AN "UNHOLY ALLIANCE": THE LAW OF MEDIA RIDE-ALONGS

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I. INTRODUCTION

Tanya Barrett's family called 9-1-1 after her mother shot herself in the chest. Soon after, the family realized their mother was dead. When the police and emergency squad arrived, a dispute arose as the family tried to prevent officials from disturbing the mother's body. Police forced the family to wait outside the house for hours, yet allowed a television crew inside to film them as they re-enacted their investigation of the scene. Pictures of the dead mother's body were later broadcast.[1]

The family filed suit in federal district court against both the police and the broadcast station, stating several causes of action, including violation of their Fourth Amendment right to be free of unreasonable searches and seizures, and the state tort law claims of trespass and intentional infliction of emotional distress.[2] The court ruled that the broadcasters "were not privileged by the First Amendment to enter [the family's] home without permission, or to film and broadcast" the inside of the home.[3]

Barrett's case stems from what has become known as "ride-along reporting."[4] This style of reporting is an increasingly common practice, particularly among television outlets, as they seek to attract and maintain an audience.[5] The resulting footage is often used on shows referred to as "reality TV," which offer a "cinema verite-style"[6] look at their subject. *Cops*, with its reggae theme song "Bad Boys," is credited with being the first television program in this genre, airing in 1989 on Fox Television.[7] Imitations were quick to spring up, and the reality TV genre became increasingly popular in the 1990s. By the middle of the decade, there were ten reality shows being widely aired around the country.[8] More recently, reality TV has taken its cameras everywhere from the hospital emergency room[9] to the bathroom stall.[10]

Not surprisingly, lawsuits have followed,[11] and,

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1 Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726, 731-33 (S.D. Ohio 1997).

2 *Id.* at 730, 737.

3 *Id.* at 748.

4 In this article, "ride-along reporting" will be defined as those situations in which media representatives, for the purpose of gathering publishable material, accompany authorized individuals performing official duties. For purposes of this article, an authorized individual is defined as one who, through his or her job, has power or access that others do not. In the ride-along cases, the authorized individual shared that power or access with the media, which gave rise to a legal claim. *See* David E. Bond, *Police Liability for the Media "Ride-Along,"* 77 B.U. L. REV. 825 (1997). Although this term and similar ones, such as "tag-along reporting," *see* Casey Tourtillott, Wilson v. Layne: *The Growing Relationship Between Law Enforcement and the Media: Should it Extend into Private Homes?*, 67 UMKC L. REV. 445, 460 (1998), and "sidekick journalism," *see* Kent R. Middleton, *Journalists, Trespass and Officials: Closing the Door on* Fla. Publishing Co. v. Fletcher, 16 PEPP. L. REV. 259, 260 (1989) have been frequently used in recent years, their meanings differ slightly.

5 *See, e.g.*, David Tobenkin, *Real Stories of a Crowded Genre*, BROAD. & CABLE, May 22, 1995, at 16; Tom Shales, *Harsh Reality: Are Dramas and Sitcoms Television's Weakest Link?*, WASH. POST, Aug. 9, 2001, at C1 (discussing the abundance of reality programming).

6 Cynthia Littleton, *True Blue*, BROAD. & CABLE, May 20, 1996, at 26.

7 *Id.*

8 Tobenkin, *supra* note 5, at 18.

9 *See, e.g.*, William C. Schumacher, *Lights! Camera! Blood! Action!*, WALL ST. J., Oct. 13, 2000, at W15.

10 Linda Moss, *Facing Legal Realities: Lawsuit Potential Challenges Producers of "Unscripted" Shows*, BROAD. & CABLE, Oct. 8, 2001, at 23 (highlighting a camera crew for a VH1 show, "Bands on the Run," which followed a woman into a bathroom stall).

11 Reality TV shows were not the catalyst for most of the cases identified for this study; only a handful of these cases arose from such programming. *See generally* Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997) (involving the program "Cops"); Ayeni v. CBS, Inc., 848 F. Supp.

courts have been grappling with these cases throughout the past decade. The U.S. Supreme Court set limits on ride-along reporting when it decided *Wilson v. Layne*[12] in 1999, a case in which a newspaper reporter and photographer accompanied police who were executing a warrant into a home. The Court held that, "it is a violation of the Fourth Amendment for police to bring members of the media or other third parties into a home during the execution of a warrant when the presence of the third parties in the home was not in aid of the execution of the warrant."[13] The fact that police were executing a warrant was an integral part of the holding in *Wilson*.[14] However, as illustrated in Tanya Barrett's case, not all ride-alongs involved police executing warrants in private homes.[15] So, the holding in *Wilson* does not address many situations from which ride-along litigation arose. While *Wilson* indicates that limitations to the practice are now being set, for years, a varied legal landscape has characterized ride-along cases. This paper will clarify for plaintiffs, officials, and the media the rules that are now emerging.

Press justifications for ride-along reporting have fallen into two categories, which reflect the major media, or "press," theories said to attach to the First Amendment. One argument is that ride-alongs allow the press to check on government,[16] a press function that flows from libertarian theory.[17] The other argument is that ride-alongs satisfy the public's right to know, a press function that flows from the social responsibility theory.[18] The case analysis presented below will show that media ride-alongs conflict with both of these theories.

A. Protections for Newsgathering

The First Amendment has been interpreted as providing broad protections for expression, but not for newsgathering.[19] Two theories, libertarian theory and social responsibility theory, each defining the duties of government and of the press, underlie much of newsgathering law.[20] Legal scholar Steven Helle has observed that the choice of theory argued determines whether a case is decided in favor of the press, or of the government.[21]

According to Helle, libertarian theory, with roots in the seventeenth-century writings of John Milton and John Locke, has led to decisions favorable to the press in newsgathering cases.[22] Decisions in newsgathering cases that favor the government's ability to place limits on the press have generally been based on the social responsibility theory, which grew from a 1947 report by the Commission on Freedom of the Press,[23] also known as the Hutchins Commission.[24] Although these theories, discussed in detail in the 1956 work *Four Theories of the Press*,[25] have become dated, they are worth reviewing here because their influence is still seen in First Amendment jurisprudence, particularly in newsgathering cases.[26]

Libertarian theory values the "free and open exchange of ideas as the best means of achieving truth."[27] It also views freedom of expression as a way to foster self-fulfillment and to control government.[28] Realization of these goals depends, Helle argues, on adherence to two key principles: independence from government[29] and emphasis on the right of the individual.[30] In a libertarian

362 (E.D.N.Y. 1994), *aff'd sub nom.* Ayeni v. Mottola, 35 F.3d 680 (2d Cir. 1994) (involving the show "Street Stories"); Crowley v. Fox Broad. Co., 851 F. Supp. 700 (D. Md. 1994) (discussing the program "Code 3"); Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993) (involving the program "Street Stories"); Shulman v. Group W Prods., Inc., 955 P.2d 469 (Cal. 1998) (discussing the show "On Scene: Emergency Response").

12 Wilson v. Layne, 526 U.S. 603 (1999).

13 *Id.* at 614.

14 *Id.* at 613-14.

15 *See* Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997).

16 Vincent Blasi, *The Checking Value in First Amendment Theory*, 3 AM. B. FOUND. RES. J. 521 (1977). *See also* Wilson v. Layne, 526 U.S. 603, 613 (1999); Huskey v. Nat'l Broad. Co., 632 F. Supp. 1282, 1290 (N.D. Ill. 1986).

17 *See* FRED S. SIEBERT ET AL., FOUR THEORIES OF THE PRESS 7 (1956) (discussing libertarian theory).

18 *See id.* at 7.

19 Steven Helle, *The News-Gathering/Publication Dichotomy and Government Expression*, 1982 DUKE L.J. 1, 3 (1982).

20 *Id.* at 4-6, 20-22.

21 *Id.* at 3.

22 *Id.* at 4-6. *See also* SIEBERT ET AL., *supra* note 17, at 44-46.

23 SIEBERT ET AL., *supra* note 17, at 75.

24 Helle, *supra* note 19, at 20.

25 SIEBERT ET AL., *supra* note 17.

26 *See* WILLIAM E. BERRY ET AL., LAST RIGHTS: REVISITING FOUR THEORIES OF THE PRESS (John C. Nerone ed., 1995).

27 Helle, *supra* note 19, at 5.

28 *Id.*

29 *Id.* at 5-9.

30 *Id.* at 9-13.

framework, "the state derives its authority from the consent of the governed,"[31] with the rights of the individual defining the extent of the state's power.[32]

Libertarianism presupposes that the roles of the government and the press are closely intertwined in a democratic society.[33] Freedom of the press is justified because it serves democracy; the press' crucial role is that of a watchdog, or check, over the three branches of government.[34] It is assumed that the government is the primary concern of the press, and that limits on expression are most likely to come from government.[35]

Contemporary commentators have noted that extragovernmental actors, such as transnational corporations, now equal or exceed governments in resources and power.[36] This shift in power challenges the old assumption that threats to individual freedom are most likely to come from the government, and that the press' job is to keep this governmental power in check.[37] While this is a valid criticism of libertarian theory, as put forth by Siebert nearly half a century ago, it is not a fatal flaw for purposes of ride-along reporting analysis. By definition, ride-alongs involve both the press and government, and the part of libertarian theory dealing with that relationship continues to be sound. In fact, the media have sometimes used the checking value to justify ride-alongs. For instance, in an *amici curiae* brief filed in *Wilson v. Layne*, major media organizations argued that the practice aids in the scrutiny of official conduct.[38]

In other cases, however, the media have invoked social responsibility theory, using the "public's right to access to information of public interest" to justify ride-alongs.[39] John Langley, co-creator of *Cops*, said of the reality TV-style program, "it is pro-social. It can inspire people to think about solutions to problems. It can be enlightening to visit the problems within one's own society."[40]

Under social responsibility theory, arguments for a newsgathering right rest primarily on the need of a self-governing people to be informed.[41] As described by Helle, the two key principles to realization of social responsibility theory are government intervention and public interest.[42] Social responsibility theorists believe that government intervention is warranted when powerful, concentrated media fail to serve their role as informers of the electorate.[43] Neoliberals, as adherents to social responsibility theory are called, tend to be concerned with abuses by corporations and other nongovernmental entities, while libertarians are concerned with abuses by government.[44] A leading twentieth-century criticism of the press was that it "wielded its enormous power for its own ends."[45] In a social responsibility scheme, the state is ultimately responsible for press performance. This theory, too, has been deemed outmoded, as technological advances have reduced the press' importance as an information source.[46] Nonetheless, the theory is manifested in commercial speech regulation, obscenity law, and regulation of electronic media.[47]

Helle has attempted to reconcile libertarian and social responsibility theory under a single approach to newsgathering law. By granting greater protection to publication than to newsgathering, the U.S. Supreme Court, Helle contends, has "implicit[ly] sanction[ed]" the notion that government has a right to deny information to the people.[48] Instead, Helle proposes a newsgathering right based on the "presumption that the government has no right *not* to speak;"[49] that also has "a duty to communicate information within its possession."[50] Under this approach, "the private interests of the press are maintained in accordance with libertarian theory, and the government assumes the duty of acting in the public interest in accordance with social responsibility theory."[51]

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31 *Id.* at 10.
32 *Id.*
33 SIEBERT ET AL., *supra* note 17, at 51.
34 *See* Blasi, *supra* note 16 (discussing the checking value of the First Amendment, which is informed by libertarian theory).
35 BERRY, *supra* note 26, at 176.
36 *Id.* at 159-60.
37 *Id.*
38 Brief of Amici Curiae of ABC, Inc., et al. at 4-5, Wilson v. Layne, 526 U.S. 603 (1999) (No. 98-83).
39 Anderson v. WROC-TV, 441 N.Y.S.2d 220, 222 (N.Y. Sup. Ct. 1981). *See also* Baugh v. CBS, Inc., 828 F. Supp. 745, 754 (N.D. Cal. 1993); Huskey v. Nat'l Broad. Co., 632 F. Supp. 1282, 1287 (N.D. Ill. 1986).
40 Littleton, *supra* note 6, at 26.
41 Helle, *supra* note 19, at 20.
42 *Id.* at 20-22.
43 *Id.* at 22-23.
44 BERRY, *supra* note 26, at 91.
45 SIEBERT ET AL., *supra* note 17, at 78.
46 BERRY, *supra* note 26, at 108-09.
47 Helle, *supra* note 19, at 32.
48 *Id.* at 3.
49 *Id.* at 4.
50 *Id.*
51 *Id.*

This paper argues that, even under Helle's analysis of a strong newsgathering right, ride-along reporting does not pass muster under the First Amendment. Such reporting violates the checking value that underlies libertarian theory because the press is in collusion with the very institution it is supposed to monitor. Previous scholarship has argued that the nature of the ride-along—the media in cooperation with government officials—compromises the press in its watchdog role.[52] This paper will support that argument.

One plaintiff aptly called the ride-along an "unholy alliance."[53] Ride-alongs also violate social responsibility theory because, as the case analysis below will show, they do not involve government information in the strictest sense, such as documents or official proceedings.[54] Instead, ride-alongs stem from situations, such as the execution of a search warrant at a private home, in which the government itself has limited authority to be present. Ride-alongs, therefore, result in the press providing contaminated information to the public, in violation of its social responsibility.[55]

Media ride-alongs represent the abuse of both corporate media power and government power to the detriment of individuals. They pit individual privacy and property interests against colluding government and corporate media interests. By looking at the individual interest threatened in each ride-along case, we can arrive at a more consistent and appropriate analysis of these cases.

II. PERSPECTIVES ON RIDE-ALONGS

This paper offers a comprehensive survey of the law of ride-along reporting, and places it within the framework of First Amendment law. Previous legal analysis of ride-alongs can be divided into two broad categories—articles examining constitutional claims and articles examining tort law claims. Across the breadth of this work, commentators generally found ride-alongs problematic from legal and ethical perspectives. Two key themes emerged. First, ride-alongs do not serve First Amendment values because they raise ethical concerns for participants—the press cannot serve as a watchdog because it is essentially colluding with the government when it rides along, which violates libertarian theory. Second, ride-alongs are frequently viewed as a means for building audience share rather than fostering democracy. This violates social responsibility theory, which requires the press to provide information for self-governance, not for entertainment.

A. Constitutional Claims Focusing on the Fourth Amendment

Scholarship on constitutional claims has concentrated on the Fourth Amendment, examining both media and official liability. Fourth Amendment claims typically arise when the media accompanies law enforcement officers who are executing a warrant. Professor Elsa Y. Ransom, a former television news producer, argued that the First Amendment privilege to gather news stopped short of supporting many ride-alongs.[56] Ransom asserted that,"[t]here is no tradition of public access to the interior of a private dwelling and no essential role played by such access in the proper functioning of the criminal justice system that would justify press invasion of a private home."[57] Ransom acknowledged that some might favor ride-alongs on the ground that the press acts as a watchdog on government[58]—the libertarian argument. But she disagreed with that argument, explaining that, "the effectiveness of the media in scrutinizing the conduct of law enforcement personnel may be greatly compromised given the potentially collusive and non-spontaneous nature of the joint enterprise."[59] Another commentator, taking a social responsibility perspective on media-police collaborations, proposed that the judge's ruling on the warrant determine whether the value of the ride-along to society outweighed the suspect's privacy interest.[60] Other authors us-

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52 *See* Elsa Y. Ransom, *Home: No Place for "Law Enforcement Theatricals" — The Outlawing of Police/Media Home Invasions in* Ayeni v. Mottola, 16 LOY. L.A. ENT. L. REV. 325, 356-57 (1995). *See also* Middleton, *supra* note 4, at 294; Randall P. Bezanson, *The New Free Press Guarantee*, 63 VA. L. REV. 731, 735 (1977).

53 Jones v. Taibbi, 508 F. Supp. 1069, 1073 (D. Mass. 1981) (quoting Plaintiff's Brief in Opposition to Defendants' Motions for Summary Judgment).

54 Helle, *supra* note 19, at 52 (explaining that proponents of a newsgathering right most often seek to gather governmental expression).

55 *Id.* at 22.

56 Ransom, *supra* note 52, at 325, 353-54.

57 *Id.* at 355.

58 *Id.* at 356.

59 *Id.*

60 John P. Cronan, *Subjecting the Fourth Amendment to Intermediate Scrutiny: The Reasonableness of Media Ride-Alongs*, 17 YALE L. & POL'Y REV. 949 (1999).

ing a social responsibility perspective were much more critical of the media, arguing that ride-alongs were driven by their quest for audience share and profits rather than by their devotion to democracy.[61] One of them deemed such ride-alongs per se violations of the Fourth Amendment and stated that courts should "refuse to let search warrants be used by the media as general admission tickets to the homes and lives of private citizens."[62]

The television industry itself has provided ample evidence that reality TV is more about good business than good democracy. "Broad-based demographics make reality shows popular with packaged goods manufacturers trying to sell frozen food and other staples to two-income families," according to one industry publication.[63] One popular reality show, "Real Stories of the Highway Patrol," is produced by Genesis Entertainment. The company's chief executive, Wayne Lepoff, credited its success to its combination of live footage and reenactments, saying, "People like the ride-alongs, but we find viewer interest in re-enactments holds audiences even better."[64]

Scholars discussing official liability in media ride-alongs found the practice problematic for the authorized officials executing the warrant. Kevin E. Lunday, a U.S. Coast Guard lieutenant, commenting before the U.S. Supreme Court's decision in *Wilson v. Layne*[65] was handed down, urged the federal government to develop a consistent policy for determining when it is permissible for the media to accompany officials in federal searches.[66] He argued that such a policy should take into account the expectation of privacy in the location to be searched, explaining that a private home would carry a high expectation of privacy.[67]

Other writers discussing official liability flatly opposed ride-alongs. One rejected the type of balancing test proposed by Lunday, arguing that it eroded the Fourth Amendment's imperative to control the police.[68] Another said that allowing the media to accompany authorized officials who are executing a warrant made a search unreasonable under the Fourth Amendment.[69] Still another claimed that ride-alongs violated the sanctity of the home.[70]

B. Tort Law Claims

Scholarship examining tort law claims arising from ride-along reporting has focused on trespass and privacy claims. Here, too, commentators have voiced little support for the ride-along, even those who one might expect to be sympathetic to the media, such as journalism professor Kent R. Middleton. In a 1989 article, Middleton argued that journalists did not have a legal privilege to accompany officials into private homes, despite the "custom and usage" rationale articulated by the Florida Supreme Court in *Florida Publishing Co. v. Fletcher*.[71] Middleton, focusing on whether there existed a journalistic privilege to trespass, also claimed that the "newsgathering values served by such journalists engaged are not sufficient to justify the violation of a homeowner's property and privacy interests protected by the law of the trespass."[72] He emphasized the weakness of arguing for the right to gather news, and the lack of historical support for extending a newsgatherer's right of access to a private home.[73]

Middleton also briefly discussed ethical concerns raised by ride-alongs. Echoing libertarian theory, he noted that it "is difficult for the journalists to maintain the role of independent reporter, or government adversary, when they routinely rely on official custom to enter private homes."[74] Other scholars have examined the notion of a newsgathering privilege for journalists

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61 Brad M. Johnston, *The Media's Presence During the Execution of a Search Warrant: A Per Se Violation of the Fourth Amendment*, 58 OHIO ST. L.J. 1499 (1997); Christopher A. Rothe, *Note: The Legal Future of "Reality" Cop Shows:* Parker v. Boyer *Dismisses § 1983 Claims Against Police Officers and Television Station Jointly Engaged in Searches of Homes*, 5 VILL. SPORTS & ENT. L.J. 481 (1998).

62 Johnston, *supra* note 61, at 1533-34.

63 Cynthia Littleton, *Reality Television: Keeping the Heat On*, BROAD. & CABLE, May 20, 1996, at 25.

64 Tobenkin, *supra* note 5, at 17.

65 Wilson v. Layne, 526 U.S. 603 (1999).

66 Kevin E. Lunday, *Note: Permitting Media Participation in Federal Searches: Exploring the Consequences for the United States Following* Ayeni v. Mottola *and a Framework for Analysis*, 65 GEO. WASH. L. REV. 278 (1997).

