 'expert' consulted is not the police authority in charge." Yet another police chief commented, "This is a good idea. There are 'no no's' and areas of sensitivity. Police have certain skills in negotiating with and understanding the criminal. We study, we learn, we do. A crash course is better than none."

One television news director in commenting on this guideline stressed, "The information should be instructional."

- Ninety-three percent of the police chiefs and 90% of the television news directors agreed with the fifth C.B.S. News guideline recommending that local authorities be given the name of C.B.S. personnel whom they can contact should they have further guidance about news person's calls to terrorists or matters which might interfere with the authorities dealing with the terrorists.

The fifth C.B.S. News guideline specifically states:

"Local authorities should also be given the name or names of C.B.S. personnel whom they can contact should they have further guidance or wish to deal with such delicate questions as a newsman's call to the terrorists or other matters which might interfere with authorities dealing with the terrorists."

The survey revealed these attitudes toward this guideline:

	<u>Agree</u>	<u>Disagree</u>	<u>No Opinion</u>
Police Chiefs	93%	7%	0%
T.V. News Directors	90	5	5

One police chief commented on this guideline, "There should be no calls to the terrorists ." Another police chief stated, "This might prevent a reporter from going the limit to make a scoop. We experienced this in the riots of 1967. National network television crews incited young people to perform to obtain live action film."

Commenting on the guideline, one television news director stated, "There are no firm rules here." Another stated, "It should be the other way around. Local authorities are too busy to contact the media in such a situation."

- Ninety-four percent of the television news directors and 86% of the police chiefs agreed with the C.B.S. News guideline recommending that reporters covering terrorist acts should avoid the use of inflammatory language and the reporting of rumors and obey all police instructions, reporting those instructions to their superiors, however, which seem intended to manage or suppress the news.

The sixth C.B.S. News guideline specifically states:

"Guidelines affecting our coverage of civil disturbances are also applicable here, especially those which relate to avoiding the use of inflammatory catch-words or phrases, the reporting of rumors, etc. As in the case of policy dealing with civil disturbances, in dealing with a hostage story reporters should obey all police instructions but report immediately to their superiors any such instructions that seem to be intended to manage or suppress the news."

The survey revealed these attitudes toward this guideline:

	<u>Agree</u>	<u>Disagree</u>	<u>No Opinion</u>	<u>Other</u>
Police Chiefs	86%	7%	7%	0%
T.V. News Directors	94	0	3	3

One police chief commented on this guideline, "Media superiors should then discuss these instructions with the police authorities, particularly if they do not feel the instructions should continue to be honored. It is hoped that these discussions would occur prior to the publication of any report that would be contrary to the police instructions." Another police chief stated, "There is a thin

line between suppression of news and completing the police mission." Yet another police chief wrote, "What is interpreted by the reporter as suppression may not be the case at hand, merely a matter of semantics." One police chief said, "If we want cooperation, we must give cooperation. It is a two-way street. Common sense and good judgment work toward the best interests of the public and private sectors."

Several television news directors also commented on this guideline. One stated, "This gives flexibility to ignore authorities' wishes, and so is needed." Another wrote, "I agree, except that often such police orders are simply self-serving or designed to keep the story from being covered." Another television news director said, "I agree if police instructions are reasonable." Yet another wrote, "I believe reporters should use their judgment at the scene. but should also report police actions to their superiors." Echoing this sentiment, another television news director remarked, "I agree in part. Qualified reporters should use their own discretion. In this situation, there may not be time to hold a conference."

• Eighty-six percent of the police chiefs and 87% of television news directors agreed with the C.B.S. News guideline recommending that coverage of terrorist acts should be in such overall balance as to length that it does not unduly crowd out other important news.

The seventh C.B.S. News guideline specifically states:

"Coverage of this kind of story should be in such overall balance as to length, that it does not unduly crowd out other important news of the hour/day."

The survey revealed these attitudes toward the guideline:

	<u>Agree</u>	<u>Disagree</u>	<u>No Opinion</u>	<u>Other</u>
Police Chiefs	86%	0%	14%	0%
T.V. News Directors	87	5	3	5

Commenting on this guideline, one police chief wrote, "The magnitude of the story will dictate this."

A television news director, commenting on this guideline, said, "Sometimes special open-ended coverage is justified." Another television news director stated, "I think the nature of this story would force it to get greater length than a normal news story." Yet another wrote, "This is double-talk. The story should get the play it demands based on existing circumstances."

One television news director who had extensive experience with a hostage situation wrote several comments on his experience, and decried the need for guidelines.

He wrote, "No answers are really possible. It seems to me circumstances will dictate answers to these questions and the answers in any one case may be totally different from another. If one, for instance, laid down an unbreakable rule that no terrorist would appear live, what happens when said terrorist says he'll kill hostages unless he gets coverage? This happened in Indianapolis and Cleveland."

"No set of rules are reliable in these situations. Decisions must be made on the spot, and news executives will not be able to rely on many guidelines to bail them out."

"The C.B.S. rules read well, but my argument holds here, too."

"We have, however, found a couple of standards which seem to cover the situations.

1. Reporters are to avoid making themselves part of the story.
2. No calls will be placed into the hostages, terrorists, or 'holed up.'
3. The most important rule of all is we will do nothing to further endanger life.

If this means losing competitive advantage, so be it."

