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"THUGS," "CROOKS," AND "REBELLIOUS NEGROES": RACIST AND RACIALIZED MEDIA COVERAGE OF MICHAEL BROWN AND THE FERGUSON DEMONSTRATIONS

Bryan Adamson*

INTRODUCTION

At approximately 1:30 p.m. CST on August 9, 2014, when the news broke of a shooting in Ferguson, Missouri, one disturbing picture was the first still image most of us saw.1 A Black male body is lying face down on the street. The picture is foregrounded by the familiar yellow “POLICE LINE DO NOT CROSS” barrier tape. One need not cross to see what is there. A wide stream of blood has run down the barely perceptible slope of the roadway. The male’s shirt is gathered up above his torso; his underwear is showing, and the waist of his pants is at mid-thigh. The body’s arms and legs are contorted around and beneath him in a manner no live person could will themselves to assume. This is a Black body. A police officer stands near Michael Brown’s body, looking down toward it. Brown would remain there, in that position—on the asphalt pavement of Canfield Drive on a Saturday at high noon in the midst of a Missouri summer—for four and one half hours.2

Brown’s killing by Wilson sparked an initial series of demonstrations that was seen and heard around the world.3 Those demonstrations were

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revived just less than four months later when a grand jury issued a “no bill” against Wilson, determining that he would not face criminal charges for his actions. Despite the grand jury’s decision, the Ferguson tragedy ushered in a sardonic, but ultimately apocryphal protest cry (“Hands Up! Don’t Shoot!”), and fortified the #BlackLivesMatter movement.

With the deaths of Black boys and men by law enforcement occurring with an alarming frequency, new activism has emerged. There are now sustained calls for reforms to the criminal justice system—particularly to confront systemic issues of mass incarceration, grand jury procedures, and carceral debt. Activists are also demanding extensive changes to police hyper-militarization, the use of body cameras, police internal affairs investigatory conflicts of interest, and to the ways in which communities of color are policed in general. Importantly, renewed activism has also brought needed media attention to the violence institutional


4. A “no bill” is a grand jury’s notation that insufficient evidence exists for an indictment on a criminal charge. See Black’s Law Dictionary (10th ed. 2014).


7. See infra notes 38-45 and accompanying text.


forces have visited upon other groups, especially Black women. Myriad examples exist under which other historically marginalized groups such as Latinos, Asian-Americans, and Native Americans experience similarly distorted media representations. Brown's death and the ensuing demonstrations exemplified the racially biased ways in which news narratives about Blacks are constructed. Consequently, mass media institutions warrant scrutiny and reform.

In recounting the Ferguson events, the media provided audiences with a framework through which to judge Brown, Wilson, and the protestors. Through ascription of racial or ethnic identities to crime narratives, and the intentional exploitation of negative stereotypes and identities, the media committed itself to perpetuating both racialized and racist constructions of Blacks—even those engaged in legitimate dissent. That framework constructed Brown and the protestors as thugs, with the demonstrators bent on creating chaos and disorder. The media hewed to a pro-majoritarian orthodoxy that privileged stability over dissent, and allowed audiences to ignore the role structural racism and bias may have played in Brown's death and the grievances demonstrators sought to surface.

The media relies heavily upon criminal and law enforcement institutions (police departments, courts systems) for its news content. Simultaneously, those institutions co-acted with mass media organizations to deliver their intended narratives for news consumption. The interdependence rendered the police and court system perspectives implicit in all crime news reporting.


17. To many, Brown was someone who attacked a police officer and Wilson's deadly force was thus justifiable. Consequently, Brown was an "imperfect victim" because the mass protests precipitated by his death were based upon the flawed assumption of his innocence or, at least, his lack of culpability. Some have contended that the protests failed, at least in part, because Brown was to blame for his own death by robbing the store and then assaulting Wilson. See Melanie Hunter, Black Conservative: 'Michael Brown Is Dead Because of Michael Brown', CNS News (Dec. 3, 2014), http://www.cnsnews.com/news/article/melanie-hunter/black-conservative-michael-brown-dead-because-michael-brown; see also Benedict Frederick, Jr., Blame Michael Brown, Not Police, BALTIMORE SUN (Dec. 25, 2014), http://www.baltimoresun.com/news/opinion/bs-ed-police-safety-letter-20141225-story.html.
The influence criminal and law enforcement agents wield on crime coverage is not narrowly attitudinal or behavioral, but is broadly ideological. This symbiosis dramatically restricts the parameters of discussion and debate about the problem of crime generally, and the implicit or explicit biases that influenced the Ferguson events specifically. With racist and racialized news on crime and Black dissent, news stories reassert a socio-political orthodoxy under which “Whiteness” and social stability remains the dominant order, and endows law enforcement responses to “disorder” with a presumptive correctness.

The media construction of Blacks as thugs or criminals is nothing new. Negative representations have been evident ever since Western colonization of the New World, when colonial newspapers ran slave advertisements and devoted ink to Black insurrections and crimes in columns entitled “The Proceedings of the Rebellious Negroes.” Even today, on television news, Blacks are over-represented as crime perpetrators. Blacks are also more likely than Whites to have their mug shots displayed on local news, be shown handcuffed, be on “perp walks,” and have prejudicial information aired about them (for example, as having a criminal record).

National news stories under-depict the true number of Blacks employed as police or law enforcement officers. Whites, on the other hand, are far more likely to be shown as crime victims, law enforcement members, or otherwise presented in more positive or benign roles (for example, as bystanders, first responders, news readers and reporters) in crime news.

The Ferguson reporting featured many of the same racist and racialized hallmarks of news coverage.

Because of the ways in which media influences what we know, our attitudes and behavior, racialized and racist media narratives carry concrete socio-political impacts. For example, in the United States, grand ju-

20. See Robert M. Entman & Andrew Rojecki, The Black Image in the White Mind: Media and Race in America 82 (2000) (the authors’ 1993-1994 study of a sample of televised news found that crime stories about Blacks were four times more likely to include mug shots than Whites).
22. Entman & Rojecki, supra note 20, at 82.
rors are not sequestered. Moreover, jurors are rarely monitored for their access to news, which may cover topics, people, or information upon which grand jurors are deliberating. In fact, the Ferguson grand jury in Wilson’s proceedings was not sequestered through the entire course of the 3-month inquest.

Regardless as to whether they were given a limiting instruction by a judge or the prosecutor, grand jurors were potentially exposed to the press conferences during which Prosecutor Bob McCulloch, Police Chief Thomas Jackson, and other law enforcement officials discussed evidence favoring Wilson and his account of the killing. Grand jury members could also watch, hear or read the countless news stories that covered the Ferguson looting incidents and demonstrations. The potential of media accounts to adversely influence deliberations was compounded by media discussants that rendered racist or racializing character assassination of Brown. And beyond jurors, judges, legislators and policy planners are no less vulnerable to mass media influence.

Nor are we. As a basis of discourse, news is just one type of media content that enables a society to build consensus (if not agreement) over myriad social problems, and solutions to those problems. By constructing Brown as the blameworthy “victim” from the outset, and through unremitting focus upon Ferguson looting and criminality, the media subverted and derailed any real opportunity for meaningful discourses around race, law enforcement and justice system reform, or around the myriad social, political, and economic issues Ferguson came to symbolize.

As of late, media coverage of tragedies involving Black men and women has been on full display. What most of us know, or came to know, about what happened in Ferguson or in the other communities recently shaken by police killings—Staten Island, Cleveland, North Charleston, Baltimore, Cincinnati—was media-constructed. In their reporting, the me-


29. See infra Part II.F.

30. According to grand jury transcripts, Ferguson jurors were given very little guidance on media attentiveness, or how they were to process the demonstration events taking place just outside the courthouse. See Transcript of Record at 1: 5–24, Missouri v. Wilson Grand Jury (2014) [hereinafter Wilson Grand Jury Transcript], available at https://graphics8.nytimes.com/newsgraphics/2014/11/24/ferguson-assets/grand-jury-testimony.pdf.

dia has shaped our understandings about Brown’s killing, Eric Garner’s killing, Tamir Rice’s killing, Walter Scott’s killing, Freddie Gray’s killing, Sam Dubose’s killing, Tanisha Anderson’s killing, Yvette Smith’s killing, and Sandra Bland’s death. The list is at once staggering and incomplete. We should no longer ignore why and how the media—as well as, law enforcement and criminal justice agents—produce, construct and frame these tragedies, and the corresponding effects of their framing.

This Article seeks to address those potential effects and propose possible remedies. Part I of this Article sets forth the events that led up to Brown’s killing and the subsequent demonstrations. Before engaging in a historical overview of Black depictions in the news media and the negative stereotyping associated with those depictions in Part III, Part II dis-


36. Samuel DuBose was an unarmed black man who was shot in the head and killed by University of Cincinnati police officer Ray Tensing during a traffic stop a few blocks from campus. See Charles M. Blow, The Shooting of Samuel DuBose, N.Y. Times (July 29, 2015), http://www.nytimes.com/2015/07/30/opinion/charles-blow-the-shooting-of-samuel-dubose.html.

37. Tanisha Anderson died on November 13, 2014, in Cleveland, Ohio, in an incident with Cleveland police officers after her mother called 911 while Anderson was having a “mental health episode.” A medical examiner ruled Anderson’s death a homicide, the result of being “physically restrained in a prone position by Cleveland police.” Lilly Workneh & Kate Abbey-Lambertz, These Black Women Died in Police Encounters, and May Never Get Justice, Huffington Post (May 19, 2016), http://www.huffingtonpost.com/entry/these-black-women-died-in-police-encounters-and-they-may-never-get-justice_us_567971c44b14e4e0c6ca0f.

38. Yvette Smith died on February 16, 2014 in Bastrop, Texas after being fatally shot when Bastrop County Sheriff’s Deputy Daniel Willis responded to a 911 call about a fight between several men at a residence. See id.

39. Sandra Bland was found dead in her jail cell in Waller County, Texas, on July 13, 2015 after she was arrested, ostensibly for a traffic violation. Authorities said her death was a suicide, but her family and pro-Bland advocates vehemently disputed the finding at the time. The Bland family’s lawyer stated that the family “is confident that she was killed and did not commit suicide.” Id.
sects the process for production of news content, media and law enforcement interdependence, narrative framing, and how those constructs operate to reify negative stereotypes. Part IV brings the history sketched in Part III to Ferguson, analyzing news text, sounds and images to demonstrate how the tropes of thugs, crooks, and rebellion came to be fixed in the accounts about Brown, the protestors, rioters and other actors.

Part V examines recent news accounts of violence in Keene, New Hampshire, Lexington, Kentucky, and Waco, Texas, which provide a sharp counterpoint to the Ferguson narratives. In news accounts of those melees—which predominantly involved White perpetrators—race went unremarked, which operated to untether the perpetrators' Whiteness from any race-based critique of their violent conduct. Part VI sets forth the media effects of cultivation and priming, and the possible impacts of Ferguson reporting on audiences' attitudes, beliefs, and behavior. Part VII examines the racist words and racialized narratives through First Amendment and broadcast regulation principles. The article concludes in search of regulatory, intra- and extra-institutional solutions, which might provide consistent and robust counter-narratives to the predominating media construction, production, and reification of racially adverse narratives.

I. THE ENCOUNTER

Section II discusses key components to the newsgathering and storytelling processes in media. However, it is useful to first provide a synopsis of the confrontation between Brown and Wilson, its aftermath, and a profile of Ferguson, Missouri. Providing a factual, political and economic context will elucidate the ways in which even routine newsgathering communicate racist and racialized meanings to the Ferguson saga.

A. August 9, 2014

A case can be made that Brown's death was precipitated by the simplest, most achingly banal offense: jaywalking, or to be legally precise, his "Manner of Walking."⁴⁰ On August 9, 2014, Brown and his friend Dorian Johnson walked down Canfield Drive, a Ferguson residential street that winds through the Canfield Green apartment complex where Brown lived. According to grand jury testimony, Wilson, on duty in an SUV squad car, pulled up and told them to move out of the street.⁴¹ Wilson drove past Brown and Johnson, and then backed up.⁴² While there were early conflicting accounts as to why Wilson re-approached Brown and Johnson,⁴³ it was later asserted that Wilson heard a dispatch about a strong-arm robbery of a pack of cigarillos at a nearby local store.⁴⁴ Wilson

⁴¹ See Wilson Grand Jury Transcript, supra note 30, at 4:45 (Dorian Johnson testimony).
⁴² See id. at 47.
⁴⁴ See id.
directed Brown to his SUV. After a brief and violent altercation at the SUV during which a shot was fired, Brown ran from the vehicle. After running for a short time and—according to some accounts—being struck again by another shot from Wilson, he turned around, and began to come back toward Wilson. Wilson fired twelve shots, leaving Brown with seven or eight gunshot wounds. Less than three minutes after being stopped for his manner of walking, Brown was dead.

In the ensuing hours, as Brown's body still laid in the street, mourning, questions, and crowds built. Demonstrations began that evening and continued for ten more nights. In the first days after Brown's killing, more than 100 police officers were deployed to the Canfield Green neighborhood, fortified in riot gear and armored tanks with shotguns, shields and batons, and dogs.

Five days after the killing, Missouri Governor Jay Nixon ordered the Missouri State Highway Patrol (MSHP) to take charge of law enforcement in Ferguson. On August 16, Nixon declared a state of emergency, instituted a midnight to 5:00 a.m. curfew, and directed other law enforcement agencies to assist the MSHP. With demonstrations unabated, the Na-
tional Guard was brought in. By the time Governor Nixon lifted the state of emergency on September 13, several businesses had been looted, two police had been injured, and thirty-two people had been arrested.

A grand jury of nine Whites and three Blacks was convened to determine whether Wilson had committed any crime. The grand jury was charged, in St. Louis County Chief Prosecutor Bob McCulloch’s words, to review “all of the physical evidence gathered, all people claiming to have witnessed any part or all of the shooting, and any and all other related matters.” It met on twenty-five separate days over the course of three months.

From the initial news reports, there was conflict as to whether Brown had first attacked Wilson at the SUV and tried to take his weapon. Moreover, for Wilson’s defense on one hand, and Brown’s supporters on the other, whether Brown was surrendering with his hands up or “charging” toward Wilson when he shot was both a legally and symbolically significant question. Grand jury testimony and the autopsy reports confirmed that the gunshot entry and exit wounds on Brown were consistent with Wilson’s account of what happened. The grand jury testimony failed to resolve whether Wilson’s initial stop was prompted by the dispatch call on the radio, or whether Wilson was on a power trip as he cruised by the youths, telling Brown and Johnson to “get the fuck on the sidewalk.”

From the beginning, McCulloch’s decision to present all known evidence to the grand jury was viewed as, and was in fact, unusual. Typically, the grand jury’s role is to evaluate evidence to determine whether

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58. See id. Based on insurance estimates, property damage in Ferguson related to the August was no more than $5 million. See Jeremy Kohler, Ferguson by the Numbers: Breakdown Since Protests Began, ST. LOUIS POST-DISPATCH (Nov. 22, 2014), http://www.stltoday.com/news/local/crime-and-courts/ferguson-by-the-numbers-breakdown-since-protests-began/article_5ec448a4-3f08-5861-813c-d03bed1c9784.html.

59. See Ferguson Protests, supra note 50; Timeline, supra note 43.

60. Kohler, supra note 5.

61. See id.

62. See discussion supra note 17.


64. See Kohler, supra note 5.


there is probable cause to issue an indictment. McCulloch’s prosecutors presented the grand jury with more than seventy hours of testimony from about sixty witnesses, including three medical examiners and experts on blood, toxicology and firearms. Perhaps the most controversial fact of McCulloch’s approach was to permit the grand jury subject—Wilson—to testify. Wilson spoke with the jury for four hours. While prosecutors even led him to make exculpatory statements through their questioning, other witnesses were not treated so delicately. Prosecutors pointed out flaws and contradictions in their testimony, confronted them with alternative witness accounts, and even raised some witness' criminal histories.

While the evidence elicited did not result in a true bill against Wilson, the grand jury’s decision caused unrest when McCulloch took to the microphone and announced that Wilson would not be indicted. On that night, there were demonstrations, rioting, and looting. About a dozen Ferguson buildings burned. The police, again in military-grade gear, fired tear gas and canisters and rubber bullets at protesters. By daylight, sixty-one people had been arrested. Demonstrations would continue for over two weeks in Ferguson, with solidarity rallies held across the country, and indeed, the world.