67 *Id.* at 306.

68 Bond, *supra* note 4.

69 Sally S. Campbell, *Lights, Cameras, Access: Should the Police Provide the Means for Television Stations to Violate the Fourth Amendment?*, 22 U. DAYTON L. REV. 351, 352 (1997).

70 Tourtillott, *supra* note 4.

71 Middleton, *supra* note 4, at 260-62, 269, 274-75 (discussing Fla. Publ'g Co. v. Fletcher, 340 So.2d 914 (Fla. 1976)).

72 *Id.* at 262.

73 *Id.* at 280.

74 *Id.* at 294.

who trespass on private property, but not specifically within the context of a ride-along.[75] Efforts to establish such a privilege have been unsuccessful.[76] Finally, Middleton warned that journalists who ride along may face liability for intrusion and civil rights violations.[77] Indeed, they have. As this paper demonstrates, many of the legal claims arising from ride-alongs in recent years have stated these causes of action.

In the realm of privacy law, one author examined the viability of these tort claims as a response to a media ride-along, or to other intrusive newsgathering techniques commonly practiced by so-called "tabloid television."[78] The author argued that despite the First Amendment and broad definitions of newsworthiness, privacy torts can be viable causes of action in claims against tabloid television, in large part because its programming is not "news."[79] This is considered a social responsibility-oriented analysis. Another author also discussed ride-along journalism and the right to privacy using *Wilson v. Layne* as the focal point.[80] Journalists and journalism scholars have been divided on whether the practice is journalistically sound.[81]

Many commentators perceived a dichotomy between news and entertainment.[82] Courts also drew a distinction in their opinions between news and entertainment.[83] Courts sometimes viewed the work of the press as less worthy of First Amendment protection when coverage seemed to be entertainment rather than news.[84] In such instances, the press was seen as straying from its role as informer of the electorate.[85] Some scholars, however, have been sharply critical of government attempts to distinguish news from entertainment, asserting that news is a social construct that government has no business defining.[86] This paper will argue that the news/entertainment dichotomy is spurious.

III. CAUSES OF ACTION

Ride-along reporting has spawned lawsuits based on an assortment of claims.[87] The most common causes of action are based on the tort of privacy: intrusion,[88] appropriation,[89] false light[90]

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75 *See, e.g.*, David F. Freedman, Note, *Press Passes and Trespasses: Newsgathering on Private Property*, 84 COLUM. L. REV. 1298 (1984). *See also* Note, *And Forgive Them Their Trespasses: Applying the Defense of Necessity to the Criminal Conduct of the Newsgatherer*, 103 HARV. L. REV. 890 (1990).

76 *See generally* Lyrissa Barnett Lidsky, *Prying, Spying and Lying: Intrusive Newsgathering and What the Law Should Do About It*, 73 TUL. L. REV. 173, 194 n.100 (1998).

77 Middleton, *supra* note 4, at 286-293.

78 Eduardo W. Gonzalez, *"Get That Camera Out of My Face!" An Examination of the Viability of Suing "Tabloid Television" for Invasion of Privacy*, 51 U. MIAMI L. REV. 935 (1997).

79 *Id.* at 947-48.

80 Tourtillott, *supra* note 4.

81 *See generally* Gary L. Bostwick, *The Newsworthiness Element:* Shulman v. Group W Prods., Inc. *Muddies the Waters*, 19 LOY. L.A. ENT. L. REV. 225 (1999) (discussing the California Supreme Court's definition of the newsworthiness element in the private facts tort as articulated in Shulman v. Group W Prods., Inc., 955 P.2d 469 (Cal. 1998)).

82 *See generally* Bond, *supra* note 4; Eric B. Easton, *Two Wrongs Mock a Right: Overcoming the Cohen Maledicta That Bar First Amendment Protection for Newsgathering*, 58 OHIO ST. L.J. 1135 (1997); Lyrissa Barnett Lidsky, *Prying, Spying and Lying: Intrusive Newsgathering and What the Law Should do About It*, 73 TUL. L. REV. 173 (1998).

83 *See* Berger v. Hanlon, 129 F.3d 505, 511, 515.

84 *Id.* at 511.

85 *Id.* at 512.

86 *E.g.*, Clay Calvert, *Toxic Television, Editorial Discretion & The Public Interest: A Rocky Mountain Low*, 21 HASTINGS COMM. & ENT. L.J. 163, 200 (1998).

87 This study is limited to published opinions from state and federal courts since 1971, the year in which *Dietemann v. Time, Inc.*, 449 F.2d 245 (9th Cir. 1971)—the earliest identified ride-along case—was decided by the Ninth Circuit of the U.S. Court of Appeals. A total of fifty cases dealing with ride-alongs are identified in this paper. Because "ride-along reporting" is not a category used in legal digests, and because the term is not always used in legal opinions involving the activity, case identification involved several steps. Cases were first identified using the index to *Media Law Reporter*. These cases were then used to compile a list of the causes of action that gave rise to claims of ride-along reporting. Appropriate key numbers in West's *Decennial Digests* and *General Digests* were then consulted for additional cases. Also used to identify cases was the casebook C. THOMAS DIENES ET AL., NEWSGATHERING AND THE LAW 578-82 (1999), and citations in already-identified court opinions.

88 *See, e.g.*, Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997); Carr v. Mobile Video Tapes, Inc., 893 S.W.2d 613 (Tex. Ct. App. 1994); Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993); Huskey v. Nat'l Broad. Co., 632 F. Supp. 1282 (N.D. Ill. 1986); Pierson v. News Group Publ'ns, Inc., 549 F. Supp. 635 (S.D. Ga. 1982); Shulman v. Group W Prods., Inc., 955 P.2d 469 (Cal. 1998); Penwell v. Taft Broad. Co., 469 N.E.2d 1025 (Ohio Ct. App. 1984) [hereinafter *Intrusion Cases*].

89 *See, e.g.*, Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997); Hagler v. Phila. Newspapers, Inc., 24 Media L. Rep. (BNA) 2332 (E.D. Pa. 1996); Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993); Pierson v. News Group Publ'ns, Inc. 549 F. Supp. 635 (S.D. Ga. 1982); Delan v. CBS, Inc., 458 N.Y.S.2d 608 (N.Y. App. Div. 1983).

90 *See, e.g.*, Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997); Carr v. Mobile Video Tapes, Inc., 893 S.W.2d 613 (Tex. Ct. App. 1994); Hagler v. Democrat-News, Inc., 699 S.W.2d 96 (Mo. Ct. App. 1985); Pierson

and private facts,[91] with a single case often including more than one of these privacy torts. A close second is violation of the plaintiff's civil rights,[92] particularly the Fourth Amendment right to be free from unreasonable searches and seizures.[93] Other common claims are trespass,[94] intentional infliction of emotional distress[95] and illegal electronic surveillance.[96]

In every case, no matter what the cause of action, the media used photographic or audio equipment. A majority of the claims arose from the presence of television crews,[97] and most of the

v. News Group Publ'ns, Inc., 549 F. Supp. 635 (S.D. Ga. 1982); Stern v. Officer John Doe, 806 So. 2d 98 (La. Ct. App. 2001); Diaz v. Univision Television Group, Inc., 29 Media L. Rep. (BNA) 2245 (N.J. Super. Ct. Law Div. 2001); Magenis v. Fisher Broad., Inc., 798 P.2d 1106 (Or. Ct. App. 1990); Penwell v. Taft Broad. Co., 469 N.E.2d 1025 (Ohio Ct. App. 1984).

[91] *See, e.g.,* Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997); Carr v. Mobile Video Tapes, Inc., 893 S.W.2d 613 (Tex. Ct. App. 1994); Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993); Huskey v. Nat'l Broad. Co., 632 F. Supp. 1282 (N.D. Ill. 1986); Pierson v. News Group Publ'ns, Inc., 549 F. Supp. 635 (S.D. Ga. 1982); Shulman v. Group W Prods., Inc., 955 P.2d 469 (Cal. 1998); Diaz v. Univision Television Group, Inc., 29 Media L. Rep. (BNA) 2245 (N.J. Super. Ct. Law Div. 2001); Penwell v. Taft Broad. Co., 469 N.E.2d 1025 (Ohio Ct. App. 1984) [hereinafter *Private Fact Cases*].

[92] *See, e.g.,* Wilson v. Layne, 526 U.S. 603 (1999); Brunette v. Humane Soc'y of Ventura County, 294 F.3d 1205 (9th Cir. 2002); Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997); Parker v. Boyer, 93 F.3d 445 (8th Cir. 1996); Stack v. Killian, 96 F.3d 159 (6th Cir. 1996); Ayeni v. Mottola, 35 F.3d 680 (2d Cir. 1994); Dietemann v. Time, Inc., 449 F.2d 245 (9th Cir. 1971); Caldarola v. County of Westchester, 142 F. Supp. 2d 431 (S.D.N.Y. 2001); Lyde v. New York City, 145 F. Supp. 2d 350 (S.D.N.Y. 2001); Robinson v. City of Philadelphia, 30 Media L. Rep. (BNA) 1317 (E.D. Pa. 2001); Lauro v. New York City, 39 F. Supp. 2d 351 (S.D.N.Y. 1999); Nichols v. Hendrix, 27 Media L. Rep. (BNA) 1503 (N.D. Ga. 1999); Swate v.Taylor, 12 F. Supp. 2d 591 (S.D. Tex. 1998); Hicks v. Cassilly, 971 F. Supp. 956 (D. Md. 1997); Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997); Hagler v. Phila. Newspapers, Inc., 24 Media L. Rep. (BNA) 2332 (E.D. Pa. 1996); Mullins v. Bookman, 23 Media L. Rep. (BNA) 2374 (N.D. Ga. 1995); Ayeni v. CBS Inc., 848 F. Supp. 362 (E.D.N.Y. 1994); Jones/Seymour v. LeFebvre, 19 Media L. Rep. (BNA) 2064 (E.D. Pa. 1992); Moncrief v. Hanton, 782 F.2d 1042 (1985); Jones v. Taibbi, 508 F. Supp. 1069 (D. Mass. 1981); Benford v. Am. Broad. Cos., 502 F. Supp. 1159 (D. Md. 1980); Avenson v. Zegart, 577 F. Supp. 958 (D. Minn. 1984); Smith v. Fairman, 98 F.R.D. 445 (C.D. Ill. 1982); Holman v. Central Ark. Broad. Co., 4 Media L. Rep. (BNA) 2300 (E.D. Ark. 1979), *aff'd,* 610 F.2d 542 (8th Cir. 1979); Mimms v. Phila. Newspapers, Inc., 352 F. Supp. 862 (E.D. Pa. 1972); People v. Henderson, 847 P.2d 239 (Colo. Ct. App. 1993); Prahl v. Brosamle, 295 N.W.2d 768 (Wis. Ct. App. 1980) [hereinafter *Civil Rights Cases*].

[93] *See, e.g.,* Wilson v. Layne, 526 U.S. 603 (1999); Brunette v. Humane Soc'y of Ventura County, 294 F.3d 1205 (9th Cir. 2002); Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997); Parker v. Boyer, 93 F.3d 445 (8th Cir. 1996); Stack v. Killian, 96 F.3d 159 (6th Cir. 1996); Ayeni v. Mottola, 35 F.3d 680 (2d Cir. 1994); Dietemann v. Time, Inc., 449 F.2d 245 (9th Cir. 1971); Robinson v. City of Philadelphia, 30 Media L. Rep. (BNA) 1317 (E.D. Pa. 2001); Lauro v. New York City, 39 F. Supp. 2d 351 (S.D.N.Y. 1999); Nichols v. Hendrix, 27 Media L. Rep. (BNA) 1503 (N.D. Ga. 1999); Swate v. Taylor, 12 F. Supp. 2d 591 (S.D. Tex. 1998); Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997); Hagler v. Phila. Newspapers, Inc., 24 Media L. Rep. (BNA) 2332 (E.D. Pa. 1996); Ayeni v. CBS Inc., 848 F. Supp. 362 (E.D.N.Y. 1994); Moncrief v. Hanton, 10 Media L. Rep. (BNA) 1620 (N.D. Ohio 1984); Benford v. Am. Broad. Cos., 502 F. Supp. 1159 (D. Md. 1980); Avenson v. Zegart, 577 F. Supp. 958 (D. Minn. 1984); People v. Henderson, 847 P.2d 239 (Colo. Ct. App. 1993); Prahl v. Brosamle, 295 N.W.2d 768 (Wis. Ct. App. 1980).

[94] *See, e.g.,* Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997); Caldarola v. County of Westchester, 142 F. Supp. 2d 431 (S.D.N.Y. 2001); Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997); Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997); Hagler v. Phila. Newspapers, Inc., 24 Media L. Rep. (BNA) 2332 (E.D. Pa. 1996); Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993); Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668 (Cal. Ct. App. 1986); Fla. Publ'g Co. v. Fletcher, 340 So. 2d 914 (Fla. 1976); Green Valley Sch., Inc. v. Cowles Fla. Broad., Inc., 327 So. 2d 810 (Fla. Dist. Ct. App. 1976); Nichols v. Ga. Television Co., 552 S.E.2d 550 (Ga. Ct. App. 2001); Belluomo v. KAKE TV & Radio, Inc., 596 P.2d 832 (Kan. Ct. App. 1979); Anderson v. WROC-TV, 441 N.Y.S.2d 220 (N.Y. Sup. Ct. 1981); Carr v. Mobile Video Tapes, Inc., 893 S.W.2d 613 (Tex. Ct. App. 1994); Prahl v. Brosamle, 295 N.W.2d 768 (Wis. Ct. App. 1980) [hereinafter *Trespass Cases*].

[95] *See, e.g.,* Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997); Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997); Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997); Crowley v. Fox Broad. Co., 851 F. Supp. 700 (D. Md. 1994); Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993); Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668 (Cal. Ct. App. 1986); Carr v. Mobile Video Tapes, Inc., 893 S.W.2d 613 (Tex. Ct. App. 1994).

[96] *See, e.g.,* Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997); Brown v. Am. Broad. Co., 704 F.2d 1296 (4th Cir. 1983); Benford v. Am. Broad. Cos., 554 F. Supp. 145 (D. Md. 1982); Holman v. Central Ark. Broad. Co., 4 Media L. Rep. (BNA) 2300 (E.D. Ark. 1979), *aff'd,* 610 F.2d 542 (8th Cir. 1979).

[97] *See* Brunette v. Humane Soc'y of Ventura County, 294 F.3d 1205 (9th Cir. 2002); Lauro v. Charles, 219 F.3d 202 (2d Cir. 2000); Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997); Parker v. Boyer, 93 F.3d 445 (8th Cir. 1996); Stack v. Killian, 96 F.3d 159 (6th Cir. 1996); Brown v. Am. Broad. Co., Inc., 704 F.2d 1296 (4th Cir. 1983); Robinson v. City of Philadelphia, 30 Media L. Rep. (BNA) 1317 (E.D. Pa. 2001); Caldarola v. County of Westchester, 142 F. Supp. 2d 431 (S.D.N.Y. 2001); Lyde v. New York City., 145 F. Supp. 2d 350 (S.D.N.Y. 2001); Nichols v. Hendrix, 27 Media L. Rep. (BNA) 1503 (N.D. Ga. 1999); Swate v. Taylor, 12 F. Supp. 2d 591 (S.D. Tex. 1998); Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997); Hicks v. Cassilly, 971 F. Supp. 956 (D. Md. 1997); Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997); Mullins v. Bookman, 23 Media L. Rep. (BNA) 2374 (N.D. Ga. 1995); Ayeni v. CBS, Inc., 848 F. Supp 362 (E.D.N.Y. 1994); Crowley v. Fox Broad. Co., 851

cases, including the case that went to the U.S. Supreme Court,[98] involved newspaper or magazine photographers as well.[99] No case was found in which someone sued over the presence of a reporter unaccompanied by a photographer.

Ride-along reporting also has led journalists to invoke shield laws.[100] In these cases, the journalist typically witnessed an arrest,[101] or the execution of a search warrant.[102] The person who was arrested or whose property was searched then faced criminal charges. In preparing a criminal defense, the accused tried to compel the reporter-witness to testify about the arrest or compel a broadcast station to hand over footage shot during the search. Journalists and news organizations sought to avoid testifying or providing video by invoking reporter's privilege. In contrast to the other ride-along claims, in which plaintiffs argued that the journalist had ventured somewhere or obtained some information that was off limits, these cases involved an attempt to obtain information that the journalist did not want to provide. Thus, the shield-law cases are not analyzed here.

A. Civil Rights Violations

More than half the opinions identified for this study arose from civil rights claims.[103] Most often, the plaintiff claimed a violation of his or her civil rights under Section 1983 of Title 42 of the U.S. Code.[104] To recover under Section 1983, two elements are required.[105] First, the plaintiff must show "that the defendant deprived him of a right secured by the 'Constitution and laws' of the United States."[106] In most of the ride-along cases, that right was identified as the Fourth Amendment's protection of citizens from unreasonable intrusions by government officials into areas where they have a reasonable expectation of privacy.[107] In a few cases, however, plaintiffs claimed violation of other rights, including the right to privacy as guaranteed by the Fourteenth Amendment.[108] To satisfy the second prong necessary for recovery under Section 1983, the plaintiff must demonstrate that the "defendant acted 'under color of law' when depriving him or her of that right."[109]

Of the civil rights claims that failed, slightly more failed on the first element, deprivation of a constitutional right[110] than on the second element, that the defendant was acting under color

F. Supp. 700 (D. Md. 1994); Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993); Jones/Seymour v. LeFebvre, 19 Media L. Rep. (BNA) 2064 (E.D. Pa. 1992); Huskey v. Nat'l Broad. Co., Inc., 632 F. Supp. 1282 (N.D. Ill. 1986); Moncrief v. Hanton, 782 F.2d 1042 (6th Cir. 1985); Benford v. Am. Broad. Co., Inc., 554 F. Supp. 145 (D. Md. 1982); Smith v. Fairman, 98 F.R.D. 445 (C.D. Ill. 1982); Jones v. Taibbi, 508 F. Supp. 1069 (D. Mass. 1981); Higbee v. Times-Advocate, Inc., 5 Media L. Rep. (BNA) 2372 (S.D. Cal. 1980); Shulman v. Group W. Prods., Inc., 955 P.2d 469 (Cal. 1998); Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668 (Cal. Ct. App. 1986); People v. Henderson, 847 P.2d 239 (Colo. Ct. App. 1993); Fla. Publ'g Co. v. Fletcher, 340 So. 2d 914 (Fla. 1976); Green Valley Sch. v. Cowles Fla. Broad., Inc., 327 So. 2d 810 (Fla. Ct. App. 1976); Nichols v. Ga. Television Co., 552 S.E.2d 550 (Ga. Ct. App. 2001); Belluomo v. KAKE TV & Radio, Inc., 596 P.2d 832 (Kan. Ct. App. 1979); Stern v. Officer John Doe, 806 So. 2d 98 (La. Ct. App. 2001); Diaz v. Univision Television Group, Inc., 29 Media L. Rep. (BNA) 2245 (N.J. Super. 2001); Rogers v. Buckel, 615 N.E.2d 669 (Ohio Ct. App. 1992); Penwell v. Taft Broad. Co., 469 N.E.2d 1025 (Ohio Ct. App. 1984); Haynik v. Zimlich, 508 N.E.2d 195 (Ct. C.P. Cuyahoga County, Ohio, 1986); Delan v. CBS, Inc., 91 A.D.2d 255 (N.Y. App. Div. 1983); Anderson v. WROC-TV, 441 N.Y.S. 2d 220 (N.Y. Sup. Ct., 1981); Magenis v. Fisher Broad., Inc., 798 P.2d 1106 (Or. Ct. App. 1990); Carr v. Mobile Video Tapes, Inc., 893 S.W.2d 613 (Tex. Ct. App. 1994); Prahl v. Brosamle, 295 N.W.2d 768 (Wis. Ct. App. 1980); Holman v. Central Ark. Broad. Co., 610 F.2d 542 (8th Cir. 1979); Avenson v. Zegart, 577 F. Supp. 958 (D. Minn. 1984) [hereinafter *Television Camera Crew Cases*].