"These are rather simple rules, obviously, but in my opinion, the more specific and complex ones don't work."

SUMMARY

The third POMCT study indicated that the nation's police chiefs and media differ about the coverage of terrorism and disagree about whether media coverage encourages terrorism, whether it is a threat to hostage safety, and whether journalists should communicate with terrorists.

This study surveyed the attitudes toward terrorism coverage held by police chiefs, television and radio news directors and newspaper editors in the nation's thirty most populated cities and involved comparing the results of four national surveys.

The research appeared to show that police were concerned about the effects of media coverage on hostage and public safety and on imitation. On the other hand, the media were concerned about the people's right to know, press freedom, and responsible coverage. Three phrases commonly used by both groups, though they differed on how best to cover terrorism, were 'common sense, responsibility, and caution.' There appeared to be no easy answers to the coverage of terrorism.

Media and police indicated the necessity of proceeding forward with responsibility, taking care neither to endanger lives nor the people's right to know where knowledge is vital. Attitudes indicated the coverage of terrorism to be at best an excruciating business, exacting great pressures on public authorities and the media alike. Neither censorship nor scoop-happy reporting got high marks. Many respondents believed terrorist coverage called for difficult decisions under difficult circumstances from able minds. On balance, both the police and the media appeared to be aware of coverage problems and, appeared to be trying to be as responsible and cooperative as they could.

Among the highlights of the research reported in 1978:

- 1. The nation's police chiefs and some of the media agreed that live television coverage of terrorist acts encourages terrorism. Nearly all of the police chiefs (93%) believed it does. Forty-three per cent of newspaper editors also believed that it does, but one-third (33%) did not, and 24% said it depended on the circumstances. Television news directors were evenly divided on the question, with 35% believing that live television coverage of terrorist acts encouraged terrorism and 35% believing it did not. Nearly a quarter of the television news directors, or 24%, believed that it depended on the circumstances.

QUESTION:

Do you believe live television coverage of terrorist acts encourages terrorism?

Table with 4 columns: Yes, No, Other, Don't Know or No Answer. Rows: Police Chiefs, T.V. News Directors, Newspaper Editors.

- 2. The media and police chiefs differed sharply about to what extent live television coverage of terrorist acts constituted a threat to hostage safety. As reported by the project in August, 1977, nearly one-half (46%) of the police chiefs considered live television coverage of terrorist acts a "great threat" to hostage safety, one-third (33%) considered it a "moderate threat," and 7% considered it a "minimal threat." Only 3% of the television news directors and none of the newspaper editors considered live TV coverage a "great threat." However, twice as many newspaper editors considered live television coverage of terrorist acts a "minimal threat" as did television news directors. Television news directors were divided and appeared somewhat unsure about to what extent live TV coverage of terrorism is a threat to hostage safety, with nearly one-third (32%) considering it a "minimal threat," another 32% considering it a "moderate threat" and 27% indicating that it depended on the circumstances. Nearly a third of all three groups considered live TV coverage a "moderate threat."

QUESTION:

To what extent do you consider live television coverage of terrorist acts a threat to hostage safety?

Table with 6 columns: Minimal Threat, Moderate Threat, Great Threat, Other, Don't Know. Rows: Police Chiefs, TV News Directors, Newspaper Editors.

3. The nation's police chiefs differed sharply with television news directors about whether television news reporters should communicate with terrorists while the terrorists are engaged in criminal activity. One-third of the police chiefs (33%) believed that under no circumstances should TV journalists communicate with terrorists and more than two-thirds of the chiefs (67%) believed that TV journalists should only communicate with terrorists with official consent. However, only 13% of the television news directors believed that under no circumstances should a TV journalist communicate with a terrorist and more than one-third (38%) believed communication should take place with official consent. More than a quarter (27%) of the TV news directors believed that communication with terrorists should take place at the media's own discretion and more than one-fifth (22%) believed communication with terrorists should depend on the circumstances.

QUESTION:

Should T.V. journalists communicate with terrorists while the terrorists are engaged in criminal activity?

	<u>Under No Circumstances</u>	<u>With Official Consent</u>	<u>At Media's Own Discretion</u>	<u>Other/Depends on Circumstances</u>
Police Chiefs	33%	67%	0%	0%
T.V. News Directors	13%	38%	27%	22%

4. A plurality of all three media groups (38% of the TV news directors, 33% of the radio news directors, and 38% of the newspaper editors) believed that communication with terrorists engaged in terrorist activity should take place with official consent, but more than a quarter of all three groups (27% of the TV news directors, 26% of the radio news directors, and 33% of the newspaper editors) believed that

communication with terrorists engaged in criminal activity could take place at the media's own discretion. Conversely, only a minority of all three media groups (13% of the TV news directors, 20% of the radio news directors, and 10% of the newspaper editors) believed that no communication should take place with terrorists engaged in criminal activity under any circumstances.

QUESTION:

Should journalists communicate with terrorists while the terrorists are engaged in criminal activity?