68. See Fagan & Harcourt, supra note 27.
70. See Fagan & Harcourt, supra note 27 (“In a typical state grand jury proceeding, the prosecutor calls only one or two witnesses, usually the reporting officer and the victim (if there is one) . . . Targets rarely appear before the grand jury, although a sympathetic target with a defense narrative will often choose to appear in a complex case.”).
73. See, e.g., id. at 13:59-60 (questioning witness about prior guilty convictions); id. at 13:60-61 (confronting witness with prior inconsistent statement that no one was with him during the shooting).
75. See id.
76. See id.
B. Ferguson, Missouri

As media attention grew in the days after Wilson killed Brown, information emerged about the city that had been catapulted to the front of every newspaper. Ferguson, Missouri, a town of about 21,000 residents, is a suburb of St. Louis. The St. Louis Post-Dispatch and the Kansas City Star are the largest circulating nearby newspaper outlets. The Post-Dispatch, with a daily circulation of about 130,000, is owned by Lee Enterprises—a media company which owns forty-six daily newspapers and about 300 specialty publications in twenty-one states; nationally, its combined weekday circulation is almost one million papers. The Kansas City Star, a McClatchy property, has a daily circulation of over 157,000. McClatchy operates twenty-nine daily newspapers in fourteen states and has an average daily circulation of 1.6 million. The five major television broadcast channels (ABC, CBS, CW, Fox, NBC), cable network news programs, and radio stations serve at least 1.2 million people in the St. Louis metropolitan area. Ferguson’s proximity to a large media center in St. Louis ensured that the news created around Brown’s killing and the subsequent protests could be disseminated, re-produced and re-created through the media networks other holdings.

Like many large U.S. cities in the Midwest and Great Lakes regions in the 1960s, St. Louis experienced rapid population decline through White flight to its suburbs. Ten miles away, St. Louis’ population shifts had ripple effects upon Ferguson. Over the past few decades, Ferguson transitioned from a majority White population to a majority Black one. Between 1990 and 2010, the White population there dropped from 16,454 to 6,206 and the Black Ferguson residents increased from being 25.1% of the population to comprising 67.4%. The average income of a Ferguson household was $40,660 in 2014, with almost twenty-three percent of the population living below the poverty line.

Even though Ferguson has a majority Black population, in 2014, its power structure was virtually all White. Ferguson’s mayor was White; its six-member school board had one Hispanic member, and its City Council

84. See id. at 2, 5, 7.
87. See Semuels, supra note 86.
had just one Black member.\textsuperscript{89} At the time Brown was killed, fifty members of Ferguson’s fifty-four-member police force were White.\textsuperscript{90}

As revealed by the Department of Justice report developed in the wake of the Ferguson tragedy, Ferguson residents experienced a web of racial, economic and criminal justice inequities. The municipality inordinately relied upon a police-enforced citation system to generate revenue. In 2010, over ten percent of the city’s general fund revenue came from fees and fines collected by the court.\textsuperscript{91} In fiscal year 2012, the City had collected $2.11 million in fees and fines through its court system.\textsuperscript{92} For the fiscal year 2015, the City anticipated fine and fee revenue streams to account for nearly twenty-five percent of its $13.26 million dollar budget.\textsuperscript{93} As of October 31, 2014, the Ferguson Municipal court had over 53,000 traffic and 50,000 non-traffic cases pending.\textsuperscript{94}

Ferguson’s law enforcement conduct towards Blacks was also nothing short of abhorrent. Despite being sixty-seven percent of the population, Blacks comprised eighty-five percent of vehicle stops, ninety percent of citations, and ninety-three percent of arrests made by Ferguson police officers between 2010 and August 2014.\textsuperscript{95} Blacks were twice as likely to be searched for possession of contraband, but were found with such contraband twenty-six percent less often than Whites.\textsuperscript{96} From 2012 to 2014, Ferguson police officers issued, in a single stop, four or more citations to seventy-three Blacks but did so only twice to non-Blacks.\textsuperscript{97} Every canine bite for which race was recorded occurred upon a Black person.\textsuperscript{98} Ninety percent of the documented cases of use of force were upon Blacks.\textsuperscript{99}

Despite the racially disparate experiences of Blacks, news coverage that purported to provide historical context on race relations failed to acknowledge the pre-existence of any deeper tensions. For example, CBS reporter Dean Reynolds asserted that the relationship between “the almost all-White police force in this largely black community” had not been a major issue prior to Brown’s death.\textsuperscript{100} In an interview in the first days of the protests, Ferguson Mayor James Knowles III insisted that he “had never believed a racial divide existed in the community[.1]”\textsuperscript{101}


\textsuperscript{91} See id. at 9.

\textsuperscript{92} See id.

\textsuperscript{93} See id. at 10.

\textsuperscript{94} See id. at 9.

\textsuperscript{95} Id. at 62.

\textsuperscript{96} Id.

\textsuperscript{97} Id.

\textsuperscript{98} Id. at 31.

\textsuperscript{99} Id. at 5.

\textsuperscript{100} CBS Evening News: 8/12: Severe Flooding Hits Midwest, East Coast; New Lead in Brooklyn Bridge Mystery (CBS television broadcast Aug. 12, 2014) (transcript on file with author).

\textsuperscript{101} Id.
As the investigation surrounding Brown's death evolved, accounts of marches, riots, and looting occupied the media space. Mass media's relentless coverage exposed us to a stream of words, images, and sounds depicting what happened, and what was happening in Ferguson. Eventually, Americans learned of a small town riven by race and now suffused by violence. The norms and routines of news-gathering and production, as well as subjective biases accounted for the narratives we saw, read, and heard. The media, as much as any other institution or individual, influenced how the public came to view and evaluate Brown, Wilson, Ferguson, and the protestors.

II. Constructing News Stories

The Ferguson saga provides a basis to illuminate the fundamental components of newsgathering and the socio-political milieu in which that newsgathering takes place. Like other cultural products (film, music, advertisements), news stories are comprised of words, images, and sounds constructed in such a way that they can most broadly resonate with an audience's cognitive schema.

News is an amalgam of words, images, sounds, and frames. Words, sounds and images convey cognitive and affective understanding in combination. For example, the intrinsic audiovisual nature of television news means that verbal (words) and nonverbal (images, sounds) signals create mental representations simultaneously. We allocate cognitive resources differently in a conscious, controlled manner while processing incoming messages, selectively perceiving and encoding the audio and video messages "while simultaneously retrieving previously stored information from memory in order to make sense of what we are observing." Simultaneous verbal and nonverbal stimuli can be congruent,


103. News stories are typically framed with an eye toward their organizational and modality constraints, professional judgments, and certain judgments about the audience. See Stephen D. Reese, Prologue—Framing Public Life: A Bridging Model for Media Research, in Framing Public Life: Perspectives on Media and Our Understanding of the Social World 7, 19-20 (Stephen D. Reese et al. eds., 2001).


106. Id. at 647.
non-congruent or ambiguous; may amplify or contradict each other; or may facilitate message comprehension in the precise ways intended.\textsuperscript{107}

The composition and juxtaposition of news components are part of the journalistic process.\textsuperscript{108} "News" does not rationally occur; it does not emanate ready-made for an audience, and certainly does not arrive at the media gates in event-story form. When an event occurs, a reporter is called to a scene and responds with his senses—sight, touch, taste, smell, or feeling.\textsuperscript{109} Yet, by simple virtue of human perception, only a fraction of the available information is processed.\textsuperscript{110} Thus, a reporter’s mere presence introduces story bias; his "semantic reactions" are not to the event itself, but to the aspects of the event that have impacted his senses.\textsuperscript{111}

Whether the event itself is "newsworthy" is determined in large measure by the degree to which the observation "maps" onto the reporter’s schema of past newsworthy events.\textsuperscript{112} Other factors include the event’s geographic proximity (for example, Brown’s death initially might not make the news in Walla Walla, Washington), attention-grabbing visual features (e.g., action, blood) and whether the story can be understood by its intended audience.\textsuperscript{113} However, policymakers, interest groups, media organizations, sponsors, and political institutions also determine the content, volume and character of news messages.\textsuperscript{114}

To appreciate the media's influence upon our micro- and macro-social, racial, and political evaluations of those narratives is to recognize a need for a broader, more forceful critique of how media institutions create news. This Part will explicate the ways in which text, image and sound are deployed to construct news in a way that influences what we think about. Therefore, using examples from Ferguson news coverage, this Part will examine the fundamental elements of news narratives and framing techniques of words, images, and sounds to produce crime and protest scripts. This Part will then explore the unique impact law enforcement and social media actors have on news messaging.

A. Agenda-Setting

Media theorist Bernard Cohen famously said that while the news media do not tell us what to \textit{think}, it does tell us what to \textit{think about}.\textsuperscript{115} Through "routine structuring of social and political reality," mass media have the ability to transfer the salience of items in their news agenda to


\textsuperscript{110} See id.

\textsuperscript{111} See id.

\textsuperscript{112} See id.

\textsuperscript{113} See id.

\textsuperscript{114} See Shoemaker & Reese, supra note 108, at 175; Shoemaker & Vos, supra note 108, at 31–32.

\textsuperscript{115} See Bernard C. Cohen, \textit{The Press and Foreign Policy} 13 (1963).
the public agenda.\textsuperscript{116} This "agenda setting" role of media posits that elements prominent in the media's construction of any given news story become prominent in the audience's thinking and articulation of the story's issues and subjects.\textsuperscript{117} Newspapers, for example, announce the journalistic salience of an item through its page placement, headline, and length.\textsuperscript{118} Radio and television story placement, as well as story length, declares the salience of the topic.\textsuperscript{119}

Telling audiences what to think about, however, only partially captures what news media do. Attribute agenda setting, with both substantive and affective dimensions, "occurs when the way in which media cover issues becomes the way in which citizens think about issues."\textsuperscript{120} By highlight, emphasis, privilege or omission, the media direct our attention to specific aspects of those issues and subjects. Thus, media also tell us what matters about what matters.

Research on agenda setting demonstrated that, as an initial matter, "story selection can alter [audience] judgments by shifting the odds that particular issues will come to mind more easily."\textsuperscript{121} In other words, what is reported is what we are likely to recall. Moreover, agenda-setting is affected by media, as well as, medium choice. For example, people using online news services form different perceptions of the salience of any given issue when compared to people using offline news.\textsuperscript{122} Finally, issue agenda-setting is also contingent on one's personal media preferences. Accordingly, people watching FOX news just after the 9/11 tragedy were more likely to perceive terrorism as an important problem; a view not necessarily had by those who watched CNN.\textsuperscript{123}

The choice and placement of the Ferguson saga in the news was the first agenda-setting step: what was happening in Ferguson mattered more than any other topic the news could have covered. Narratives created

\textsuperscript{116} See Brian McNair, News and Journalism in the UK 24 (4th ed. 2003).

\textsuperscript{117} See Maxwell McCombs & Salma I. Ghanem, The Convergence of Agenda Setting and Framing, in Framing Public Life, supra note 103, at 67, 67; Dietram A. Scheufele & David Tewksbury, Framing, Agenda Setting, and Priming: The Evolution of Three Effects Models, 57 J. COMM. 9, 11 (2007) ("[T]here is a strong correlation between the emphasis that mass media place on certain issues (e.g., based on relative placement or amount of coverage) and the importance attributed to these issues by mass audiences." (internal citation omitted)). Agenda setting theory was first introduced by Maxwell McCombs and Donald Shaw in the early 1970s. See generally Maxwell E. McCombs & Donald L. Shaw, The Agenda-Setting Function of Mass Media, 36 Pub. Opinion Q. 176 (1972).

\textsuperscript{118} See Maxwell McCombs & Amy Reynolds, News Influence on Our Pictures of the World, in Media Effects: Advances in Theory & Research 1, 4 (Jennings Bryant & Dolf Zillmann eds., 2d ed.).

\textsuperscript{119} See id. The concept of the agenda setting role of news was first affirmatively tested with the 1968 U.S. presidential election, where researchers found a high degree of correlation between the prioritization of political and social issues of voters and that of the news media sources those voters regularly consumed. See id. at 4.

\textsuperscript{120} Ashley Muddiman et al., Media Fragmentation, Attribute Agenda Setting, and Political Opinions About Iraq, 58 J. Broadcasting & Electronic Media 215, 216 (2014).


\textsuperscript{122} See Muddiman et al., supra note 120, at 217.

\textsuperscript{123} See id. at 216.
around Brown’s killing highlighted racial discord, looting, violence, and demonstrations. In the construction of those thematic attributes, the media suggested to us not (necessarily) what to think about the Ferguson events, but how to think about them.

B. Words: Crime and Protest Scripts

The primary component of any media news is the word as text. Whether written or spoken, words are the primary vehicles through which our understanding of an event is made.\textsuperscript{124} A journalist will begin to form a narrative based upon media-established categories of social experiences (e.g., “crime,” “human interest,” “politics”), and then articulate a story in a way to conform the narrative to linguistic conventions of the story “type.”\textsuperscript{125}

All news stories are comprised of a script, “a coherent sequence of events expected by the individual, involving him either as a participant or as an observer.”\textsuperscript{126} As a heuristic pattern, a script facilitates comprehension in audiences by presenting an orderly and predictable set of scenarios and roles.\textsuperscript{127} Scripts enable a reader or viewer, “quite effortlessly, to make inferences about events, issues, or behaviors.”\textsuperscript{128} A common rhetorical form of news script is the narrative.

News narratives typically possess four components.\textsuperscript{129} First, there must be active event and a stative event, i.e., something occurs to disrupt a setting or state of being (e.g., “on Saturday afternoon, a man was shot,” or “demonstrators took to the streets”).\textsuperscript{130} Second, the events must have a temporal relationship, though, this does not necessarily mean that events must relate chronologically, but only that they evince a sequence.\textsuperscript{131} Third, a contributing or causal relationship must exist between earlier and later events.\textsuperscript{132} An earlier event may act as a precursor necessary for a later event to have occurred or an earlier event may cause a later event as an effect.\textsuperscript{133} Finally, a narrative must unify by theme and within a genre; as opposed to listing events and characters, “the setting, the characters, and their actions must be connected in ways that together tell the story.”\textsuperscript{134}

\begin{itemize}
\item \textsuperscript{124} Cf. Johnson, supra note 109, at 664.
\item \textsuperscript{125} See id.
\item \textsuperscript{127} See id.
\item \textsuperscript{128} Id.
\item \textsuperscript{129} See Eleanor Ryan, I’ve Heard this Story Before: A Narrative Criticism of News Coverage of Ferguson, 18 UW-L J. UNDERGRADUATE RES. 1, 6 (2015).
\item \textsuperscript{131} See id.
\item \textsuperscript{132} See id. at 39–40.
\item \textsuperscript{133} See id. at 40.
\item \textsuperscript{134} Id. at 53.
\end{itemize}
cast within various narrative genres—crime stories, protest accounts, and press conference recapitations.

1. Crime Scripts

Crime is perhaps the most common and economically lucrative news genre. Daily print news providers rely on the genre to generate sales. Local news broadcast, which remain the most popular medium for news acquisition, relies on it to generate optimal ratings. Local news places special emphasis on sensationalism. Murders, armed robberies, violent accidents, kidnappings or gang activities are common staples in local newscasts—thus the axiom "if it bleeds, it leads." Stories that do not lend themselves to such kinetic visuals or wordplay are rarely, if ever, seen. As a result, little time is ever devoted to non-violent crimes such as embezzlement, fraud, or tax evasion.

"Crime" scripts most often focus on concrete events, drama, emotion, and their impact on ordinary people. Regardless of the medium, crime scripts follow a specific pattern: 1) the crime is violent; 2) the coverage focuses on a discrete event, and thus is episodic; and 3) news reports will usually feature a causal agent, i.e., an actual or suspected perpetrator.

All crime narratives have a recurring set of figures: the suspect, law enforcement officials, and the victim and/or the victim's family. The crime script usually revolves around the suspect. In reconstructing the crime event, the only information usually conveyed about the suspect is a name, if known, and the suspect's gender. However—through implicit or explicit news story conventions, the crime and criminal behavior is often associated with the race or ethnicity of the subject.

Brown's killing had all the hallmarks of crime news drama: a shooting, an image of a dead body, and a causal agent. The initial stories noted that Brown was unarmed, and that the suspect was "a" police officer or "the
police." 147 Many initial reports explicitly noted Brown’s race—even in the headline. 148 Those stories not given to such explicit expression could allow the image of Brown’s body lying on Canfield Drive to proclaim his race.

2. Protest Scripts

Protests are epochal forms of expression, with a host of paradigms within which protest activities communicate. Protests may emphasize: 1) the literal, symbolic, aesthetic, and sensory (e.g., chanting, dance, theater); 2) movement in space (e.g., parades, pickets, marches); (3) solemnity and the sacred (e.g., vigils, prayers); (4) civil disobedience (e.g., sit-ins, blockades); (5) institutional and conventional activity (e.g., lawsuits, boycotts, lobbying); and (6) collective violence and threats (e.g., physical harm, property destruction). 149 Demonstrators chanting “Hands Up! Don’t Shoot!” as they march exemplify a protest marked by movement and symbolism.