98 Wilson v. Layne, 526 U.S. 603 (1999).

99 *Id.*; Dietemann v. Time, Inc., 449 F.2d 245 (9th Cir. 1971); Hagler v. Phila. Newspapers, Inc., 24 Media L. Rep. (BNA) 2332 (E.D. Pa. 1996); Hagler v. The Democrat-News, Inc., 699 S.W.2d 96 (E.D. Mo. 1985); Pierson v. News Group Publ'ns., 549 F. Supp. 635 (S.D. Ga. 1982); Mimms v. Phila. Newspapers, Inc., 352 F. Supp. 862 (E.D. Ga. 1972).

100 *E.g.*, United States v. Sanusi, 813 F. Supp. 149 (E.D.N.Y. 1992); Delaney v. Los Angeles County, 789 P.2d 934 (Cal. 1990); People v. Henderson, 847 P.2d 239 (Colo. Ct. App. 1993); Miami Herald Publ'g Co. v. Morejon, 561 So. 2d 577 (Fla. 1990).

101 *See* Miami Herald Publ'g Co. v. Morejon, 561 So. 2d 577 (Fla. 1990).

102 *See* United States v. Sanusi, 813 F. Supp. 149 (E.D.N.Y. 1992).

103 *See Civil Rights Cases, supra* note 92.

104 Civil Rights Act, 42 U.S.C. §1983 (2000).

105 *See* Jones v. Taibbi, 508 F. Supp. 1069, 1072 (D. Mass. 1981) (explaining that there are two elements necessary in a §1983 claim).

106 *Id.*

107 *See, e.g.*, Katz v. United States, 389 U.S. 347, 353 (1967).

108 Mullins v. Bookman, 23 Media L. Rep. (BNA) 2374 (N.D. Ga. 1995).

109 *See* Adickes v. S.H. Kress & Co., 398 U.S. 144, 150 (1970) (discussing the second element required under a §1983 claim).

110 *See* Stack v. Killian, 96 F.3d 159 (6th Cir. 1996); Jones/Seymour v. LeFebvre, 19 Media L. Rep. (BNA) 2064

of law.[111] Courts were divided as to whether the media were acting under color of law in the ride-along cases. Most of the time, they held that the media were not acting under color of law.[112] In three cases, however, courts held that they were acting under color of law.[113] In one of these three, the court accepted the media's own claim that they were acting under color of law.[114]

The vast majority of civil rights claims stemmed from an incident at a private home or other property with limited accessibility to the public,[115] including five cases filed by people who were incarcerated when the offending incident occurred.[116] Although courts generally were not sympathetic to the inmates, they were sympathetic to plaintiffs whose private homes had been invaded by the media. The best illustration of this point was provided by the U.S. Supreme Court's decision in *Wilson v. Layne*.[117] Writing for a unanimous court, Chief Justice Rehnquist outlined centuries of English law that established the sanctity of the home.[118] After citing a seventeenth-century court decision that referred to the home as one's "castle and fortress,"[119] and Blackstone's eighteenth-century *Commentaries on the Laws of England*, stating that the law "will never suffer [the home] to be violated with impunity,"[120] Rehnquist continued:

> The Fourth Amendment embodies this centuries-old principle of respect for the privacy of the home . . . . Our decisions have applied these basic principles of the Fourth Amendment to situations, like the one in this case, in which police enter a home under the authority of an arrest warrant in order to take into custody the suspect named in the warrant.[121]

Lower courts showed similar sympathy for plaintiffs whose homes had been invaded by police accompanied by the media. In *Ayeni v. CBS*, a woman was clad only in a dressing gown when Secret Service agents accompanied by a television crew burst into her home and videotaped her young son crying behind the couch.[122] The district court stated, "CBS had no greater right than that of a thief to be in the home, to take pictures, and to remove the photographic record."[123] The woman also brought a lawsuit against the Secret Service agents, in which a federal appeals court explained, "A private home is not a soundstage for law enforcement theatricals."[124] In a case filed by another woman whose home was invaded by police and newspaper photographers who took pictures of her underwear-clad children, the court stated, "A search warrant is simply not a press pass."[125]

Government officials in these cases included police,[126] Secret Service agents,[127] members of a

(E.D. Pa. 1992); Avenson v. Zegart, 577 F. Supp. 958 (D. Minn. 1984); Moncrief v. Hanton, 10 Media L. Rep. (BNA) 1620 (N.D. Ohio 1984); Benford v. Am. Broad. Co., Inc., 502 F. Supp. 1159 (D. Md. 1980); Holman v. Central Ark. Broad. Co., 4 Media L. Rep. (BNA) 2300 (E.D. Ark. 1979), *aff'd*, 601 F.2d 542 (8th Cir. 1979); Mimms v. Phila. Newspapers, Inc., 352 F. Supp. 862 (E.D. Pa. 1972); People v. Henderson, 847 P.2d 239 (Colo. Ct. App. 1993); Prahl v. Brosamle, 295 N.W.2d 768 (Wis. Ct. App. 1980).

111 Brunette v. Humane Soc'y of Ventura County, 294 F.3d 1205 (9th Cir. 2002); Parker v. Boyer, 93 F.3d 445 (8th Cir. 1996); Robinson v. City of Philadelphia, 30 Media L. Rep. (BNA) 1317 (E.D. Pa. 2001); Nichols v. Hendrix, 27 Media L. Rep. (BNA) 1503 (N.D. Ga. 1999); Mullins v. Bookman, 23 Media L. Rep. (BNA) 2374 (N.D. Ga. 1995); Jones v. Taibbi, 508 F. Supp. 1069 (D. Mass. 1981).

112 Ayeni v. CBS, 848 F. Supp. 362 (E.D.N.Y. 1994), *aff'd by* Ayeni v. Mottola, 848 F. Supp. 362 (E.D.N.Y. 1994); Jones v. Taibbi, 508 F. Supp. 1069 (D. Mass. 1981); Mimms v. Phila. Newspapers, Inc., 352 F. Supp. 862 (E.D. Pa. 1972); Mullins v. Bookman, 23 Media L. Rep. (BNA) 2374 (N.D. Ga. 1995); Nichols v. Hendrix, 27 Media L. Rep. (BNA) 1503 (N.D. Ga. 1999); Parker v. Boyer, 93 F.3d 445 (8th Cir. 1996); Prahl v. Brosamle, 295 N.W.2d 768 (Wis. Ct. App. 1980).

113 Berger v. Hanlon, 129 F.3d 505, 514-16 (9th Cir. 1997); Dietemann v. Time, Inc., 449 F.2d 245, 247 (9th Cir. 1971); Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726, 736 (S.D. Ohio 1997).

114 Dietemann v. Time, Inc., 449 F.2d 245, 247 (9th Cir. 1971).

115 Cases *not* arising from an incident at a home were Caldarola v. County of Westchester, 142 F. Supp. 2d 431 (S.D.N.Y. 2001) (involving a public perp walk); Lyde v. New York City, 145 F. Supp. 2d 350 (S.D.N.Y. 2001) (focusing on public perp walk); Lauro v. Charles, 219 F.3d 202 (2d Cir. 2000) (involving a public perp walk); Swate v. Taylor, 12 F. Supp. 2d 591 (S.D. Tex. 1998) (involving a methadone clinic); Hicks v. Cassilly, 971 F. Supp. 956 (D. Md. 1997) (involving a bookstore); People v. Henderson, 847 P.2d 239 (Colo. Ct. App. 1993) (focusing on a flyover); Jones v. Taibbi, 508 F. Supp. 1069 (D. Mass. 1981).

116 Mullins v. Bookman, 23 Media L. Rep. (BNA) 2374 (N.D. Ga. 1995); Jones/Seymour v. LeFebvre, 19 Media L. Rep. (BNA) 2064 (E.D. Pa. 1992); Smith v. Fairman, 98 F.R.D. 445 (C.D. Ill. 1982); Holman v. Central Ark. Broad. Co., 4 Media L. Rep. (BNA) 2300 (E.D. Ark. 1979), *aff'd*, 610 F.2d 542 (8th Cir. 1979); Mimms v. Phila. Newspapers, Inc., 352 F. Supp. 862 (E.D. Pa. 1972).

117 Wilson v. Layne, 526 U.S. 603 (1999).

118 *Id.* at 605, 609-10.

119 *Id.* at 609.

120 *Id.* at 610.

121 *Id.*

122 Ayeni v. CBS, Inc., 848 F. Supp. 362 (E.D.N.Y. 1994), *aff'd by* Ayeni v. Mottola, 35 F.3d. 680, 686 (2d Cir. 1994).

123 *Id.* at 368.

124 Ayeni v. Mottola, 35 F.3d. 680, 686 (2d Cir. 1994).

125 Hagler v. Phila. Newspapers, Inc., 24 Media L. Rep. (BNA) 2332, 2334 (E.D. Pa. 1996).

126 Lauro v. Charles, 219 F.3d 202 (2d Cir. 2000); Parker

congressional investigatory team,[128] agents from the U.S. Fish and Wildlife Service,[129] district attorneys,[130] prison wardens,[131] Humane Society officers,[132] U.S. marshals,[133] a state Department of Agriculture official[134] and a Drug Enforcement Agency officer.[135] Nor were police the only officials to execute warrants. Mistreatment of animals was the most common reason for non-police officials to execute a warrant. These included a Humane Society official investigating a puppy mill,[136] a state department of agriculture official investigating an animal shelter,[137] and an investigation by U.S. Fish and Wildlife agents.[138]

Civil rights cases in which officials were not executing a warrant arose from a variety of situations. Some were filed by prison inmates who objected to being filmed or photographed by the media.[139] Others were similar to the warrant cases in that officials investigating a crime cooperated with the media.[140] For example, police flew in a television station's helicopter over the residence of a suspected marijuana grower, and the TV station was able to videotape the scene from the helicopter.[141]

Even when officials were not executing a warrant, courts still were mindful about limiting the coercive power of the police. An example was *Barrett v. Outlet Broadcasting*, the case that arose from a 9-1-1 call reporting a self-inflicted gunshot wound.[142] The court ruled that the police were justified in entering the plaintiff's home, "and as such the police were temporarily placed in control of the premises."[143] But, the court explained that it was not permissible for police to allow a news crew into a private residence without placing limits on the crew's conduct.[144]

Police coercion in the absence of a warrant took place in public as well as private places. For instance, *Lauro v. Charles* arose from a "perp walk,"[145] which is a police officer's slang for parading an arrestee outside the precinct upon request from the media.[146] The Second Circuit held that the perp walk violated the plaintiff's Fourth Amendment rights.[147] The police had taken the plaintiff outside the police station for a perp walk because the media were interested in the case.[148] The court emphasized that such a perp walk was a "staged recreation of [an] event . . . an inherently fictional dramatization of an event that transpired

v. Boyer, 93 F.3d 445 (8th Cir. 1996); Holman v. Central Ark. Broad. Co., 4 Media L. Rep. (BNA) 2300 (E.D. Ark. 1979), *aff'd*, 610 F.2d 542 (8th Cir. 1979); Caldarola v. County of Westchester, 142 F. Supp. 2d 431 (S.D.N.Y. 2001); Lyde v. New York City, 145 F. Supp. 2d 350 (S.D.N.Y. 2001); Nichols v. Hendrix, 27 Media L. Rep. (BNA) 1503 (N.D. Ga. 1999); Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997); Hagler v. Phila. Newspapers, Inc., 24 Media L. Rep. (BNA) 2332, 2334 (E.D. Pa. 1996); Moncrief v. Hanton, 782 F.2d 1042 (1985); Jones v. Taibbi, 508 F. Supp. 1069 (D. Mass. 1981); People v. Henderson, 847 P.2d 239 (Colo. Ct. App. 1993); Prahl v. Brosamle, 295 N.W.2d 768 (Wis. Ct. App. 1980).

127 Ayeni v. CBS, Inc., 848 F. Supp. 362 (E.D.N.Y. 1994), *aff'd by* Ayeni v. Mottola, 35 F.3d. 680, 686 (2d Cir. 1994).

128 Benford v. Am. Broad. Cos., 502 F. Supp. 1159 (D. Md. 1980).

129 Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997), *vacated*, Hanlon v. Berger, 526 U.S. 808 (1999).

130 *See, e.g.*, Dietemann v. Time, Inc., 449 F.2d 245 (9th Cir. 1971); Hicks v. Cassilly, 971 F. Supp. 956 (D. Md. 1997) (involving an agreement between media and the Los Angeles District Attorney's Office whereby the media were given permission by the D.A.'s office to visit the plaintiff).

131 Mullins v. Bookman, 23 Media L. Rep. (BNA) 2374 (N.D. Ga. 1995); Jones/Seymour v. LeFebvre, 19 Media L. Rep. (BNA) 2064 (E.D. Pa. 1992); Smith v. Fairman, 98 F.R.D. 445 (C.D. Ill. 1982); Mimms v. Phila. Newspapers, Inc., 352 F. Supp. 862 (E.D. Pa. 1972).

132 Brunette v. Humane Soc'y of Ventura County, 294 F.3d 1205 (9th Cir. 2002).

133 Wilson v. Layne, 526 U.S. 603 (1999).

134 Stack v. Killian, 96 F.3d 159 (6th Cir. 1996).

135 Swate v. Taylor, 12 F. Supp. 2d 591 (S.D. Tex. 1998).

136 Avenson v. Zegart, 577 F. Supp. 958 (D. Minn. 1984).

137 Stack v. Killian, 96 F.3d 159 (6th Cir. 1996).

138 Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997).

139 *E.g.*, Mullins v. Bookman, 23 Media L. Rep. (BNA) 2374 (N.D. Ga. 1995); Jones/Seymour v. LeFebrve, 19 Media L. Rep. (BNA) 2064 (E.D. Pa. 1992); Smith v. Fairman, 98 F.R.D. 445 (C.D. Ill. 1982); Mimms v. Phila. Newspapers, Inc., 352 F. Supp. 862 (E.D. Pa. 1972).

140 Dietemann v. Time, Inc., 449 F.2d 245 (9th Cir. 1971) (involving the magazine staff accompanying the district attorney's office to investigate an alleged medical quack); Caldarola v. County of Westchester, 142 F. Supp. 2d 431 (S.D.N.Y. 2001) (involving a perp walk); Lyde v. New York City, 145 F. Supp 2d 350 (S.D.N.Y. 2001) (involving a perp walk); Benford v. Am. Broad. Cos., 502 F. Supp. 1159 (D. Md. 1980) (highlighting a television crew surreptitiously taping congressional questioning of an insurance salesman suspected of wrongdoing); Prahl v. Brosamle, 295 N.W.2d 768 (Wis. Ct. App. 1980) (involving a television crew accompanying a SWAT team as it responded to a report of shots being fired at several boys).

141 People v. Henderson, 847 P.2d 239 (Colo. Ct. App. 1993).

142 Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726, 731 (S.D. Ohio 1997).

143 *Id.* at 737.

144 *Id.* at 739.

145 Lauro v. Charles, 219 F.3d 202 (2d Cir. 2000).

146 *Id.* at 203 (explaining that "perp" is a police officer's slang for "perpetrator").

147 *Id.* at 213.

148 *Id.*

hours earlier."[149] The "staged" nature of the event meant it did not effectively serve the legitimate state interest in accurate reporting of police activity.[150] However, the court ultimately decided the case in favor of the defendant police officer, holding that he was entitled to qualified immunity because, as the court explained, it had not been clearly established at the time of the 1995 perp walk that such activity was unconstitutional.[151]

In subsequent Fourth Amendment claims arising from perp walks, courts continued to comment on the coercive and humiliating nature of the activity. One such claim ultimately failed because it was not a staged event; police were legitimately transporting a suspect from the police station to a courthouse for arraignment.[152] But another perp walk claim, in which a police officer and the city of New York were both defendants, went forward on the claim against the city.[153] Although the officer involved was deemed to have qualified immunity,[154] the claim survived the city's motion to dismiss.[155] The plaintiff had a chance to show whether his Fourth Amendment right was violated as a result of a municipal policy, and there was evidence that perp walks were indeed a common police practice in the city.[156]

Some civil rights cases claimed media liability,[157] some claimed official liability,[158] and some claimed both.[159] Plaintiffs claiming official liability generally found a more sympathetic ear in court than did those claiming media liability, as illustrated by the Court's decision in *Wilson v. Layne*.[160] When considering media liability, courts have generally held that the media were not acting under color of law,[161] or had not violated a constitutional right.[162] But, when considering claims of official liability, courts are more likely to find a violation or a potential violation of a constitutional right.[163]

Plaintiffs in the civil rights claims fell into three

149 *Id.*

150 *Id.*

151 *Id.* at 216.

152 Caldarola v. County of Westchester, 142 F. Supp. 2d 431, 443 (S.D.N.Y. 2001).

153 Lyde v. New York City, 145 F. Supp. 2d 350 (S.D.N.Y. 2001).

154 *Id.* at 354.

155 *Id.* at 355.

156 *Id.* at 354-55.

157 *See, e.g.,* Dietemann v. Time, Inc., 449 F.2d 245 (9th Cir. 1971) (involving a magazine); Nichols v. Hendrix, 27 Media L. Rep. (BNA) 1503 (N.D. Ga. 1999) (involving television); Mullins v. Bookman, 23 Media L. Rep. (BNA) 2374 (N.D. Ga. 1995) (involving television); Jones v. Taibbi, 508 F. Supp. 1069 (D. Mass. 1981) (involving television).

158 *See, e.g.,* Wilson v. Layne, 526 U.S. 603 (1999) (involving federal marshals); Stack v. Killian, 96 F.3d 159 (6th Cir. 1996) (concerning a state agriculture department official); Caldarola v. County of Westchester, 142 F. Supp. 2d 431 (S.D.N.Y. 2001) (involving the police and state Department of Corrections); Lauro v. Charles, 219 F.3d 202 (2d Cir. 2000) (involving police); Swate v. Taylor, 12 F. Supp. 2d 591 (S.D. Tex. 1998) (concerning Drug Enforcement Agency officials); Hicks v. Cassilly, 971 F.Supp. 956 (D. Md. 1997) (concerning the district attorney); Hagler v. Phila. Newspapers, Inc., 24 Media L. Rep. (BNA) 2332 (E.D. Pa. 1996) (concerning the police); Jones/Seymour v. LeFebvre, 19 Media L. Rep. (BNA) 2064 (E.D. Pa. 1992) (concerning a prison official); Avenson v. Zegart, 577 F. Supp. 958 (D. Minn. 1984) (involving a Humane Society officer); Smith v. Fairman, 98 F.R.D. 445 (C.D. Ill. 1982) (concerning a prison warden); People v. Henderson, 847 P.2d 239 (Colo. Ct. App. 1993) (involving the police).

159 *See, e.g.,* Brunette v. Humane Soc'y of Ventura County, 294 F.3d 1205 (9th Cir. 2002) (involving television and Humane Society officers); Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997) (concerning television and U.S. Fish and Wildlife Service officers); Parker v. Boyer, 93 F.3d 445 (8th Cir. 1996) (involving television and the police); Lyde v. New York City, 145 F. Supp. 2d 350 (S.D.N.Y. 2001) (involving television and police); Robinson v. City of Philadelphia, 30 Media L. Rep. (BNA) 1317 (E.D. Pa. 2001) (taking issue with television and police); Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997) (concerning television and the police); Ayeni v. CBS Inc., 848 F. Supp. 362 (E.D.N.Y. 1994), *aff'd sub nom.* Ayeni v. Mottola, 35 F.3d 680 (2d Cir. 1994) (taking issue with television and the Secret Service); Moncrief v. Hanton, 10 Media L. Rep. (BNA) 1620 (N.D. Ohio 1984) (concerning television and the police); Benford v. Am. Broad. Co., 554 F. Supp. 145 (D. Md. 1982) (involving television and congressional staff); Holman v. Central Ark. Broad. Co., 4 Media L. Rep. (BNA) 2300 (E.D. Ark. 1979), *aff'd,* 610 F.2d 542 (8th Cir. 1979) (involving radio and the police); Mimms v. Phila. Newspapers, Inc., 352 F. Supp. 862 (E.D. Pa. 1972) (concerning newspaper and a prison official); Prahl v. Brosamle, 295 N.W.2d 768 (Wis. Ct. App. 1980) (taking issue with television and the police).