	<u>Under No Circumstances</u>	<u>With Official Consent</u>	<u>At Media's Own Discretion</u>	<u>Other</u>
TV News Directors	13%	38%	27%	22%
Radio News Directors	20%	33%	26%	21%
Newspaper Editors	10%	38%	33%	19%

5. As reported by the project in August, 1977, more than half of the police chiefs (53%) believed the judgments of on-the-scene television reporters covering terrorist stories were "average" or "poor." One-fifth (20%) of the police chiefs believed television reporters covering terrorist acts were "poor" and one-third (33%) believed they were "average." Only 20% believed that TV journalists covering terrorists were "good." Television news directors to some degree agreed with police chiefs in assessing the performance of TV reporters but gave them slightly better marks. Less than half as many television news directors as police chiefs (8% to 20%) believed that TV reporters covering terrorist acts were "poor."

QUESTION:

Do you believe the judgment of on-the-scene television reporters covering terrorists generally is:

	<u>Excellent</u>	<u>Good</u>	<u>Average</u>	<u>Poor</u>	<u>Don't Know</u>	<u>No Answer</u>	<u>Other</u>
Police Chiefs	13%	20%	33%	20%	0%	14%	0%
TV News Directors	13%	30%	35%	8%	3%	3%	8%

6. Radio news directors gave radio news reporters covering terrorist acts slightly higher marks than did television news directors for television journalists. More than half of the radio news directors (54%) believed the judgment of on-the-scene radio reporters covering terrorist stories generally was "excellent" or "good" while 43% of the television news directors gave television reporters similar ratings.

QUESTION:

Do you believe the judgment of on-the-scene television/radio reporters covering terrorists generally is:

	<u>Excellent</u>	<u>Good</u>	<u>Average</u>	<u>Poor</u>	<u>Don't Know</u>	<u>No Answer</u>	<u>Other</u>
TV News Directors	13%	30%	35%	8%	3%	3%	8%
Radio News Directors	10%	44%	25%	8%	1%	0%	12%

7. Newspaper editors, by nearly a two-to-one majority (57% to 29%), did not believe newspaper coverage of terrorist acts encourages terrorism. However, radio news directors were nearly evenly divided with 42% believing live radio coverage of terrorist acts does not encourage terrorism, but 36% saying it does.

QUESTION OF NEWSPAPER EDITORS:

Do you believe newspaper coverage of terrorist acts encourages terrorism?

	<u>Yes</u>	<u>No</u>	<u>Other</u>
Newspaper Editors	29%	57%	14%

QUESTION OF RADIO NEWS DIRECTORS:

Do you believe live radio coverage of terrorist acts encourages terrorism?

	<u>Yes</u>	<u>No</u>	<u>Other</u>	<u>Don't Know</u>
Radio News Directors	36%	42%	21%	1%

8. The nation's police chiefs and television news directors differed sharply on whether television coverage of terrorist acts should be broadcast live, delayed, or blacked out. As reported by the project in August, 1977, none of the big-city police chiefs surveyed believed that coverage of terrorist acts should be televised live. Sixty per cent (60%) thought such TV coverage should be delayed or video taped, and 27% believed terrorist acts should not be covered by television. However, while 8% of the television news directors believed TV coverage of terrorist acts should be carried live, only 19% believed it should be delayed or video taped for later broadcast.

Nearly two-thirds (65%) of the TV news directors believed the decision should be based on the circumstances. Only 5% of the television news directors believed in blacking out TV coverage altogether.

QUESTION:

Do you believe television coverage of terrorists should be:

	Live	Delayed-- (Taped)	Blacked Out	Other	Don't Know
Police Chiefs	0%	60%	27%	13%	0%
TV News Directors	8%	19%	5%	65%	3%

9. A plurality of radio news directors (36%) favored live radio coverage of terrorist acts, however nearly an equal number (35%) said live radio coverage depends on the circumstances. Nearly one-quarter (24%) favored delayed or taped coverage. Only 5% of the radio news directors favored blacked out coverage.

QUESTION:

Do you believe radio coverage of terrorist acts should be:

	Live	Delayed-- (Taped)	Blacked Out	Other
Radio News Directors	36%	24%	5%	35%

10. When TV news directors, radio news directors, and newspaper editors were asked to what extent they considered their own media's live or immediate coverage of terrorist acts a threat to hostage safety, all three appeared to agree that immediacy of coverage, using their own media, constitutes only a minimal threat. However, newspaper editors and radio news directors appeared more certain than television news directors who are in charge of a live, visual medium.

QUESTION:

To what extent do you consider live/immediate coverage of terrorist acts a threat to hostage safety?

	Minimal Threat	Moderate Threat	Great Threat	Other	Don't Know
TV News Directors	32%	32%	3%	27%	6%
Radio News Directors	47%	19%	14%	17%	3%
Newspaper Editors	76%	19%	0%	5%	0%

Moreover, all three media groups agreed that live or immediate coverage of terrorist acts does not constitute a "great threat" to hostage safety.

11. While nearly two-thirds of radio stations (65%) had a policy concerning the coverage of terrorist acts, one-third (33%) did not, and more than half (52%) of the newspapers also did not have such a policy.

QUESTION:

Do you have a policy concerning coverage of terrorist acts?

	Yes	No	Other	No Answer
Radio News Directors	65%	33%	1%	1%
Newspaper Editors	38%	52%	10%	0%

12. Overwhelmingly, newspaper editors believed in normal coverage of terrorist acts, and would resort neither to censorship nor to printing special editions in reporting such activities.