Whether and how a given protest is deemed newsworthy is dictated by selection and description biases. Protests are more likely to be selected for news accounts if they “fit well with the production routines of news organizations and if they have features that make them newsworthy.” 150 Researchers studying over 2,500 protests found that those resulting in arrests, violence, and counterdemonstrations tended to generate the most amount of news coverage. 151 Thus, selection bias prefers protests that feature disruption of stative conditions, conflict, and law enforcement response. 152

Often, protest story description biases emphasize selection bias preferences and conform to crime scripts. 153 They are framed as “riots,” “carni-

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151. See id.

152. See id.

153. See id.
vals," or "clashes." Protest scripts also highlight the protesters' outsider or socially-marginal status and question the participants' socio-political legitimacy. The invocation of public opinion about protest issues, or public reactions to protestors, also tends to delegitimize demonstrations. If stated at all, the underlying reasons or rationales for the protests are buried toward the end of print accounts, and rarely spoken of in the course of television news coverage of the protest. By failing to adequately explain the meaning and context of protest actions, audiences may indeed see them as futile and even irrational.

C. Sounds

Whether in the form of voice, music, environmental scape or noise, sounds are the primary element of broadcast radio and a constitutive part of television broadcast news. Sounds, however, are more than just particular vibrations of air, or properties of material objects. Like other sensory cues, sounds possess physical, cognitive, symbolic, and expressive characteristics. For example, people tend to hear not just sounds, but events. We hear whether a bottle has bounced or broken, whether a door was closed or slammed, or whether a car has braked or crashed.

Voice, the primary message vehicle of broadcast news, communicates information linguistically while also communicating semantic or referential meaning. Through myriad paralinguistic characteristics (e.g., pitch, intonation, volume) and vocal qualifiers (voice types based upon physical or physiological traits), voices convey substantive and emotive messages. In fact only seven percent of messaging pertaining to feelings and attitudes is performed by the words we use; thirty-eight percent of such messaging is in the way in which the words are said, and fifty-five percent is in our facial expressions.


155. See id. at 186.

156. See id. at 187.

157. See id.

158. See id.


161. See Bergman et al., supra note 160, at 3157; see also Gaver, supra note 159, at 287. Auditory alerts can be described as "caricatures of naturally occurring sounds such as bumps, scrapes, or even files hitting mailboxes" and have an intuitive link to the event they describe. Bergman et al., supra note 160, at 3157 (quoting William W. Gaver, Auditory icons: Using Sound in Computer Interfaces, 2 Hum.-Computer Interaction 167, 169 (1986)).


Broadcast news stories contain diegetic and non-diegetic acoustics. Diegetic acoustics are those seen or whose presence is implied. A reporter talking into a camera, or a police vehicle siren would be an example of a diegetic sound. Non-diegetic sounds are those in which the source is neither present nor implied in the event context. A voice-over narrative of a Ferguson story on video, a sound effect at the opening of the story (e.g., the noise that accompanies a “Breaking News” alert), or mood music accompanying the story are non-diegetic sounds.

While diegetic and non-diegetic sounds may have different cognitive goals, in news stories they work together to accomplish important narrative tasks. For example, in a CNN August 18 newscast about “violence erupt[ing]” in Ferguson, diegetic sounds of loud vehicles (the armored trucks) rolling down Florissant Avenue aided in developing the “war” and “chaos” metaphors that themed the newscast. Whether by triggering memory or unconscious inferences, sounds aid in our interpretation of what is occurring.

D. Images

News images contribute as much as aural or textual discourse to narrative construction. Words require us to construct meaning through propositions about causality, comparisons or generalizations. Images, however, possess codes, which contribute to how image content is interpreted and evaluated. Light, color, angle selection, setting, background, foreground, contrast, level, subject, balance, white space, distance, depth, and, what is/what is not in the frame are semiotic codes rooted in all static images. Moving images possess those and additional semantic codes attendant to camera movements, editing choices, and sounds.

Images—moving or still—perform metacognitive functions in ways that words alone cannot. Observers rarely consider that images are products intentionally produced through the use and manipulation of semantic and semiotic codes. Without conscious consideration, an observer may conclude that what is being viewed is not a transformation, not a signification, nor a representation of reality; it is reality. Importantly, images also allow observers to make meaning intuitively. In reposing

164. See Klas Dykhoff, Non-Diegetic Sound Effects, 2 NEW SOUNDTRACK 169, 172 (2012).
165. See id. at 174.
166. See NICHOLAS COOK, ANALYSING MUSICAL MULTIMEDIA 20–21 (1998).
169. See id. at 232–33.
170. See id.
in the viewer the power of interpretation, images bypass human agency, and thus can make claims beyond what is conveyed orally or in text.\textsuperscript{173}

A photograph of Brown, tweeted by NBC News a day after he was killed, illustrates how images may convey meaning through racial codes.\textsuperscript{174} The picture shows Brown standing, unsmiling, wearing a blood-red Nike Air jersey, looking down into the camera lens. The photograph’s grainy, diffuse texture, the light and shadows, and the camera angle call attention to Brown’s height and size. The visage is one of a cold if not cool, confident persona.

And, of course, there is the hand gesture. The photograph introduced Brown performing a gesture sufficiently ambiguous but one that could also signify gang affiliation and, by extension, fuel a news narrative of Black youth and crime. Many news outlets ran the photograph with pundits speculating over its meaning. Some television pundits insisted it must have been a gang sign.\textsuperscript{175} Others simply allowed the picture to “speak for itself,” without explicit textual or verbal reference to the gesture.\textsuperscript{176} Under the latter circumstances, the image was used more insidiously. The image was left to communicate on its own, though indirectness and implication, and racism was enacted symbolically.

E. News Frames

Words, images and sounds are used to advance ideas, themes, and values. The act of framing news stories for audience interpretation is a routine deployed by news content creators, as well as everyday citizens who re-tell or re-transmit news stories in quotidian behaviors. Frames “are organizing principles that are socially shared and persistent over time, that work symbolically to meaningfully structure the social world.”\textsuperscript{177} As a cognitive construct, framing is the intuitive method by which we naturally select, categorize, and process stimuli.\textsuperscript{178} In news production, frames are used to present information in a way to most effectively resonate with the underlying cognitive schemas of an audience.\textsuperscript{179}

\textsuperscript{173}. Messaris & Abraham, supra note 171, at 216.


\textsuperscript{176}. See id.

\textsuperscript{177}. Stephen D. Reese, The Framing Project: A Bridging Model for Media Research Revisited, 57 J. COMM. 148, 150 (2007) (quoting Reese, supra note 103, at 11). Frames are part of a “basic tool kit of ideas [that can be used] in thinking about and talking about” the news. Price et al., supra note 121, at 482.

\textsuperscript{178}. See generally ERVING GOFFMAN, FRAME ANALYSIS: AN ESSAY ON THE ORGANIZATION OF EXPERIENCE (1974). Goffman posits that in order to interpret life experiences and make sense of the world around us efficiently, individuals apply interpretive schemas, or “primary frameworks.” See id. at 24.

\textsuperscript{179}. Frames act like plots or story lines, lending coherence to otherwise discrete pieces of information. Stereotypes are a kind of framing. See Thomas E. Nelson et al., Media Framing of a Civil Liberties Conflict and Its Effect on Tolerance, 91 AM. POL. SCI. REV. 567,
News stories are framed by content (e.g., “crime”), organization (lead sentence content), and themes (e.g., “human interest,” “conflict” or “consequence”), which serve as slants and hooks. Frames are also established in news production by words chosen, article placement, people interviewed, the quotes used, and even the way photographs accompanying the story are presented.

There are a litany of other journalistic framing conventions: headlines and kickers (small headlines over the main headline); anchors (text below photographs); screen captions or crawls (text traveling across the screen, usually at the bottom); leads (the beginnings of print news stories) or lead-ins (spoken story openings in televisual news); statistics, charts, or graphs; source selection, or the naming of source affiliation (e.g., “R-NY,” or “D-UT”); quote selection; pull quotes (quotes placed in prominent font, usually alongside the story); news page compositions; concluding statements or even article paragraphs; the use of active or passive voice, personal pronouns, adjectives or metaphors; spin, jargon, or trigger words (e.g., “Thug”). How news stories are framed have a demonstrable impact on audience opinion about the news subject. A research study of print and television news stories on a Ku Klux Klan rally affirmed that audience reaction was strongly dependent on how the event was described. Researchers found public support to be significantly different when news stories framed the rally as an exercise of free speech (positive) versus a disruption of public order (negative).

However, the cognitive and affective powers of frames are crucially dependent upon not calling attention to them. Take the St. Louis-Post Dispatch front page from August 11, 2014. It features paradigmatic framing features so inherent as to be invisible. The story’s salience is signified by the fact that it is on the first page. Dual headlines read, “DAY OF PROTESTS, NIGHT OF FRENZY.” The headline font size is intentionally large, and the two dominant headlines infer contrasting themes: Day/Night, Peace/Violence. Narrative themes are also signaled by the sub-headlines, “Hundreds Gather to Mourn,”

568 (1997); Zhongdang Pan & Gerald M. Kosicki, Framing as a Strategic Action in Public Deliberation, in FRAMING PUBLIC LIFE, supra note 103, at 35, 48; Scheufele & Tewksbury, supra note 117, at 11. A “consequence” story is one that explicates an issue and its impact on the reader (e.g., “Gas Prices Set to Increase: What You Will Pay at the Pump.” See Price et al., supra note 121, at 485.

See id. at 484–85.

See James W. Tankard, Jr., The Empirical Approach to the Study of Media Framing in FRAMING PUBLIC LIFE, supra note 103, at 95, 100.

See id. at 100–01.

Nelson et al., supra note 179, at 576. Nelson et al. examined how local television news outlets framed a demonstration and rally by the Ku Klux Klan (KKK) in a small Ohio city. See id. They were able to demonstrate that the way news outlets textually framed the KKK activity had an effect on public opinion support for the event or the counter-protestors. See id.

See id.

See id.

See Messaris & Abraham, supra note 171, at 217.

and “Some...Turn to Looting and Violence.” The two stories at the far left and right columns of this front page take decidedly different angles, one describing the city as “wary,” and the other describing Brown as a “Gentle Giant”—a term that would come to be used against Brown. Notably, the phrase “Night of Frenzy” in red font conjures the cognitive associations we tend to make with that color: danger and alarm.188

The reader’s eyes, however, become fixed on the photograph taking up most of the page: a nighttime scene of fire, tear gas, and smoke. The image captures Ferguson as a place in dystopian ruin. The photograph’s anchor interprets the image for the reader: that is the local QuikTrip burning, and a police truck from which tear gas was fired. The smaller photograph at bottom-center of the page captures a looter in the QuikTrip before it was burned to the ground. The figure—male, Black, with sagging jeans—has “bottles of wine in his hands [.]”

Presumably, the Post-Dispatch had options in electing what words, themes, and images to pursue. It could have, for example, devoted its front page to examining peaceful protests and the socio-political issues that lay beneath the protests. Moreover, it could have refused to feature a Black person committing a robbery. But it did not. The choices made about the headlines, kickers, anchors and photographs by the Post-Dispatch speak volumes about the narrative it preferred to privilege: racialized criminality, lawlessness, and destruction.

F. Framing by Law Enforcement and Criminal Justice Institutions

Political-legal institution agents in general and law enforcement and justice system agents in particular, are invaluable primary media content sources.189 Consequently, media reliance upon those institutions to aid in news production is such that “news organizations and policing agencies allow for the collection of news about crime to be routinized.”190 Through police reports, rap sheets, arrest photographs, criminal and court records, criminal and law enforcement institutions “are the principal suppliers of these stories.”191 Conversely, those institutions readily and strategically leverage media in communicating their own messages.192

Understanding the institutional interdependence explains the construction of crime narratives generally, and those which recounted the Ferguson saga specifically. Brown’s death became screened through a law enforcement filter, imbued with culturally resonant news themes (crime, race, social unrest), then shaped and molded by the conventions

189. See Pan & Kosicki, supra note 179, at 44–45; see also Vincent F. Sacco, Media Construction of Crime, ANNALS AM. ACAD. POL. SCI. 539 141, 142 (1995).
190. Sacco, supra note 189, at 144; see also Robert M. Entman & Kimberly Gross, Race to Judgment: Stereotyping Media and Criminal Defendants, 71 L. & Contemp. Probs. 93, 95 (2008); Gene Policinski, Setting the Docket: News Media Coverage of Our Courts – Past, Present and an Uncertain Future, 79 MISSOURI L. REV. 1007, 1008 (2014); see also Sacco, supra note 189, at 144.
191. Sacco, supra note 189, at 144.
192. Id.
and requirements of news media: crime and protest scripts, sound and images, and framing. The earliest reports of Brown's death relied exclusively on department sources, and narratives were constructed out of press conferences held by Ferguson Police Chief Tom Jackson and Prosecutor Bob McCulloch.\(^{193}\)

When institutional agents such as McCulloch and Jackson are the predominant content providers of news, stories will be told from the institutional perspective. What invariably happens is that narratives are constructed from the perspectives of the powerful, and the perspectives of those challenging those perspectives are delegitimized.\(^{194}\) One significant method of institutional control of news narratives is the press conference.

Press conferences are a unique rhetorical method for sources to control news narratives, and are especially valuable to institutional agents in times of crisis. They represent a type of strategic communication—an amalgam of stagecraft, marketing and even public relations.\(^{195}\) Utilizing prepared or unprepared statements, agents are able to frame controversies, justify actions, or explain outcomes. Moreover, they represent an efficient method of controlled information dissemination and newsgathering.\(^{196}\)

Press conferences possess an important trait not seen in the traditional media interviews. They are not dialogic (i.e., question/answer), but monologic (speaker/audience). Given the one-to-many relationship, the journalistic role at a press conference is fragmented;\(^{197}\) any one reporter has few, if any, chances to ask follow-up or probing questions. This format fundamentally changes the conditions of interaction between journalists and their sources. Because of the monologic structure, the institutional agent is able to avoid certain questions, privilege certain journalists, and control the narrative.\(^{198}\)

The convener's institutional status lends the message a presumed legitimacy as an "official" perspective.\(^{199}\) To be sure, a press conference's "success" can be measured by the speaker's ability to "manipulate or tailor language to properly craft and deliver the right message to persuade or change opinions of the audience."\(^{200}\) Because the press conference structure allows only a degree of factual interrogation, doubts are

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193. See discussion infra this section.
194. See McLeod, supra note 154, at 186.
196. The immediate press conference audience is often predominately comprised of news reporters who use its content as foundations for news stories. The press conference can be news in and of itself, aired live and completely. Otherwise, deliberately selected passages from press conferences are extracted, framed and represented. See Jacobs, supra note 196, at 1901.
197. See id.
198. See id.
199. See id; see also Sacco, supra note 189, at 146.
sublimated and the media, in the act of reporting, legitimizes the institutional source as well as the "facts" underlying the crisis.

The Jackson and McCulloch press conferences are prime examples of press conference effectiveness in framing stories and of media-law enforcement interdependence. Within hours of the shooting, the Ferguson Police Department (FPD) embarked upon a systematic effort to control the Brown-Wilson narrative. On August 10, a St. Louis Post-Dispatch article led with this headline: "Police: Ferguson teen struggled over officer's gun before being shot to death." At press conferences, Police Chief Tom Jackson was allowed police department's version of what transpired that afternoon. Jackson described to reporters on August 12, "an altercation inside the [officer's], before the altercation outside the car."

For days after Brown's death, the FPD refused to divulge Wilson's name or race. Jackson's refusal to name Wilson's race was perhaps out of a desire to avoid any suggestion that Brown's death was racially motivated, or that Wilson harbored racial animus. To be sure, Jackson used his press conferences to paint a sympathetic portrait of the unnamed lawman. Jackson described Wilson as a "gentle, quiet man" and a "distinguished officer." In the same news segment, Jackson told reporters, "[i]t's devastating, absolutely devastating. He—he never intended for any of this to happen."

Jackson would not only enhance Wilson's character, but tarnish Brown's. On August 13, a Post-Dispatch story fed by the police department was headlined: "Ferguson Chief Says Officer Involved in Shooting Has Face Injuries." A department leak to the media cited an official who suggested that Brown was high on marijuana at the time of the encounter. On August 15, Jackson released the videotape later confirmed

201. While the headline of the archived article on the Post-Dispatch website has since been changed, the original article headline can be found on Reddit. See Police: Ferguson Teen Struggled Over Officer's Gun Before Being Shot to Death, REDDrr (Aug. 10, 2014), https://www.reddit.com/r/StLouis/comments/2d5vkd/police_ferguson_teen_struggled_over_officers_gun/.