160 Wilson v. Layne, 526 U.S. 603 (1999).

161 *See, e.g.,* Brunette v. Humane Soc'y of Ventura County, 294 F.3d 1205 (9th Cir. 2002); Parker v. Boyer, 93 F.3d 445 (8th Cir. 1996); Nichols v. Hendrix, 27 Media L. Rep. (BNA) 1503 (N.D. Ga. 1999); Mullins v. Bookman, 23 Media L. Rep. (BNA) 2374 (N.D. Ga. 1995); Jones v. Taibbi, 508 F. Supp 1069 (D. Mass. 1981); Mimms v. Phila. Newspapers, Inc., 352 F. Supp. 862 (E.D. Pa. 1972); Prahl v. Brosamle, 295 N.W.2d 768 (Wis. Ct. App. 1980).

162 *See, e.g.,* Robinson v. City of Philadelphia, 30 Media L. Rep. (BNA) 1317 (E.D. Pa. 2001); Moncrief v. Hanton, 10 Media L. Rep. (BNA) 1620 (N.D. Ohio 1984); Benford v. Am. Broad. Cos., 554 F. Supp. 145 (D. Md. 1982); Holman v. Central Ark. Broad. Co., 4 Media L. Rep. (BNA) 2300 (E.D. Ark. 1979), *aff'd,* 610 F.2d 542 (8th Cir. 1979).

163 *See, e.g.,* Wilson v. Layne, 526 U.S. 603 (1999); Lauro v. Charles, 219 F.3d 202 (2d Cir. 2000); Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997); Swate v. Taylor, 12 F. Supp. 2d 591 (S.D. Tex. 1998); Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997); Hagler v. Phila. Newspapers, Inc., 24 Media L. Rep. (BNA) 2332 (E.D. Pa. 1996); Ayeni v. CBS, Inc., 848 F. Supp. 362 (E.D.N.Y. 1994), *aff'd sub nom.*

broad categories. More than half were people suspected of wrongdoing;[164] the rest were evenly divided between incarcerated individuals[165] and innocent bystanders.[166] The courts had a sympathetic ear for most of the innocent bystander plaintiffs.[167] They were sympathetic to only one of the five incarcerated plaintiffs.[168] And, the courts were sympathetic to suits filed by suspects when official liability was claimed.[169] In general, the courts have appeared sensitive to limiting the coercive powers of the police.

Similarly, noting that the *Washington Post* did not publish its photographs of the event, the Court in *Wilson v. Layne* focused on the intrusive aspect of the ride-along, not on the publication.[170] The Court wrote that petitioner Charles Wilson was "dressed only in a pair of briefs" and petitioner Geraldine Wilson was "wearing only a nightgown" when officers and the media entered their home.[171] Other courts, too, discussed the indignities faced by some of these plaintiffs during the ride-along. For instance, in *Ayeni v. Mottola*, plaintiff Tawa Ayeni was "clad in a dressing gown."[172] Similarly, the children of the plaintiff in *Hagler v. Philadelphia Newspapers, Inc.*, were photographed "wearing nothing but their underwear," and the photos were published in a local newspaper.[173] The court has responded to these concerns of invasion of privacy. In *Lauro*, the court stated that the controversial perp walk,

> had the effect only of humiliating plaintiff, assisting the media in sensationalizing the facts of his case, and allowing [Detective] Charles to appear on television. None of these effects qualifies as a legitimate interest of law enforcement officers—whose legal obligation is not to provide titillating entertainment to the public but rather to enforce the laws of the state in a meaningful and prudent manner.[174]

B. Privacy

More than one-third of the opinions reviewed for this study included privacy claims. Most common were claims of intrusion,[175] followed by private facts,[176] false light[177] and appropriation.[178] A few privacy claims did not fit into any of these categories.[179] Following the pattern of decisions in

Ayeni v. Mottola, 35 F.3d 680 (2d Cir. 1994); Smith v. Fairman, 98 F.R.D. 445 (C.D. Ill. 1982).

164 Brunette v. Human Soc'y of Ventura County, 294 F.3d 1205 (9th Cir. 2002); Lauro v. Charles, 219 F.3d 202 (2d Cir. 2000); Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997); Stack v. Killian, 96 F.3d 159 (6th Cir. 1996); Dietemann v. Time, Inc., 449 F.2d 245 (9th Cir. 1971); Robinson v. City of Philadelphia, 30 Media L. Rep. (BNA) 1317 (E.D. Pa. 2001); Caldarola v. County of Westchester, 142 F. Supp. 2d 431 (S.D.N.Y. 2001); Lyde v. New York City, 145 F. Supp. 2d 350 (S.D.N.Y. 2001); Swate v. Taylor, 12 F. Supp. 2d 591 (S.D. Tex. 1998); Nichols v. Hendrix, 27 Media L. Rep. (BNA) 1503 (N.D. Ga. 1999); Hicks v. Cassilly, 971 F. Supp. 956 (D. Md. 1997); Avenson v. Zegart, 577 F. Supp. 958 (D. Minn. 1984); Moncrief v. Hanton, 10 Media L. Rep. (BNA) 1620 (N.D. Ohio 1984); Benford v. Am. Broad. Cos., 502 F. Supp. 1159 (D. Md. 1980); Jones v. Taibbi, 508 F. Supp. 1069 (D. Mass. 1981); People v. Henderson, 847 P.2d 239 (Colo. Ct. App. 1993); Prahl v. Brosamle, 295 N.W.2d 768 (Wis. Ct. App. 1980).

165 Mullins v. Bookman, 23 Media L. Rep. (BNA) 2374 (N.D. Ga. 1995); Jones/Seymour v. LeFebvre, 19 Media L. Rep. (BNA) 2064 (E.D. Pa. 1992); Smith v. Fairman, 98 F.R.D. 445 (C.D. Ill. 1982); Holman v. Central Ark. Broad. Co., 4 Media L. Rep. (BNA) 2300 (E.D. Ark. 1979); Mimms v. Phila. Newspapers Inc., 352 F. Supp. 862 (E.D. Pa. 1972).

166 Wilson v. Layne, 526 U.S. 603 (1999); Parker v. Boyer, 93 F.3d 445 (8th Cir. 1996); Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997); Hagler v. Phila. Newspapers, Inc., 24 Media L. Rep. (BNA) 2332 (E.D. Pa. 1996); Ayeni v. CBS Inc., 848 F. Supp. 362 (E.D.N.Y. 1994), *aff'd sub nom.* Ayeni v. Mottola, 35 F.3d 680 (2d Cir. 1994).

167 *See* Barrett v. Outlet Broad. Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997) (holding that media and police violated plaintiff's civil rights); Hagler v. Phila. Newspapers, Inc., 24 Media L. Rep. (BNA) 2332 (E.D. Pa. 1996) (declaring that police violated plaintiff's civil rights); Ayeni v. CBS Inc., 848 F. Supp. 362 (E.D.N.Y. 1994) (ruling that media violated plaintiff's civil rights), *aff'd sub nom.* Ayeni v. Mottola, 22 Media L. Rep. (BNA) 2225 (2d Cir. 1994) (holding that officials violated plaintiff's civil rights). *But see* Parker v. Boyer, 93 F.3d 445 (8th Cir. 1996) (holding that the media were not acting under color of law and that the police had qualified immunity).

168 Smith v. Fairman, 98 F.R.D. 445 (C.D. Ill. 1982) (denying defendant prison warden's motion for summary judgment).

169 *See* Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997) (dealing with media liability); Lauro v. Charles, 219 F.3d 202 (2d Cir. 2000); Swate v. Taylor, 12 F. Supp. 2d 591 (S.D. Tex. 1998).

170 Wilson v. Layne, 526 U.S. 603, 608 (1999).

171 *Id.* at 607.

172 Ayeni v. Mottola, 35 F.3d 680, 683 (2d Cir. 1994).

173 Hagler v. Phila. Newspapers, Inc., 24 Media L. Rep. (BNA) 2332, 2333 (ED. Pa. 1996).

174 Lauro v. New York City, 39 F. Supp. 2d 351, 364 (S.D.N.Y. 1999).

175 *See Intrusion Cases, supra* note 88.

176 *See Private Fact Cases, supra* note 91.

177 *See False Light Cases, supra* note 90.

178 *See Appropriation Cases, supra* note 89.

179 Brown v. Am. Broad. Cos., 704 F.2d 1296 (4th Cir. 1983); Dietemann v. Time, Inc., 449 F.2d 245 (9th Cir. 1971); Hicks v. Cassilly, 971 F. Supp. 956 (D. Md. 1997); Jones/Seymour v. LeFebvre, 19 Media L. Rep. (BNA) 2064 (E.D. Pa. 1992); Higbee v. Times-Advocate, Inc., 5 Media L. Rep. (BNA) 2372 (S.D. Cal. 1980); Holman v. Central Ark. Broad., 4 Media L. Rep. (BNA) 2300 (E.D. Ark. 1979), *aff'd*, 610 F.2d 542 (8th Cir. 1979); Mimms v. Phila. Newspapers, Inc., 352 F. Supp. 862 (E.D. Pa. 1972) (finding a constitutional right to privacy); Delan v. CBS, Inc., 458 N.Y.S.2d 608 (N.Y. App. Div.

privacy cases against the media in general, plaintiffs in ride-along cases seldom prevailed. Of the four privacy torts, the intrusion claims were most likely to find a sympathetic ear in court.[180] Those claiming public disclosure of private facts or false light were likely to have their claims rejected. However, generally, the appropriation claims stemming from ride-alongs were unsuccessful,[181] unlike appropriation claims arising from other situations.[182]

C. Intrusion

Intrusion was the most frequently claimed privacy tort, figuring in half of the privacy claims.[183] Four of the plaintiffs in intrusion claims found a sympathetic ear in court.[184] The tort of intrusion consists of two elements: (1) intrusion into a private place (2) in a manner highly offensive to a reasonable person,[185] with consent being an absolute defense.[186] Courts applied these criteria when deciding the ride-along cases, with varying results.

The case that presented the clearest illustration of a viable intrusion claim was *Shulman v. Group W Productions*, decided in 1998 by the California Supreme Court.[187] The court reversed a lower court's summary judgment in favor of a television crew that made and broadcast an audio recording of an accident victim's conversation with a nurse in a medical rescue helicopter.[188] Addressing the first element, the expectation of privacy, the *Shulman* court compared the helicopter to an ambulance, stating, "Although the attendance of reporters and photographers at the scene of an accident is to be expected, we are aware of no law or custom permitting the press to ride in ambulances or enter hospital rooms during treatment without the patient's consent."[189] Addressing the second element, the offensiveness of the intrusion, the court stated that the camera crew,

> took calculated advantage of the patient's 'vulnerability and confusion.' Arguably, the last thing an injured accident victim should have to worry about while being pried from her wrecked car is that a television producer may be recording everything she says . . . to medical personnel for the possible edification and entertainment of casual television viewers.[190]

The court held that a patient in these circumstances is incapable of giving consent.[191] In addition, the court ruled that the intrusion was not privileged even though it involved newsgathering.[192]

In contrast to the law enforcement officials who composed most of the authorized individuals in the civil rights claims, the official in *Shulman* was a nurse;[193] a helper, not a law enforcer. Other intrusion cases also involved officials who were helpers, including paramedics[194] and a victim's advocate.[195] In another instance, the plaintiffs were the wife and daughter of a man who had suffered a heart attack in his bedroom.[196] When paramedics arrived to administer life-saving techniques, they were accompanied by a television crew that shot footage of the event.[197] NBC used the film on its nightly news.[198]

Plaintiffs in intrusion cases included crime sus-

1983).

180 *See, e.g.*, Huskey v. Nat'l Broad. Co., 632 F. Supp. 1282 (N.D. Ill. 1986); Carr v. Mobile Video Tapes, Inc., 893 S.W.2d 613 (Tex. Ct. App. 1994); Shulman v. Group W Prods., 955 P.2d 469 (Cal. 1998); Miller v. Nat'l Broad. Co., 232 Cal. Rptr 668 (Cal. Ct. App. 1986).

181 Of the appropriation claims listed, five did not go forward. In the sixth case, Hagler v. Phila. Newspapers, Inc., 24 Media L. Rep. (BNA) 2332 (E.D. Pa. 1996), the court did not discuss the appropriation claim.

182 *See, e.g.*, Midler v. Ford Motor Co., 849 F.2d 460 (9th Cir. 1988); Eastwood v. Superior Court, 198 Cal. Rptr. 342 (Cal. Ct. App. 1983); Onassis v. Christian Dior of N.Y., Inc., 472 N.Y.S.2d 254 (N.Y. Sup. Ct. 1984). *See also* Jonathon Kahn, *Bringing Dignity Back to Light: Publicity Rights and the Eclipse of the Tort of Appropriation of Identity*, 17 CARDOZO ARTS & ENT. L.J. 213 (1999).

183 *See Intrusion Cases, supra* note 88.

184 Huskey v. Nat'l Broad. Co., 632 F. Supp. 1282 (N.D. Ill. 1986); Carr v. Mobile Video Tapes, Inc., 893 S.W.2d 613 (Tex. Ct. App. 1994); Shulman v. Group W Prods., 955 P.2d 469 (Cal. 1998); Miller v. Nat'l Broad. Co., Inc., 232 Cal. Rptr 668 (Cal. Ct. App. 1986).

185 RESTATEMENT (SECOND) OF TORTS §652B (1977).

186 Baugh v. CBS, Inc., 828 F. Supp. 745, 757 (N.D. Cal. 1993).

187 Shulman v. Group W Prods., Inc., 955 P.2d 469 (Cal. 1998).

188 *Id.* at 497.

189 *Id.* at 490.

190 *Id.* at 494.

191 *Id.*

192 *Id.*

193 *Id.* at 475.

194 Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668, 670 (Cal. Ct. App. 1986).

195 Baugh v. CBS, Inc., 828 F. Supp. 745, 750 (N.D. Cal. 1993).

196 Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668, 670 (Cal. Ct. App. 1986).

197 *Id.*

198 *Id.*

pects,[199] an inmate,[200] bereaved family members,[201] an accident victim[202] and an Army lieutenant who underwent POW training.[203] When the plaintiff prevailed, the location of the offending incident was always a place traditionally inaccessible to the general public: the home,[204] a private ranch,[205] a medical rescue helicopter,[206] a prison.[207] Plaintiffs who prevailed in the intrusion cases also had in common the fact that they were involved with authorized officials in life-and-death situations through uncontrollable misfortune. The plaintiff in *Shulman* had little choice but to allow the medical helicopter crew to take care of her.[208] The family in *Miller* called for emergency medical help when the father suffered an apparent coronary; they had no way of knowing the paramedics would bring a TV crew into their home.[209]

D. Private Facts

Publication of private facts was a cause of action in eight cases.[210] Elements of this tort are public disclosure of a private fact that is offensive to a reasonable person and not of legitimate public concern.[211] Private facts claims typically fail because the fact is indeed newsworthy. All but one of the private facts claims stemming from a ride-along failed on the newsworthiness prong of the test.[212]

Private facts claims arose from incidents in a bar,[213] a private home,[214] a prison[215] and a medical rescue helicopter.[216] In all cases, a television crew captured sound or footage of the plaintiff in that location. For example, *Penwell v. Taft Broadcasting Co.*, decided by an Ohio appeals court in 1984, was filed by an innocent bystander in a drug bust in a small-town bar.[217] Plaintiff Billy Gene Penwell, Jr. was having a drink when police ordered him to put his hands over his head, after which they frisked, handcuffed, and removed him from the bar.[218] A local television station captured the arrest on videotape and aired it on several news programs, even though police later determined that his arrest was a case of mistaken identity.[219] Penwell's claim for private facts failed because of the event's newsworthiness. The court noted that his arrest was part of the largest drug raid in county history—a matter in which the public had a legitimate concern.[220]

Other unsuccessful plaintiffs claiming this cause of action were those in *Shulman*,[221] the case filed by the accident victim transported in the medical rescue helicopter, and in *Reeves v. Fox Television*, which was filed by a man who police, accompanied by a television crew, arrested in his

199 Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997) (involving an assault suspect); Haynik v. Zimlich, 30 Ohio Misc. 2d 16 (Ct. C.P. Cuyahoga Cty., Ohio, 1986) (involving suspect arrested on felony drug charges); Carr v. Mobile Video Tapes, Inc., 893 S.W.2d 613 (Tex. Ct. App. 1994) (concerning an animal cruelty suspect).

200 Huskey v. Nat'l Broad. Co., 632 F. Supp. 1282, 1285 (N.D. Ill. 1986).

201 Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668, 670 (Cal. Ct. App. 1986).

202 Shulman v. Group W Prods., Inc., 955 P.2d 469, 474 (Cal. 1998).

203 Pierson v. News Group Publ'ns, Inc., 549 F. Supp. 635, 637 (S.D. Ga. 1982).

204 Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668, 683 (Cal. Ct. App. 1986).

205 Carr v. Mobile Video Tapes, 893 S.W.2d 613, 616 (Tex. Ct. App. 1994).

206 Shulman v. Group W Prods., Inc., 955 P.2d 469, 474-75 (Cal. 1998).

207 Huskey v. Nat'l Broad. Co., 632 F. Supp. 1282, 1285 (N.D. Ill. 1986).

208 Shulman v. Group W Prods., Inc., 955 P.2d 469, 474-75 (Cal. 1998).

209 Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668, 670 (Cal. Ct. App. 1986).

210 Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997); Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993); Huskey v. Nat'l Broad. Co., 632 F. Supp. 1282 (N.D. Ill. 1986); Carr v. Mobile Video Tapes, 893 S.W.2d 613 (Tex. Ct. App. 1994); Pierson v. News Group Publ'ns, Inc., 549 F. Supp. 635 (S.D. Ga. 1982); Shulman v. Group W Prods., Inc., 955 P.2d 469 (Cal. 1998); Diaz v. Univision Television Group, 29 Media L. Rep. (BNA) 2245 (N.J. Super. Ct. Law Div. 2001); Penwell v. Taft Broad. Co., 469 N.E.2d 1025 (Ohio Ct. App. 1984).

211 RESTATEMENT (SECOND) OF TORTS §652D (1977).

212 Huskey v. Nat'l Broad. Co., 632 F. Supp. 1282, 1289 (N.D. Ill. 1986) (holding that the plaintiff's tattoo was not a matter of public concern and therefore, not fair game for broadcast).

213 *See* Penwell v. Taft Broad. Co., 469 N.E.2d 1025 (Ohio Ct. App. 1984).

214 *See* Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997); Diaz v. Univision Television Group, 29 Media L. Rep. (BNA) 2245 (N.J. Super. Ct. Law Div. 2001).

215 *See* Huskey v. Nat'l Broad. Co., 632 F. Supp. 1282 (N.D. Ill. 1986).

216 *See* Shulman v. Group W Prods., Inc., 955 P.2d 469 (Cal. 1998).

217 Penwell v. Taft Broad. Co., 469 N.E.2d 1025, 1027 (Ohio Ct. App. 1984).

218 *Id.*

219 *Id.*

220 *Id.* at 1028.