QUESTION:

Do you believe newspaper coverage of terrorist acts should be:

	<u>Printed in a Special Edition</u>	<u>Printed in the Next Regular Edition</u>	<u>Held, Until...</u>
Newspaper Editors	0%	100%	0%

IMPLICATIONS AND RECOMMENDATIONS, 1979

We view the foregoing surveys as very modest research in a decidedly needed area of inquiry. At best, the research, limited by inadequacies of design and funds, points to the need for more and better research.

This research, as all scholarship, also reflects the backgrounds, insights, and, no doubt, the biases of the authors. Our backgrounds are in journalism, law, psychology, sociology, and politics, with whatever merits and demerits these fields bring to an inquiry of this kind. Our backgrounds also reflect experience in police reporting, although our deficiencies in criminology and some other fields were painful to us.

These inadequacies, however, ironically allowed us to opine that research in terrorism needs either Renaissance persons or very skilled teams specializing in a variety of areas. Furthermore, in our view, any useful approach to understanding the complexities of media coverage of terrorism needs an understanding of the unique problems of journalism, police science, politics, psychology, and a host of other disciplines.

Our initial review of the literature, undertaken in 1977, indicated not only a paucity of knowledge about media coverage of terrorism, but also a lack of meaningful interdisciplinary approaches to the topic. The latter, in our view, has hurt useful inquiry into this occasionally and lately alarming political and social phenomenon. Bluntly, we found too many times to our liking that some journalists, police, psychiatrists and others were mistaken or talking through their hats. Often they simply did not have, or did not care to have, sufficient, qualitative background or experience in the problems of other disciplines involved in terrorism that they were analyzing.

We have discussed the results of our research with some European journalists and government officials, particularly in West Germany, England, France, Austria, and Sweden. We found these spirited discussions mainly that, spirited. Often they were limited in value for an American investigator's inquiry into the special problems of media coverage of terrorism that we face in this country. European terrorism, thankfully, is different from our own variety in kind and intensity and our Constitution and political and journalistic traditions are decidedly different. For good or bad, we are carriers of the libertarian banner.

We would warn against being trapped by some European research approaches and philosophical concepts in approaching this inquiry. But we would at the same time also warn against not heeding some of the lessons the Europeans have to offer.

Our major problem, however, was not with our European friends, but with some American peers.

A major criticism of journalists, police, and academics working the vineyards of this field could well be that too many tend to pluck self-fulfilling sour grapes. From journalists we hear too many well-intentioned but curiously pious statements about "the right to know" and real or imagined threats to First Amendment freedoms and the need for better self-regulation when occasionally unintelligent, inexperienced, and unthinking if not irresponsible reporting is the real problem. From police we hear too many misplaced notions of the media as sensationalistic, left-wing, deadbeats. And one even hears a psychologist or two arguing that "I'm the guy you really want to listen to."

Nonsense. No one discipline or profession yet has a good handle on the multiple and complex problems of media coverage of terrorism. We urge all parties in good faith to open their eyes, ears, minds, and hearts, to learn from each other, and, above all, to cooperate with each other. Now.

Journalists are expected to find out and report whatever they can, within the bounds of law and ethics. Police should not expect anything less from them. They will seldom get it, not if the journalist is a good professional. Most journalists, overwhelmingly so, are responsible professionals. And, when you come right down to it, it's to the police's advantage to have them there, provided they do not cause injury to life, limb, or property, for two reasons: First, by informing, they allay public suspicion, fear, and panic. Second, many police find it advantageous to have the media present "to set the record straight" for the public constituency that both groups serve, though both have been known to forget that.

Of course, police will also find unintelligent, inexperienced, unthinking and, quite occasionally, irresponsible journalists. But, thankfully, there are not many of them and, when they are found out, most are unceremoniously disengaged by a profession that surely does not want or need them around. Responsible police officials are mandated to follow the same credo with respect to their undesirables.

Most police must be admired and respected for putting their lives on the line every day. They and their families suffer the myriad psychological scars that no journalist could adequately portray.

Some of the authors' best friends happen to be policemen and we are second to none in our appreciation and awe of them. We would not want their jobs. We lack their devotion, courage, and willingness to serve every second of every day in tense public service at insufficient pay. And were the pay sufficient, it would never be enough.

However, these same police friends, as we have told them, would do well to better understand the unique place of the media in the history and daily survival of this country. Without the media we might have police, but not a democracy, not America.

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Therefore, a real, not cursory understanding of the media, not just by superior officers but by policemen and policewomen "down the line" is essential toward the betterment of police and media relations in general and the coverage of terrorism in particular.

The reverse, of course, holds true for journalists.

Let there be constant seminars, interchanges, communication and, above all, reasoned understanding between police and journalist. In the absence of it, we will all pay for our pettiness and pride.

And, let government, foundations, news organizations, police organizations, indeed any suitable group interested in the betterment of this precious country open up its treasuries to spur research and meaningful interaction between journalists, police, psychologists and other parties in the pursuit of knowledge, not self-serving biases.

And, let us pursue both research and cooperation with all deliberate speed. Because for all journalists, police, and psychologists alike know about the problems, complexities, and results of media coverage of terrorism, they really don't know very much.

We can continue to muddle along, pretending we know some truths, talking through our hats, trumpeting our biases, or we can take a better approach: we can get at some truths.

