

U. S. Constitutional Protections under the 1st Amendments, Differences Between States: Media

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ABSTRACT : *What rights do journalists have to view footage taken by law enforcement? And what rights do journalists have to keep video and other images from law enforcement? This paper addresses the evolving rights of journalist in the media age, when the journalist is conducting investigations in different states, and the impact on management in dealing with different standards, policies, and legal constraints, depending on the location of the journalists' investigation. With a historical approach to evaluating the development of laws as well as the relationships between journalists and governments, it becomes evident that information, or lack there of, has an anachronistic pattern. Paradoxically, in the age where information is available at everyone's fingertips, segments of our population remain uninformed. The development of law in this area is the best way to predict future media law.*

We examined case law from a variety of states as state law differs throughout the United States. Cases that were evaluated include New York Times Co. V. United States, Zurcher v. Stanford Daily (Calif.), Leiserson v. The City of San Diego (Calif.), Glik v. Cunniffe (Mass.), Iacobucci v. Boulter (Mass.), Smith v. City of Cumming (GA.), Fordyce v. City of Seattle (Wash.), Sharp v. Baltimore (MD.), Garcia v. Montgomery County (Md.), Riley v. California (Calif.) and Channel 10 v. Gunnarson (Minn.).

I. THE EVOLVING ROLE OF THE MEDIA IN THE UNITED STATES

Newspapers have played an important role in the United States since before the founding of this country. Over time the way news is distributed has morphed and evolved to the point that many claim the golden age of journalism is dead. The remnants of newspapers and printing presses like James Franklin and later his brother Benjamin, one of the founding fathers of the United States, fired up to inform and educate the public in times of turmoil and war are dwindling. Since the advent of local television stations in the 1950s, the competitive market for newspapers has essentially disappeared.¹ Yet at the same time, people like Jeff Bezos, the founder of Amazon, are investing in newspapers and in the process potentially ushering in a new Golden Age of journalism. Bezos recently invested \$250 million in *The Washington Post*, a move which indicates he believes newspapers are a good investment². Why does it matter whether the United States has an active, engaged journalism community? Because our republican form of government requires informed voters. It also needs a watchdog who can monitor that actions of government entities at all levels more effectively than individual citizens. As a result, it is critical to the on-going success of the United State's democratic experiment that a healthy media exists. It may seem strange to explore this topic in an age when access to information has never been easier. Yet at a time when the media should be at its strongest because of the proliferation of formats to access media and the abundance of media sources, there is a growing challenge for media to protect their stories and images from government intrusion. It would be easy to argue this is a result of the media moving

¹ David Warsh, *The Golden Age of Newspapers: A Short History*, at <http://www.economicprincipals.com/issues/2013.08.12/1528.html> (Accessed July 31, 2014).

² Justin Fox, *A New Golden Age for Media?*, *The Atlantic Magazine*, (Apr. 14, 2014) at <http://www.theatlantic.com/magazine/archive/2014/05/start-the-presses/359810/>(accessed July 31, 2014) and Taylor Vincent, *Rights of Journalists not clear to Police*, *Purdue Exponent* at http://www.purdueexponent.org/campus/article_3de80420-da8e-58e4-871f-5d69e07d1d50.html(Accessed 08/01/14).

from its roots. In fact, the origins of the United States press are fascinating, considering the impact that it had on the young nation as it sought independence. Fast-forward approximately 200 years and muckrakers created a new identity for journalists: investigators for the public good. In this time period, the meat packing industry, the Standard Oil monopoly, and many other businesses were investigated and destroyed due to journalistic efforts. Then for the supposed betterment of the country, various legislatures became involved in the industries. Yet it took the press to illuminate the problems in these industries. In the last 150 years, journalists and various levels of governments in the United States have worked together for the betterment of society. The question becomes what happened to this symbiotic relationship between the two parties and what should it look like moving forward? True, we aren't living during a revolutionary war as was the case during the Franklins' time, but the freedom of information is crucial for any and every society. The information the press provides plays a critical role in educating a voting public. The Pew Research Center has found that the millennial generation is both the most well educated generation yet the least informed generation relative to the technology present. This trend is disturbing, and one that needs to change if the United States is to remain a country with an educated voting population. Accordingly, the focal point of any analytical piece that attempts to understand the shortcomings of information must examine the relationship between government and media. Does the government interfere with the ability of the press to research and write stories that inform the public?