204. Scott Pelley reported that "The Ferguson Police Chief described him today as a gentle, quiet man, and excellent officer." CBS Evening News: 8/15: Michael Brown Suspected in Robbery Minutes Before Shooting; ALS Patient Continues "BIGG" Initiative to Bring People Together (CBS television broadcast Aug.15, 2014) (transcript on file with author).

205. Id.


to show that Brown had committed a strong-arm robbery—even though it was far from clear at the time whether Wilson had even heard the radio call of that incident before he encountered Brown and Johnson.  

McCulloch's press conference announcing the “no bill” was another example of the power these conferences hold for institutional agents. On November 24, he offered a forty-five-minute explanation of his chosen approach to grand jury presentment, and the basis for Wilson’s exoneration. At that conference, where he took very few questions, McCulloch gave detailed steps as to how the shooting unfolded and repeatedly cited inconsistencies in witness statements and accounts. While he claimed to not put much stock in Wilson’s testimony, grand jury transcripts revealed that a remarkable level of deference was granted Wilson. On the other hand, McCulloch’s prosecution team challenged and confronted other witnesses about their statements, effectively discrediting their accounts. McCulloch’s press conference remarks made no such mention of those prosecutorial tactics. Arguably, McCulloch’s main goal that Monday evening was to officially exonerate Wilson in the court of public opinion. As University of Missouri Professor Ben Trachtenberg stated, McCulloch’s entire press conference “read like a closing argument for the defense [.]”

G. News Framing in Social Media Networks

When we rely on secondary sources for news information, the impact is unique. Audiences do not always receive news stories directly, but will get news through personalized news feeds, peers, significant or proximate (co-workers) others, and those otherwise members of our social media networks. Exposure to news and civic information is mediated through online social networks and electronically-enabled personaliza-

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See Kohler, supra note 5.

209. See Kohler, supra note 5.

210. See, e.g., Wilson Grand Jury Transcript, supra note 30, at 5:280–81 (leading Wilson to say that he felt like his life was in jeopardy and giving him an opportunity to explain why he saw Brown as a threat).

211. See supra note 73.

212. Kohler, supra note 5.


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tion now more than ever. In fact, we all tend to construct our online social networks much in the same way we construct our networks based on face-to-face interactions.

In considering the cognitive and affective impact of news consumed through online networks, we start with the premise that all people seek out congenial news sources—media that align with their personally relevant beliefs. Selective news source exposure is especially marked under circumstances in which the covered topic goes to the core of one’s self-identity or self-concept—especially those closely linked to socio-political ideologies such as racial predispositions. While we have always been able to choose which news sources to attend, the degree of political/ideological segregation in social media networks is in fact higher than that associated with mass media such as television and newspapers. In sum, our media selection evinces our general tendency toward confirmation bias—i.e., attentiveness to news sources whose stories tend to reinforce our predispositions and the discounting or exclusion of non-congenial sources and information.

When news stories enter our electronic media networks, they do so in at least three forms: 1) unadulterated, as when news enters our network directly from the news source (e.g., Washington Post articles arrive in Facebook feed); 2) summarized and sent by a social network, or “ingroup” member or; 3) rearticulated through a different rhetorical device such as a meme. As audience members engage their media sources in social networks, four communication phenomena may occur. For stories shared with the whole or subset of one’s social network, the sender might 1) transmit the story unedited; 2) excerpt portions of the story, 3) tag or give the story an explicative anchor, or 4) by excerpt, tag, or explication, distort the original information.

Interpersonal and rumor theory principles of leveling, sharpening, and adding explain how news stories, transmitted through electronic social media, undergo consequential distortions. Leveling occurs when

215. See Eytan Bakshy et al., Exposure to Ideologically Diverse News and Opinion on Facebook, 34 SCIENCE 1130, 1130 (2015) (noting that friends share less cross-cutting news from sources with opposing ideology and, inter alia, political news and more selective exposure). While peers also share news information in face-to-face networks, this article does not delve into the framing conventions that occur in live interpersonal dialogues.

216. See Flaxman et al., supra note 214, at 299.

217. See Natalie Jomini Stroud, Media Use and Political Predispositions: Revisiting the Concept of Selective Exposure, 30 POL. BEHAV. 341, 342 (2008). For example, one study showed that those viewing FOX News were more likely to believe the link between Iraq, Saddam Hussein and the existence of weapons of mass destruction than those who watched PBS or listened to NPR. See Steven Kull et al., Misperceptions, the Media, and the Iraq War, 118 POL. SCI. Q. 569, 585 (2004).

218. See Stroud, supra note 217, at 345.

219. See Flaxman et al., supra note 214, at 299.

220. See id.

221. Framing conventions used by media institutions in distributing news online perform important cognitive functions unique to that ecosystem. Id.

222. See Bakshy et al., supra note 215, at 1131.

the story grows shorter and more concise as it is passed along.\textsuperscript{224} Sharpening involves the "selective perception, retention, and reporting of a limited number of details from a larger context."\textsuperscript{225} Adding occurs as news is passed along, and the communicator adds new material or details in the storytelling.\textsuperscript{226} In the adding phase, the transmitter may posit his own opinion, idea, or spin upon which the transmitter incorporates his own cognitive habits, biases, and prejudices.\textsuperscript{227} Because in-group network members most likely evince ideological homophily, news items shared through social media have reinforcing effects.\textsuperscript{228}

Memes are a particularly insidious news distortion shared in social media networks. Memes are cultural units (or idea) that seek replication.\textsuperscript{229} When replicated, memes become basic "minimum cultural information units transferred between individuals and/or generations."\textsuperscript{230} Memes are distinguished by their properties of fecundity, fidelity and longevity.\textsuperscript{231} Those properties best ensure their spread, distribution, replication, and propagation.\textsuperscript{232} Created with summative characteristics of complex events or issues,\textsuperscript{233} memes, as rhetorical constructs, are effective at framing issues. They can be evaluations of people, issues or matters that are an admixture of facts and opinion.\textsuperscript{234}

Social media, during the Ferguson saga, was suffused with memes. For months, memes about Brown and the protesters circulated through networks. Some memes took on explicitly racist tones.

One such meme shows a Black man holding a sign reading, "NO MOTHER SHOULD HAVE TO FEAR FOR HER SON’S LIFE EVERY
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TIME HE ROBS A STORE.235 The photograph originally featured three pro-Brown demonstrators and the sign read, “NO MOTHER SHOULD HAVE TO FEAR FOR HER SON’S LIFE EVERY TIME HE LEAVES HOME.”236 The meme featured prototypical characteristics of leveling, sharpening, and adding. The Brown-Wilson encounter was focused on the fact that Brown had committed a strong-arm robbery just before Wilson saw him. Someone in the cascade through the networks added the racist phrase onto the placard. The image was edited to excise the other protestors, leaving the Black male holding the placard anchoring the racist theme of the meme creator. At some point, as the image moved through social networks, a tag “You can’t make this up!!!!!!” was also added, accumulating thousands of “likes” and racist comments.237 The meme was shared over 28,000 times on Facebook.238

For those taking their cues about the Ferguson saga online, our social network members could exert powerful cognitive and affective influence. As explained, news stories are distorted from their inception. But when framed by our network peers and select media sources, news stories are further distorted, and can be manipulated to feed into the best, and the worst predispositions and prejudices.239

News stories are the product of mass media organization structures, journalistic norms, and extra-organizational influences. Information is filtered by and through media, institutional agents, and peers through social media networks. Lexical, auditory and visual texts operate to communicate meaning of crime and protest news narratives. Moreover, through source preferences and framing conventions, media producers construct stories “in such a way as to promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation for the item described.”240

The media and our social network consorts endowed certain Ferguson facts, considerations and values with greater apparent relevance than they may have otherwise possessed. Through privileging violence and looting, and by relying upon law enforcement and institutional agents for its narratives, the media conferred legitimacy to those agents’ claims. The words, sounds, images and frames used determined not only what we talked about, but how we talked about Ferguson. As we will see, the impact of media construction of Ferguson narratives upon our approach to racial conflict was powerful. That impact is not, however, new.

236. Id. (emphasis added).
237. Id.
238. Id.
240. Robert Entman, Framing: Toward Clarification of a Fractured Paradigm, 43 J. COMM. 51, 52.
Mass media depiction of Blacks as thugs, criminals, or people otherwise bent on social disruption has a 400-year history in America. By 1619, even before the birth of United States, the possession and commodification of Black bodies had begun in the Americas. Newspapers played more than a role in slavery’s commercialization. In depicting and describing Slaves and their activities, newspapers were instrumental in constructing their image in the popular imagination.

Between 1619 and 1775, there were approximately eighty weekly, bi-weekly, or tri-weekly newspapers circulating in and between the colonies. News publications during the Colonial Era took the form of multi-page newspapers, pamphlets, broadsides and leaflets. In them, news of enslaved Blacks was explicit, and almost always negative.

In her Pulitzer Prize-winning novel Beloved, Author Toni Morrison’s captures the racist ethos that guided media attitude towards Blacks. Based upon an actual news item from 1851 that recounted a runaway slave’s act of infanticide, Morrison describes a discussion of the newspaper clipping between two characters.

A whip of fear broke through the heart chambers as soon as you saw a Negro’s face in the paper, since the face was not there because the person had a healthy baby, or outran and street mob. Nor was it there because the person had been killed, or maimed or caught or burned or jailed or whipped or evicted or stomped or raped or cheated, since that could hardly qualify as news in a newspaper. It would have to be something out of the ordinary—something white people would find interesting, truly different, worth a few minutes of teeth sucking if not gasps.

Certainly, colonial newspapers supported racist institutional structures merely through their presentment of advertisements for the
purchase and sale of slaves. However, news stories describing a fugitive slave, actual or aborted slave uprisings or other alleged criminal behavior were proto-racist if for no other reason than the fact that such stories were virtually the only type of news about Blacks printed.

A. News of Slave Uprisings

"The Proceedings of the Rebellious Negroes" were weekly reports on slave activities generated from nearly every place in the New World (including the Caribbean colonies) and published in colonial publications. Between 1690 and 1775, the press reported forty-seven slave revolts planned or realized, and hundreds of crimes allegedly committed by Blacks. As formal mass media newsgathering channels were not in abundance, news was often based upon hearsay and gossip. However, news items would also appear as letter extracts, editor reports, execution sermons, or last word confessions from the scaffold.

From the 17th well into the 19th centuries, there were scores of planned or actualized slave rebellions. Slave rebellions were one of the most important types of news not just because of the economic calamity that could come through loss of an invaluable labor source. Press accounts also instilled in colonists fears of slave uprisings and addressed how violent self-manumissions would threaten social and racial order. Those fears were doubtlessly heightened by the widely recounted 1739 Stono Rebellion and 1741 New York Conspiracy.

For example, the Boston Weekly Post-boy was the first to publish a letter that told of a planned Jamaican slave insurrection to "destroy all the Whites" on the island. Furthermore, as if to soothe the fears of Whites,


248. See id. at 180.

249. Professor Copeland examined approximately 7,100 editions of colonial newspapers published between 1690 and 1775. See COPELEND, supra note 241, at 280.

250. See COPELEND, supra note 241, at 131.

251. See Lisa Vox, What Impact Did the Stono Rebellion Have on the Lives of Slaves, ABOUT EDUCATION (Aug. 8, 2016), http://afroamhistory.about.com/od/slavery/a/stono.htm ("In his book American Negro Slave Revolts (1943), historian Herbert Aptheker estimates that over 250 slave rebellions occurred in the United States between 1619 and 1865. Some of these insurrections were as terrifying for slave owners as Stono, such as the Gabriel Prosser Slave Revolt in 1800, Vesey’s Rebellion in 1822 and Nat Turner’s Rebellion in 1831.").

252. See COPELEND, supra note 241, at 127.

253. See COPELEND, supra note 241, at 131.

254. See id. at 131. Contemporaneously, colonial conflicts with the French-Canadian and Native Americans in Canada furthered alarms that slaves would join forces with those factions or be otherwise incited to rebel. See id.

255. See Vox, supra note 252.


257. See COPELEND, supra note 241, at 128. As another example, the Boston Weekly Post warned of "a new Negro Plot" in South Carolina in 1740, a report of the Stono Rebellion. See id.
where known, news reports would trumpet the dire consequences that befell the unsuccessful rebellions. In 1712, the Boston News-Letter told of “Seventy Negroes” in custody following a “late Conspiracy to Murder the Christians” within the New York colony. For that offense, slaves who had taken an active role in the insurrection were “burned, broke on the wheel, and hunged up alive to be left to die[.]” The intent perhaps was to reassure Whites that Blacks had been brought to justice, and that the justice meted out was particularly vicious.

Perhaps due to the dire social risk to Whites that any slave rebellion symbolized, published accounts in one newspaper outlet were often picked up by other purveyors. For example, the Boston Evening-Post printed a letter on a thwarted uprising on April 1, 1745, which was subsequently reprinted in New York newspapers, and ran for twelve days in Philadelphia’s Pennsylvania Gazette. As another example, between April and October of 1741, Boston’s five weekly newspapers reported on the 1741 New York Conspiracy as a result of which New York had executed seventeen slaves, ordered forty-two out of the colony, and arrested another 100. Finally, the Boston Gazette, whose editor, John Baydell, saw himself as “slavery’s watchdog,” reported on the execution of a slave who, in his scaffold confession, admitted to several murders of White men, and to a role in an infamous Antigua uprising. That story of his last words, which “confirmed fears that revolts on the island plantations were now being plotted in the mainland,” filled New England newspapers in late 1736 and early 1737.

Slave revolts and crime narratives continued to be a part of news stories into the nineteenth century. Uprisings such as Gabriel’s Conspiracy of 1800, the German Coast Uprising of 1811, and Nat Turner’s Rebellion of 1831 continued to occupy the press up to Emancipation. Crime columns so drove sales that, in 1833, the New York Sun began to dedicate a column specifically to crime coverage—the first United States newspaper to do so. Such columns proliferated and maintained their presence into the twentieth century.

258. See id.
259. Id.
260. See Desrochers, supra note 247, at 185.
262. See Desrochers, supra note 247, at 186.
263. See id. at 182.
264. Id. at 186–87.
265. See Copeland, supra note 241, at 149.
266. Stories featured headlines such as “Insurrection of Slaves in Mississippi,” and “Horrible Conspiracy.” See Davidson Burns McKibben, Negro Slave Insurrections in Mississippi, 1860-1865, 34 J. NEGRO HIST. 73, 76 (1949).
B. News of Loitering in the Colonies and Ferguson

Aside from the textual similarities between the accounts of slave insurrections and Ferguson unrest, unavoidable connections are seen in how Blacks were and are policed. The fear instilled by news narratives constructing Blacks predisposed to commit unfathomable criminal acts and bent on rebellion led to another form of social control off the plantations. Loitering laws, part of sweeping slave codes, represent an instance in which news reports helped shape legal policy.

Even before Emancipation shifted racial ideologies and practices, concern over Blacks' ambulation and congregation off the plantation was widespread. Newspapers sounded the alarms for Whites. For example, between 1719 and 1784, the Boston Gazette made over 330 references to "slaves" and "slavery."269 Some of those references regarding their "idleness," lack of "proper supervision," and general "consternation" over their public behavior, and claims of "the bad Effects of Negroes to freely constitute together[.]")270 In the New York Gazette, a citizen attested that "Negroes" could be heard uttering "very insolent expression and other ways misbehaved themselves."271 Another such complaint running in the Boston Evening-Post criticized slave owners and the "untenable" situation owners were creating by "the great Disorders committed by Negroes, who are permitted by their impudent Masters to be out late at night."272 In response to this temerity, the writer hoped that "all lovers of Peace and good Order [would] join their endeavors for preventing the like Disorders for the future."273

News accounts of Black men engaging in public rebellion influenced opinion, and shaped social and legal practices. Aggregated with reports of slave rebellions from other colonies, newspapers warned that slavers were "an inferior necessity" requiring "stringent legislation to control."274 Those reports induced New Englanders to enact legislation on curfews and loitering.275 Movement and congregation restrictions were direct initiatives that sought to address colonists' fears of conspiratorial actions by slaves.276

Statutes restricting the activities and movements of slaves became widespread. In New York, for example, slaves could not congregate in

269. See Desrochers, supra note 247, at 180.
270. Id.
272. Id. at 134. Laws restricting the activities and movement of slaves were legion. One such law in Massachusetts stated: "If one or more . . . Slaves . . . shall, in the Time of Alarm or Invasion, be found at the Distance of one Mile or more from the Habitation or Plantation of their respective Owners. . . .it shall be adjudged Felony without Benefit of Clergy in such Slave or Slaves; and it shall and may be lawful for the Person or Persons finding such Slave or Slaves. . . .to shoot or otherwise destroy such Slave or Slaves, without being impeached, censured or prosecuted for the same . . . ." Id. at 121.
273. Id. at 134.
274. Id.
275. See Desrochers, supra note 247, at 184.
276. See CopeLand, supra note 241, at 147.
groups larger than three. In 1755, the Virginia governor ordered slave quarters inspected every night. In Georgia, a generation before the American Revolution, laws were passed in 1755 and 1757 requiring plantation owners or their White employees to make monthly inspections of slave quarters. In Boston, slaves could not leave their owner’s home after 9 p.m., and, if they were found to violate this policy, could be publicly whipped.