The truth, He said, shall make us free. It will also help us to understand the complex and difficult problems and results of the American media's coverage of terrorism, allowing for both the people to be adequately informed and the police to protect the public safety.

If these are indeed our goals, and let us first agree that they are, then let us get on with realizing them. Now.

The following page (249) contain material protected by the Copyright Act of 1976 (17 U.S.C.): REPORTING TERRORISM: IN SEARCH OF BALANCE, The Washington Post, November 17, 1978
Author Charles B. Seib

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GREAT BRITAIN: THE PROBLEM OF TERRORISM,
SCHOOL OF JOURNALISM, INDIANA UNIVERSITY, AUTHOR, Walter B. Jaehing
October 1979

National Criminal Justice Reference Service

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incidents involving American citizens or property, including possible attacks on USG installations. US diplomats or military spokespersons, therefore, must, if at all possible, clear press statements or comments in advance with Washington and coordinate them with the host government as well. When this is not possible, both Washington and the host government should be fully informed as to the statements that are being made by the USG spokesperson on the scene.

In the United States, official press officers should respect the jurisdictions and interests of all concerned USG agencies, both at the national as well as the state and local levels. Appropriate and reasonable clearance procedures should be followed. The Department of Justice and the Federal Bureau of Investigation have responsibility for coordinating most press statements on domestic acts of terrorism; the Federal Aviation Administration has responsibility for aircraft hijackings in flight; the Department of State and, in certain instances, the Department of Defense, acts of terrorism abroad. Releases concerning incidents involving officials or property of foreign governments or organizations in the United States are to be coordinated with the Department of State.

Another important and difficult aspect of USG press relations during terrorist incidents are those involving the people or property of private American business firms, foundations, religious associations, or other groups. The needs, requirements, and objectives of private American businesses or associations involved in a hostage or other terrorist incident often may be different from those of the USG. Terrorists may demand not only ransom, but also the purchase of newspaper space or radio/television time to publicize their existence or viewpoints. USG spokespersons cannot become involved in these activities, but they should not prevent or hinder private Americans from acting in what they may believe are their own or the hostage(s)' best interests.

It is the responsibility of U.S. Government spokespersons to be fully conversant with U.S. policy considerations regarding terrorist situations. Priority must be given to the safe return of any hostages, and to the apprehension of the terrorists. For posts abroad, Department of State guidance should be requested on any policy considerations or interpretations. The Department of Justice and the FBI have similar responsibility in domestic terrorist situations.

Before a Terrorist Incident:

-- Maintain good contacts with local press.

Arrange background discussions with the local press so that the lines of communication are open and they are aware of some of the basic scenarios, expectations, and ground rules that will be maintained by the USG during a terrorist event. Also, this will be a good way to assess the mood, requirements, and suggestions of the press most immediately involved.

-- Maintain contact with other USG and foreign spokespersons.

In Washington, press officers for the NSC/SCC Working Group agencies should maintain current lists of their counterparts in other member agencies for use during an incident.

Abroad, Foreign Service, military and other official USG spokespersons should be acquainted with those officials in host-government press offices who would act as government spokespersons during a terrorist incident.

It is important that in the case of a foreign incident, contact be maintained with the Department of State so that up-to-date information is available by noon for the daily press briefing.

-- Participate in simulation exercises.

Practice makes, if not perfect, at least for greater familiarity with the heightened demands of a terrorist situation. Include simulated coordination with other press offices in all Post Terrorism Contingency Plans and terrorism-related exercises. Make certain that any simulated situation being undertaken includes the USG press spokesperson and consideration of the public and press component as part of the dry run.

-- Special accreditation.

Prepare a plan for special accreditation of the press during a terrorist incident of duration since both additional foreign and domestic press will very likely be arriving from other locations.

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During a Terrorist Incident:

-- Seek to provide essential, factual information to the press during the course of an incident. Maintain accuracy. Discourage and dispel rumors by issuing as frequently as possible as much correct and factual information as you can. Be alert to the "contagion" of rumors and curb them quickly. Try to avoid premature publicity which could be dangerous, particularly in hostage situations.

-- Do not overdramatize or sensationalize the situation. Be calm, responsive, and accurate in your dealings with the press and convey the Government's condemnation of lawless violence.

-- Give frequent press briefings at specified times. Be assessible. Have a designated area for briefings away from the incident scene, at or near the command center, depending on the command center location, size and availability of facilities, and security requirements.

-- Designate one press spokesperson who will be at or have expeditious communication with the command center and who will be the official communicator to the press during the incident. This person should have full and up-to-date information and should have a designated deputy at the scene with the press at all times. Communication should be accurate and complete between the spokesperson and other officials involved in the handling of the terrorist situation.

-- Make certain the spokesperson has a fully informed and available deputy so that if the incident goes on for many hours or days, the thread, continuity, familiarity, and accessibility are not lost with the press or with the circumstances of the incident. Gaps in communication because of exhaustion or improper backup can open up the possibility of misinformation or lack of information flow between the spokesperson and the press.

-- Provide a designated press area as near to the scene of the incident as possible.

-- Verify press bona fides. USG spokespersons should deal only with accredited news people. Be prepared for an influx of out-of-town or foreign press.

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-- Explain our concern regarding the possible hazards of direct contact or phone calls with, or live coverage of, the terrorists or the incident scene. Discourage live interviews with participants and the use of mini-cameras at or near the incident site.