In her latest book, *The Bully Pulpit: Theodore Roosevelt, William Howard Taft and the Golden Age of Journalism*, Pulitzer Prize winner and noted historian and author Doris Kearns Goodwin examined the relationship between the power in the country and the press. She focused on the progressive era with Presidents Theodore Roosevelt and William Howard Taft. In an interview with popular talk show host, Jon Stewart, she claimed that in the golden age, "journalists had a mission and a call."³ She went on to discuss the amazing relationship Teddy Roosevelt had with the press. "He let them in even when he was shaving, had the barbers hour and the shavers going on and the press are in there," Goodwin said. "He would take walks with journalists and ambassadors, and he would talk the whole time ... somebody wrote a bad review of his *Roughriders* book and said it looked like he was the only person in Cuba. So it should have been called, 'Alone in Cuba.' He writes the guy back and he says 'I regret to tell you that my wife and family loved your review of my book. Now, you owe me one; you have to come meet me cause I've always respected you.' He respected the press and that doesn't happen today⁴."

Police and media needn't think of each other as enemies or have an "us versus them" mentality. The keys to building a relationship between the two parties are transparency and education; drawing the lines between what both parties can and cannot legally do, allowing one another to see or participate in internal matters and acting upon what they learn in good faith. Internationally, as well as within the United States, the relationship between the press and government varies. A Youtube clip shows how a CNN reporter named David McKenzie was "roughed up" in Beijing, China, when he covered a trial of a human rights activist.⁵ McKenzie and his crew were physically manhandled and removed from a sidewalk around the courthouse. In the video, McKenzie can be heard saying "this is a public space." However, McKenzie and his crew learned the hard way as their camera was broken and they were hauled away in a police vehicle that the Chinese do not have the same concept of public space as is found in the United States. Unlike China, in the United States journalists have a federal right to report from public spaces. It is no secret that the U.S. has one of the best legal protections for journalists in the world. Generally speaking, journalists are protected under the First and Fourth Amendments of the U.S. constitution. The First Amendment guarantees a right of free speech and press, and the Fourth prohibits illegal search and seizure of a person without a warrant. That being said, journalists have very few protections in addition to those the average citizen has. Yet since journalists put themselves in the middle of incidents as they happen, they are more likely to be apprehended or detained than the average citizen. Therefore it is vital for police to understand the laws that protect journalists in the U.S. We will more thoroughly examine those in this paper.

The Purdue Exponent v. Purdue University

The case study used for analysis in this paper is an event that happened at Purdue University in the state of Indiana on January 21, 2014. Around noon that day, a shooting occurred in the Electrical Engineering

³ The entire interview from November 11, 2013, on *The Daily Show with Jon Stewart* can be accessed here: <http://thedailyshow.cc.com/videos/rnnurj/doris-kearns-goodwin>

⁴ Id.

⁵ Video of the incident is available at: <http://youtu.be/frOniFomnlw>: the video is from footage aired on CNN on January 22, 2014.

building. As the campus locked down and law enforcement swarmed the campus, *The Purdue Exponent*, the campus student newspaper, focused on covering the shooting that occurred just yards from their offices. In the process of covering the incident, the chief photographer Michael Takeda, a student, was apprehended by police. During the apprehension, the officers possibly used coarse language and a Tippecanoe County Sheriff's Department officer shoved the photographer to the ground. Then a Purdue police officer shoved the photographer against the wall even after he held up his cameras. Additionally, Takeda was apprehended for two hours and his camera equipment for three.⁶ Purdue Police denied requests to return the camera equipment for the purpose of checking to see if any photos contained any evidence of the shooting. Police had no evidence of Takeda being on the same floor as the one where the shooting had occurred, but did believe he was trying to leave a secured building and failed to stop when ordered to do so by officers.⁷ The camera equipment was released upon a request from a lawyer of the Student Press Law Center, an outside organization based in Atlanta, Georgia. When the equipment was released, Takeda noticed that one of his lenses were damaged in the incident.⁸ Subsequently, *The Exponent* and its photographer filed complaints against the University and its police department followed by a lawsuit filed in Indiana state court on August 12, 2014.¹⁰ A key point of contention between the paper and the police is the video footage from the area where the photographer was taken. At first the Purdue police department denied such footage existed, then it denied the paper's request for the release of the video claiming the video was part of an ongoing investigation. The paper then hired an attorney who specializes in media law and wrote a letter to the Public Access Counselor of Indiana Luke Britt to urge him to convince Purdue University to release the videotape the paper hoped would either exonerate the police or the photographer. The problem that the paper and its attorney ran into was a lack of case law in this area. Because of that the Public Access Counselor could not advise the university to release the tape.