221 Shulman v. Group W Prods., Inc., 955 P.2d 469 (Cal. 1998).

own home.[222] Also unsuccessful was the plaintiff in *Diaz v. Univision Television Group,* which concerned a man who was described in a television news program as a "deadbeat dad," that is, delinquent in his child support payments.[223]

The prisoner who filed *Huskey v. NBC* was allowed to go forward with his claim because the court agreed he was engaged in private activity when the camera crew filmed him in the prison exercise cage, where his distinctive tattoos were visible.[224] In four private facts claims, plaintiffs claimed that officials had coercive power: the prison warden in *Huskey,*[225] and the police in *Reeves,*[226] *Penwell,*[227] and *Diaz.*[228]

E. False Light

False light invasion of privacy is the publication of information in a manner that places a person in a false and offensive light.[229] Fewer and fewer jurisdictions are recognizing false light as a separate cause of action, distinct from defamation.[230] In keeping with this trend, courts rejected all but one of the eight claims of false light filed in the ride-along cases.[231] The one case that survived summary judgment was *Pierson v. News Group Publications,* decided in 1982 by a federal district court.[232] Pierson was an Army officer who underwent training at a military reservation.[233] The Army permitted a freelance photographer who was working with a print reporter to take pictures of the training.[234] Pierson said the resulting publicity made him appear weak, while the media defendant claimed it made him appear superhuman.[235] The court ruled that the interpretation of the articles was a matter for the jury to decide.[236]

F. Appropriation

Appropriation is the use of someone's name or likeness for trade or commercial purposes without consent.[237] Although it has become increasingly difficult for plaintiffs to win most kinds of privacy claims against the media, they can still sometimes succeed with appropriation claims.[238] Six ride-along cases included claims of appropriation. Courts rejected five of the claims,[239] and did not reach the issue in the fifth.[240] The courts' rationale for rejecting the appropriation claims fell into two groups: (1) the message at issue had a news purpose, not just a commercial purpose;[241] or (2) the plaintiff's name had no intrinsic commercial value.[242]

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222 Reeves v. Fox Television Network, 983 F. Supp. 703, 707 (N.D. Ohio 1997).

223 29 Media L. Rep. (BNA) 2245 (N.J. Super. Ct. Law Div. 2001).

224 Huskey v. Nat'l Broad. Co., 632 F. Supp. 1282, 2109 (N.D. Ill. 1986).

225 *Id.*

226 Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997).

227 Penwell v. Taft Broad. Co., 469 N.E.2d 1025 (Ohio Ct. App. 1984).

228 Diaz v. Univision Television Group, 29 Media L. Rep. (BNA) 2245 (N.J. Super. Ct. Law Div. 2001).

229 RESTATEMENT (SECOND) OF TORTS §652E cmt. b (1977)

230 *See* Ruth Walden and Emile Netzhammer, *False Light Invasion of Privacy: Untangling the Web of Uncertainty,* 9 HASTINGS COMM. & ENT. L.J. 347 (1987).

231 Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997); Pierson v. News Group Publ'ns, Inc., 549 F. Supp. 635 (S.D. Ga. 1982); Hagler v. Phila. Newspapers, Inc., 24 Media L. Rep. (BNA) 2332 (E.D. Pa. 1996); Stern v. Officer John Doe, 806 So. 2d 98 (La. Ct. App. 2001); Diaz v. Univision Television Group, 29 Media L. Rep. (BNA) 2245 (N.J. Super. Ct. Law Div. 2001); Penwell v. Taft Broad. Co., 469 N.E.2d 1025 (Ohio Ct. App. 1984); Magenis v. Fisher Broad., Inc., 798 P.2d 1106 (Or. Ct. App. 1990); Carr v. Mobile Video Tapes, Inc., 893 S.W.2d 613 (Tex. Ct. App. 1994).

232 Pierson v. News Group Publ'ns, 549 F. Supp. 635 (S.D. Ga. 1982).

233 *Id.* at 637.

234 *Id.*

235 *Id.* at 642.

236 *Id.*

237 RESTATEMENT (SECOND) OF TORTS, §652C (1977).

238 *See, e.g.,* Midler v. Ford Motor Co., 849 F.2d 460 (9th Cir. 1988); Eastwood v. Superior Court, 198 Cal. Rptr. 342 (Cal. Ct. App. 1983); Onassis v. Christian Dior of N.Y., Inc., 472 N.Y.S.2d 254 (N.Y. Sup. Ct. 1984). *See also* Jonathan Kahn, *Bringing Dignity Back to Light: Publicity Rights and the Eclipse of the Tort of Appropriation of Identity,* 17 CARDOZO ARTS & ENT. L.J. 213 (1999).

239 Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997); Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993); Pierson v. News Group Publ'ns, Inc., 549 F. Supp. 635 (S.D. Ga. 1982); Diaz v. Univision Television Group, Inc., 29 Media L. Rep. (BNA) 2245 (N.J. Super. Ct. Law Div. 2001); Delan v. CBS, Inc., 91 A.D.2d 255 (N.Y. App. Div. 1983).

240 Hagler v. Phila. Newspapers, Inc., 24 Media L. Rep. (BNA) 2332 (E.D. Pa. 1996).

241 Baugh v. CBS, Inc., 828 F. Supp. 744, 755 (N.D. Cal. 1993).

242 *See, e.g.,* Reeves v. Fox Television Network, 983 F. Supp. 703, 709 (N.D. Ohio 1997); Pierson v. News Group Publ'ns, 549 F. Supp. 635, 642 (S.D. Ga. 1982); Diaz v. Univision Television Group, Inc., 29 Media L. Rep. (BNA) 2245, 2248 (N.J. Super. Ct. Law Div. 2001).

G. Other Privacy Claims

Plaintiffs who made general claims of violation of the constitutional right to privacy did not fare well in court.[243] Such was the case for lawyer Marvin Holman, the plaintiff in *Holman v. Central Arkansas Broadcasting*, decided by a federal district court in 1979.[244] When Holman got publicly drunk, he was placed in the city jail, where he became violent and loud enough to be heard on the street.[245] A radio announcer arrived at the jail and attempted to interview Holman, who tried to snatch the broadcaster's microphone.[246] The broadcaster recorded Holman's voice as he screamed and pounded on the bars of his jail cell.[247] Holman filed suit, claiming that police violated his privacy when they told the media he was in custody.[248] The district court ruled that reporting the fact of an arrest and detention did not constitute invasion of privacy.[249]

Another inmate plaintiff in *Jones/Seymour v. LeFebvre*, was similarly unsuccessful.[250] The plaintiff was a state prisoner who claimed that the defendant prison superintendent permitted a television crew to film him without consent.[251] In 1992, a federal district court held that the facts in *Jones/Seymour* were "not egregious enough" to state a cause of action for violation of the constitutional right to privacy.[252]

H. Trespass

Trespass was claimed in thirteen cases identified for this study, making it a fairly common cause of action to stem from a ride-along.[253] Every trespass claim resulted from the presence of television reporters,[254] or newspaper photographers[255]—never a print reporter working alone. Most resulted from the presence of reporters in a private home[256] or other traditionally private locations, such as a private school.[257] A variety of officials were involved, from an animal welfare worker to a fire marshal.[258] Most were enforce-

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243 *See, e.g.*, Holman v. Central Ark. Broad. Co., 4 Media L. Rep. (BNA) 2300 (E.D. Ark. 1979), *aff'd*, 610 F.2d 542 (8th Cir. 1979) (claiming a violation of civil rights under 42 U.S.C. §1983, specifically the constitutional right to privacy derived from the penumbras of the First, Fourth, Fifth, and Ninth Amendments); Hicks v. Cassilly, 971 F. Supp. 956 (D. Md. 1997), *rev'd*, 961 F.2d 1567 (3d. Cir. Pa. 1992) (alleging a violation of civil rights under 42 U.S.C. §1983 and constitutional right to privacy); Jones/Seymour v. LeFebvre, 19 Media L. Rep. (BNA) 2064 (E.D. Pa. 1992) (claiming a violation of the constitutional right to privacy); Jones v. Taibbi, 508 F. Supp. 1069 (D. Mass. 1981) (alleging a violation of civil rights under 42 U.S.C. §1983 and invasion of privacy); Higbee v. Times-Advocate, 5 Media L. Rep. (BNA) 2372 (S.D. Cal. 1980) (claiming a violation of civil rights under 42 U.S.C. §1983 and invasion of privacy); Mimms v. Phila. Newspapers, Inc., 352 F. Supp. 862 (E.D. Pa. 1972) (alleging a violation of civil rights under 42 U.S.C. §1983 and invasion of privacy); Delan v. CBS, Inc., 91 A.D.2d 255 (N.Y. App. Div. 1983) (claiming a violation of the constitutional right of privacy).

244 Holman v. Central Ark. Broad., 4 Media L. Rep. (BNA) 2300 (E.D. Ark. 1979), *aff'd*, 610 F.2d 542 (8th Cir. 1979) (holding a violation of constitutional right to privacy).

245 *Id.* at 2301.

246 *Id.*

247 *Id.*

248 *Id.*

249 *Id.* at 2303 (citing Paul v. Davis, 424 U.S. 693 (1975)).

250 Jones/Seymour v. LeFebvre, 19 Media L. Rep. (BNA) 2064 (E.D. Pa. 1992), *aff'd*, 961 F.2d 1567 (3d Cir. 1992).

251 *Id.*

252 *Id.*

253 *See Trespass Cases, supra* note 94.

254 *See, e.g.*, Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997); Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997); Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997); Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993); Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668 (Cal. Ct. App. 1986); Green Valley Sch., Inc. v. Cowles Fla. Broad., 327 So. 2d 810 (Fla. Dist. Ct. App. 1976); Belluomo v. KAKE TV & Radio, Inc., 596 P.2d 832 (Kan. Ct. App. 1979); Anderson v. WROC-TV, 441 N.Y.S.2d 220, 223 (N.Y. Sup. Ct. 1981); Carr v. Mobile Video Tapes, Inc., 893 S.W.2d 613 (Tex. Ct. App. 1994); Prahl v. Brosamle, 295 N.W.2d 768 (Wis. Ct. App. 1980).

255 *See* Hagler v. Phila. Newspapers, Inc., 24 Media L. Rep. (BNA) 2332 (E.D. Pa. 1996); Fla. Publ'g Co. v. Fletcher, 340 So. 2d 914 (Fla. 1976);

256 *See, e.g.*, Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997); Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997); Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993); Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668 (Cal. Ct. App. 1986); Nichols v. Ga. Television Co., 552 S.E.2d 550 (Ga. Ct. App. 2001); Anderson v. WROC-TV, 441 N.Y.S.2d 220, 223 (N.Y. Sup. Ct. 1981); Fla. Publ'g Co. v. Fletcher, 340 So. 2d 914 (Fla. 1976).

257 *See, e.g.*, Green Valley Sch., Inc. v. Cowles Fla. Broad., 327 So.2d 810 (Fla. Dist. Ct. App. 1976).

258 *See* Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997); Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997); Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997); Hagler v. Phila. Newspapers, Inc., 24 Media L. Rep. (BNA) 2332 (E.D. Pa. 1996); Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993); Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668 (Cal. Ct. App. 1986); Fla. Publ'g Co. v. Fletcher, 340 So. 2d 914 (Fla. 1976); Green Valley Sch., Inc. v. Cowles Fla. Broad., 327 So. 2d 810 (Fla. Dist. Ct. App. 1976); Nichols v. Ga. Television Co., 552 S.E.2d 550 (Ga. Ct. App. 2001); Belluomo v. KAKE TV & Radio, Inc., 596 P.2d 832 (Kan. Ct. App. 1979); Anderson v. WROC-TV, 441 N.Y.S.2d 220, 223 (N.Y. Sup. Ct. 1981); Carr v. Mobile Video Tapes, Inc., 893 S.W.2d 613 (Tex. Ct. App. 1994); Prahl v. Brosamle, 295 N.W.2d 768 (Wis. Ct. App. 1980).

ment officials of some type, but in two cases they were members of helping professions—an advocate for victims of domestic violence,[259] and a team of paramedics.[260] Courts had a sympathetic ear for the media in four cases.[261]

Trespass protects against physical intrusions into the home, or other private areas in which one has a possessory interest.[262] Tort liability may result from entry to property without the permission of the owner or occupier.[263] Consent is, therefore, a critical issue in any trespass case, and the ride-along cases are no exception. Although some legal scholars have argued for a privilege to trespass in order to gather news,[264] courts have been reluctant to recognize one.[265]

The media have used one of two defenses to claims of trespass resulting from a ride along: an official permission agreement or the "custom and usage" defense. In an official permission agreement, media argued that the officials were accompanying gave them permission to enter the private property. In these situations, the media argued that the officials, rather than the owner, were in control of the property and thus able to grant such permission, in the "custom and usage" defense, the media claimed that there is a long history of officials allowing the media to accompany them as they perform their duties. In other words, it is acceptable because things always have been done that way.

Courts uniformly rejected this argument, however, stating that authorized officials did not have the power to grant permission to non-officials to enter private property.[266] A Florida appeals court stated that to uphold such an assertion, "could well bring to the citizenry of this state the hobnail boots of a Nazi stormtrooper equipped with glaring lights invading a couple's bedroom at midnight with the wife hovering in her nightgown in an attempt to shield herself from the scanning TV camera."[267]

In one case, however, the media prevailed despite the lack of the possessor's consent. That case, *Florida Publishing v. Fletcher*,[268] was decided by the Florida Supreme Court in 1976, and was also the earliest ride-along trespass case identified for this study. In *Fletcher*, firefighters and police gathered at the scene of a fatal house fire and invited the news media to accompany them, as was their standard practice.[269] Media representatives entered the house through the open door.[270] There was no objection to their entry; the homeowner was away and the remaining householder, a teenage girl, was dead.[271] The media representatives did not damage any of the property.[272] They only entered for the purpose of covering the news of the fire and death.[273] The fire marshal needed a picture of the silhouette left on the floor after removal of the girl's body.[274] The marshal had run out of film, however, so a newspaper photographer took a picture that became part of the official investigation file.[275]

Sadly, the dead girl's mother first learned of the fire and her daughter's death by reading the newspaper story and viewing the published photographs.[276] The mother filed suit, claiming trespass, among other causes of action.[277] But, the court ruled that the journalists lawfully entered

259 Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993).

260 Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668 (Cal. Ct. App. 1986).

261 Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997); Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993); Belluomo v. KAKE TV & Radio, Inc., 596 P.2d 832 (Kan. Ct. App. 1979); Fla. Publ'g Co. v. Fletcher, 340 So. 2d 914 (Fla. 1976).

262 RESTATEMENT (SECOND) OF TORTS §158 (1965).

263 *Id.*

264 Note, *And Forgive Them Their Trespasses: Applying the Defense of Necessity to the Criminal Conduct of the Newsgatherer*, 103 HARV. L. REV. 890 (1990).

265 *See* Paul A. LeBel, *The Constitutional Interest in Getting the News: Toward a First Amendment Protection from Tort Liability for Surreptitious Newsgathering*, 4 WM. & MARY BILL RTS. J. 1145, 1158-1159 (1996). *See also* Le Mistral, Inc. v. Columbia Broad. Sys., Inc., 402 N.Y.S.2d 815 (N.Y. App. Div. 1978); Stahl v. State, 665 P.2d 839 (Okla. Crim. App. 1983) (declining to recognize a privilege to trespass in the name of newsgathering).

266 *See* Berger v. Hanlon, 129 F.3d 505, 516 (9th Cir. 1997); Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726, 746 (S.D. Ohio 1997); Hagler v. Phila. Newspapers, Inc., 24 Media L. Rep. (BNA) 2332, 2334 (E.D. Pa. 1996); Green Valley Sch., Inc. v. Cowles Fla. Broad., 327 So. 2d 810, 819 (Fla. Dist. Ct. App. 1976); Nichols v. Ga. Television Co., 552 S.E.2d 550 (Ga. Ct. App. 2001); Anderson v. WROC TV, 441 N.Y.S.2d 220, 223 (N.Y. Sup. Ct. 1981).

267 Green Valley Sch., Inc. v. Cowles Fla. Broad., 327 So. 2d 810, 819 (Fla. Dist. Ct. App. 1976).

268 Fla. Publ'g Co. v. Fletcher, 340 So. 2d 914 (Fla. 1976).

269 *Id.* at 915.

270 *Id.*

271 *Id.*

272 *Id.*

273 *Id.*

274 *Id.*

275 *Id.* at 916.

276 *Id.*

277 *Id.*

the Fletcher home under the doctrine of common custom, usage, and practice.[278] The court noted that the "fire was a disaster of great public interest,"[279] and that it had become customary for the news media to enter private property where such a disaster has occurred.[280]

Some courts, deciding subsequent trespass cases, have taken great pains to distinguish *Fletcher* from the case at bar.[281] In these cases, media defendants have attempted to invoke this "custom and usage" defense, but to no avail.[282] Sometimes, courts explicitly rejected the custom and usage rationale.[283] Other times, courts have emphasized that the media aided in the official investigation.[284]

In addition, to using the custom and usage defense to defend himself against the trespass claim, the television newsman in *Prahl v. Brosamle*, also insisted that he had a privilege under the First Amendment to gather news.[285] The court rejected this argument,[286] as have other courts in trespass cases that did not involve ride-alongs.[287] In addition, accompanying authorized officials did not help journalists to defeat claims of trespass. The media have generally prevailed only when the possessor consented to their entry,[288] even when the plaintiff argued that consent was given under duress and therefore, invalid.[289] Courts have protected citizens from police overreaching their coercive power in these cases.

I. Intentional Infliction

Intentional infliction of emotional distress was a cause of action in seven ride-along cases,[290] and four found a sympathetic ear in court.[291] All seven stemmed from the actions of television crews, and all but one,[292] involved the TV crew's intrusion onto private property, usually a home. Two of these plaintiffs were the bereaved relatives of a deceased person,[293] and one was a battered wife.[294] Thus, half the plaintiffs were considered victims rather than suspects. Officials involved in these cases included a victim's advocate,[295] a team of paramedics,[296] a Humane Society officer,[297] and a tactical rescue team.[298]

The tort of intentional infliction of emotional distress protects emotional security.[299] This tort has been used to combat collection agencies and other creditors who use high-pressure methods; insurance adjusters using aggressive tactics to force a settlement; and, landlords who try to harass unwanted tenants into moving.[300] In recent years, the tort has been used in employment

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278 *Id.* at 918.

279 *Id.* (quoting dissenting opinion from state district court's decision in Fletcher v. Fla. Publ'g Co., 319 So. 2d 100, 113 (Fla. App. 1 1975)).

280 *Id.*

281 *See, e.g.*, Berger v. Hanlon, 129 F.3d 505, 517 (9th Cir. 1997); Anderson v. WROC TV, 441 N.Y.S.2d 220, 223 (N.Y. Sup. Ct. 1981).

282 *See, e.g.*, Green Valley Sch., Inc. v. Cowles Fla. Broad., 327 So. 2d 810, 819 (Fla. Dist. Ct. App. 1976); Anderson v. WROC TV, 441 N.Y.S.2d 220, 222 (N.Y. Sup. Ct. 1981); Prahl v. Brosamle, 295 N.W.2d 768, 779 (Wis. Ct. App. 1980).

283 *See, e.g.*, Green Valley Sch., Inc. v. Cowles Fla. Broad., 327 So. 2d 810, 819 (Fla. Dist. Ct. App. 1976); Anderson v. WROC TV, 441 N.Y.S.2d 220, 223 (N.Y. Sup. Ct. 1981).

284 *See, e.g.*, Fla. Publ'g Co. v. Fletchers, 340 So. 2d 914, 915 (Fla. 1976).

285 Prahl v. Brosamle, 295 N.W.2d 768, 780 (Wis. Ct. App. 1980).

286 *Id.* at 781.

287 *See, e.g.*, Le Mistral, Inc. v. CBS, Inc., 402 N.Y.S.2d 815 (N.Y. App. Div. 1978); Stahl v. State, 665 P.2d 839 (Okla. Crim. App. 1983).

288 *E.g.*, Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993).

289 *E.g.*, Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997).

290 Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997); Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726, 746 (S.D. Ohio 1997); Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997); Crowley v. Fox Broad. Co., 851 F. Supp. 700 (D. Md. 1994); Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993); Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668 (Cal. Ct. App. 1986); Carr v. Mobile Video Tapes, Inc., 893 S.W.2d 613 (Tex. Ct. App. 1994).

291 Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997); Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997), Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993); Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668 (Cal. Ct. App. 1986).

292 Crowley v. Fox Broad. Co., 851 F. Supp. 700 (D. Md. 1994) (involving footage of the plaintiff rescuing two teenagers from a fast-moving river).

293 Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997) (involving the daughter of suicide victim); Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668 (Cal. Ct. App. 1986) (involving widow of heart attack victim).