-- As spokesperson, don't act as terrorist(s)' "messenger" to the public. Coordinate closely with the command center as to your instructions in this regard which may vary in degree as the needs of the specific situation require.

-- Provide access to other officials and experts as appropriate who can background the press on aspects of the specific event.

-- Urge caution with press interviews or unknown or amateur "experts" on terrorist motivation or background.

-- Underline counterproductive aspects of reporting on any operational activities of the police, military, or other counter-terrorism forces.

-- Use appropriate phraseology; for example, encourage the downplaying of inflammatory words (and pictures). Keep in mind that terrorists most often have access to radios and/or television, and will monitor what is being shown or said publicly.

After a Terrorist Incident:

-- Hold a background debriefing session with the media to exchange views, give some perspective to the situation, provide USG comment on media reporting and analysis, get media reaction, and improve, where necessary, planning for future incidents.

CBS NEWS PRODUCTION STANDARDS

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Coverage of Terrorists (4/7/77)

Because the facts and circumstances of each case vary, there can be no specific self-executing rules for the handling of terrorist/Hostage stories. CBS News will continue to apply the normal tests of news judgment and if, as so often they are, these stories are newsworthy, we must continue to give them coverage despite the dangers of "contagion." The disadvantages of suppression are, among things, (1) adversely affecting our credibility ("What else are the news people keeping from us?"); (2) giving free rein to sensationalized and erroneous word of mouth rumors; and (3) distorting our news judgments for some extraneous judgmental purpose. These disadvantages compel us to continue to provide coverage.

Nevertheless in providing for such coverage there must be thoughtful, conscientious care and restraint. Obviously, the story should not be sensationalized beyond the actual fact of its being sensational. We should exercise particular care in how we treat the terrorist/kidnapper.

More specifically:

- (1) An essential component of the story is the demands of the terrorist/kidnapper and we must report those demands. But we should avoid providing an excessive platform for the terrorist/kidnapper. Thus, unless such demands are succinctly stated and free of rhetoric and propaganda, it may be better to paraphrase the demands instead of presenting them directly through the voice or picture of the terrorist/kidnapper.
- (2) Except in the most compelling circumstances, and then only with the approval of the President of CBS News, or in his absence, the Senior Vice President of News, there should be no live coverage of the terrorist/kidnapper since we may fall into the trap of providing an unedited platform for him. (This does not limit live on-the-spot reporting by CBS News reporters, but care should be exercised to assure restraint and context.)
- (3) News personnel should be mindful of the probable need by the authorities who are dealing with the terrorist for communication by telephone and hence should endeavor to ascertain, wherever feasible, whether our own use of such lines would be likely to interfere with the authorities' communications.
- (4) Responsible CBS News representatives should endeavor to contact experts dealing with the hostage situation to determine whether they have any guidance on such questions

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as phraseology to be avoided, what kinds of questions or reports might tend to exacerbate the situation, etc. Any such recommendations by established authorities on the scene should be carefully considered as guidance (but not as instruction) by CBS News personnel.

- (5) Local authorities should also be given the name or names of CBS personnel whom they can contact should they have further guidance or wish to deal with such delicate questions as a newsman's call to the terrorists or other matters which might interfere with authorities dealing with the terrorists.
- (6) Guidelines affecting our coverage of civil disturbances are also applicable here, especially those which relate to avoiding the use of inflammatory catchwords or phrases, the reporting of rumors, etc. As in the case of policy dealing with civil disturbances, in dealing with a hostage story reporters should obey all police instructions but report immediately to their superiors any such instructions that seem to be intended to manage or suppress the news.
- (7) Coverage of this kind of story should be in such overall balance as to length, that it does not unduly crowd out other important news of the hour/day.

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The Courier-Journal and The Louisville Times

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May 18, 1977

The following are guidelines for the newspapers' coverage in the event terrorists take and hold hostages in our area.

It will be our policy to cover the story fully and accurately. To do otherwise -- to withhold information -- could destroy our credibility and give life to reckless and exaggerated rumors in the community.

At the same time, our approach will be one of care and restraint. We will avoid sensationalism in what we write and how we display it, taking care not to play the story beyond its real significance.

We will make every effort not to become participants in the event. We will resist being used by the terrorists to provide a platform for their propaganda.

If terrorists demand that we publish specific information, we will agree to do so only if we are convinced that not to publish it would further endanger the life of a hostage. Our decision on whether to publish will be made only after consultation with the most senior editor available and, when possible, top police officials.

We will always be mindful of the dangers in telephoning terrorists or hostages for interviews during the event, realizing that such action could interrupt vital negotiations or incite the terrorists to violence.

We will assign experienced staff members to the story. We will involve the papers' top news officials when making decisions.

Insofar as possible, we will maintain contact with the responsible law-enforcement officials dealing with the situation. It will always be our aim to avoid taking any action that would interfere with the proper execution of duties by police or other officials.

Although we cannot be responsible for the coverage by other news media, we can and will conduct a constant review of our own performance.