Journalist rights under Federal Law : As the *Purdue Exponent* case illustrates, there is ongoing confusion about how the police and journalists should interact in the midst of exigent circumstances. In addition to the basic First and Fourth Amendment rights every citizen of the United States has, there is case law that dictates additional freedoms of the press.

The First Amendment states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."¹¹

⁶ Dan Bangert, What wasn't in Purdue's Investigation into detained student journalist, *Indianapolis Star*, (April 16, 2014) at <http://www.indystar.com/story/opinion/columnists/dave-bangert/2014/04/12/bangert-purdue-investigation-detained-journalist/7638475/> (accessed Sept. 1, 2014).

⁷ To quote, the police chief made the following findings in his report of the subsequent internal investigation: "I find that Mr. Takeda's detention was not unwarranted," Cox wrote in the Purdue report. "He was detained because of the apprehending officers' reasonable suspicion, supported by articulable facts, that criminal activity may be afoot based on Mr. Takeda's entering a building they had thought was secured, not heeding their verbal commands, and attempting to flee from them."

Quoted in Dave Bangert, Purdue clears police in student photographer detention, paper claims 'whitewash,' *Indianapolis Star*, (Apr. 17, 2014) at <http://www.indystar.com/story/news/college/2014/04/12/purdue-clears-police-student-media-detention/7638221/> (accessed Sept. 1, 2014).

⁸ Chris Morisse Vizza, Student Newspaper sues Purdue over video surveillance tape, *Indianapolis Star*, (Aug. 12, 2014) at <http://www.indystar.com/story/news/education/2014/08/12/student-newspaper-sues-purdue-video-surveillance-tape/13947095/> (accessed Sept. 1, 2014).

⁹ Takeda also argues that because his equipment was seized without a warrant for several hours police prohibited from performing his duties as a photojournalist on assignment for a breaking news story.

¹⁰ The text of the complaint with supporting exhibits can be accessed here: <http://www.indystar.com/story/news/college/2014/08/12/document-purdue-exponent-v-purdue-university-lawsuit/13951029/>.

¹¹ U.S. Const. Amend I.

And the Fourth stipulates: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.¹²” Unless and until someone, a journalist or an ordinary citizen, violates the law, the person retains her First and Fourth Amendment rights. However, the press has a few additional rights that have grown out of case law based on First and Fourth Amendment disputes.

United States Supreme Court Decisions : The first major media-government case was *Near v. Minnesota*¹³, argued at the Supreme Court of the U.S. In the case, the Court ruled that a Minnesota law that targeted publishers of "malicious" or "scandalous" newspapers violated the First Amendment. As the Supreme Court stated in its 1931 opinion, “It is no longer open to doubt that the liberty of the press, and of speech, is within the liberty safeguarded by the due process clause of the Fourteenth Amendment from invasion by state action.”¹⁴ Furthermore, the Supreme Court found that the state statute was the “essence of censorship”: the operation and effect of the statute in substance is that public authorities may bring the owner or publisher of a newspaper or periodical before a judge upon a charge of conducting a business of publishing scandalous and defamatory matter — in particular that the matter consists of charges against public officers of official dereliction — and unless the owner or publisher is able and disposed to bring competent evidence to satisfy the judge that the charges are true and are published with good motives and for justifiable ends, his newspaper or periodical is suppressed and further publication is made punishable as a contempt.”¹⁵

After *Near*, the Supreme Court was asked to address *New York Times Co. v. United States*¹⁶, in 1971. This landmark case explored whether *The New York Times* and *The Washington Post* could publish the formerly classified Pentagon papers about the Vietnam War. In a 6-3 decision, the Supreme Court ruled for the newspaper. Chief Justice Hugo Black opined, “In the First Amendment the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors.”¹⁷ These two cases illustrate the strong support for an independent press that operates without interference by the government. There is also precedence for the right of the press to have access to information.

