

FOREWORD

This book offers a fascinating glimpse into some new uses of media and communications technology in criminal justice and reports recent research on some enduring questions. The book should be of interest to criminologists, communications researchers, those in the mass media, and criminal justice practitioners.

The articles offer strong support for the intertwining of the mass media and criminal justice. Yet there are few simple answers to the nature of this relationship. These articles directly confront the complexity of the questions. The reader seeking simple answers or monolithic, unidirectional impacts will be disappointed.

The first two sections of the book dealing with the effects of media on both individuals and the criminal justice system, offer a helpful review and some fresh insights. Relevant processes and models, gaps in knowledge, unresolved issues, and future research needs are identified. The third section goes beyond these traditional concerns to note how the criminal justice system itself is using communications technologies in new ways.

Looked at abstractly, the external and internal uses of the media which this book treats correspond to mass communication and mass surveillance. Modern technology has simultaneously increased the power of both.¹ The direct ties between central institutions and the public are intensified by the enhanced ability to watch and to send messages. Those controlling the communications levers can use them in a categorical, spongelike fashion, or focus them with a laser-like specificity on particular subjects. This joining and versatility represents a powerful tool. It is vital to understand how these technologies are used and to note that they can enhance, as well as undermine democracy.

The new uses of the media in criminal justice—whether in the form of television crime simulations intended to help apprehend suspects, or cameras in the courtroom, or hidden in police stings, are part of broader changes wherein information gathering technology is more penetrating and prevalent. We are becoming a more transparent or porous society, in which information leakage and access to this previously confidential information is rampant. This, combined with dossiers, social engineering, suspiciousness, and self-monitoring are pushing us in the direction of becoming a “maximum security society.”²

The issues these new uses and capabilities raise are complex and poorly understood, both conceptually and empirically. Even if we had better data whose meaning was clear, risks and trade-offs and disputes over how values should be balanced would remain.

On the positive side, the media bring visibility and thus enhance accountability. Openness in government is a fundamental American principle. As Justice Brandeis observed, sunlight is the best disinfectant. The videotaping of police behavior in crowds or individual citizen contact situations, in booking rooms, and during interrogations can deter abuse or offer a documentary record. Without the incriminating tapes secretly recorded by President Richard Nixon, Watergate would have remained a case of breaking and entering; and without the back-up computer records in National Security Council files Oliver North thought he erased, we would know far less about the Iran-Contra affair. Yet visibility may have negative consequences.

It can conflict with privacy and diplomacy. It can lead to unwarranted stigmatization and a hesitancy to take risks and to experiment. Making a permanent record of interaction can also destroy spontaneity and mediated interaction across a video terminal may have a dehumanizing or depersonalizing effect.

The freedom to communicate is central to our notion of liberty. It is not by chance that the drafters of the Constitution put the Amendment protecting freedom of speech *first*. Yet as some of the evidence reported here suggests, there may be instances in which this freedom encourages victimization and interferes with the right to a fair trial. The rights of the media to discover, and the public to know, can conflict with due process and privacy. While cooperation between the mass media and the criminal justice system can further the public interest, it can also undermine the media's importance as an independent watchdog.

The new uses of the media also raise important issues about truth. When offered as evidence they can easily lead to a misplaced confidence in the validity of what is seen or heard. Seeing should not always lead to believing, particularly when the replay occurs in an environment far removed in space, time, culture and social setting from the original. There is a danger of decontextualizing the interaction. Video technology, for example, can beguile us into confusing image with reality, because the video record is believed to more fully approximate real experience than witnesses who merely tell what they remember. Video can distort in a number of ways from high-tech editing in which things are added or deleted, to unrepresentative sampling, to naive subjects who are manipulated in performing before a camera or audio recorder they are unaware of. It is important to always ask what went on before the machine was turned on.

In its documentation of new developments this book stimulates one to ask where are we headed? What forms and policy impacts would a book such as this consider a decade or two from now? It is easy to imagine: perhaps visual subliminal messages that crime doesn't pay in cinemas, video and computer screens and equivalent audio messages in omnipresent music; the careful production and pretesting of mass communications to insure that they have socially constructive effects (perhaps a social impact statement would have to be filed before any general communication., could be offered); or a less sweeping rating of communications materials and the granting of access only to those whose characteristics suggest they would not be influenced in an antisocial fashion; the widespread availability of highly differentiated anonymous hotlines (e.g., there might be one specifically targeted at families and friends to encourage parents, spouses, children, and colleagues to report violations of those they are closest to); the use of video scanning devices (e.g., on busy streets or transportation centers) to search for wanted individuals; voice and speech recognition systems that are able to identify individuals of interest and key words by remote monitoring of communications; biometric measuring devices that must be worn at all times by violent offenders (should the measuring device suggest heightened emotions, the probation officer would be notified at once, or a remote shock might even be administered); a requirement that uniformed police and those on probation (and perhaps those juridically determined to be habitual criminals) wear unobtrusive video and audio recording devices at all times; and computer displayed pin-point visual location monitoring of all persons and valuable property via satellite. Of course, the above sounds implausible, but in 1970 some of the things discussed in Part III of this book would also have sounded implausible.

Technology and media cheerleaders argue that tools and mediums are neutral. It is true that any technique can be used for good or ill, although observers with different values may well differ on just what constitutes these, on how competing rights and wrongs ought to be weighed and as several articles here indicate, on how evidence should be interpreted.

But there is an important sense in which technology and mass media are not neutral. Both develop out of a social context for particular purposes. In the United States the major creators of new technologies are the military and industry; the major utilizers of the mass media are government and corporations, not environmental, consumer, or civil liberties groups, the elderly, farm laborers or the least privileged segments of society. From this perspective neither the technology nor the media is hardly neutral, nor do all groups have equivalent access. It is thus vital that claims about social usefulness be empirically documented.

We live in a democracy, not a technocracy. Just because a communications technology is able to do something, it does not mean that it should be done. A police leader's belief that "it is not only our duty, but also our responsibility to utilize available state-of-the-art technology" must be tempered by asking additional questions.

In thinking about the policy issues the media raises for the criminal justice system, it is important to go beyond the conventional questions of "is it legal?" and "does it work?" to additional questions such as: is this a wise policy? what are the costs of a particular policy relative to other policies, or the cost of doing nothing? what are the risks and likely consequences if the policy fails? Is there solid ground for believing that the technology will only be used for its intended purpose? Will the system become unduly mechanical and impersonal? Will there still be room for the professional exercise of vigilance and discretion? Can the technology be used in a focused fashion so that only those there is some reason to suspect are subject to it? Will information collected be treated confidentially and destroyed when it is no longer needed? What symbolic meaning does the policy communicate? Will the sanctity of institutions such as the courts be undermined by communications technology? What precedents does the policy establish and where might this lead? As Justice Potter Stewart observed in a First Amendment case in which police searched a news office, just because there is a legal right to do something does not mean that it's the right thing to do. The magnifying glass of contemporary mass media and communications technology can clarify, but it can also burn. The careful analysis and reflection of the essays in this book are fortunately conducive to the former.

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¹ For example see the discussions in E. Shils, (1975) *Center and Periphery*, (Chicago: University of Chicago); M. Foucault, (1977) *Discipline and Punish* (New York: Pantheon); and J. Rule, (1984) "1984 — The Ingredients of Totalitarianism" in *1984: Totalitarianism in Our Century*, (ed.) I. Howe, (New York: Harper and Row).

² G. Marx (1988), *Undercover: Police Surveillance in America*, (Berkeley: University of California Press).