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The Sun-Times and Daily News Standards for Coverage of Terrorism

Recognizing that circumstances vary in each story, the following standards are meant for general guidance:

1. Normal tests of news judgment will determine what to publish despite the dangers of contagion, since the adverse effects of suppression are greater.
2. Coverage should be thoughtful and restrained and not sensationalized beyond the innate sensation of the story itself. Inflammatory catchwords, phrases and rumors should be avoided.
3. Demands of terrorists and kidnapers should be reported as an essential point of the story but paraphrased when necessary to avoid unbridled propaganda.
4. Reporters should avoid actions that would further jeopardize the lives of hostages or police.
5. Reporters should obey all police instructions but report immediately to their supervisors any such instructions that seem to manage or suppress the news.
6. Supervising editors and reporters should contact authorities to seek guidance -- not instructions -- on the use of telephones or other facilities, the reporting of negotiations or police strategies.
7. Editors, reporters and photographers should not become part of the story, should not participate in negotiations and should not ask terrorists about deadlines.
8. The senior supervisory editor should determine what -- if any -- information should be withheld or deferred after consultation with reporters and appropriate authorities.
9. The constant objective should be to provide a credible report without hampering authorities or endangering life.

Terrorism/Kidnapping Coverage Guidelines



The United Press International National Broadcast Advisory Board recommends posting in your newsroom the following guidelines to help broadcast news operations deal with the dilemma of covering acts of kidnapping and terrorism:

1. Each station should have established procedures for coverage of such events, which should include prompt notification of management.
2. Judge each story on its own and if the story is newsworthy, cover it.
3. Coverage should be thoughtful, conscientious and show restraint, and be carried out with an awareness of the potential danger to life and person.
4. Report demands made as an essential point of the story but do not provide an excessive platform for those demands.
5. Reporters should avoid deliberately injecting themselves into the story as intermediaries or negotiators.
6. If there has been no mention of a deadline, no one should ask the terrorist-kidnappers if there IS one.
7. Above all, apply the rules of common sense.

Prepared by: UPI National Broadcast Advisory Board

From: NATIONAL ADVISORY COMMITTEE ON CRIMINAL JUSTICE STANDARDS AND GOALS, REPORT OF THE TASK FORCE ON DISORDERS AND TERRORISM, 1975.

News and Entertainment Media Responsibility for the Prevention of Extraordinary Violence

Factual and fictional depictions of incidents of extraordinary violence in the mass media are an important part of the background against which individual choices whether or not to participate in crimes of this nature are made. They also are a significant influence on public fears and expectations. So long as extraordinary violence is a fact of social life, the media cannot and should not avoid portraying and discussing it. But the special responsibility of the mass media in the prevention of extraordinary violence should dictate some guiding principles to govern the presentation of this material. In particular:

1. Factual journalistic coverage of extraordinary violence in the mass media should be as accurate and complete as the availability of information permits. Such coverage should:

- a. Give appropriate emphasis to the immediate and long-term consequences of extraordinary violence, for both victims and perpetrators;
- b. Include reliable information on the capacity of law enforcement agencies to deal with extraordinary violence; and
- c. Avoid unnecessary glamorization of persons who engage in crimes of extraordinary violence.

2. Editorials, features, and journalistic background pieces concerning extraordinary violence should attempt to place the phenomenon in total context, by reference to other problems of law enforcement and to related political and social issues.

3. Particular fictional presentations of extraordinary violence in the entertainment media, and the variety of mass entertainment that has criminal violence as its subject matter, should be crafted so as to:

- a. Avoid giving any general impression that participation in extraordinary violence is a common, glamorous, or effective means of resolving personal or political problems;
- b. Avoid conveying the impression that law enforcement responses to extraordinary violence are generally either incompetent or marked by the use of extreme force; and
- c. Present affirmative portrayals of private individuals and officials coping effectively with extraordinary violence and its consequences.

News Media Self-Regulation in Contemporaneous Coverage of Terrorism and Disorder

When an incident involving a confrontation between law enforcement officers and participants in mass disorder, terrorism, or quasi-terrorism is in progress, the role of the news media is an important and controversial one. The manner in which information about the incident is collected, and the form of its presentation to the public, will necessarily affect the conduct of the agencies and persons involved. In addition, these factors will be critical influences on the growth or spread, if any, of the incident. Finally, the approach taken by the media to news gathering and reporting on an incident-by-incident basis will have an important cumulative effect on public attitudes toward the phenomenon of extraordinary violence, the groups and persons who participate in it, and the official measures taken against it.

No hard rules can be prescribed to govern media performance during incidents of extraordinary violence. Whatever principles are adopted must be generated by the media themselves, out of a recognition of special public responsibility. But in general, the essence of an appropriate approach to news gathering is summarized in the principle of minimum intrusiveness: Representatives of the media should avoid creating any obvious media presence at an incident scene that is greater than that required to collect full, accurate, and balanced information on the actions of participants and the official response

to them. Similarly, the essence of an appropriate approach to contemporaneous reporting of extraordinary violence lies in the principle of complete, noninflammatory coverage; the public is best served by reporting that omits no important detail and that attempts to place all details in context.