Right to information: Two cases remain as the landmark cases when it comes to media law at the federal level. These reinforce the right of the press to have access to information and the areas where privacy prevents the press from that access. In *Zurcher v. Stanford Daily*¹⁸, the Supreme Court addressed actions of the Stanford campus police when it conducted a warranted search of the *Stanford Daily's* newsroom. Police were seeking photos of a demonstration at which officers were injured. Staff of the *Daily* had attended and photographed the violent demonstration and ran a story with photographs. In response to the publication, the police went to the *Daily* looking for unpublished photographs, which investigators could then use to identify and prosecute violent demonstrators. The search turned up no new photographs of the event. The paper challenged the search and a federal district court found that the search was unlawful: “[i]t should be apparent that means less drastic than a search warrant do exist for obtaining materials in possession of a third party.”¹⁹ Therefore, in most cases, “a subpoena duces tecum is the proper -- and required -- method of obtaining material from a third party.”²⁰ Finally, the district court dismissed the police's argument that the First Amendment has no affect on the Fourth Amendment. The court found that the Fourth Amendment must be interpreted in light of the First Amendment and that “[t]he threat to the press's newsgathering ability . . . is much more imposing with a search warrant than with a subpoena.”²¹ However, when the case reached the Supreme Court, that court held that neither the First nor Fourth Amendment prohibited this search. The Court stated: “Under existing law, valid warrants may be issued to search any property, whether or not occupied by a third party, at which there is probable cause to believe that fruits, instrumentalities, or evidence of a crime will be found. Nothing on the face of the

¹² U.S. Const. Amend IV.

¹³ *Near v. Minnesota* 283 U.S. 697 (1931).

¹⁴ *Near*, 283 U.S. at 707.

¹⁵ *Near*, 283 U.S. at 713.

¹⁶ *New York Times v. United States*, [403 U.S. 713 \(1971\)](#)

¹⁷ *Id.*

¹⁸ *Zurcher v. Stanford Daily*, 436 U.S. 547 (1978).

¹⁹ *Stanford Daily v. Zurcher*, 353 F. Supp. 124, 130 (N.D. Cal. 1972)

²⁰ *Id.*

²¹ *Id.* at 135.

Amendment suggests that a third-party search warrant should not normally issue.”²²

Two years after the Supreme Court issued its opinion, Congress passed the federal Privacy Protection Act (hereinafter PPA) in order to overrule *Zurcher* and protect the need of journalists to gather and disseminate the news without fear of government interference. The PPA, with some exceptions, forbids all levels of law enforcement from searching for and seizing journalists' work product and documentary materials.

The Current State of First Amendment Rights and Media Law in the States: In this section we will examine several cases from around the country that impact the interactions between media and government officials, in particular law enforcement agencies. These cases highlight the need for transparency between government and media. Transparency is difficult without recording devices. As previously mentioned, journalists have only a few more legal protections than “normal” citizens. In Maryland, a case explored the rights a student had to videotape the police. This student shot video footage in 2010 of police officers interacting with a student from the University of Maryland²³. He caught two Prince George’s County police officers beating an unarmed University of Maryland student during a raucous. Another student took the video from his dorm room window. Both officers were videotaped striking McKenna with their batons after forcing him to the ground. Both officers, Reginald Baker and James Harrison, were charged with second-degree assault upon the release of the video. Baker was cleared of all charges but Harrison was found guilty of second-degree assault. Assistant State’s Attorney Joseph Ruddy told reporters that both officers failed to fill out a use-of-force report, and that Harrison initially lied to an investigator about his role in the incident. He said that had video not captured the beating, the officers likely would have evaded detection. “That’s why they did not report it, because that’s not justified,²⁴” Ruddy said. “Without that video, we would not have known how John McKenna was beaten.” According to The Washington Post, “Sources familiar with the case said the county had already agreed to pay McKenna a \$2 million settlement and \$1.6 million in settlements to nine others involved in incidents that night.”²⁵

What this example demonstrates is the need for a system of checks and balances. In the past, the press has taken the role of holding the government responsible for its actions on both a local and national level. It becomes increasingly important then, to effectively utilize technology in an effort to promote transparency between all parties: citizens, press and government. In the golden state of California, the legislature granted “authorized” news media representatives the statutory right-to-access emergency scenes under California Penal Code Section 409.5 (D) and 409.6. Under this statute, media personnel have the right to enter emergency areas to document scenes, which are otherwise not open to the public. In *Leiserson v. The City of San Diego*, the California appellate court took the statute even further. In this case Steven Leiserson was arrested by a San Diego police officer while photographing the site of the Pacific Southwest Airlines (PSA) jetliner crash in a residential section of central San Diego where approximately 150 persons were killed on September 25, 1978. The arrest followed his refusal to remain away from the crash site where rescue and fire personnel were engaged. After the misdemeanor criminal complaint filed against him was dismissed, he sued the City and others for damages for their false imprisonment, assault, battery, torture, intentional infliction of mental distress, conspiring to violate his civil rights, violating his civil rights, interfering with his contract relations, invading his privacy and malicious prosecution. A trial court found for the defendants or the police in this matter specifically citing Penal Code sec. 409.5 (D) “the rights do not extend to situations where the police reasonably believed members of the press would be endangered by entering the disaster area.” However, on appeal, the court affirmed Leiserson’s claim by deciding: “We weighed Leiserson's claim the statute gave the press unrestricted access to disaster sites for the purpose of news gathering so long as they do not interfere with emergency crews performing their duties and the uncontradicted evidence there was no interference by Leiserson. (*Id.* at p. 49.)