A direct line can be drawn from these antebellum regulations to Ferguson. Early on during the protests, law enforcement officials sought to control demonstrators’ movements. Authorities imposed a “Five Second Rule,” which subjected protestors to arrest if they stood still on the street for more than that allotted time. In the first two days of the “keep moving” rule, police arrested sixty-five people for failing to disperse. Effectively, this forced protesters to keep moving, and prevented them from even resting by standing if two others were nearby. Though rescinded after being successfully challenged in federal court, the resemblance of those restrictions on movement and congregation, rooted in slavery, bore an uncanny resemblance to those of the 1700s. While Ferguson law enforcement contended the rule was a way to control the crowds, some saw it as nothing less than a provocation. Others saw it as nothing short of disenfranchisement, the wresting away of citizens’ only power—the power to be heard through collective action.

Scientific and pseudo-scientific racist revelations surrounding evolution, eugenics, and phrenology would also emerge at the turn of the nineteenth century. Pernicious ways of categorizing, naming, and marking

277. The Act prohibited meetings of more than three slaves, trading by slaves, and testimony by slaves in court. See Edwin Olson, The Slave Code in Colonial New York, 29 J. NEGRO HIST. 147, 149, 153 (1944).
280. See Copeland, supra note 241, at 147.
281. Protesters were not told to disperse, but to keep moving. See Abdullah v. County of St. Louis, No. 4:14CV1436 CDP, 2014 WL 4979314, at *17 (E.D. Mo. Oct. 6, 2014) (order granting preliminary injunction). Some were told nothing. See id. The “keep moving” order was given even when there were fewer than six people; given even when people were simply standing. See id. at *8. To compound the confusion and humiliation, police told many people who were either peacefully assembling or simply standing on their own that they would be arrested if they did not keep moving. See id. Others gave instructions that people were walking too slowly, or that they could not walk back and forth in a small area. See id.
283. See Abdullah, 2014 WL 4979314, at *25.
285. See id.
Blacks as “inferior,” “bestial” and “savage” made their way out of the scientific journals and into popular print.286 By the early twentieth century, slurs such as “black buck,” “coon,” the “dark brute,” and those asserting Blacks’ likeness in visage and temperament to apes and monkeys began to make their way into White vernacular.287 Those malignant labels would continue well into the twentieth century. In the post-Reconstruction era, new forms of mass communication would enable wider dissemination of news stories.288 Now incorporating radio, phonography, moving pictures and vaudeville, mass media would root those slurs and images into our culture on a mass scale.289

C. New Mass Media: Racist and Racialized News Accounts

The early age of television marked seismic shifts in mass media, technology and their consumption.290 In the 1940s and 1950s, newspapers and radio remained hugely popular.291 Throughout the early twentieth century, film and radio played a pivotal role in disseminating “racism images.”292 However, because of its potent cognitive effects, television became the most powerful medium for reifying racial ideologies. Blacks were contending with negative racial stereotypes propagated by the televised fiction of Amos & Andy and Beulah,293 while, at the same time, news of and about Blacks was presented in the context of the Civil Rights Movement.

The 1960s and 1970s was a time during which Blacks used popular culture to gain support for the Civil Rights Movement, achieve social equality, and forge a positive social identity.294 Martin Luther King was said to have believed that if television would show demonstrators being attacked by police and hecklers, the nation would be repulsed then ashamed by the cruelty and violence.295 Indeed, television portrayals of Little Rock, Birmingham and Selma arguably “helped turn the tide of world opinion in favor of civil rights.”296

Television networks heavily reported on the Civil Rights Movement. James Meredith, the first African American to be admitted into the University of Mississippi, appeared on Meet the Press on May 26, 1963.297 That

287. Larson, supra note 23, at 95; see also Donald Bogle, Toms, Coons, Mulattoes, Mammies, and Bucks 8 (1994).
288. See Brown & Johnson, supra note 286, at 17.
289. See Larson, supra note 23, at 95.
290. See id. at 105.
291. See id. at 159.
293. See Bogle, supra note 287, at 66, 72; Larson, supra note 23, at 24.
294. See Kuchi, supra note 292, at 33.
295. See id. at 29.
296. Id.
297. See id.
same year, the ABC show Issues & Answers debated the civil rights legislation being considered by President Kennedy.298 Televised racial conflicts in Little Rock, Birmingham, and Selma featured white-on-black abuse and brutalities for the world to see.299 Those stories increasingly became topics of local and network public affairs programs.300 It was during this period, as scholar Sasha Torres noted, that “both the Civil Rights movement and the television industry shared the urgent desire to forge a newly national consensus on the meanings and functions of racial difference.”301

1. The “Urban” Crisis: News of Inner-City Crime and Poverty

The latter decades of the twentieth century witnessed the proliferation of discourses on the “urban crisis.”302 Long understood as code for “Black,”303 “urban” news stories made negative stereotypes about Blacks salient. In linking Blacks in explicit and implicit ways to the welfare system, crime, drugs, or even the AIDS epidemic,304 mass media pathologized urban Black citizens and spaces.

Time and again, studies have shown how news stories make implicit links between Blacks and negative thematic concepts.305 Although lexical news text is a vital component to the process and impact of telling urban stories, visual aspects of news text are often underappreciated.306 Stories racializing those thematic concepts do so predominantly by juxtaposing or illustrating stories with Black images.307 For example, a roundly criticized January 1986 CBS News special report titled The Vanishing Family: Crisis in Black America, which questioned the social efficacy of extending welfare benefits, presented Blacks in Newark, New Jersey who were shown as poor, unwed, teen-aged mothers and criminal-minded men.308

News magazines are also complicit in the racialization of poverty. In 2003, Martin Gilens examined the pictures of the poor appearing in poverty-related stories in Time, Newsweek, and U.S. News and World Report over a forty-two-year period between 1950 and 1992.309 Gilens found that

298. See id. at 29–30.
299. See id. at 29.
300. See id. at 30.
301. Id.
304. See Messaris & Abrahm, supra note 171, at 222–225; see also Larson, supra note 23, at 98–100.
305. See Messaris & Abrahm, supra note 171, at 220.
306. See id.
307. See id. at 221; Entman & Rojecki, supra note 20, at 94–101.
308. See Larson, supra note 23, at 100.
fifty-three percent of all poor people depicted were Black, but during that
time frame, Blacks made up an average of just twenty-nine percent of
"poor" in America.310 This trend began in 1965, coinciding with an in-
crease in the public's negativity toward government antipoverty poli-
cies.311 In 1967, seventy-two percent of those pictured were Black.312 In
these same magazines between 1993 and 1998, Blacks were represented in
forty-five percent of photographs associated with articles about
poverty.313

An NBC news story from 1993 told of a Cleveland, Ohio program that
was proven effective at moving people from welfare to work. The story
uses two people—one Black, and one White—as case studies, but the
story's introduction begins with a profile of "people who have been on
welfare all their lives."314 The series of images juxtaposed with the intro-
duction all depict Blacks. The first fourteen shots of the story are all of
Blacks, and none are named.315 Another popular televised documentary,
Poverty in America, a purportedly sympathetic examination of a national
economic crisis in the inner city, featured pictures of Blacks sitting in wel-
fare offices, on porch stoops, on window ledges, or otherwise not en-
gaged in purposeful activity.316 The inference is that most people on
welfare are Black, which ignores the fact that more Whites than Blacks are
on welfare then and now. Even without any explicit references to race,
racism was symbolically enacted.

The racial, spatial, aesthetic, and affective text of "urban crisis" stories
painted a racially stereotypic portrait of Black lives.317 The attitudinal
cues triggered were that Blacks were lazy or lacking drive, criminal,318
and engaged in self-destructive or anti-social behaviors.319 These urban
crisis discourses "produced a wave of popular alarm over the city that, in
turn, was used as the pretext for a campaign to 'get tough' on the city's
poorest, most oppressed residents."320

The media tropes emerging out of Hurricane Katrina and the New
Orleans levee breach marked yet another example of racialized narra-
tives. Following the flooding and reporting of the more than 1200 deaths,
some news coverage focused on official reactions and the outpouring of
support.321 Other coverage was rife with racially coded text and im-

310. See id. at 110.
311. See id. at 109–10.
312. See id. at 110–11.
313. See id. at 110.
314. Messaris & Abraham, supra note 171, at 222.
315. See id.
316. See id.
317. See Parisi, supra note 302, at 199 (criticizing Washington Post's Leon Dash's Pulitzer-
Prize winning series "Rosa Lee's Story," narrating how generations of a District of
Columbia family lived in poverty, crime, and drug abuse).
318. See id. at 198.
319. See Messaris & Abraham, supra note 171, at 221.
320. Id.
321. See Shannon Kahle et al., Another Disaster: An Examination of Portrayals of Race in
Hurricane Katrina Coverage, 14 VISUAL COMM. Q. 75, 76 (2007).
322. See id.
Wall Street Journal, USA Today and The Washington Post evinced a particularly troubling pattern. Comparatively, there was an "overwhelming disparity in which Blacks were portrayed in active and passive activities and identified in active and passive roles." The majority of depictions featured Blacks begging for help, being rescued, and as looters or otherwise dangerous and opportunistic. In contrast, Whites were consistently and overwhelmingly shown as aid workers, volunteers, military members, or standing guard against looters. These images enabled audiences to reinforce racist stereotypes by depicting Blacks as criminals, or lacking autonomy or independence while depicting Whites as protectors and saviors.

2. Mass Media and the (Re)Construction of Black Male Deviance

History has shown that racism, as it regards Black men, is reified through mediated images that have become synonymous with crime and deviance. In fact, like the rebellious Negro trope, the myth of the feral Black male was borne in the colonial papers. The narrative was most vividly exemplified in stories of alleged rapes. Differences in presentation, content, and emphasis led to different depictions of reporting Black-on-White versus White-on-White rapes.

In an examination of reports of rape trials in nearly 100 newspapers of nine colonies between 1728 and 1776, Professor Sharon Block found that, first, "[a]ll newspapers reported a comparatively high number of incidents involving African American defendants in rape cases" such that "black-on-white rape was reported far more than the black population might indicate." Moreover, she found that when blacks were accused of rape, the defendant was nameless, with newspapers recounting a " negro" or "mulatto" offense against a White woman or child. In contrast, white-on-white rapes were reported for their "exceptional" nature (e.g., for either their particular viciousness or the victim's vulnerability).

Most notably, in white-on-white rape accounts, the race of neither party is mentioned. In these stories, "Whiteness was both an assumed attribute and unnecessary detail when both the attacker and victim shared the same racial identity." In the examination of Whiteness, and the particularization of the crime's heinousness, white-on-white rape sto-
ries were constructed to engender outrage at the individual act, and in no way to exemplify “white men’s general depravity.”333

Printers, publishers and editors alike “made every effort to endow suitable events with appropriate and timely morals to ensure that (for the White reading public at least) transgression always met with con dign punishment.”334 By focusing on the punishment, newspapers emphasized the absolute guilt of the Black defendant and reinforced the importance and (re)stabilization of racial hierarchies. Moreover, colonial newspaper reports on rape trials—like slave revolts and criminal prosecutions—presaged the troubling interdependent relationship between the mass media and criminal justice institutions that we see today.

A more contemporary example of racist media narrative was published in the June 5, 1938 edition of the Chicago Tribune.335 There, Tribune journalist Charles Leavelle reported on the criminal trial of Robert Nixon.336 The headline read: “Brick Slayer Likened to Jungle Beast.”337 Nixon, an 18-year-old from Louisiana, was eventually convicted of raping and killing a woman, and confessed to four other murders. In Leavelle’s piece, a police officer is quoted as saying Nixon looked “just like an ape.”338 Leavelle concurred that the murders were the “work of a giant ape.”339 By Leavelle’s own estimation, Nixon possessed “none of the charm of speech or manner that is characteristic of so many southern darkies.”340 Nixon was a “jungle Negro,” with characteristics akin to “an earlier link in the species.”341 After all, Nixon’s “hunched shoulders and long, sinewy arms that dangle almost to his knees; [and] his out-thrust head and catlike tread all suggest the animal.”342

Media framing of Nixon recalled the Rodney King and O.J. Simpson accounts of the recent past. In March 1991, King was beaten by four Los Angeles Police Department officers after a high speed car chase. Despite the fact that King was struck by police batons over fifty times with more than twenty officers at the scene, during the officers’ trial, King was a framed as a “big Black, brute who victimized the White police officers.”343 Running with that trope, the law officers’ attorneys—quoted in news stories and described by the reporters—were able to portray King as having “bestial strength,” and “a higher threshold of pain tolerance” that justified the use of such force.344

333. Id. at 149.
334. Id.
336. Id.
337. Id.
338. Id.
339. Id.
340. Id.
341. Id.
342. Id.
344. Id. at 278.
Media complicity in constructing and reinforcing Black male otherness was perhaps no more infamously exemplified than by Time magazine’s cover headshot of Simpson. Shortly after his arrest, Time’s June 27, 1994 front cover featured Simpson face—occupying nearly the entire front page—with a darker than normal complexion. The blatant strengthening of the racially coded image was all the more offensive because Time’s editor had Simpson’s face intentionally darkened. In a subsequent apology to “anyone who was offended,” Time managing editor James Gaines noted, “[i]t seems to me you could argue that it’s racist to say the blacker is more sinister.”

For over a year, audiences watched those in the media publicly dissect Trayvon Martin, the Sanford, Florida teenager killed by George Zimmerman in February 2012. Martin was visiting with his father and his father’s fiancée in the Twin Peaks, Florida neighborhood. Zimmerman, spying Martin from a distance as he made his way back to the townhome, noted to a 911 dispatcher that a “real suspicious guy...looks like he’s up to no good or on drugs or something...looks black.” Armed with a 9mm semiautomatic handgun, Zimmerman confronted Martin, an altercation ensued, and Zimmerman shot Martin. Zimmerman, invoking Florida’s Stand Your Ground law as a defense, was subsequently charged with and acquitted of second-degree murder and involuntary manslaughter. The trial and subsequent acquittal sparked days of demonstrations.

The media and legal experts examined his school history. Reports were that he was truant and tardy, and even once had been suspended. The degree of media attention to Martin’s school record, photos of him posing shirtless and serving the middle finger were images used to construct Martin as hostile and even menacing. Martin was not a “boy,” but a fully-grown man, full of trickery and rage.

Two relevant narratives and metanarratives course through these accounts. First, Zimmerman’s stereotypical utterances show just how internalized racial narratives are. The image of the Black male as dangerous

351. See Venus E. Evans-Winters, Introduction (Re)Teaching Trayvon, in (Re)TEACHING TRAYVON, supra note 286, at 1, 3.
and innately capable of causing physical terror seemed a ready-made construct mapped onto the psyche and made cognitively accessible. That "racial knowledge" enabled Zimmerman and the LAPD officers to make racialized evaluations about their Black male victims as physical threats to be dominated.

Second, in each incident, the media played a distinct role in stimulating the discourse of Black deviance, as well as ridicule of Black claims-making through protest. Media accounts of the Los Angeles riots themselves would evince a familiar narrative pattern: the focus upon law enforcement and government reactions in contrast to the underlying issues.

Martin's death by Zimmerman's gun had its roots in the White terror that results from seeing "Blackness . . . out of place." Martin, in the deadly, common trope that emerged again with Brown, because of his height and weight, was construed by Zimmerman, and re-constructed by the media, as an adult. Like Brown, Martin was branded a thug and blamed for his own death. As news reporter Geraldo Rivera scolded, "[y]ou dress like a thug, people are going to treat you like a thug." The Black male in the White mind has been inscribed for centuries. Slavery, theology, science and popular culture have given meaning and legitimacy to the construction of Black men as the embodiment of fear. Moreover, the media construction of rebellions, rapes, urban crises and individuals such as Simpson, King and Martin were vehicle for the reproduction of a plethora of racist stereotypes: criminality, irresponsibility, and laziness.