294 Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993).

295 *Id.*

296 Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668 (Cal. Ct. App. 1986).

297 Carr v. Mobile Video Tapes, Inc., 893 S.W.2d 613 (Tex. Ct. App. 1994).

298 Crowley v. Fox Broad. Co., 851 F. Supp. 700 (D. Md. 1994).

299 RESTATEMENT (SECOND) OF TORTS §46 (1965).

300 *See* Daniel Givelber, *The Right to Minimum Social Decency and the Limits of Evenhandedness: Intentional Infliction of Emotional Distress by Outrageous Conduct*, 82 COLUM. L. REV. 42,

law—in cases of workplace sexual misconduct.[301] In family law, it has been used in divorce proceedings as a way to get a larger share of the marital estate.[302] And in media law, intentional infliction has emerged as a cause of action, as plaintiffs begin to recognize that other legal remedies, such as libel law and invasion of privacy, are becoming increasingly ineffective.[303]

Courts typically employ a four-part test to determine whether the plaintiff has stated a claim of intentional infliction: (1) the defendant intended to cause emotional distress, or knew or should have known that the actions taken would result in serious emotional harm to the plaintiff; (2) the defendant's conduct was extreme and outrageous; (3) the defendant's actions caused the plaintiff's distress; (4) the emotional distress was severe.[304] A study of claims of intentional infliction against the media showed that although courts usually rejected cases based on the content of a report, they sometimes had a sympathetic ear for cases based on journalists' newsgathering behavior.[305]

All of the ride-along cases claiming intentional infliction of emotional distress were, by definition, based on behavior of the media and some of these plaintiffs did indeed find a sympathetic ear in court. For instance, the claims that passed the summary judgment hurdle were based on journalists' entry onto private property.[306] Even though the tort protects emotional security, courts appear to be linking this emotional security to violation of one's physical security. In fact, in the two intentional infliction cases decided in favor of the media, courts based their analysis on the content of the broadcast rather than journalists' newsgathering behavior.[307]

J. Illegal Electronic Surveillance

Four claims of illegal electronic surveillance arose from ride-alongs.[308] Not surprisingly, all involved electronic media, either television[309] or radio.[310] All were brought under Title III of the Omnibus Crime Control Act.[311] Commonly referred to as the federal eavesdropping statute, this law protects the privacy of wire and oral communications and delineates the circumstances under which interception of such communications may be authorized.[312]

The incidents leading to the claims occurred in places that the plaintiff considered private, including the home,[313] a private ranch,[314] and a jail cell.[315] Two of the claims arose from an investigation by congressional investigatory committee members into fraudulent insurance sales to the elderly.[316] The others involved the police,[317] and

44-49 (1982).

301 *See* Dennis P. Duffy, *Intentional Infliction of Emotional Distress and Employment at Will: The Case Against 'Tortification' of Labor and Employment Law*, 74 B.U. L. Rev. 387 (1994).

302 *See* Bradley A. Case, *Turning Marital Misery into Financial Fortune: Assertion of Intentional Infliction of Emotional Distress Claims by Divorcing Spouses*, 33 U. Louisville J. Fam. L. 101 (1995).

303 *See* Karen Markin, *The Truth Hurts: Intentional Infliction of Emotional Distress as a Cause of Action Against the Media*, 5 Comm. L. & Pol'y 469, 470 (2000).

304 Restatement (Second) of Torts §46 (1965).

305 *See* Markin, *supra* note 303, at 491-94.

306 Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997) (taking place at a ranch); Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726, 746 (S.D. Ohio 1997) (taking place in the home); Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997) (concerning the home); Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993) (taking place in the home); Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668 (Cal. Ct. App. 1986) (involving the home).

307 Reeves v. Fox Television Network, 983 F. Supp. 711 (N.D. Ohio 1997); Crowley v. Fox Broad. Co., 851 F. Supp. 700, 704 (D. Md. 1994).

308 Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997) (involving a U.S. Fish & Wildlife Service agent who wore a wire in cooperation with CNN as he entered private home); Brown v. Am. Broad. Co., 704 F.2d 1296 (4th Cir. 1983) (involving a television crew that surreptitiously filmed an insurance saleswoman under investigation by Congress); Benford v. Am. Broad. Cos., 554 F. Supp. 145 (D. Md. 1982) (concerning a television crew that surreptitiously filmed an insurance salesman under investigation by Congress); Holman v. Central Ark. Broad. Co., 4 Media L. Rep. (BNA) 2300 (E.D. Ark. 1979), *aff'd*, 610 F.2d 542 (8th Cir. 1979) (concerning a lawyer's drunken rantings from a jail cell, which were audible from public street and were recorded and aired on the radio).

309 Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997); Brown v. Am. Broad. Co., 704 F.2d 1296 (4th Cir. 1983); Benford v. Am. Broad. Cos., 554 F. Supp. 145 (D. Md. 1982);

310 Holman v. Central Ark. Broad. Co., 4 Media L. Rep. (BNA) 2300 (E.D. Ark. 1979), *aff'd*, 610 F.2d 542 (8th Cir. 1979).

311 18 U.S.C. §2510 *et seq.* (1994).

312 *Id.* §2511.

313 Brown v. Am. Broad. Co., 704 F.2d 1296 (4th Cir. 1983); Benford v. Am. Broad. Cos., Inc., 554 F. Supp. 145 (D. Md. 1982).

314 Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997).

315 Holman v. Central Ark. Broad. Co., 4 Media L. Rep. (BNA) 2300, 2302 (E.D. Ark. 1979), *aff'd*, 610 F.2d 542 (8th Cir. 1979).

316 Brown v. Am. Broad. Co., 704 F.2d 1296 (4th Cir. 1983); Benford v. Am. Broad. Cos., 554 F. Supp. 145 (D. Md. 1982).

317 Holman v. Central Ark. Broad. Co., 4 Media L. Rep. (BNA) 2300, 2302 (E.D. Ark. 1979), *aff'd*, 610 F.2d 542 (8th

agents of the U.S. Fish and Wildlife Service.[318]

At least one legal scholar has argued for a qualified First Amendment privilege against tort liability for surreptitious newsgathering based on the value of the social good that flows from press acquisition of information.[319] A review of the illegal electronic surveillance claims identified for this study, however, showed that courts did not recognize such a privilege.[320] *Benford v. ABC*, which resulted from a congressional investigation of insurance fraud, illustrates this point.[321] ABC claimed it was acting under color of law and therefore was exempt from the provisions of the federal eavesdropping statute. The federal district court in this case, decided in 1980, disagreed. It stated: "Extending protection to private individuals acting in concert with government officials, *when their purpose is self-serving*, thwarts this primary congressional objective of protecting individual privacy."[322] This court apparently did not view ABC's activity from the perspective that democracy would be enhanced by press acquisition of information.

The court made a similar holding in *Brown v. American Broadcasting Company*, a separate case that arose from the same congressional investigation.[323] ABC offered a defense based on the consent provision of the eavesdropping statute, which states that the prohibition against electronic surveillance does not apply when one of the parties consents to the surveillance.[324] The congressional parties had, of course, consented to the surveillance.[325] But, plaintiff Brown noted that the consent exception does not apply when a communication is intercepted for the purpose of committing a crime or tortious act.[326] The court agreed, and held that the broadcaster's intention in taping the meeting was an issue of fact for a jury to decide.[327] Evidently, the court did not assume that the broadcaster was an entity involved in newsgathering that would serve a democratic society.

Consent was the pivotal issue in the two cases in which the media prevailed. In *Berger v. Hanlon*, the Ninth Circuit noted that the wildlife service agent, who wore a wire for CNN when he entered the home of a suspect, was a party to the conversation and agreed to its interception. Therefore, CNN was not liable under the federal eavesdropping statute.[328] The court noted that the agent was acting under the authority of a search warrant.[329] None of the other officials involved in the eavesdropping cases identified for this study was executing a warrant.[330] *Holman v. Central Arkansas Broadcasting Co.*, the case filed by the jailed drunken lawyer, also included an unsuccessful eavesdropping claim. As the court noted, "[t]he Plaintiff knew he was being interviewed."[331]

IV. ANALYSIS

In a ride-along, an authorized official provides the media with access to a situation that would otherwise be inaccessible.[332] Sometimes, this involves physical trespass onto private property[333] or

Cir. 1979).

318 Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997).

319 *See* LeBel, *supra* note 265.

320 Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997); Brown v. Am. Broad. Co., 704 F.2d 1296 (4th Cir. 1983); Benford v. Am. Broad. Cos., 554 F. Supp. 145 (D. Md. 1982); Holman v. Central Ark. Broad. Co., 4 Media L. Rep. (BNA) 2300 (E.D. Ark. 1979), *aff'd*, 610 F.2d 542 (8th Cir. 1979).

321 Benford v. Am. Broad. Cos., 554 F. Supp. 145 (D. Md. 1982).

322 *Id.* at 1162 (emphasis added).

323 Brown v. Am. Broad. Co., 704 F.2d 1296 (4th Cir. 1983).

324 *Id.* at 1305.

325 *Id.*

326 *Id.*

327 *Id.*

328 Berger v. Hanlon, 129 F.3d 505, 516 (9th Cir. 1997).

329 *Id.*

330 Brown v. Am. Broad. Co., 704 F.2d 1296 (4th Cir. 1983); Benford v. Am. Broad. Cos., Inc., 554 F. Supp. 145 (D. Md. 1982); Holman v. Central Ark. Broad. Co., 4 Media L. Rep. (BNA) 2300 (E.D. Ark. 1979), *aff'd*, 610 F.2d 542 (8th Cir. 1979).

331 Holman v. Central Ark. Broad. Co., 4 Media L. Rep. (BNA) 2300, 2302 (E.D. Ark. 1979), *aff'd*, 610 F.2d 542 (8th Cir. 1979).

332 *See, e.g.*, Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993) (involving a private home); Jones/Seymour v. LeFebvre, 19 Media L. Rep. (BNA) 2064 (E.D. Pa. 1992) and Huskey v. NBC, 632 F. Supp. 1282 (N.D. Ill. 1986) (taking place in a prison); Pierson v. News Group Publ'ns, 549 F. Supp. 635 (S.D. Ga. 1982) (involving military reservation); and Shulman v. Group W. Prods., 955 P.2d 469 (Cal. 1998) (involving a medical rescue helicopter).

333 *E.g.*, Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997); Barrett v. Outlet Broad. Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997); Reeves v. Fox TV, 983 F. Supp. 703 (N.D. Ohio 1997); Hagler v. Phila. Newspapers, 24 Media L. Rep. (BNA) 2332 (E.D. Pa. 1996); Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993); Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668 (Cal. Ct. App. 1986); Fla. Publishing, v. Fletcher, 340 So. 2d 914 (Fla. 1976); Green Valley Sch., Inc. v. Cowles, 327 So. 2d 810 (Fla. Dist. Ct. App. 1976); Nichols v. Ga. Television Co., 552 S.E.2d 550 (Ga. Ct. App. 2001); Anderson v. WROC-TV, 441 N.Y.S.2d 220 (N.Y. Sup. Ct. 1981); Carr v. Mobile Videotapes, 893 S.W.2d 613 (Tex. Ct. App. 1994); Prahl v. Brosamle, 295 N.W.2d 768 (Wis. Ct. App. 1980).

other traditionally private locations, such as prisons.[334] Other times, it involves electronic access through a hidden microphone,[335] or the ability to listen to an otherwise private conversation between an official and another individual.[336] In these situations, plaintiffs have perceived government and the media as posing threats to their privacy and property interests. Government representatives typically have been present in one of two capacities: to enforce the law,[337] or to help with an emergency.[338] The media have claimed they had a First Amendment right to ride along because they were serving in their capacity as a watchdog on government, or as an informer of the electorate.[339]

Generalizations about the law of ride-alongs can be placed in four categories. First, the cases are divided according to whether they involved official liability or media liability. Within these two groups, the cases are divided by the nature of the alleged harm, and whether it involved a property interest or a privacy interest, broadly construed.

The cases involving official liability are fairly straightforward. During ride-alongs, officials cannot allow the media to ride along during the execution of a warrant. The U.S. Supreme Court has held that the special power provided by a warrant is for the official alone.[340] Plaintiffs claimed official liability primarily in the civil rights cases,[341] and in a few of trespass cases.[342] Most of the authorized individuals involved in these cases were enforcement officials of some sort—police,[343]

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334 Holman v. Central Ark. Broad. Co., 4 Media L. Rep. (BNA) 2300 (E.D. Ark. 1979), *aff'd*, 610 F.2d 542 (8th Cir. 1979); Huskey v. NBC, 632 F. Supp. 1282 (N.D. Ill. 1986); Smith v. Fairman, 98 F.R.D. 445 (C.D. Ill. 1982); Mimms v. Phila. Newspapers, 352 F. Supp. 862 (E.D. Pa. 1972).

335 *E.g.*, Brown v. ABC, 704 F.2d 1296 (4th Cir. 1983); Benford v. ABC, 554 F. Supp. 145 (D. Md. 1982).

336 *E.g.*, Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997).

337 *See, e.g.*, Wilson v. Layne, 526 U.S. 603 (1999); Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997); Parker v. Boyer, 93 F.3d 445 (8th Cir. 1996); Stack v. Killian, 96 F.3d 159 (6th Cir. 1996); Ayeni v. Mottola, 35 F.3d 680 (2d Cir. 1994); Dietemann v. Time, Inc., 449 F.2d 245 (9th Cir. 1971); Caldarola v. County of Westchester, 142 F. Supp. 2d 431 (S.D.N.Y. 2001); Lyde v. New York City, 145 F. Supp. 2d 350 (S.D.N.Y. 2001); Nichols v. Hendrix, 27 Media L. Rep. (BNA) 1503 (N.D. Ga. 1999); Swate v. Taylor, 12 F. Supp. 2d 591 (S.D. Tex. 1998); Barrett v. Outlet Broad. Inc., 22 F. Supp.2d 726 (S.D. Ohio 1997); Hicks v. Cassilly, 971 F. Supp. 956 (D. Md. 1997); Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997); Hagler v. Phila. Newspapers, 24 Media L. Rep. (BNA) 2332 (E.D. Pa. 1996); Ayeni v. CBS, Inc., 848 F. Supp. 362 (E.D.N.Y. 1994), *aff'd by* Ayeni v. Mottola, 35 F.3d 680 (2d Cir. 1994); Avenson v. Zegart, 577 F. Supp. 958 (D. Minn. 1984); Moncrief v. Hanton, 10 Media L. Rep. (BNA) 1620 (N.D. Ohio 1984); Jones v. Taibbi, 508 F. Supp. 1069 (D. Mass. 1981); People v. Henderson, 847 P.2d 239 (Colo. Ct. App. 1993); Green Valley Sch., Inc. v. Cowles Fla. Broad. Inc., 327 So. 2d 810 (Fla. Dist. Ct. App. 1976); Nichols v. Ga. Television Co., 552 S.E.2d 550 (Ga. Ct. App. 2001); Belluomo v. KAKE TV, 596 P.2d 832 (Ct. App. Kan. 1979); Stern v. Officer John Doe, 806 So. 2d 98 (La. Ct. App. 2001); Diaz v. Univision Television Group, Inc., 29 Media L. Rep. (BNA) 2245 (N.J. Super. Ct. Law Div. 2001); Penwell v. Taft Broad. Co., 469 N.E.2d 1025 (Ohio Ct. App. 1984); Magenis v. Fisher Broad., Inc., 798 P.2d 1106 (Or. Ct. App. 1990); Prahl v. Brosamle, 295 N.W.2d 768 (Wis. Ct. App. 1980).

338 Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993); Shulman v. Group W Prods., 955 P.2d 469 (Cal. 1998); Miller v. NBC, 232 Cal. Rptr. 668 (Cal. Ct. App. 1986).

339 *See, e.g.*, Dietemann v. Time, Inc., 449 F.2d 245 (9th Cir. 1971); Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997); Hagler v. Phila. Newpapers, 24 Media L. Rep. (BNA) 2332 (E.D. Pa. 1996); Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993); Huskey v. NBC, 632 F. Supp. 1282 (N.D. Ill. 1986); Pierson v. News Group Publ'ns, 549 F. Supp. 635 (S.D. Ga. 1982); Smith v. Fairman, 98 F.R.D. 445 (C.D. Ill. 1982); Higbee v. Times-Advocate, 5 Media L. Rep. (BNA) 2372 (S.D. Cal. 1980); Shulman v. Group W Prods., 955 P.2d 469 (Cal. 1998); Miller v. NBC, 232 Cal. Rptr. 668 (Cal. Ct. App. 1986); Fla. Publ'g Co. v. Fletcher, 340 So. 2d 914 (Fla. 1976); Stern v. Officer John Doe, 806 So. 2d 98 (La. Ct. App. 2001); Anderson v. WROC-TV, (N.Y. Sup. Ct. 1981); Delan v. CBS, Inc., 458 N.Y.S.2d 608 (N.Y. App. Div. 1983); Penwell v. Taft Broad., 469 N.E.2d 1025 (Ohio Ct. App. 1984); Haynik v. Zimlich, 508 N.E.2d 195 (Ct. C.P. Cuyahoga Cty., Ohio 1986); Carr v. Mobile Video Tapes, 893 S.W.2d 613 (Tex. Ct. App. 1994).

340 Wilson v. Layne, 526 U.S. 603, 614 (1999); *see* also Brunette v. Humane Soc'y, 294 F.3d 1205, 1211 (9th Cir. 2003).

341 *See* Wilson v. Layne, 526 U.S. 603 (1999); Ayeni v. Mottola, 35 F.3d 680 (2d Cir. 1994); Holman v. Central Ark. Broad., 4 Media L. Rep. (BNA) 2300 (E.D. Ark. 1979), *aff'd*, 610 F.2d 542 (8th Cir. 1979); Lauro v. Charles, 219 F.3d 202 (2d Cir. 2000); Lyde v. New York City, 145 F. Supp. 2d 350 (S.D.N.Y. 2001); Swate v. Taylor, 12 F. Supp. 2d 591 (S.D. Tex. 1998); Hicks v. Cassilly, 971 F. Supp. 956 (D. Md. 1997); Hagler v. Phila . Newspapers, 24 Media L. Rep. (BNA) 2332 (E.D. Pa. 1996); Avenson v. Zegart, 577 F. Supp. 958 (D. Minn. 1984).

342 Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997); Hagler v. Democrat-News, 699 S.W.2d 96 (Mo. Ct. App. 1985).

343 Parker v. Boyer, 93 F.3d 445 (8th Cir. 1996); Caldarola v. County of Westchester, 142 F. Supp. 2d 431 (S.D.N.Y. 2001); Lyde v. New York City, 145 F. Supp. 2d 350 (S.D.N.Y. 2001); Holman v. Central Ark. Broad. Co., 4 Media L. Rep. (BNA) 2300 (E.D. Ark. 1979), *aff'd*, 610 F.2d 542 (8th Cir. 1979); Lauro v. Charles, 219 F.3d 202 (2d Cir. 2000); Nichols v. Hendrix, 27 Media L. Rep. (BNA) 1503 (N.D. Ga. 1999); Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997); Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997); Moncrief v. Hanton, 10 Media L. Rep. (BNA) 1620 (N.D. Ohio 1984); Jones v. Taibbi, 508 F. Supp. 1069 (D. Mass. 1981); Higbee v. Times-Advocate, 5 Media L. Rep. 2372 (S.D. Cal. 1980); People v. Henderson, 847 P.2d 239 (Colo. Ct. App. 1993); Nichols v. Ga. Television Co., 552 S.E.2d 550 (Ga. Ct. App. 2001); Hagler v. Democrat-News, 699 S.W.2d 96 (Mo. Ct. App. 1985); Diaz v. Univision Televi-

animal safety officers,[344] or federal agents.[345] These individuals wielded coercive power even when they were not executing a warrant. Courts tended to favor plaintiffs claiming official liability in the civil rights cases.[346] Courts also had a sympathetic ear for the plaintiff who claimed official liability in *Barrett*, a trespass case that did not involve a warrant;[347] and, the plaintiff who claimed official liability in *Benford*, a 1982 eavesdropping case.[348] Official liability cases, for the most part, involved threats to the plaintiffs' security on their property rather than threats to a privacy interest.[349]

Media liability cases are more varied, involving threats to the plaintiffs' security in their property,[350] as well as threats to a broadly defined notion of privacy.[351] As noted previously in this article, the media argue that they have a First Amendment right to ride along because they are serving in their capacity as a watchdog on government, or an informer of the electorate.[352] However, courts have not always embraced these First Amendment arguments.[353]

As in the official liability cases, courts deciding media liability cases sometimes protected plaintiffs' property interests.[354] They were sympathetic to the plaintiff when the media accompanied—physically or electronically—authorized officials into someone's home.[355] Not all courts waxed as poetic as Rehnquist did in *Wilson* when he discussed the long history of the sanctity of the American home.[356] But, generally, courts have accorded the same respect to this traditionally private space.[357] Courts were also sympathetic about

sion Group, Inc., 29 Media L. Rep. (BNA) 2245 (N.J. Super. Ct. Law Div. 2001); Penwell v. Taft Broad. Co., 469 N.E.2d 1025 (Ohio Ct. App. 1984); Magenis v. Fisher Broad., Inc., 798 P.2d 1106 (Or. Ct. App. 1990); Prahl v. Brosamle, 295 N.W.2d 768 (Wis. Ct. App. 1980).