²²*Zurcher v. Stanford Daily*, 436 US 547, 554 (1978).

²³Matt Zapotsky, 'Unruly' revelry after Maryland game leads to 28 arrests in College Park, *The Washington Post*, (Mar. 5, 2010) at <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/04/AR2010030405060.html> (accessed on July 31, 2014).

²⁴ Matt Zapotosky, One Prince George’s Officer convicted of assault, another acquitted in U.M.D. beating trial, *The Washington Post*, (Oct. 19, 2012) at http://www.washingtonpost.com/local/crime/closing-arguments-coming-in-pr-georges-beating-trial/2012/10/19/f754ea60-1a15-11e2-bd10-5ff056538b7c_story.html (accessed on July 31, 2014).

²⁵ *Id.*

We concluded two of the trial court's three independent justifications for the police conduct were insufficient. More specifically, we held safety is not a ground to exclude press members from a disaster site because the statute provides a specific exception for members of the media in situations already determined to be unsafe. (*Id.* at p. 50.) Similarly, we held that providing a separate confined area for the press at disaster sites does not comport with the mandate of the statute, because press access must be unrestricted unless police personnel at the scene reasonably determine such unrestricted access will interfere with emergency operations.”²⁶

This decision raises the question of who is an “authorized” media personnel. The way the state of California determines this is by examining a reporter or photographer’s credentials. Media members obtain credentials after the local police department conducts a background check. Additionally once credentialed, the statute says that media have a right to be as close to the scene as the furthest piece of evidence. As mentioned before, state law plays a big role in the relationship between journalists and governments in the U.S. If we venture back east to the state of Massachusetts, we can observe how that state handled a case regarding video footage of a police officers interaction with a citizen during an apprehension. The facts of *Glik v. Cunniffe*²⁷ are as follows: Simon Glik was arrested for using his cell phone's digital video camera to film several police officers arresting a young man on the Boston Common. The charges against Glik, which included violation of Massachusetts's wiretap statute and two other state-law offenses, were subsequently judged baseless and were dismissed. Glik then brought this suit under 42 U.S.C. § 1983²⁸, claiming that his arrest for filming the officers constituted a violation of his rights under the First and Fourth Amendments. Glik stopped roughly ten feet away and recorded video footage of the arrest on his cell phone because he believed the officers exercised unnecessary force on the suspect. After placing the suspect in handcuffs, one of the officers turned to Glik and said, "I think you have taken enough pictures." Glik replied, "I am recording this. I saw you punch him." An officer then approached Glik and asked if Glik's cell phone recorded audio. When Glik affirmed that he was recording audio, the officer placed him in handcuffs, arresting him for, inter alia, unlawful audio recording in violation of Massachusetts's wiretap statute.

Glik was taken to the South Boston police station. In the course of booking, the police confiscated Glik's cell phone and a computer flash drive and held them as evidence. Glik was eventually charged with violation of the wiretap statute²⁹, disturbing the peace³⁰, and aiding in the escape of a prisoner.³¹ *Glik v. Cunniffe* is an interesting case because the court held that officers in Glik’s arrest had violated both the First and Fourth Amendments. In regards to the First Amendment, the court held that Glik had a constitutional right to videotape the officers. The court noted that this right was not limited to reporters and journalists, but a right of all citizens, subject to reasonable limitations of time, place and manner³². It was clear in the current case that none of those limitations applied. Then the court examined whether Glik’s Fourth Amendment rights had been violated. For a legal arrest, an officer needs probable cause. The court held, after looking at the Massachusetts Supreme Judicial Court for clarification on the state law, that Glik’s Fourth Amendment rights had been violated. The Massachusetts court required that the recording be made secretly to be a violation, and that when a camera was in plain sight a recording was not made secretly. In Glik's case, the criminal complaint stated that Glik "openly record[ed] the police officers", (brackets in original)and “was not made in secret.”³³ In its decision, the court reviewed a few prior cases, which will be discussed here in an attempt to carve out a proper picture of how media law stands nationwide. One of those, *Iacobucci v. Boulter*³⁴, is another case out of Massachusetts. In *Iacobucci*, a local journalist brought a 1983 claim arising from his arrest in the course of filming officials in the hallway outside a public meeting of a historic district commission. The commissioners objected to the plaintiff’s filming. When the plaintiff refused to desist, a police officer on the scene arrested him for disorderly conduct. The charges were later dismissed. The court held that Iacobucci’s activities, “were peaceful, not performed in derogation of any law, and done in the exercise of his First Amendment rights, [the officer] lacked