If there was one incident that connected the Ferguson incident to the odious past, it was Wilson's description of Michael Brown just before he shot him: to Ferguson Police Officer Darren Wilson, when alive, "it looks like a demon." Brown had "the most aggressive face. The only way I can describe it, it look[ed] like a demon[.]." And according to Wilson, as he fired his sixteen shots, "it looked like [Brown] was almost bulking

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352. Racial knowledge is a term coined by David Theo Goldberg. He contends that racial knowledge is an exercise of power that seeks to normalize social reality, noting that "Power is exercised epistemologically in the dual practices of naming and evaluating. In naming or refusing to name things in the order of thought, existence is recognized or refused, significance assigned or ignored, being evaluated or rendered invisible. Once defined, order has been maintained, serviced, extended, operationalized." DAVID THEO GOLDBERG, RACIST CULTURE: PHILOSOPHY AND THE POLITICS 150 (1993).


354. Kareena A. Johnson & Kenneth L. Johnson, "Looking-Like Trayvon": The Narratives We Tell About Race, in (Re)TEACHING TRAYVON, supra note 286, at 25, 30.


357. Id. at 5:225.
up to run through the shots, like it was making him mad that I’m shoot-
ing at him.”

Wilson’s perception made manifest essayist Claudia Rankine’s obser-
vation: “Because white men can’t/ police their imagination/ black men
are dying.” Critically, just as Wilson’s “demon” fantasy was the topic
of mass reproduction, the worst narrative devices deployed in the Fer-
gunson tragedy and ensuing demonstrations perpetuated some of the
more jaundiced stereotypes about Blacks, crime and criminality.

IV. “THUGS,” “CROOKS,” AND “REBELLIOUS NEGROES”

Mere hours after Brown’s death, media stories began to articulate
common themes attendant to crime and protests stories. Given that racial
conflict was made and became the predominant narrative framework,
media stories came to articulate some of the same pernicious codes histor-
ically ascribed Blacks. Whether self-describing or reifying original
sources of statements, media reporters, news readers, opinion givers and
pundits established not just the lens, but the parameters within which we
came to evaluate Brown, the Ferguson demonstrations and law enforce-
ment responses.

This Part examines the ways in which certain words were used to de-
scribe Michael Brown, the protests, the protestors, or related events in
general over two time frames: the weeks after Brown’s death, and roughly
three weeks after the November 24, 2014 grand jury decision. The aim
here is to demonstrate how Brown and the protesters were constructed as
racial threats through racist and racialized terms and images, and how
the media reified White law enforcement power structures through law-
and-order narratives.

The media sampled were selected for their audience numbers, geogra-
phy and, where ascertainable, their editorial ideology. Moreover, the re-
searcher sought representative samples from print, radio and television
news outlets. The researcher opted to test eleven media outlets: St. Louis
Post Dispatch, Wall Street Journal, USA Today, New York Times, CNN,
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MSNBC, Fox News, National Public Radio, Fox News Radio, CBS News, and ABC News Radio.\textsuperscript{363}

It can be reasonably stated that the selected media outlets fairly represent the spectrum of social ideology and have vast audience reach. In 2014, the \textit{St. Louis Post-Dispatch}, \textit{The Wall Street Journal}, USA Today, and \textit{The New York Times}, had a combined daily circulation of more than four million viewers.\textsuperscript{364} Average nightly prime time audiences for FOX, CNN, and MSNBC in 2014 exceeded 2.8 million nightly.\textsuperscript{365} Thus, the impact of the narratives articulated by these outlets was initially pervasive—made more so through those outlets’ social media channels.

The terms selected to be analyzed were chosen primarily to capture the negative ways in which the events occurring in Ferguson were depicted during the relevant time periods. Assuming that every story would mention its core subject somewhere within it, viz., “Michael Brown” and “Ferguson,” this researcher searched for words such as “thug,” “violence,” “looting,” and “chaos.”

Mentions were excluded if the context suggested a word was being used in neutral, non-directive manner. For example, a discussion of the word “thug” is not included in the tally if it was as a topic of discussion itself (e.g., “should we be using this term “thug”?). Whether describing Brown, the protestors, or the situation on the ground in Ferguson, three things were clear: 1) there were a significant number of instances in which Brown or the protesters were described as “thugs,” 2) the news

narratives hewed to the traditional crime and protest scripts and 3) the protest scripts were suffused with lexical and visual images of forceful counter-responses.

A. "Thugs"

Use of the term "thug" has received a great deal of news coverage in recent years. Webster's Dictionary defines "thug" as "a violent criminal" or "a brutal ruffian or assassin." The term derives from the Hindi word "thug," which meant a thief, or swindler. The word entered the English lexicon in the 1800s during the British imperial rule of India, yet abided as a derogatory term to describe Indian "deviants." The term's association with Blacks occurred in the 1990s with the rise of hip-hop and gangsta-rap.

Music artist Tupac Shakur popularized "thug" in rap music and was a major progenitor of its adoption into contemporary urban culture. "Thug life" was ascribed to men in impoverished, inner-city environments, but did not signify "disgust, rebellion, or nihilism." Instead, it was used to signify "coolness and power." The term, adopted for "subversive and oppositional reasons," eventually found its way into the popular public sphere.

The popularization of the term thug coincided with a spike in social and moral panic, fueled by the war on drugs and increasingly chronic incarceration rates of Black men. The term has become re-associated with its original root—deviant—but now used when speaking of Black men (and virtually only when referring to Black men). To many, it has come to be regarded as a racial slur, the new code for a word long fallen out of public favor—"nigger."


369. See Kutner, supra note 367.

370. In the 1990s, Tupac was considered one of the most popular rap stars. Even today he is considered a legend in the hip-hop world, and has sold over twenty-two million records, posthumously. See Derek Iwamoto, *Tupac Shakur: Understanding the Identity Formation of Hyper-Masculinity of a Popular Hip-Hop Artist*, 33 *Black Scholar* 344, 344–49 (2003). From his tattoos ("Thug Life" was inked across his abdomen) to his music, videos and lifestyle, Tupac, too, made marked efforts with his media image to glamorize and legitimize the "thug life." See id. at 346.

371. Kutner, supra note 367.


373. *Id.* at 87.

374. See *id.* at 81.

375. See *id.* at 86.
RACIST AND RACIALIZED MEDIA COVERAGE

Table I—Use of Term “Thug”

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<tr>
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<th>St. Louis Post-Dispatch</th>
<th>Wall Street Journal</th>
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Radio

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<tr>
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In one Fox News segment, a journalist explicitly racialized the word “thug.” While talking about the role of the police in protecting the “law-abiding resident,” he said, “this whole idea that the police don’t respect or value black lives or America doesn’t value black lives, what about these black thugs and the value they place on black lives given the crime statistics?” He continued to link the New York violent crime statistics to “blacks” and “low-income black neighborhoods.”

News sources and opinion-writers amplified the thug trope. After a St. Louis Rams player expressed solidarity with those asking for justice in Ferguson, Jeff Roorda, a spokesman for the police officers association, warned the entire N.F.L. to basically stay out of it: “I’d remind the N.F.L. and their players that it is not the violent thugs burning down buildings that buy their advertisers’ products. It’s cops and the good people of St. Louis and other N.F.L. towns that do.”

Ferguson protestors were not alone in being characterized by the media as “thugs.” Months before Wilson would offer his incendiary description of Brown as a “demon,” Brown’s character had already been decimated by media actors and discussants. Presidential candidate Mike Huckabee said Brown was “shot because he behaved like a thug.” FOX News contributor David Webb also said Brown “was a thug. He was

376. Each table that follows demonstrates the extent to which articles or news programs used certain terms to describe Brown, the Ferguson protests and Ferguson protestors. In each table, the total number of terms founds in a given source may not add up to the total number of articles discussing Brown, Ferguson, or the protestors in that source. For the sum of terms adding up to less than the total number of articles, some articles did not mention any term examined. For the sum of terms adding up to more than the total number of articles, some combination of terms was found several times in one article.


378. See id.


someone who committed a crime[.]"381 Weeks after his death, Nancy Grace interviewed Reverend Jesse Lee Peterson, founder and president of a Los Angeles not-for-profit counseling organization, who felt it critical to "re-establish[ ] that Michael Brown was a thug."382

Without using the term explicitly, Ferguson law enforcement sustained the criminal framing. At an August 13 news conference, Police Chief Thomas Jackson referred to the "possibility" of Brown having marijuana in his system.383 The next day, someone within the police department leaked the fact that Brown may have been involved in a strong-arm robbery just minutes before Wilson killed him.384 Jackson released the store video, which showed Brown shoving a store clerk or owner, stating that it was solely in response to media requests.385 At the time of its release, there had been no verification that Wilson's encounter with Brown had anything to do with the robbery because Wilson had not known of it at the time. Jackson himself stated that Wilson's encounter with Brown was unrelated to the robbery.386 As a result, skeptics viewed the tape's release as rank character assassination—an "attempt to 'thug up'" Brown.387

B. Black "Boys" as Black "Men"

Another insidious term used to describe Brown carried extraordinary cognitive and affective weight. While some initial stories referred to Brown as a "teen,"388 many others described him as a "man;"389 a few

385. See Thomas Jackson Press Conference, DEMOCRACY NOW (Aug. 18, 2014), http://www démocracynow.org/2014/8/18/st_louis_pastor_ferguson_police_chief ("UNIDENTIFIED REPORTER 3: If the robbery had nothing to do with the stop, then why would you release the video of the robbery? What's the explanation for the timing of it? POLICE CHIEF THOMAS JACKSON: Because you asked for it. You asked for it. I held it for as long as I could.").
referred to Brown as a "boy." In addition, several accounts made explicit references to Brown's height and weight. In describing Brown as a "man," and emphasizing his size, the media re-affirmed an issue rife with cultural and racial biases.

The bias fed into a common law enforcement trope when seeking to justify deadly actions. While Rodney King's and Eric Garner's sizes were invoked as being at least partially responsible for their demise, the narrative as it regarded Brown also involved his youth. Most recently, we heard this trope in the announcement that no bill of indictment would be issued in the police officer killing of Tamir Rice, when the prosecutor credits his demise in part to the fact that he was five foot, seven inches and weighed 195 pounds; thus, he did not look like a little boy.
On FOX and Friends, and in an op-ed piece, syndicated columnist and political pundit Linda Chavez took the media to task because it was misleading to refer to Brown as “unarmed”: “[w]e’re talking about an 18-year-old man who is six foot four and weighs almost three hundred pounds.” Nowhere in that description is there anything indicating that Brown was armed with anything other than Black maleness. On CNN’s Nancy Grace program, conservative pundit Reverend Jesse Lee Peterson cautioned that Brown “wasn’t some little innocent kid tiptoeing through the tulips.” The encounter was all his own fault; “Michael Brown is dead because of Michael Brown.”

Researchers have found that Black boys are not as likely to be seen as “childlike” when compared to their White peers. Subjects in one study who were shown photos of boys of different races viewed Black boys ages ten and older as less innocent than their White counterparts. The subjects also estimated that the Black boys were four and a half years older on average than they actually were. The “dispensations granted the ‘child’ and the ‘boy’ through the process of ‘adultification’ justifies harsher, more punitive responses to rule-breaking behavior.” Referring to Brown as a man, and references to his height and weight imbued Brown with adult qualities so as to make him less sympathetic, more powerful, and, critically, imbue him with greater culpability for his own demise. Adultification originates from the visual judgments of law enforcement officers who, even though dealing with children, so readily—consciously or unconsciously—incribe adult male on the behavior of Black boys.

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394. See Chavez, supra note 31.
396. See Transcripts, Nancy Grace: Ferguson Cop Walks Free, supra note 382.
397. See id.
399. See id. at 530.
400. See id. at 531.
402. See Johnson & Johnson, supra note 354, at 31.
C. "Crooks"

In the wake of Brown's killing, there were scores of peaceful protests and vigils. There were also responsible and legitimate calls for non-violence and dialogue on the racial and social injustices brought to bear because of Brown's death. However, rather than providing consistent accounts of such calls, news outlets expended time and space focused on people engaged in criminal acts and violent behavior.

The news media predictably featured its favored form of protest—the one that captures the eyeballs—the riots and looting. This is apparent from this content analysis of the Ferguson events.

Table III demonstrates how it was utterly unavoidable to read an account of Ferguson without encountering a crime and violence theme. The St. Louis Post-Dispatch story, "Day of Protests, Night of Frenzy" exemplified the privilege given conflict over peace and legitimate protest. In another example, CBS News opened its August 11, 2014 story on Ferguson with the headline: "Michael Brown shooting: Vigil for dead teen turns violent." The vigil was not covered. In doing so, the media diminished any potential credibility that could attach to the justifications and goals of the demonstrations.

Visual images depicted fires, looting, and vandalism. The images alone were sufficient to racialize the criminal behavior, but racialized nar-


404. See supra note 403.


406. See supra note 187.


408. See id.

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RACIST AND RACIALIZED MEDIA COVERAGE

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tatives were reinforced by the words that anchored the images. Notably, the overwhelming number of stories surveyed invariably mention "looting," "robbery" or "violence," or some variation of that word.

Megyn Kelly described Ferguson riots after the grand jury verdict on her FOX News program. Keying in on the looting as undescribed Ferguson video ran, Kelly, in what seemed to be an unscripted voiceover, checks off what, apparently, were the only places being looted worth mentioning: "[W]e saw people running out of the liquor store with bottles of booze and running out of the McDonalds with food."

By only mentioning those two locations—although they were not even shown in the video being aired—Kelly fed into the tired, fetid stereotype that all the rioters wanted was free liquor and free food.

Months earlier, after initial riots following Brown’s death, Kelly ended one segment on rebuilding damaged businesses by framing a purported upcoming story to suggest that her audience would be forced to pay to rehabilitate the Ferguson community. In advance of breaking for commercial, Kelly asserted that Ferguson was asking the "American taxpayer" to "bail it" out of financial damage caused by looting, alluding to the "federal bailout." Rhetorically, the phrase "federal bailout" carries affective force. It is in one sense descriptive of the federal government’s automobile and bank rescues during the 2008 recession. The phrase also takes on a derisive connotation, evoking government welfare and the misperception that Blacks were its primary beneficiaries. In one sentence, Kelly invites her audience to ire in saying that now someone is


411. See The Kelly File: Fox News August 29, 2014 9:00pm-10:01pm PDT, TV ARCHIVE (Aug. 30, 2014), https://archive.org/details/FOXNEWSW_20140830_040000_The_Kelly_File#start/3360/end/3420 (Kelly says: "Well, the Ferguson City Council has approved a million-dollar aid package to help the businesses hurt in the Ferguson protests, but it is apparently not enough. Now, some are pushing for a federal bailout. The county executive saying of the feds, quote, if they can bail out the banks, they can bail out Ferguson.").


asking them to pay for the destruction caused by the looting and violence. When anchored to images and the known fact of Ferguson’s demographic, “federal bailout” becomes associated with welfare.

The overwhelming number of words denoting or connoting crime and criminality demonstrates with crystal clarity the intended frames media sought to create. Reflexively reliant upon conflict and crime scripts, whenever possible, media also wedded visual and aural frames to emphasize words such as “looting,” “assault,” “violence” and “robbery.” Given that most people shown engaging in that behavior were Black, media symbolically racialized crime and deviance.

D. “Rebellious Negroes”

As seen in Table III, news media suffused their coverage with words connoting or denoting violence, rebellion, and conflict. Words such as “mob,” “chaos,” “lawlessness,” and “riots” appeared in hundreds of stories. Those descriptive biases characterized much of the Ferguson reporting. Ferguson “erupted;” it was a “war zone;” the city was “in flames.” The St. Louis Post-Dispatch described how angry residents took to the street, “taunting police and firing shots.”414 Several news outlets trumpeted that the “crowd” had turned its “rage”415 on the cops and local businesses. Protesters were inciting “terror.”416

Televised and photographic images out of Ferguson depicted clashes between law enforcement, protesters, and even bystanders. Images of fires, Molotov cocktails, tear gas, crowds, police dogs, and the like dominated the airwaves. There were also images showing the Ferguson police force dressed as if for battle in Iraq, fully camouflaged, protected by armored vehicles carrying officers with weapons drawn.417

This hyper-militarization is not only what law enforcement response looked like in Ferguson. This was what the anticipation looked like. This is what the Ferguson Police Department looked like on August 13, days after Brown was killed.418 From the very start, there were images of an overwhelmingly White, hyper-militarized police force, ready for battle. Officers were armored in flak jackets, stood behind riot shields, bran-
dished assault rifles, and wore camouflage with faces obscured by black helmets.419 The deployment of military equipment and tactics in Ferguson set the scene of not just legal, but unrelenting physical power against Blacks. That extraordinary display of force was also heard. Anyone within their sweep was subject to law enforcement’s Long Range Acoustic Device, or sound cannon, which was capable of causing physical pain and permanent ear damage.420 Armored trucks—designed to withstand mine and IED explosions—rolled through the streets.421 Wafts of tear gas (long banned in combat but being used against Ferguson civilians) engulfed demonstrators.422 As former New York City Police Commissioner, Bernard Kerik asserted in his CNN.com article justifying the use of force against Ferguson demonstrators: “You can’t let the thugs take over the city.”423

The visual and aural images did symbolic work. Chaos and war narratives, implicitly and explicitly marked by race, dominated the accounts of the protests. At the same time, those narratives stifled meaningful expression and discussion of the racial, social, political and economic grievances the protesters sought to bring to light. With the militarized responses to the Ferguson protesters along with the State’s curfew imposition and “keep moving” policy, ghosts of our racist past were revived. In a photograph featured in an article from Mother Jones,424 the St. Louis County Police dogs triggered memory storms.