Putting these general principles into practice, however, requires hard choices for the media, both at the organizational policy level and by the working reporter. In particular:

1. News media organizations and representatives wishing to adopt the principle of minimum intrusiveness in their gathering of news relating to incidents of extraordinary violence should consider the following devices, among others:

- a. Use of pool reporters to cover activities at incident scenes or within police lines;
 - b. Self-imposed limitations on the use of high-intensity television lighting, obtrusive camera equipment, and other special news-gathering technologies at incident scenes;
 - c. Limitations on media solicitation of interviews with barricaded or hostage-holding suspects and other incident participants;
 - d. Primary reliance on officially designated spokesmen as sources of information concerning law enforcement operations and plans; and
 - e. Avoidance of inquiries designed to yield tactical information that would prejudice law enforcement operations if subsequently disclosed.
2. News media organizations and representatives wishing to follow the principle of complete, non-inflammatory coverage in contemporaneous reporting of incidents of extraordinary violence should consider the following devices, among others:
- a. Delayed reporting of details believed to have a potential for inflammation or aggravation of an incident that significantly outweighs their interest to the general public;
 - b. Delayed disclosure of information relating to incident location, when that information is not likely to become public knowledge otherwise and when the potential for incident growth or spread is obviously high;
 - c. Delayed disclosure of information concerning official tactical planning that, if known to incident participants, would seriously compromise law enforcement efforts;
 - d. Balancing of reports incorporating self-serving statements by incident participants with contrasting information from official sources and with data reflecting the risks that the incident has created to noninvolved persons;
 - e. Systematic predisclosure verification of all information concerning incident-related injuries, deaths, and property destruction; and
 - f. Avoidance, to the extent possible, of coverage that tends to emphasize the spectacular qualities of an incident or the presence of spectators at an incident scene.

Followup Reporting of Extraordinary Violence by News Media

Although contemporaneous news-gathering and reporting practices can have great impact on the course of an incident of extraordinary violence and the shape of its eventual resolution, the coverage that the phenomena of extraordinary violence receives during nonemergency periods is ultimately even more significant. From the followup reporting of particular incidents and their aftermaths, as well as from general and background reporting, the public at large receives the bulk of its information about disorder, terrorism, and quasi-terrorism—and about official response to these law enforcement problems. What constitutes responsible selection of objectives and means for ongoing, nonemergency coverage is difficult to define with precision. But it is clear that a media policy that emphasizes reporting an emergency to the near exclusion of followup coverage constitutes a disservice to the public. Bearing in mind the interests and characteristics of its audience, every news organ should make a serious, complete and noninflammatory presentation of information that will serve to put extraordinary violence in context, including:

1. Factual material documenting the aftermath of particular incidents, and emphasizing:
 - a. Effects of extraordinary violence on individual victims and the community at large;
 - b. Apprehension, trial, and sentencing of persons participating in extraordinary violence;

- c. Community reactions to law enforcement efforts in incident handling; and
 - d. Official and nonofficial efforts to identify and address underlying grievances and precipitating social conditions.
2. Factual material not specifically tied to particular incidents, emphasizing such topics as:
- a. Local and national trends and tendencies in extraordinary violence;
 - b. Available preventive security and law enforcement techniques applicable to extraordinary violence;
 - c. Comparison of foreign and domestic experiences with extraordinary violence;
 - d. Aims, characteristics, and records of terrorist groups;
 - e. Background and recent history of quasi-terrorism and related forms of extraordinary violence; and
 - f. Recent history and causative factors of mass disorder.
3. Editorial material analyzing options in public policy and private conduct, and where appropriate, recommending courses of action, in such topic areas as:
- a. Kinds and levels of preventive security;
 - b. Law enforcement techniques;
 - c. Community roles and responsibilities in emergencies; and
 - d. Elimination of causes of extraordinary violence.

PART IV

BIBLIOGRAPHY

Terrorism and the Mass Media. A Selected Bibliography

Richard L. Moreland and Michael L. Berbaum

Terrorism and the Mass Media: A Selected Bibliography

Compiled by

Richard L. Moreland

The University of Pittsburgh

and

Michael L. Berbaum

The University of Michigan

Terrorism and the Mass Media: A Selected Bibliography

Compiled by

Richard L. Moreland

The University of Pittsburgh

and

Michael L. Berbaum

The University of Michigan

Modern-day terrorism makes the issue of a possible relationship between exposure to mass media and subsequent violent behavior more urgent than ever before. Three questions encompass the major concerns of the public and law enforcement agencies. First, the socialization question: Does exposure to "violent" materials and programming in childhood predispose people to behave violently as adults? Second, the contagion question: Do certain media accounts of violent acts lead others to immediately imitate them? And third, the question of media coverage of law enforcement operations: What constitutes appropriate media reporting of terrorist events in progress? The first two questions have been the focus of federal inquiries (Surgeon General's Scientific Advisory Committee on Television and Social Behavior, 1972; National Commission on the Causes and Prevention of Violence, 1972; President's Commission on Obscenity and Pornography, 1970) and remain matters of fundamental scholarly interest in the social sciences and the legal community. The third question concerning the uneasy relationship between the press and the authorities arouses intense interest when terrorist activities become prominent in domestic and international politics.

We have attempted to include in this bibliography a wide selection of social science studies that bear on the basic scientific issues and public debate in the domain of terrorism and the media (with less attention to the related topics of propaganda and media influence on political culture). Inevitably, some interesting work has been omitted owing to space limitations or was simply overlooked. Entries are arranged alphabetically by author and include title, journal, year, volume (with issue number if known), and pages in that order. Dates are given for magazine articles; book references are standard. Order numbers, where known, are given for materials available through the National Criminal Justice Reference Service (NCJRS).

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