²⁶*Leiserson v. City of San Diego*, 202 Cal. App. 3d 725, 730

²⁷*Glik v. Cunniffe*, 655 F.3d 78 (1st Cir. 2011)

²⁸42 U.S.C. § 1983 provides relief when someone is deprived of rights, privileges or immunities under the laws of the United States.

²⁹Mass. Gen. Laws ch. 272, § 99(C)(1).

³⁰Mass. Gen. Laws ch. 272, § 53(b).

³¹Mass. Gen. Laws. ch. 268, § 17.

³²*Glik*, 55 F.3d at 83.

³³ *Glik*, 55 F.3d at 87.

³⁴*Iacobucci v. Boulter*, 193 F.3d 14 (1st Cir. 1999).

the authority to stop them."³⁵

In *Glik*, the court further looked at “the right to gather information on public officials” based on a case out of the southern and rather politically conservative state of Georgia. In *Smith v. City of Cumming*,³⁶ a case from 2000, James and Barbara Smith filed suit against the City of Cumming and its police chief, Earl Singletary, pursuant to 42 U.S.C. § 1983, alleging that the city police had harassed the Smiths. They included a claim that Mr. Smith had been prevented from videotaping police actions in violation of Smith's First Amendment rights. The 11th Circuit Court of Appeals held, “we agree with the Smiths that they had a First Amendment right, subject to reasonable time, manner and place restrictions, to photograph or videotape police conduct. The First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest.”³⁷ The court then cited a string of cases from around the country, which supported that proposition. In one of those cases, *Fordyce v. City of Seattle*³⁸, the Ninth Circuit Court of Appeals said that Fordyce had agreed to tape a protest for public access television.³⁹ It also found that there was a question of fact as to whether the city had interfered with his “First Amendment right to film matters of public interest.”⁴⁰ Fordyce was charged with violating a Washington State privacy statute⁴¹, which forbids the recording of private conversations without the consent of all participants as he was filming a protest. In its opinion, the court stated, that Fordyce was, and still is, uncertain and insecure regarding his right *vel non* to videotape and audiotape private persons on public streets. Thus the court held that in the state of Washington, a distinction must be made between media personnel and citizens. A final example of the media case law we will review is *Channel 10 v. Gunnarson*,⁴² in which the facts state that on March 29, 1971, “Dennis A. Anderson, an employee of Channel 10, Inc., was in the ordinary course of his duties as a news reporter covering a purported burglary” Sgt. Gunnarson of the Duluth City Police Department “arrived at approximately 12:15 A.M. and entered the building along with other officers and captured the suspects.” A light from Anderson’s filming equipment came on Gunnarson, who was opening the door for the other officers and prisoners, shouted "No Pictures!", and then approached Anderson saying "No Pictures!" again. The light was turned off, not being on for more than five seconds. Upon further conversation, the camera was taken down to Police Headquarters. The film and camera were returned unopened and unprocessed March 30, 1971.⁴³ The court held that, police interference with television newsman's filming of crime scene and seizure of video camera constituted unlawful prior restraint under First Amendment whether or not the film was reviewed.⁴⁴

³⁵*Iacobucci*, 193 F.3d at 25.

³⁶*Smith v. City of Cumming*, 212 F.3d 1332 (11th Cir. 2000)

³⁷*Smith*, 212 F.3d at 1333.

³⁸*Fordyce v. City of Seattle*, 55 F.3d 436 (9th Cir. 1995)

³⁹*Fordyce*, 55 F.3d at 438.

⁴⁰*Fordyce*, 55 F.3d at 439.