The photograph, showing a standoff between rows of Black protesters confronted by White police officers with barking dogs, conjured memories of Birmingham, Alabama, circa 1963. By that time, most Americans living outside the Jim Crow South had heard stories of Southern brutality. But when network television cameras arrived in Alabama and beamed images around the world of Birmingham police officers hosing down student protesters and sicking attack dogs on them, those stories were no longer theoretical. The St. Louis County and Ferguson police used dogs to protect the shooting scene as crowds gathered. Although police dog use was “consistent with each agency’s policy,” it was “inconsistent with widely accepted policing practices and, in fact, exacerbated tensions by

419. See Bouie, supra note 418.
420. See Lily Hay Newman, This Is the Sound Cannon Used Against Protesters in Ferguson, SALON (Aug. 14, 2014), http://www.slate.com/blogs/future_tense/2014/08/14/lrad_long_range_acoustic_device_sound_cannons_were_used_for_crowd_control.html.
421. See Bouie, supra note 417.
422. See Bouie, supra note 54.
unnecessarily inciting fear and anger among amassing crowds."425 The "the tanks and armoured [sic] personnel carriers on Florissant Avenue" recalled "Bull Connor's hoses and attack dogs. Americans of good will could no longer retreat into their comfort zones and pretend that there were not consequences for us all."426

It is well-understood that protests are "considered to be threatening to the actors charged with making decisions in specific protest situations."427 We also know that the criminal justice system, or its threat, is a frequently deployed control mechanism.428 When it comes to claim-making by African Americans in the context of protests, however, it is a troubling fact that the threat or reality of criminal punishment has been deployed in a demonstrably racially disproportionate manner.

An evaluation of newspaper reports of over 15,000 protest events in the United States between 1960 and 1990 established that finding.429 Researchers analyzing protests news accounts over a thirty year period sought to determine whether otherwise equally threatening protest events are more likely to be policed when there are African American participants present, and to learn whether, once at an event, police treated African American and White protesters differently.430 Not only were Black protesters "more likely to draw police presence," the police, once present, were "more likely to make arrests, use force and violence, and use force and violence in combination with arrests[.]"431 The researchers' statistical analyses concluded that race did in fact affect the probability of various policing strategies being employed above and beyond the threats posed by protester behavior.432

When viewed against that finding, the scores of arrests in Ferguson took on a more inevitable nature when we understand that militarization in law enforcement tactics and equipment leads to "escalation in violent encounters between citizens and police[.]"433 Days after Brown's, death, the narrative of war and institutional power emerged from the manner the state chose to encounter demonstrators.

Militarization establishes a defensive in law enforcement that can act to embolden racist pre-dispositions or, at the very least, embolden provocations. Karena Rahall has written a thorough examination of the history


428. See id.

429. See id. at 153.

430. See id. at 152.

431. Id. at 153.

432. See id.

433. See Rahall, supra note 11, at 1788.
and effects of the militarization of municipal police.\textsuperscript{434} Professor Rahall cites the fact that police officers are increasingly trained using a “stress-based military curriculum in the academy,” and some even train directly with the military.\textsuperscript{435} As she demonstrates, “[w]hen police are trained to view themselves as soldiers, it is unsurprising that they sometimes treat encounters with suspects as an engagement with the enemy.”\textsuperscript{436}

A fear-based and enemy-based mentality encouraged by such training lead to Ferguson scenes at which officers were ready to kill at the slightest provocation—even those posing no threat. On August 19, 2014, a police officer aimed a semiautomatic rifle at protestors during the following exchange:

Protester 1: “Gun raised, gun raised and pointed.”
Protester 2: “My hands are up.”
Officer: “I will fucking kill you, get back!”
Protester 3: “What’s your name, sir?”
Officer: “Go fuck yourself.”\textsuperscript{437}

Mass media constructed narratives reinforced the exertion of stabilizing and retributive forces that could be wielded by police departments and the criminal justice system. Racist policing and media excuse-making became most evident during an August 10, 2014, CNN segment broadcast widely around the nation. On CNN’s live evening broadcast of Ferguson unrest, an armed White plainclothes police officer, looking at protestors, yelled “Bring it! All you fucking animals! Bring it!”\textsuperscript{438} The CNN reporter, in presenting the clip, prefaced the plainclothes officer’s slur by noting the “pure chaos,” and stating that citizens were “pushing the limit with police.”\textsuperscript{439} The reporter characterized the officer’s rant as if it were a slip of the tongue, explaining that the officer “gave in to his rage.”\textsuperscript{440}

However, in report after report, correspondents justified, praised, or even made excuses for law enforcement conduct. In one report, President Obama is quoted as saying “there was ‘no excuse’ for violence either against the police or by officers against peaceful protesters.”\textsuperscript{441} His statement gives primacy against harm to police without need to examine the degree of force deployed. They were “respond[ing] with smoke bombs

\textsuperscript{434} See id. at 1785.
\textsuperscript{435} Id. at 1823.
\textsuperscript{436} Id.
\textsuperscript{439} See id.
\textsuperscript{440} See id.
and tear gas to disperse the crowd."442 Vladimir Duthiers of CBS News explained passively that "pepper spray was deployed to stop vandalism."443 A Ferguson department spokesperson stated that "[p]olice said they were simply responding to protesters."444 The word "simply" makes the police officers response seem rational and entirely proportional to the events.445

In all, these media—that reached millions of people every day—facilitated the cognitive association of Brown and the protestors with criminality, deviance, and lawlessness. In the aftermath of Brown’s death, news stories focused audience attention toward the negative outgrowths of the protests—riots and lootings. As a result of their images and personas being conflated with depictions of lawlessness, the actual grievances of the demonstrators were practically ignored in majoritarian media circles. Moreover, given that many around the world grew to believe that Brown himself was partly, if not fully, culpable for his own demise, the protestors’ efforts were framed as being either wasted, or counter-productive over-reactions. Consequently, the media deprived influence or credibility from any pleas of racial and economic justice.

The words, phrases, images and sounds amplified by hundreds of media outlets framed the Ferguson conflict as an untenable form of social disruption. The news media's selective emphasis upon social disruption served the interests of the majoritarian orthodoxy by casting law enforcement authorities as restorers of order and social stability. In doing so explicitly, supportively and almost uncritically, any law enforcement excesses against protesters were legitimized.446

Protesters were not noble actors railing against abject brutality and deprivation. Those voicing grievances were "fucking animals" who posed a risk to social stability and racial hierarchy. The "rebellious negroes" theme was set, and media took up the mantle of treating the Ferguson saga as an ongoing coverage of a war. As a result, the media narratives played a significant role to "discourage progressive political solutions."447 The issues of justice underlying the protests went underexamined, subsumed under the over-reported narrative of violence.

445. See Ryan, supra note 129, at 10. In fact, CBS only acknowledged possible police force as excessive when two journalists from The Huffington Post and The Washington Post were arrested, and videotaped the events, which took place at a local McDonald's. See id.
446. See Jackie Smith et al., From Protest to Agenda Building: Description Bias in Media Coverage of Protest Events in Washington, DC, 79 SOC. FORCES 1397, 1415 (2001).
447. Larson, supra note 23, at 89.
V. THE DOUBLE STANDARD: MEDIA, WHITE CRIME AND WHITE GRIEVANCE

Protestors taking to the streets demanding justice in the wake of Brown’s and other Black deaths at the hands of law enforcement officers also highlighted a problematic double standard. As the media was unrelenting in framing Brown and Ferguson protestors with racist and racialized narratives, such ascriptions were noticeably absent when it came to constructing stories around Whites who commit notorious acts of violence, or even mass murder. For example, Dylan Roof, who killed nine Blacks as they worshipped in a Charleston South Carolina church, was described as “a really sweet kid. He was quiet. He only had a few friends.”448 Adam Lanza, the Newtown, Connecticut gunman who shot twenty children and six adults dead at Sandy Hook Elementary school in 2013 before killing himself was described as a “sweet little boy.”449

A similar tendency was seen in media accounts of White protest. The men who invaded and then engaged in a six-week armed occupation of a federal building were “activists.”450 Not only were they not “terrorists,”451 those who seized Oregon’s Malheur National Wildlife Refuge were “patriots”452 engaged in a “standoff.”453 When Robert Louis Dear opened fire at a Colorado Planned Parenthood clinic, killing three and

injuring nine in November 2015, politicians and pundits insisted he was not a terrorist.\textsuperscript{454} It seems that when White mobs and violent protesters wreak havoc, a decidedly different narrative is perpetuated.

A content analysis of news reports of three incidents involving groups comprised predominately of White citizens engaged in criminal and violent acts illustrates the racially problematic double standard. The content analyzed was from the same media outlets examined in the Ferguson protests, with the addition of geographically relevant media outlets. In addition, the news content was examined for the same words depicting the Ferguson events.

A. Keene, New Hampshire

On Saturday, October 18, 2014, a riot broke out in Keene, New Hampshire at the close of a pumpkin festival.\textsuperscript{455} Over the course of twelve hours, fires were set, lamp posts ripped from their moorings, and cars were set aflame.\textsuperscript{456} Rioters shouted “fuck the police” to police in riot gear.\textsuperscript{457} Rioters threw liquor bottles, cases of beer and billiard balls at law enforcement officers. Property damage was estimated to be over $70,000, and another $150,000 in overtime costs associate with the festival riots.


\textsuperscript{454} Dear’s murders occurred in the heat of the presidential campaign, and candidates were asked to weigh in on the tragedy. Ted Cruz called it a “multiple murder.” See Tony Norman, \textit{That Was a Terrorist Attack in Colorado}, \textit{Pittsburgh Post-Gazette} (Dec. 1, 2015, 12:00), http://www.post-gazette.com/opinion/tony-norman/2015/12/01/Tony-Norman-That-was-a-terrorist-attack-in-Colorado/stories/201512010045. “Marco Rubio, who seized on the shooting of Cecil the Lion as a reason to ask where the outrage was over Planned Parenthood and ‘dead babies,’ didn’t have anything to say about the victims in Colorado,’ notes The New Yorker ‘s Amy Davidson.” Chris Ostendorf, \textit{It’s Time to Rethink the Word ‘Terrorist’}, \textit{Daily Dot} (Dec. 11, 2015), http://www.dailydot.com/via/its-time-to-rethink-word-terrorist/. “Ben Carson, asked about the heated words leading up to the shooting, spread the blame to supporters of reproductive rights. ... Then he somehow connected that thought to the Islamic State.’ Donald Trump, meanwhile, fell back on the old scapegoat that Dear was ‘mentally disturbed.’” Id. \textit{See also} Bruce Healy, \textit{When Do We Apply The Title ‘Terrorist’?}, \textit{Cincinnati Enquirer} (Dec. 9, 2015), http://www.cincinnati.com/story/news/local/indian-hill/2015/12/09/column-apply-title-terrorist/76609916/.


\textsuperscript{456} See \textit{id}.

\textsuperscript{457} See \textit{id}.
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was assessed by the city. There were nearly 100 arrests and thirty injuries.

As expected, over the course of thirty days, the media in closest geographic proximity devoted the most coverage to the melee. Conflict terms are used. However, the lack of coverage by other media demonstrates the values that inform decisions as to what news is "newsworthy." Many of the same outlets that descended onto Ferguson hardly reported anything about the Pumpkin Festival riot. Only one mention of the perpetrators as "thugs." One.

The reactions to the Keene Pumpkin Festival riot stand in stark contrast to those from Ferguson. The Keene riots seem to be excused due to the fact that it mostly consisted of college students who consumed too much alcohol. Keene destruction was caused by "drunken partygoers," and young people who were "drunk" and "disrespectful." The protesters were characterized as merely college students who "got out of hand." One article said "mobs of college students and young people turned parts of the town of Keene into a free-for-all." The article further states, "[t]he town, which is home to Keene State College, appears to have been mildly terrorized by its own young people, who massed in the streets for drunken revelry." Another article described the Keene actors as "hordes of partyers."

Even the reaction by public officials to the Keene incident differs from those in Ferguson. News video showed instances of uniformed officers relaxed, engaging in chatter, or even laughing along with the "revelers." New Hampshire Governor Maggie Hassan said that she was "outraged by the irresponsible, terrible actions that marred a New Hampshire tradition."

461. See id.
462. Id.
463. Id.
465. See Pearce, supra note 460.
466. See id.
B. Lexington, Kentucky

Just last year, seven days after Freddie Gray died while in Baltimore police custody, and while people were still reeling over Walter Scott’s murder in North Charleston, South Carolina, predominantly White mobs were rioting in Lexington, Kentucky because the University of Kentucky Wildcats had lost to the Wisconsin Badgers. These overwhelmingly White throngs were described by media as “angry fans” who were “at times hostile.” Yet again for thirty days after the violence—according to major media outlets—scarcely a thug amongst them. As shown in Table V below, only one outlet used the term “thug” in coverage of the riots.

<table>
<thead>
<tr>
<th></th>
<th>Lexington Herald-Leader</th>
<th>Wall Street Journal</th>
<th>USA Today</th>
<th>New York Times</th>
<th>CNN</th>
<th>MSNBC</th>
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C. Waco, Texas

Even in the wake of deadly violence, the media avoided racist or racialized descriptions of the actors in a Waco, Texas gunfight. On May 17, 2015 in the Twin Peaks restaurant in Waco, Texas, a gunfight between


470. See id.
and amongst rival motorcycle "gang" members left nine dead, eighteen wounded by guns or knives or—both, and 170 arrested.

A Waco police spokesman described the scene as the most "gruesome" he had seen in his thirty-four years on the force. The area was described as a "war zone." Vehicles in the parking lot were riddled with bullet holes. In addition to gunfire and stabbings, clubs, chains, and brass knuckles were used in the battle. Police officers were shot at as well. Yet, notably, the police response was markedly different from that witnessed in Ferguson. This was the Twin Peaks scene as the body count was being taken.

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473. Merchant, supra note 471.
475. See Holley et al., supra note 472.
476. See Merchant, supra note 471.
477. See id.
RACIST AND RACIALIZED MEDIA COVERAGE

TABLE VI—WACO SHOOTOUT

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<th>Waco Tribune Herald</th>
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The picture and Table VI above demonstrate the ways in which the scene and the perpetrators were depicted. The image shows no images of tear gassed rioters, handcuffs, or police in paramilitary attire. In fact, the relaxed demeanor of the officer shown in the image paints a surprisingly "calm" scene. Shootout participants milling about and checking their cell phones recalls a social gathering, not the scene of a mass murder. It is impossible to imagine similar liberties granted Ferguson demonstrators. Violence, guns, chaos, war, several dead, yes—but scarcely a thug.479

The media's renderings of racialized narratives and depictions of Michael Brown and Ferguson protesters are made more troubling when contrasted with how White crime, social disruption and its perpetrators are depicted. The fact that the riots of Keene and Lexington, and the Twin Peaks shootout were isolated, episodic events does not fully explain the difference in media portrayal. Those incidents also resulted in significant economic losses. They involved criminal behavior equal to or far more extensive than that in Ferguson.

Yet the media inscribed markedly different motives and character traits to White actors. Ferguson stories were rife with accounts of "thug," violence and looting; it was relentlessly covered as if this was the only response to Brown's killing. In Keene, Lexington and Waco, race was

made invisible, and consequently, unlike Ferguson, there was no interro-
gation of Whiteness and its relationship to the violence witnessed.

The semantic texts not put forward by news media in these stories
illustrate the way in which White deviance is made invisible by not nam-
ing it, and thus affords those perpetrators the privilege of stereotype
avoidance. Those ravaging Keene and Lexington, those who left Twin
Peaks bloody and bullet ridden, received neither the scrutiny nor acri-
mony visited upon Ferguson protestors. No story would be found to dis-
cuss, say, “the cultural dysfunction of white men and their tendency to
over-consume alcohol.” There were no cries for Whites’ “personal re-
sponsibility,” to end the cycle of violence and criminality. Nor was there
a call for voices that could speak for the White community and perhaps
illuminate the pathology that explains, for example, what motivates
Whites to riot over pumpkins.