344 Brunette v. Humane Soc'y of Ventura County, 294 F.2d 1205 (9th Cir. 2002); Anderson v. WROC-TV, 441 N.Y.S.2d 220 (N.Y. Sup. Ct. 1981); Carr v. Mobile Video Tapes, Inc., 893 S.W.2d 613 (Tex. Ct. App. 1994).

345 Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997); Stack v. Killian, 96 F.3d 159 (6th Cir. 1996); Ayeni v. Mottola, 35 F.3d 680 (2d Cir. 1994); Rogers v. Buckel, 615 N.E.2d 669 (Ohio Ct. App. 1992).

346 *See, e.g.*, Wilson v. Layne, 526 U.S. 603 (1999); Ayeni v. Mottola, 35 F.3d 680 (2d Cir. 1994); Hagler v. Phila. Newspapers, 24 Media L. Rep. (BNA) 2332 (E.D. Pa. 1996); Swate v. Taylor, 12 F. Supp. 2d 591 (S.D. Tex. 1998).

347 Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997).

348 Benford v. Am. Broad. Cos., 554 F. Supp. 145 (D. Md. 1982).

349 *See, e.g.*, Wilson v. Layne, 526 U.S. 603 (1999); Ayeni v. Mottola, 35 F.3d 680 (2d Cir. 1994); Swate v. Taylor, 12 F. Supp. 2d 591 (S.D. Tex. 1998) Hagler v. Phildelphia. Newspapers, 24 Media L. Rep. (BNA) 2332 (E.D. Pa. 1996); Avenson v. Zegart, 577 F. Supp. 958 (D. Minn. 1984).

350 *See* Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997), *vacated*, Wilson v. Layne, 526 U.S. 603, 614 (1999); Parker v. Boyer, 93 F.3d 445 (8th Cir. 1996); Dietemann v. Time, Inc., 449 F.3d 245 (9th Cir. 1971); Nichols v. Hendrix, 27 Media L. Rep. (BNA) 1503 (N.D. Ga. 1999); Barrett v. Outlet Broad., Inc, 22 F. Supp. 726 (S.D. Ohio 1997); Ayeni v. CBS, Inc., 848 F. Supp. 362 (E.D.N.Y. 1994); Benford v. Am. Broad. Cos., 502 F. Supp. 1159 (D. Md. 1980); People v. Henderson, 847 P.2d 239 (Colo. Ct. App. 1993); Nichols v. Ga. Television Co., 552 S.E.2d 550 (Ga. Ct. App. 2001).

351 *See* Mullins v. Bookman, 23 Media L. Rep. (BNA) 2374 (N.D. Ga. 1995); Jones/Seymour v. LeFebvre, 19 Media L. Rep. (BNA) 2064 (E.D. Pa. 1992); Moncrief v. Hanton, 10 Media L. Rep. (BNA) 1620 (N.D. Ohio 1984); Smith v. Fairman, 98 F.R.D. 445 (C.D. Ill. 1982); Jones v. Taibbi, 508 F. Supp. 1069 (D. Mass. 1981); Prahl v. Brosamle, 295 N.W.2d 768 (Wis. Ct. App. 1980); Mimms v. Phila. Newspapers, 352 F. Supp. 862 (E.D. Pa. 1972); Stern v. Officer John Doe, 806 So. 2d 98 (La. Ct. App. 2001); Diaz v. Univision Television Group, Inc., 29 Media L. Rep. (BNA) 2245 (N.J. Super. Ct. Law Div. 2001).

352 *See* Wilson v. Layne, 526 U.S. 603, 612 (1999); Dietemann v. Time, Inc., 449 F.2d 245, 249 (9th Cir. 1971); Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726, 747 (S.D. Ohio 1997); Huskey v. Nat'l Broad. Cos., 632 F. Supp. 1282, 1290 (N.D. Ill. 1986); Shulman v. Group W Prods., 955 P.2d 469, 477 (Cal. 1998); Miller v. NBC, 232 Cal. Rptr. 668, 683 (Cal. Ct. App. 1986); Stern v. Officer John Doe, 896 So. 2d 98, 101-102 (La. Ct. App. 2001); Hagler v. Democrat-News, 699 S.W.2d 96, 98 (Mo. Ct. App. 1985); Diaz v. Univision Television Group, Inc., 29 Media L. Rep. (BNA) 2245, 2248 (N.J. Super. Ct. Law Div. 2001); Anderson v. WROC-TV, 441 N.Y.S.2d 220, 222 (N.Y. Sup. Ct. 1981); Delan v. CBS, Inc., 458 N.Y.S.2d 608, 613 (N.Y. App. Div. 1983); Penwell v. Taft Broad. Co., 469 N.E.2d 1025, 1028 (Ohio Ct. App. 1984).

353 *See, e.g.*, Wilson v. Layne, 526 U.S. 603, 613 (1999); Dietemann v. Time, Inc., 449 F.2d 245, 249 (9th Cir. 1971); Barrett v. Outlet Broad. Inc., 22 F. Supp. 2d 726, 748 (S.D. Ohio 1997); Huskey v. Nat'l Broad. Cos., 632 F. Supp. 1282, 1290 (N.D. Ill. 1986); Shulman v. Group W Prods., 955 P.2d 469, 495 (Cal. 1998); Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668, 685 (Cal. Ct. App. 1986); Anderson v. WROC-TV, 441 N.Y.S.2d 220, 223 (N.Y. Sup. Ct. 1981).

354 *See* Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997); Dietemann v. Time, Inc., 449 F.2d 245 (9th Cir. 1971); Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997); Ayeni v. CBS, Inc., 848 F. Supp. 362 (E.D.N.Y. 1994), *aff'd*, Ayeni v. Mottola, 35 F.3d 680 (2d Cir. 1994); Nichols v. Ga. Television Co., 552 S.E.2d 550 (Ga. Ct. App. 2001).

355 *See* Wilson v. Layne, 526 U.S. 603, 609-610 (1999); Hanlon v. Berger, 526 U.S. 808 (1999), vacating 129 F.3d 505 (9th Cir. 1997); Dietemann v. Time, Inc., 449 F.2d 245 (9th Cir. 1971); Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997); Ayeni v. CBS, Inc., 848 F. Supp. 362 (E.D. N.Y. 1994), *aff'd*, Ayeni v. Mottola, 35 F.3d 680 (2d Cir. 1994).

356 Wilson v. Layne, 526 U.S. 603, 609-610 (1999).

357 *See* Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997); Dietemann v. Time, Inc., 449 F.2d 245 (9th Cir. 1971); Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997); Ayeni v. CBS, Inc., 848 F. Supp. 362 (E.D.N.Y. 1994),

other traditionally private spaces that were not homes: the medical rescue helicopter in *Shulman*[358] and the prison exercise cage in *Huskey*.[359]

When the plaintiff in a media liability ride-along claim alleged a threat to his or her privacy interest, the results were mixed. Plaintiffs seldom prevailed in claims of false light[360] or private facts.[361] In the latter, the newsworthiness defense was common.[362] Sometimes, however, plaintiffs found a sympathetic ear in court when they claimed intrusion[363] or intentional infliction of emotional distress.[364] These torts protect the privacy and, one might argue, the dignity of the individual, which inevitably leads to the nature of the harm that occurred in the ride-alongs.

At the root of all ride-along claims is an electronic or photographic medium: television camera crews,[365] audio recording[366] or newspaper photographers.[367] Plaintiffs were people who were the target of media scrutiny, and found the gath-

aff'd, Ayeni v. Mottola, 35 F.3d 680 (2d Cir. 1994); Nichols v. Ga. Television Co., 552 S.E.2d 550 (Ga. Ct. App. 2001).

358 Shulman v. Group W Prods., Inc., 955 P.2d 469 (Cal. 1998).

359 Huskey v. Nat'l Broad. Co., 632 F. Supp. 1282 (N.D. Ill. 1986).

360 Eight false light cases were identified for this study. The media prevailed in five: Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997); Stern v. Officer John Doe, 806 So. 2d 98 (La. Ct. App. 2001); Hagler v. Democrat-News, Inc., 699 S.W.2d 96 (Mo. Ct. App. 1985); Diaz v. Univision Television Group, Inc., 29 Media L. Rep. (BNA) 2245 (N.J. Super. Ct. Law Div. 2001); Penwell v. Taft Broad. Co., 469 N.E.2d 1025 (Ohio Ct. App. 1984); Magenis v. Fisher Broad., Inc., 798 P.2d 1106 (Or. Ct. App. 1990); Carr v. Mobile Video Tapes, Inc., 893 S.W.2d 613 (Tex. Ct. App. 1994). The plaintiff prevailed in one: Pierson v. News Group Publ'ns, 549 F. Supp. 635 (S.D. Ga. 1982).

361 Eight private facts cases were identified for this study. The media prevailed in five: Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997); Pierson v. News Group Publ'ns, 549 F. Supp. 635 (S.D. Ga. 1982); Shulman v. Group W. Prods., Inc., 955 P.2d 469 (Cal. 1998); Diaz v. Univision Television Group, Inc., 29 Media L. Rep. (BNA) 2245 (N.J. Super. Ct. Law Div. 2001); Penwell v. Taft Broad. Co., 469 N.E.2d 1025 (Ohio Ct. App. 1984); Carr v. Mobile Video Tapes, Inc., 893 S.W.3d 613 (Tex. Ct. App. 1994)). The plaintiff prevailed in two: Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993); Huskey v. Nat'l Broad. Co., 632 F. Supp. 1282 (N.D. Ill. 1986).

362 *See, e.g.*, Reeves v. Fox Television Network, 983 F. Supp. 703, 709 (N.D. Ohio 1997); Pierson v. News Group Publ'ns, Inc., 549 F. Supp. 635, 639-40 (S.D. Ga. 1982); Shulman v. Group W Prods., Inc., 955 P.2d 469, 478-479 (Cal. 1998); Penwell v. Taft Broad. Co., 469 N.E.2d 1025, 1027-1028 (Ohio Ct. App. 1984); Carr v. Mobile Video Tapes, Inc., 893 S.W.3d 613, 622 (Tex. Ct. App. 1994).

363 Huskey v. Nat'l Broad. Co., Inc., 632 F. Supp. 1282 (N.D. Ill. 1986); Shulman v. Group W. Prods., Inc., 955 P.2d 469 (Cal. 1998); Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668 (Cal. Ct. App. 1986); Carr v. Mobile Video Tapes, Inc., 893 S.W.3d 613 (Tex. Ct. App. 1994).

364 Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997), *vacated by*, 526 U.S. 808 (1999); Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997); Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993); Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668 (Cal. Ct. App. 1986); Carr v. Mobile Video Tapes, Inc., 893 S.W.3d 613 (Tex. Ct. App. 1994).

365 *See* Brunette v. Humane Soc'y of Ventura County, 294 F.3d 1205 (9th Cir. 2002); Lauro v. Charles, 219 F.3d 202 (2d Cir. 2000); Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997); Parker v. Boyer, 93 F.3d 445 (8th Cir. 1996); Stack v. Killian, 96 F.3d 159 (6th Cir. 1996); Brown v. Am. Broad. Co., 704 F.2d 1296 (4th Cir. 1983); Caldarola v. County of Westchester, 142 F. Supp. 2d 431 (S.D.N.Y. 2001); Lyde v. New York City, 145 F. Supp. 2d 350 (S.D.N.Y. 2001); Robinson v. City of Philadelphia, 30 Media L. Rep. (BNA) 1317 (E.D. Pa. 2001); Nichols v. Hendrix, 27 Media L. Rep. (BNA) 1503 (N.D. Ga. 1999); Swate v. Taylor, 12 F. Supp. 2d 591 (S.D. Tex. 1998); Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997); Hicks v. Cassilly, 971 F. Supp. 956 (D. Md. 1997); Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997); Mullins v. Bookman, 23 Media L. Rep. (BNA) 2374 (N.D. Ga. 1995); Ayeni v. CBS, Inc., 848 F. Supp. 362 (E.D.N.Y. 1994), *aff'd sub nom.* Ayeni v. Mottola, 35 F.3d 680 (2d Cir. 1994); Crowley v. Fox Broad. Co., 851 F. Supp. 700 (D. Md. 1994); Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993); Jones/Seymour v. LeFebvre, 19 Media L. Rep. (BNA) 2064 (E.D. Pa. 1992); Huskey v. Nat'l Broad. Co., 632 F. Supp. 1282 (N.D. Ill. 1986); Moncrief v. Hanton, 782 F.2d 1042 (6th Cir. 1985); Benford v. Am. Broad. Co., 554 F. Supp. 145 (D. Md. 1982); Smith v. Fairman, 98 F.R.D. 445 (C.D. Ill. 1982); Jones v. Taibbi, 508 F. Supp. 1069 (D. Mass. 1981); Shulman v. Group W Prods., 955 P.2d 469 (Cal. 1998); Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668 (Cal. Ct. App. 1986); People v. Colorado, 847 P.2d 239 (Colo. Ct. App. 1993); Green Valley Sch., Inc., v. Cowles Fla. Broad., Inc., 327 So. 2d 810 (Fla. Ct. App. 1976); Nichols v. Ga. Television Co., 552 S.E.2d 550 (Ga. Ct. App. 2001); Belluomo v. KAKE TV & Radio, Inc., 596 P.2d 832 (Kan. Ct. App. 1979); Stern v. Officer John Doe, 806 So. 2d 98 (La. Ct. App. 2001); Diaz v. Univision Television Group, Inc., 29 Media L. Rep. (BNA) 2245 (N.J. Super. Ct. Law Div. 2001); Delan v. CBS, Inc., 91 A.D.2d 255 (N.Y. App. Dir. 1983); Anderson v. WROC-TV, 441 N.Y.S.2d 220 (N.Y. Sup. Ct. 1981); Rogers v. Buckel, 615 N.E.2d 669 (Ohio Ct. App. 1992); Penwell v. Taft Broad Co., 469 N.E.2d 1025 (Ohio Ct. App. 1984); Haynik v. Zimlich, 508 N.E.2d 195 (Ct. C.P. Cuyahoga County, Ohio, 1986); Magenis v. Fisher Broad., Inc., 798 P.2d 1106 (Or. Ct. App. 1990); Carr v. Mobile Video Tapes, Inc., 893 S.W.2d 613 (Tex. Ct. App. 1994); Prahl v. Brosamle, 295 N.W.2d 768 (Wis. Ct. App. 1980).

366 *See* Holman v. Central Ark. . Broad. Co., 4 Media L. Rep. (BNA) 2300 (E.D. Ark. 1979), *aff'd*, 601 F.2d 542 (8th Cir. 1979).

367 *See* Wilson v. Layne, 526 U.S. 603 (1999); Dietemann v. Time, Inc., 449 F.2d 245 (9th Cir. 1971); Hagler v. Phila. Newspapers, Inc., 24 Media L. Rep. (BNA) 2332 (E.D. Pa. 1996); Hagler v. The Democrat-News, Inc., 699 S.W.2d 96 (E.D. Mo. 1985); Avenson v. Zegart, 577 F. Supp. 958 (D. Minn. 1984) (discussing "media representatives"); Pierson v. News Group Publ'ns, 549 F. Supp. 635 (S.D. Ga. 1982); Mimms v. Phila. Newspapers, 352 F. Supp. 862 (E.D. Pa. 1972); Fla. Publ'g Co. v. Fletcher, 340 So. 2d 914 (Fla. 1976).

ering of photos, footage, and audio offensive. These forms of newsgathering have also generated complaints about sensational journalism.[368] As journalism has become more "sensational," courts have been more likely to construe it as entertainment rather than news.[369] Courts with a sympathetic ear for the plaintiff in these ride-along cases have described the information sought as entertainment material rather than news about a matter of public concern.[370] They tended to brand emotion-evoking electronic reports as commercial entertainment, in contrast with the staid gray columns of newspaper text.[371] Both the news/entertainment and electronic/print dichotomies are cause for concern from a First Amendment perspective.

Many courts and commentators have said that stories about ride-alongs constitute entertainment rather than news and, are thus, less worthy of First Amendment protection than speech related to self-governance.[372] Though some courts are fervent in decrying ride-alongs as mere entertainment,[373] it is a weak rationale for denying First Amendment protection. It is a form of regulation on the basis of content, pure and simple.

The U.S. Supreme Court dealt with this issue a half-century ago, and its analysis is worth revisiting for its striking relevance to the ride-along cases. In *Winters v. New York*, decided in 1948, the Court dealt with the question of whether lurid, racy stories of crime and lust were protected by the First Amendment.[374] At issue was a magazine containing "criminal news, police reports, and accounts of criminal deeds, and pictures and stories of deeds of bloodshed, lust and crime."[375] The Court ruled that the publication was worthy of First Amendment protection.[376] As the Court explained, "We do not accede to appellee's suggestion that the constitutional protection of a free press applies only to the exposition of ideas. The line between the informing and the entertaining is too elusive for the protection of that basic right . . . [w]hat is one man's amusement, teaches another's doctrine."[377]

A closely related criticism of ride-along programs is their commercial nature. The issue of whether the profitability of a message affects the degree of First Amendment protection it is afforded was addressed by the Supreme Court in 1952 in *Joseph Burstyn, Inc. v. Wilson*.[378] In that case, the Court held that the motion-picture industry's profitable films were worthy of First Amendment protection.[379] The court declared, "[t]hat books, newspapers and magazines are published and sold for profit does not prevent them from being a form of expression whose liberty is safeguarded by the First Amendment." The Court continued, that "[w]e fail to see why operation for profit should have any different effect in the case of motion pictures."[380] Taken together, the holdings of *Winters* and *Burstyn* indicate that courts are on shaky ground when they suggest that ride-alongs are not worthy of First Amendment protection due to their entertaining and commercial nature. The courts have viewed electronic and print media differently. This is cause for concern because control of the type of media permitted to cover events is tantamount to control of content, according to legal scholar Steven Helle.[381] He used *Garrett v. Estelle*[382] to illustrate

368 Moss, *supra* note 10.

369 *See generally* Shulman v. Group W Prods., Inc., 955 P.2d 469, 494 (1998) (stating, "Arguably the last thing an injured accident victim should have to worry about while being pried from her wrecked car is that a television producer may be recording everything she says to medical personnel for the possible edification and entertainment of casual television viewers.").

370 *See, e.g.*, Berger v. Hanlon, 129 F.3d 505, 512 (9th Cir. 1997); Ayeni v. CBS, Inc., 848 F. Supp. 362, 368 (E.D.N.Y. 1994), *aff'd sub nom.* Ayeni v. Mottola, 35 F.3d 680 (2d Cir. 1994); Shulman v. Group W Prods., Inc., 955 P.2d 469, 494 (Cal. 1998).