⁴¹Wash. Rev. Code § 9.73.030. The statute states in relevant part: “It shall be unlawful for any individual, partnership, corporation, association, or the state of Washington, its agencies, and political subdivisions to intercept, or record any: Private conversation, by any device electronic or otherwise designed to record or transmit such conversation regardless how the device is powered or actuated without first obtaining the consent of all the persons engaged in the conversation.” But it also stated, “An employee of any regularly published newspaper, magazine, wire service, radio station, or television station acting in the course of bona fide news gathering duties on a full time or contractual or part time basis, shall be deemed to have consent to record and divulge communications or conversations otherwise prohibited by this chapter if the consent is expressly given or if the recording or transmitting device is readily apparent or obvious to the speakers. Withdrawal of the consent after the communication has been made shall not prohibit any such employee of a newspaper, magazine, wire service, or radio or television station from divulging the communication or conversation.”

⁴²*Channel 10 v. Gunnarson*, 337 F.Supp. 634 (D.Ct. Minn. 1972).

⁴³ Facts summarized: *Channel 10*, 337 F.Supp. at 635-36.

⁴⁴*Channel 10*, 337 F.Supp. at 637.

⁴⁰*Riley v. California* 574 U.S.

⁴¹*Sharp V. Baltimore*. Civil Rights Division, U.S. Department of Justice, http://www.justice.gov/crt/about/spl/documents/Sharp_ltr_5-14-12.pdf

⁴² PDN Pulse News, *Baltimore To Pay \$250K for Videos Deleted by Police: A Vindication of Photographers’ Rights*, Accessed: 06/12/2014

The Effect of Technology on Media Law: The rise of technology has confused media law further — more specifically cellular phones that have camera and video features. This readily-available technology blurs the line between what an average citizen can do in comparison to rights that traditionally were limited to media personnel. As the above cases demonstrate, media law is now blurred further in the U.S. due to the rise of technology. A question that can now be asked since everyone has a cellular device, which is capable of recording audio and video, is “Who is a journalist and what is the difference between a journalist and citizen?” The two cases we will consider are *Sharp v. Baltimore* and *Riley v. California*; both decided earlier this year. Much like *Glik*, both involve citizens being charged following discovery of content in their cellular devices. *Riley*, a landmark case, focuses on violations of the fourth amendment by police in California. David Leon Riley was arrested on August 22, 2009, after a traffic stop resulted in the discovery of loaded firearms in his car. The officers took Riley's phone and searched through his messages, contacts, videos, and photographs. Based on the findings in Riley's phone, the officers charged him with an unrelated shooting that had taken place several weeks prior to his arrest.

Riley was convicted by the trial court after his lawyer tried to suppress all evidence found in his phone, claiming that it was a violation of his fourth amendment rights. The California Supreme Court held the trial court's decision based on the precedent of the case *People v. Diaz*. In *Diaz*, police arrested Gregory Diaz on the charge of conspiracy to sell drugs. The police collected several ecstasy pills, some marijuana and his cell phone following his arrests. The sheriff's department, following the warrantless seizure of the device, reviewed the contents of the cell phone. Diaz confessed to the crime after the deputy sheriff presented text messages from his phone to Diaz as evidence of a crime. Thus, Riley appealed the California Supreme Court decision and the case was heard by the U.S. Supreme Court. Chief Justice John Roberts found that warrantless seizing a person's cell phone is a violation of fourth amendment rights. ⁴⁰Roberts opined, “Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans “the privacies of life”. The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought.” *Sharp V. Baltimore* was a case that saw a settlement of \$250,000 for the plaintiff. Christopher Sharp complained that Baltimore City Police seized his phone and erased footage of officers forcibly arresting his friend. In doing so, police violated the first, fourth and fourteenth amendment of the U.S. Constitution; the first, because private citizens have a right to record police officers in the public discharge of their duties. The fourth and fourteenth amendments were violated when police seized and erased data on Sharp's phone without a warrant and or due process. ⁴¹

The American Civil Liberties Union took up Sharp's case which resulted in a

\$250,000 settlement⁴² as well as the Baltimore Police Department Police agreed as part of the settlement to issue a written apology to sharp, although they found no wrong doing on their behalf. In addition, the Baltimore Police Department agreed to adopt a comprehensive and detailed written policy intended to protect the rights of citizens to photograph and record police activity from anywhere those citizens have a legal right to be, without interference or intimidation from police.

Analysis and conclusion : We will now briefly return to the matter of *The Purdue Exponent*, its photographer and the Purdue University Police Department. After reviewing examples of case law from across the United States, it is easy to conclude that had *The Exponent* facts occurred in a different state, there is case law to support *The Exponent's* demand for the video footage release is required for public good. Additionally, The Exponent believed that the apprehension of the photographer was not warranted plus the seizing of his camera equipment without a warrant was a violation of fourth amendment freedoms. Purdue University is a public university, and thus the spaces within the realm of the university could be seen as “public space.” Video footage from a camera, which could either exonerate or appropriately show the events during the apprehension of the photographer, could be seen as public video that is “for the public good.” By not releasing the video, the University is insinuating something dire: police officers may be allowed to act in any manner without facing consequences under the veil of the footage being part of an “ongoing investigation” as is the current case. Local media is then hindered in its duty to act as the body that holds government responsible.

On July 18, 2014, The Exponent filed a tort claim notice against Purdue University seeking damages in the amount of \$100,000 plus attorney fees. (In the state of Indiana, citizens must provide a notice if they are filing suit against a public entity.) The ACLU of Indiana soon took the case and filed suit against Purdue. If Purdue were situated in other states, the outcome and course of this investigation would be different: In California, under *Leiserson*, the photographer would have had the right to be near the “disaster situation” following the shooting. As that court held, “safety is not a ground to exclude press members from a disaster site because the statute provides a specific exception for members of the media in situations already determined to

be unsafe.” Takeda was apprehended on the second floor of the EE building after he crossed a skywalk that linked the second floor of the EE building to an adjacent building (Material Science and Engineering Building). Police did not block off the skywalk by police tape or signs. There were no police present in the skywalk and Takeda claims another member of the public was sitting in the skywalk. Takeda continued on but did not leave the second floor. The video evidence becomes substantial as it questions whether Takeda’s apprehension was warranted considering he was not interfering with police activity, had not passed police tape, and allegedly cooperated with police. On August 20th, Purdue released the video via its Youtube channel after a hearing upon agreement from all local law enforcement offices in the area. However, it remains unclear whether the one-minute twenty-five second long clip was the complete footage of the encounter on the second floor of the Electrical Engineering building on January 21st. Several attorneys who work in the area of media law commented on the manner of release of the video saying that the time it took for the release was unnecessarily elongated and additionally, the method in which the video was released could be a point of contention due to the editing of the video.

“Purdue University has not provided us with a copy of the video, so we have not been able to confirm that it is the complete video of the encounter between the Exponent’s photographer and law enforcement,” said Kelly Eskew, ACLU of Indiana staff attorney, in a statement. “If it is the video we asked Purdue to release, we are pleased that it is now publicly available since it is a public record as defined under the Access to Public Records Act.” Steve Key, the executive director and general counsel of the Hoosier State Press Association, the overseeing body of all media in the state of Indiana told *The Exponent* that he was pleased that the video was made public but he believes that Purdue would have been better off if the University had made the video tape was available to begin with. “Initially Purdue reacted in similar fashion that I’ve seen other entities react when there is a document that might not put their employees in the best light,” Key said. “They would have been better off if had made the video tape was available to begin with so people could see and judge themselves whether or not the officers had acted out of line or not.”

If the incident had occurred in Massachusetts, then according to *Glik*, the video footage could have been deemed public information ... we saw something similar in the footage from the University of Maryland case where the Assistant State Attorney of Maryland identified the importance of video footage in the case. In the age of technology, where public cameras are in most major cities and some college towns, like West Lafayette, Indiana, the home of Purdue University, it isn’t much of a stretch of imagination to see how video footage could be deemed as evidence either for or against citizens, journalists or police. When West Lafayette installed cameras at the busiest intersection last year, its police chief was quoted in *The Exponent* as saying that though the cameras were erected for traffic and safety measures, and the police don’t have the manpower to continually monitor the cameras, the police will use footage from them as evidence in specific criminal cases. If those cameras can be used for evidentiary purposes, then video footage from inside a public building should be viewed as public information that is subject to request under sunshine laws. Additionally, as *Sharp, Riley, Glik, Gunnarson* and *Smith* showed, police cannot seize camera equipment of a citizen, whether that be a cellular device or a camera, without a proper warrant. If this case were to continue on to court, the Indiana courts will have to decide if the state will uphold the same interpretation of the first and fourth amendments in this new technological age as some other states have. The purpose of this paper was to not only illustrate the evolution of media law over time, but also call for transparency between journalists and government entities. It becomes vital to have an open relationship between those that enforce the law and those that check on the enforcers. This paper also attempts to show how the media and government relationship varies based on the generation and era. In the progressive era, journalists had free range to interact with the President of the United States. During the Revolutionary War, the press played a significant role in distributing information about British forces amongst the colonies. However, now in the age of information, media has evolved into a new role in the public. One way to revive the lagging importance of the news industry is to encourage more transparency between government and media. Moving forward, one can only hope more information is shared, as it is vital for the public to be an educated public.