371 *See, e.g.*, Berger v. Hanlon, 129 F.3d 505, 510 (9th Cir. 1997); Nichols v. Hendrix, 27 Media L. Rep. (BNA) 1503, 1505 (N.D. Ga. 1999); Swate v. Taylor, 12 F. Supp. 2d 591, 596 (S.D. Tex. 1998); Miller v Nat'l Broad. Co., 232 Cal. Rptr. 668, 682 (Cal. Ct. App. 1986).

372 *See* Johnston, *supra* note 61; Rothe, *supra* note 61. *See also* Ayeni v. Mottola, 35 F.3d 680, 686 (2d Cir. 1994) (highlighting law enforcement theatrics); Berger v. Hanlon, 129 F.3d 505 (9th Cir. 1997) (describing "television entertainment"); Lauro v. Charles, 219 F.3d 202, 213 (2d Cir. 2000) (explaining ". . . an inherently fictional dramatization of an event that transpired hours earlier."); Shulman v. Group W Prods., Inc., 955 P.2d 469, 494 (Cal. 1998) (involving ". . . entertainment of casual television viewers.").

373 Berger v. Hanlon, 129 F.3d 505, 512 (9th Cir. 1997), *vacated*, 526 U.S. 808 (1999); Shulman v. Group W Prods., Inc., 955 P.2d 469, 494 (Cal. 1998).

374 Winters v. New York, 333 U.S. 507 (1948).

375 *Id.* at 509.

376 *Id.* at 510.

377 *Id.*

378 Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 501 (1952).

379 *Id.* at 501-502.

380 *Id.*

381 Helle, *supra* note 19, at 47.

382 Garrett v. Estelle, 556 F.2d 1274 (5th Cir. 1977).

that newsgathering and publication are inseparable.[383] In *Garrett v. Estelle,* the Fifth Circuit of the U.S. Court of Appeals stated that a television cameraman had no greater right than the public to film an execution.[384] The court stated that the cameraman was not prohibited from simulating or recounting the incident, and therefore could convey the same content as the two print reporters allowed to witness the execution.[385] Helle argued that the fact that a simulation or narrative was acceptable, but that a broadcast was not, suggested that the content of the latter must differ in a substantive way from the content of the former.[386] Such restriction of expression raises constitutional questions, Helle stated, citing *Cohen v. California,* in which the U.S. Supreme Court found that, "the emotive function . . . may often be the more important element of the overall message sought to be communicated."[387]

Some of the most valuable ride-along journalism is arguably also some of the programming decried as sensational entertainment. The broadcasts that prompted *Shulman v. Group W Products, Inc.,* the rescue helicopter case,[388] and *Baugh v. CBS, Inc.,* the domestic violence victim case,[389] were found to be offensive to the plaintiffs, but also gave the public a rare look at the work of some unsung heroes—an emergency flight nurse and a victim's advocate. Courts did not accuse the helping professionals of inviting the media to ride-along out of a lust for self-aggrandizement,[390] as they did the enforcement officials.[391] Nonetheless, the courts are, in effect, declaring that the media may not barge uninvited into private homes or medical vehicles to capture these stories.[392] Plaintiffs apparently do not want to share these stories with the public, perhaps, to borrow the term from *Cohen v. California,*[393] because of their "emotive" power.

While the long-standing American aversion to government intrusion in individual affairs[394] has guided the courts in ride-along cases involving officials with coercive power, this was not the case with the ride-alongs involving helping professionals. Rather, the distaste that courts and plaintiffs have shown for the helper ride-alongs appears to stem from a desire to protect human dignity,[395] a proposition which lacks strong legal support in the United States.

A distinction between privacy and dignity has been discussed in the context of labor law.[396] This distinction, discussed by Lawrence E. Rothstein, is useful for analyzing the ride-alongs involving helping professionals, even though the *Shulman,*[397] *Baugh,*[398] and *Miller*[399] courts did not explicitly discuss it. American law is characterized as taking a possessive and territorial view of privacy, according to Rothstein.[400] From this viewpoint, privacy is treated as a property right.[401] As Rothstein notes, "Privacy is associated with one's home and . . . with premises under one's control."[402]

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383 Helle, *supra* note 19.

384 Garrett v. Estelle, 556 F.2d 1274, 1278-79 (5th Cir. 1977).

385 *Id.* at 1276-77.

386 Helle, *supra* note 19, at 48.

387 *Id.* at 49 (quoting Cohen v. California, 403 U.S. 15, 26 (1971)).

388 Shulman v. Goup W Prods., Inc., 955 P.2d 469 (Cal. 1998).

389 Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993).

390 *See, e.g.,* Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993); Shulman v. Group W Prods., Inc., 955 P.2d 469 (Cal. 1998); Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668 (Cal. Ct. App. 1986).

391 *See, e.g.,* Wilson v. Layne, 526 U.S. 603, 613 (1999) (ruling that it was "good public relations for the police"); Lauro v. City of New York, 39 F. Supp. 2d 351, 364 (S.D.N.Y. 1999) (declaring that, "The publication of plaintiff's arrest by means of the perp walk had the effect . . . of . . . allowing Det. Charles to appear on television.") *rev'd,* Lauro v. Charles, 219 F.3d 202 (2d Cir. 2000).

392 *See* Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993); Shulman v. Group W Prods., Inc., 955 P.2d 469 (Cal. 1998); Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668 (Cal. Ct. App. 1986).

393 Cohen v. California, 403 U.S. 15, 26 (1971).

394 *See generally* Green Valley Sch., Inc. v. Cowles Fla. Broad., 327 So. 2d 810, 819 (Fla. Dist. Ct. App. 1976) (expressing this attitude by the "hobnail boots" quotation).

395 *See* Baugh v. CBS, Inc., 828 F. Supp. 745, 758 (N.D. Cal. 1993) (declaring that "Baugh was vulnerable"); Shulman v. Group W Prods., Inc., 955 P.2d 469, 494 (Cal. 1998) (finding that "the last thing an injured accident victim should have to worry about . . . is that a television producer may be recording everying she says . . ."); Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668, 682 (Cal. Ct. App. 1986) (emphasizing the "alarming absence of sensitivity and civility").

396 Lawrence E. Rothstein, *Privacy or Dignity? Electronic Monitoring in the Workplace,* 19 N.Y.L. Sch. J. Int'l & Comp. L. 379 (2000).

397 Shulman v. Group W. Prods., Inc., 955 P.2d 469 (Cal. 1998).

398 Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993).

399 Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668 (Cal. Ct. App. 1986).

400 Rothstein, *supra* note 396, at 381.

401 *Id.*

402 *Id.* at 382.

This view of privacy is evident in the civil rights[403] and trespass[404] claims reviewed earlier in this paper.

In contrast, the "concept of human dignity is a social one that promotes a humane and civilized life. The protection of human dignity allows a broader scope of action against treating people in intrusive ways."[405] This notion, prevalent in continental European countries, is more concerned with "community and citizenship than property."[406] This body of law deals with "actions that reduce a person's status as a thinking being, a citizen and a member of a community."[407] Now, let us consider the nature of the *plaintiffs* in the ride-along cases.

Many were people who did not have normal control over their environment. They could not consent to the media coverage that led to the suit.[408] Courts seldom articulated this notion of consent unless it was explicitly related to the cause of action, as in the trespass cases.[409] But a pattern emerged across the plaintiffs. Some were crime suspects,[410] or lived in the homes of crime suspects, and were confronted by warrant-wielding police.[411] In other cases, they were trauma victims,[412] or their family members[413]—some in literally life-or-death situations—seeking aid from health professionals[414] or victim's advocates.[415] Other examples included inmates,[416] a soldier on a military reservation,[417] and a mentally disabled person in a hospital.[418] Clearly, many of them were in no position to evict the media from the premises.

Also in the media liability cases, some officials were members of the "helping professions"—the flight nurse in *Shulman*,[419] the victim's advocate in *Baugh*,[420] and the paramedics in *Miller*.[421] Courts were sympathetic to plaintiffs in these cases also, specifically citing the victim's vulnerability at the time of the media encounter.[422] Although no

403 *See Civil Rights Cases, supra* note 92.

404 *See Trespass Cases, supra* note 94.

405 Rothstein, *supra* note 396, at 383.

406 *Id.*

407 *Id.*

408 *See* Lauro v. Charles, 219 F.3d 202 (2d Cir. 2000); Caldarola v. County of Westchester, 142 F. Supp. 2d 431 (S.D.N.Y. 2001); Lyde v. City of New York, 145 F. Supp. 2d 350 (S.D.N.Y. 2001); Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997); Hagler v. Phila. Newspapers, Inc., 24 Media L. Rep. (BNA) 2332 (E.D. Pa. 1996); Mullins v. Bookman, 23 Media L. Rep. (BNA) 2374 (N.D. Ga. 1995); Ayeni v. CBS, Inc., 848 F. Supp. 362 (E.D.N.Y. 1994), *aff'd sub nom.* Ayeni v. Mottola, 35 F.3d 680 (2d Cir. 1994); Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993); Jones/Seymour v. LeFebvre, 19 Media L. Rep. (BNA) 2064 (E.D. Pa. 1992); Huskey v. Nat'l Broad. Co., 632 F. Supp. 1282 (N.D. Ill. 1986); Pierson v. News Group Publ'ns, Inc., 549 F. Supp. 635 (S.D. Ga. 1982); Smith v. Fairman, 98 F.R.D. 445 (C.D. Ill. 1982); Holman v. Central Ark. Broad. Co., 610 F.2d 542 (8th Cir. 1979); Mimms v. Phila. Newspapers, 352 F. Supp. 862 (E.D. Pa. 1972) (inmate); Shulman v. Group W. Prods., Inc., 955 P.2d 469 (Cal. 1998); Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668, 682 (Cal. Ct. App. 1986); Stern v. Officer John Doe, 806 So. 2d 98 (La. Ct. App. 2001); Nichols v. Ga. Television Co., 552 S.E. 2d 550 (Ga. Ct. App. 2001); Delan v. CBS, Inc., 458 N.Y.S.2d 608 (N.Y. App. Div. 1983); Haynik v. Zimlich, 508 N.E.2d 195 (Ct. C.P. Cuyahoga City., Ohio 1986).

409 *See* Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993); Prahl v. Brosamle, 295 N.W.2d 768 (Wis. Ct. App. 1980).

410 *See* Lauro v. Charles, 219 F.3d 202 (2d Cir. 2000); Caldarola v. County of Westchester, 142 F. Supp. 2d 431 (S.D.N.Y. 2001); Lyde v. City of New York., 145 F. Supp. 2d 350 (S.D.N.Y. 2001); Reeves v. Fox Television Network, 983 F. Supp. 703 (N.D. Ohio 1997); Jones v. Taibbi, 508 F. Supp. 1069 (D.Mass. 1981); Haynik v. Zimlich, 508 N.E.2d 195 (Ct. C.P. Cuyahoga City, Ohio 1986); Nichols v. Ga. Television Co., 552 S.E.2d 550 (Ga. Ct. App. 2001).

411 Wilson v. Layne, 526 U.S. 603 (1999); Parker v. Boyer, 93 F.3d 445 (8th Cir. 1996); Hagler v. Phila. Newspapers, Inc., 24 Media L. Rep. (BNA) 2332 (E.D. Pa. 1996); Ayeni v. CBS, Inc., 848 F. Supp. 362 (E.D.N.Y. 1994), *aff'd sub nom.* Ayeni v. Mottola, 35 F.3d 680 (2d Cir. 1994).

412 Shulman v. Group W Prods., Inc., 955 P.2d 469 (Cal. 1998).

413 Barrett v. Outlet Broad., Inc., 22 F. Supp. 2d 726 (S.D. Ohio 1997); Miller v. NBC, 232 Cal. Rptr. 668 (Cal. Ct. App. 1986).

414 Shulman v. Group W Prods., Inc., 955 P.2d 469 (Cal. 1998); Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668, 682 (Cal. Ct. App. 1986).

415 Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993).

416 Mullins v. Bookman, 23 Media L. Rep. (BNA) 2374 (N.D. Ga. 1995); Jones/Seymour v. Le Febvre, 19 Media L. Rep. (BNA) 2064 (E.D. Pa. 1992); Huskey v. NBC, 632 F. Supp. 1282 (N.D. Ill. 1986); Smith v. Fairman, 98 F.R.D. 445 (C.D. Ill. 1982); Holman v. Central Ark. Broad. Co., 610 F.2d 542 (8th Cir. 1979); Mimms v. Phila. Newspapers, 352 F. Supp. 862 (E.D. Pa. 1972).

417 Pierson v. News Group Publ'ns, 549 F. Supp. 635 (S.D. Ga. 1982).

418 Delan v. CBS, Inc., 458 N.Y.S.2d 608 (N.Y. App. Div. 1983).

419 Shulman v. Group W Prods., Inc., 955 P.2d 469 (Cal. 1998).

420 Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993).

421 Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668 (Cal. Ct. App. 1986).

422 *See* Baugh v. CBS, Inc., 828 F. Supp. 745, 758 (N.D. Cal. 1993); Shulman v. Group W Prods., 955 P.2d 469, 494 (Cal. 1998) (stating that "the last thing an injured accident victim should have to worry about . . . is that a television producer may be recording everything she says . . ."); Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668, 682 (Cal. Ct. App. 1986) (emphasizing the "alarming absence of sensitivity and civility.").

court explicitly stated it, their holdings indicate that those who need the services of a public helper, such as a paramedic or social worker, do not necessarily make themselves a limited public figure, or "fair game" for the media. This rationale echoed that of *Time v. Firestone*,[423] in which the U.S. Supreme Court held that Mary Alice Firestone's divorce proceeding was "not the sort of 'public controversy'" referred to in *Gertz v. Robert Welch, Inc.*.[424] Nor was she a public figure. The Court noted that Mrs. Firestone was compelled to go to court to seek relief in a marital dispute.[425]

In both *Shulman*[426] and *Baugh*,[427] the courts criticized the media for taking advantage of vulnerable victims. Even though the legal claims in those cases were intrusion and intentional infliction, respectively, the courts appeared to be trying to protect human dignity as it is viewed in Europe. Because this notion is not clearly developed in American law, it manifested itself in more than one type of tort claim. The cases reviewed in this paper reveal an interest by the courts in protecting plaintiffs from assaults on their dignity by the media, whom they view as grubbing for entertaining content that will yield high ratings.[428]

Media ride-alongs with officials are also ethically problematic, representing a Faustian bargain for the press. Rather than allowing journalists to check on official conduct, the ride-along is a chance for officials to manipulate coverage of government. Government decides when the media can ride along. This is control of content, in the same sense as prohibiting the cameraman in *Garrett*[429] from broadcasting the execution. The information resulting from a ride-along is tainted. Courts have suggested as much when they have criticized law enforcement officials who permitted ride-alongs as being self-serving.[430]

So when—if ever—can a journalist ride along with authorized officials and avoid liability? Accompanying officials to a public place seems to protect a journalist from most civil rights,[431] trespass[432] and privacy claims.[433] A crucial question is whether the journalist sees what any other visitor to the premises sees, or is instead given special treatment by officials. Thus, the innocent bystander in the drug bust in *Penwell* did not succeed in a claim of false light,[434] but the victims of the perp walks staged in *Haynik v. Zimlich*[435] and *Lyde v. New York City*[436] were able to proceed with their cases. Limiting ride-alongs to public places, however, will not eliminate lawsuits. Journalists can still face subpoenas if they witness a crime on the ride-along, as happened in the shield law cases discussed earlier.[437]

V. CONCLUSION

The law of ride-alongs has been evolving haphazardly over the past thirty years. The Court's decision in *Wilson*[438] began to set limits on this practice, which has become increasingly common because it serves the media's bottom line. The fact that a program is entertaining and profitable is not grounds for reducing its First Amendment protection. Rather, the problems with the ride-along result from the way they throw off kilter the roles of the press, public, and government. A

423 Time, Inc. v. Firestone, 424 U.S. 448 (1976).

424 *Id.* at 454 (citing Gertz v. Robert Welch Inc., 418 U.S. 323, 351 (1974), which defines the limited public figure, but not "public controversy").

425 Time, Inc. v. Firestone, 424 U.S. 448, 454 (1976).

426 Shulman v. Group W Prods., Inc., 955 P.2d 469 (Cal. 1998).

427 Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993).

428 *See* Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993); Shulman v. Group W Prods., Inc., 955 P.2d 469 (Cal. 1998); Miller v. Nat'l Broad. Co., 232 Cal. Rptr. 668 (Cal. Ct. App. 1986).

429 Garrett v. Estelle, 556 F.2d 1274 (5th Cir. 1977).

430 *See, e.g.*, Wilson v. Layne, 526 U.S. 603, 613 (1999) (declaring that, "[s]urely the possibility of good public relations for the police is simply not enough, standing alone, to justify the ride-along intrusion into a private home."); Ayeni v. Mottola, 35 F.3d 680, 686 (2d Cir. 1994) (holding that "[a] private home is not a soundstage for law enforcement theatricals.").

431 *See, e.g.*, People v. Henderson, 847 P.2d 239 (Colo. Ct. App. 1993) (ruling for the media in a case where the media flew over the home of a person suspected of growing marijuana).

432 *See, e.g.*, Belluomo v. KAKE TV, 596 P.2d 832 (Ct. App. Kan. 1979) (ruling for the media in the only trespass case identified for this study that arose from an incident in a public place—a restaurant).

433 *See, e.g.*, Haynik v. Zimlich, 508 N.E.2d 195 (Ct. C.P. Cuyahoga City, Ohio, 1986) (holding for the media in a case involving a perp walk in the hallway of a sheriff's department).

434 Penwell v. Taft Broad. Co., 469 N.E.2d 1025 (Ohio Ct. App. 1984).

435 Haynik v. Zimlich, 508 N.E.2d 195 (Ct. C.P. Cuyahoga City, Ohio, 1986).

436 Lyde v. New York City, 145 F. Supp. 2d 350 (S.D.N.Y. 2001).

437 *See, e.g.*, Lauro v. City of New York, 39 F. Supp. 2d 351 (S.D.N.Y. 1999).

438 Wilson v. Layne, 526 U.S. 603 (1999).

ride-along with an enforcement official oversteps the official's already limited authority to enter a private home. In turn, by riding along with the official, the press colludes with the government representative it is supposed to be monitoring. Instead of serving the individual, these two institutions end up trammeling the citizen's rights for the sake of their own self-promotion or profit.

Neither of the two press theories that are justified by the Constitution—libertarian and social responsibility—support the ride-along. When the media ride along, at the pleasure of government officials who are exercising coercive power, they cannot argue that they are serving as a check on the government's power. Such an arrangement transforms the press from government watchdog to government lapdog. Similarly, when the media are disseminating information from a ride-along that has been approved by government, they cannot argue that they are serving democracy by providing reliable information for self-governance. Rather, the information that flows from such arrangements has been approved by the government and therefore, is contaminated.

Less clear-cut are the cases involving helping professionals. They raise different ethical problems than the ride-alongs with officials wielding coercive power. These cases are less about serving as a check on government power and more about informing the public. Information obtained through official approval may be viewed as tainted. However, some of the helping professionals seem to have little to gain from the ride-along, aside from a brief moment of public glory, and perhaps public support that would result in slightly better funding for social services. But, the officials use their power in a way that distresses and humiliates plaintiffs, and those plaintiffs have found a sympathetic ear in court. Courts are allowing such cases to go forward based on an apparent concern for the human dignity of the plaintiffs.

This paper has found only limited legal justification for the press to accompany officials into traditionally private spaces such as homes. To observe the law, the press may have to forgo stories of legitimate public concern, such as the work of the domestic violence victim's advocate in *Baugh*.[439] Alternatively, the press may need to obtain victims' permission to ride along in these situations. Courts appear to be trying to protect the human dignity of these individuals, despite the various torts under which the claims are made. The content the press wishes to disseminate about such stories—footage of distraught victims being assisted by an official—cannot always be gathered by legal means. If the press continues to ride along, and fails to consider the dignity of those it covers, it will face consequences in court.

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[439] Baugh v. CBS, Inc., 828 F. Supp. 745 (N.D. Cal. 1993).