VI. TWO THEORIES ON THE EFFECTS OF RACIST AND RACIALIZED
NARRATIVES

Media-constructed narratives of Ferguson events relied upon institu-
tional information sources and pundits who reified a majoritarian, law
enforcement, anti-Black orthodoxy. The metanarrative coursing through
those accounts “expresse[d] disapproval toward protests and dissent.”

The concern remains as to what effects the racist and racialized news nar-
ratives have upon audiences and policy reform. This Part examines the
Ferguson accounts and how those narratives triggered knowledge activa-
tion and use as posited by two media theory perspectives: cultivation and
priming.

A. Cultivation Theory

Cultivation theory holds that, in the aggregate, stories and images—
cutting across all program types (news, fiction/non-fiction, entertain-
ment, sports)—evince consistent patterns in the portrayal of specific peo-
ple, topics, and issues.481 For heavy television viewers, long-term
exposure to a relatively stable system of messages “cultivates” their per-
ceptions on given subjects.482 Cultivation effects fall into two categories
or “orders.”483 First-order cultivation effects involve audiences adopting
distorted estimates about their social reality,484 in which they see their re-
ality as more similar to that portrayed on television.485 Second-order cul-

480. Lee, supra note 150, at 2727.
481. See generally George Gerbner & Larry Gross, A System of Cultural Indicators, 38 Pub.
Opinion Q. 460 (1974); Michael Morgan & James Shanahan, The State of Cultivation,
54 J. Broadcasting & Electronic Media 337 (2010); Narissara M. Punyanunt-
482. George Gerbner et al., Growing Up with Television: Cultivation Processes, in Media
Effects: Advances in Theory & Research, supra note 118, at 43, 52.
483. See Amir Hetsroni & Riva H. Tukachinsky, Television-World Estimates, Real-World Es-
timates, and Television Viewing: A New Scheme for Cultivation, 56 J. Comm'N 133, 134
484. See id.
485. See id. at 133.
tivation effects identify audiences' "global reactions to the real world such as perceptions, attitudes, feelings, and values."486

Studies have identified real first-order effects, concluding that frequent television viewing causes audiences to skew understandings of reality versus what they come to understand from television. Avid soap opera viewers, for example, overestimated the actual divorce rate in America.487 First order-cultivation effects have also been found on subjects ranging from overestimations about life risks posed by lightning strikes488 and floods,489 the number of people over age 65,490 and terror attacks.491 For heavy television viewers depictions of violence and criminal behavior also result in skewed realities, particularly for those viewers who live in high crime areas.492

Second-order effects manifest themselves in what is described as the "mean world" phenomenon.493 Persistent exposure to television news about violent crime over time "increases the salience of crime "independently of actual trends or rates of local crime and of viewer characteristics."494

Much cultivation research has focused on local news, as it is the most widely used and influential news source for Americans.495 Moreover, local newscasts rely heavily upon crime scripts and "other mayhem with particular emphasis on homicide and violence."496 As a result, cultivation research has focused on viewer perceptions of violence,497 crime rates,498 and judgments about criminality.499

For example, when heavy local television news viewers were asked about personal risks to themselves, their families or others, they rated crime related risks more severely than lighter viewers.500 The media's fo-
cus upon lawlessness and violence and, conversely, the lack of focus on peaceful protests and law-abiding Blacks could cultivate in heavy television viewers a jaundiced portrait of Ferguson citizens. Television news especially cultivated a belief that Blacks may be prone to criminal behavior or lack motivation to change their social circumstances. These beliefs arise out of the perceptions that Blacks are not worthy of sympathy or assistance.

B. Priming Theory

Media priming effects refer to the short-term impact of exposure to a mass-mediated stimulus on subsequent judgments or behaviors. Rooted in psychology and cognitive science, priming is a heuristic by which we utilize the most accessible mental schema to help us make sense of new information. Three important concepts undergird priming effects: cognitive accessibility, applicability, and spreading activation.

In the processing of new information, words, sounds, and images have semantic associations with others in our memory, and like an activated network, spread to associated (i.e., cognitively accessible) information. In turn, the newly-applied information retains some residual activation potential, making it more likely to be accessed and used in making subsequent evaluations. Memory schemas or cognitive structures influence the interpretation of new information such that recently and or frequently activated ideas come to mind more easily than ideas that have not been activated. For example, stereotypes are activated by priming—increasing the likelihood that the knowledge will be used in a


502. See id.


504. In psychology, priming is an implicit memory effect in which exposure to a stimulus influences a response to a later stimulus. See Berkowitz & Rogers, supra note 503, at 58–60.

505. See id. at 59.

506. See Price et al., supra note 121, at 486.

507. See id. at 486; see also Roger Ratcliff & Gail McKoon, A Retrieval Theory of Priming in Memory, 95 PSYCHOL. REV. 385, 385 (1988) (discussing spreading activation as a part of priming). People do not and cannot pay attention to every stimulus that is encountered. Instead of making comprehensive analyses of encountered information, we tend to “routinely draw on those bits of information that are particularly salient at the time” we make a judgment. McCombs & Reynolds, supra note 118, at 14. Press-generated stories that depict violence or violence-related concepts, for example, have been shown to cognitively prime violence and violence-related concepts. See David R. Roskos-Ewoldsen et al., Media Priming: A Synthesis, in MEDIA EFFECTS: ADVANCES IN THEORY & RESEARCH, supra note 118, at 97, 98.

508. See Roskos-Ewoldsen et al., supra note 507, at 98.

509. See Larson, supra note 23, at 88–89.
subsequent judgment.\textsuperscript{510} Such stereotyping, in turn, may provoke a range of antisocial, intergroup responses including stereotyping, prejudice, discrimination, attribution errors, and generally punitive outcomes.\textsuperscript{511}

One form of priming study examines the link between the salience of an object and its attributes in mass media messages and the existence of opinions among the audience about that object and attributes.\textsuperscript{512} That investigatory frame has yielded ample data on how news media reinforces negative attitudes about marginalized groups.\textsuperscript{513} While stereotypes primed by the media have been explored by examining Muslim\textsuperscript{514} and Hispanic/Latino representations,\textsuperscript{515} the bulk of priming and stereotype reinforcement research has concerned Black representations in news stories.\textsuperscript{516}

Blacks in criminal "roles" outnumber Blacks in socially positive representations in newscast and daily papers. When compared to actual demographic and crime statistics, these portrayals over-represent the role of Blacks as crime perpetrators.\textsuperscript{517} One particular study of 596 news stories, spanning twenty-six television stations and forty-eight newscasts over twelve years in eleven large U.S. cities found that Black-focused stories were two and a half times more likely than White-focused stories to be about crime.\textsuperscript{518}

Other studies of local news show Blacks as more symbolically threatening and also more culpable than Whites accused of similar crimes.\textsuperscript{519} Blacks of any age are more likely to be shown in mug shots, doing perp


\textsuperscript{511} See Dixon & Azocar, supra note 510, at 245; see also Gilliam et al., supra note 137, at 19.

\textsuperscript{512} See McCombs & Reynolds, supra note 118, at 14. Priming is often understood as an extension of agenda setting. There are two primary reasons for that contention: 1) both effects are memory-based models of information processing, and that based on memory models, priming effects ascertain impact of salient features over time. See id.

\textsuperscript{513} See Larson, supra note 23, at 88–89.

\textsuperscript{514} See Nicole C. Andersen et al., On-Screen Muslims: Media Priming and Consequences for Public Policy, 4 J. Arab & Muslim Media Res. 203, 203 (2012).

\textsuperscript{515} See Nicholas A. Valentino et al., Immigration Opposition Among U.S. Whites: General Ethnocentrism or Media Priming of Attitudes About Latinos?, 34 Pol. Psychol. 149, 149 (2013).

\textsuperscript{516} Much of the prior media effects research addressing racial stereotyping almost exclusively examines recency effects associated with the black criminality construct. See Dixon, supra note 25, at 272.

\textsuperscript{517} See Dixon & Azocar, supra note 510, at 231 (citing multiple studies exploring the portrayal of blacks and Latinos in television news). Dixon and Linz found that blacks are overrepresented as criminal suspects but underrepresented as victims in news programs when compared to actual crime reports. Dixon & Linz, supra note 24, at 147.


\textsuperscript{519} See Entman & Gross, supra note 190, at 99–100.
walks, or shown in some form of physical restraint by police than Whites.  

Violence and youth—especially male youth—are also narratively linked in news stories. The violence they commit or suffer is depicted in local news, usually with a White male as the dominant speaker. Black and Latino youth, in particular, are susceptible to portrayals as gang members or being called "savage" and "wild."  

In one study of news broadcasts and racial images, Blacks were named less frequently than Whites. When Blacks go unnamed, the message has both potential priming and cultivating effects. Going unnamed "suggests the visual representation can be assimilated into a larger, undifferentiated group," i.e., that a "dangerous Black man" could be anyone. An image of an unidentified Black male robbing the store on the front page of a major newspaper illustrates the point well. All of the disproportionate representations contribute to the likelihood that Blacks will more likely be subject to negative pretrial publicity.  

Conversely, Blacks are grossly underrepresented in socially positive or benign roles in television news and daily papers. One study found that Blacks are underrepresented as newscasters, reporters, and in otherwise benign roles in crime stories compared to real-world crime reports and employment records. National newscasts underrepresented Blacks as victims of violent crimes and as police officers while Whites were over-represented in these roles.  

People may make race-related judgments based on their news viewing habits. For example, one study found that news viewers exposed to unidentified criminality will rate racially unidentified perpetrators as having a high likelihood of being Black. In addition, the study found that among heavy television viewers, unidentified officers will be perceived as being both White and as being positive figures. Exposure to Black rather than White suspects in the news also led to increased support for the death penalty and "three strikes" legislation. Clearly, viewing even limited, stereotypical representations of Blacks in the media "influences the attitudes, beliefs, and behaviors of audience members."
Race-based judgments on personal attributes can also be primed by news exposure. One study found that heavy television news viewers exposed to *unidentified* suspects were less likely to see Blacks as facing structural limitations to achievement likely because news viewing over time had contributed to a stereotypical association between Blacks and criminality.534 Likewise, another study found that those participants viewing a majority of Black crime suspects in televised news were more likely to attribute personal guilt to a nondescript, unrelated criminal suspect.535

In this last study, researchers took an expansive look into the impact of race and media exposure on subsequent judgments by dividing 180 participants into four groups, and had each group watch a thirty minute television news show.536 The racial element of the crime script became the dominant cue for observers.537 Participants were then given an independent written scenario. In the scenario, a 25-year-old non-descript male convict, unconnected to any of the news stories viewed earlier, was coming up for parole. He had committed an act of manslaughter, but was being considered for early release for good behavior. Participants were asked to assess whether the convict 1) could likely be rehabilitated, or 2) would commit a violent crime in the future.538 Those viewing the news show with a majority of Black suspects were more likely to see the convict’s condition as dispositional, believing he would commit a crime in the future, rather than situational (attributable to the suspect’s circumstance).539

Through the persistent overrepresentation of Black males in crime-related news stories, the cognitive association between Blacks and criminality in the audience’s mind is strengthened such that the connection (i.e., Blacks and crime) becomes chronically accessible for use in race-related evaluations.540 Those news representations of Brown’s killing, demonstrations, and law enforcement and prosecutorial agents matter “because they are a central component in a circular process by which racial and ethnic misunderstanding and antagonism are reproduced, and thus become predictable influences in the criminal justice process.”541 And these representations also influenced public opinion.

At the height of the Ferguson demonstrations, a Pew Research Center poll revealed a society cleaved along racial lines.542 Sixty-five percent of

534. See Dixon & Azocar, supra note 511, at 238–239.
536. Over the course of the news show, participants viewed either 1) seven crime stories, with six of the stories implicating a Black male as the perpetrator and one implicating a White male; 2) the same seven crime stories, with six of the stories implicating a White male as the perpetrator and one implicating a Black male; 3) the same seven crime stories, with the suspects image replaced with racially irrelevant graphic; or 4) no crime stories at all, only unrelated filler stories. See id. at 160.
537. See id.
538. See id. at 162.
539. Id. at 165–66.
541. See Entman & Gross, supra note 190, at 97.
the Blacks polled felt the police had over-reacted in response to the shooting's aftermath. Whites were divided. Thirty-three percent stated the police had gone too far, thirty-two percent answered that the police response has been about right, and thirty-five percent offered no response. In that same survey, forty-four percent of those polled felt that the Brown case raised "important issues about race that require discussion," while forty percent felt that the issue of race was getting too much attention.

Selection and description biases impelled anti-protestor public opinion. Topic content, story organization, theming and framing devices influenced how Ferguson stories were understood by audiences. The largely negative news accounts of the protesters caused some to perceive those Blacks in Ferguson as unworthy of assistance or sympathy. Conversely, support for law enforcement responses was heightened for many. As Professor David Garrow would note, those images and accounts of Ferguson riots and looting were "deadly when it came to white public opinion."

VII. MITIGATING RACIST AND RACIALIZED NEWS NARRATIVES

Through priming and cultivation, racist and racialized narrative treatments of Brown and Ferguson protesters caused injury to Blacks as a group. News narratives overrepresented Blacks linked to crime and criminality, and underrepresented Blacks in affirming behavior, engaged in peaceful demonstrations or assuming other positive roles. Racially distorted narratives have the potential to adversely influence judgments and attitudes, and diminish consensus-building to solve endemic problems racial bias in our justice and policing systems.

This Part explores the constitutional, statutory, regulatory, and institutional barriers to long-term, effective solutions to racially adverse news narratives. At the outset, it must be acknowledged that as a matter of law, policy, morality and practicality, it is folly to insist that only positive, non-injurious perspectives on or about Blacks be discussed. Aside from its utter impossibility, one should seriously question the desirability of one-dimensional representations. However, it is not irrational to insist upon structural reform in the production and dissemination of news in order to eliminate racially disproportionate and inequitably adverse representations.

visions-in-reactions-to-ferguson-police-shooting/ (surveying 1,000 adults between August 14, 2014 and August 17, 2014).

543. Id.

544. Id.


The First Amendment edict that "Congress shall make no law ... abridging the freedom of the press" applies to all media. Under the First Amendment, the gathering and dissemination of news in particular (as distinct from other content genre, e.g., advertisement) has historically been regarded with especial solicitude. Thus, in general, any directives that purport to impose a prior restraint upon a publication or require editors or journalists to avoid or discuss certain topics from a particular viewpoint would scarcely withstand constitutional scrutiny.

However, not all mediums are treated the same for First Amendment purposes; nor does all speech—even in the context of news—enjoy absolute protection. Any solution to mitigating, if not eliminating racist and racialized narratives in news production and dissemination must first examine the goal from the perspective of expressive rights and obligations of media institutions and agents. Solution exploration must account for considerations that undergird hate speech and defamation principles, broadcast regulation including Fairness Doctrine and news anti-distortion rules. Minority media ownership reform, expanding the presence of news ombudsman and nurturing of alternative sources of counter-narrative hold some limited promise in addressing racist and racializing news distortions.

A. "Thugs" and "Crooks" Characterizations: Defamation, Hate Speech, Incitement, or True Threats?

Although content-based restrictions on speech are presumptively invalid under the First Amendment, certain categories of speech fall outside of absolute shelter: obscene and indecent speech, child pornography, and commercial speech. Further, racist expressions can be characterized as hate speech, "fighting words," utterances that create a "clear and present danger" of "imminent lawless action," or defama-

547. U.S. Const. amend. I.
548. See, e.g., Near v. Minnesota, 283 U.S. 697, 716 (1931) ("The exceptional nature of its limitations places in a strong light the general conceptions that liberty of the press, historically considered and taken up by the Federal Constitution, has meant, principally although not exclusively, immunity from previous restraints or censorship.").
549. See id.
550. See infra notes 552-59 and accompanying text.
tion, all forms of expression without absolute First Amendment protections.

It can certainly be argued that calling a person or group a thug or crook could rise to actionable defamation. A communication is defamatory if "it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." Whether in the form of libel or slander, defamatory statements cause injury by exposing the target to hatred, ridicule, contempt or shame. Successful actions can result in actual, special, or punitive damages.

Whether categorized as hate speech or otherwise, libel—not only against an individual, but also against a group—is actionable. In fact, the sanction of group libel arose due to the hazards of unfettered hate propaganda. As early as 1917, states began enacting criminal group libel laws to halt such messaging. The Nazi defamation of minority groups and, later, the racial tensions of the 1950s and 1960s brought renewed attention to group libel laws. Beauharnais and Chaplinsky reflect the only instances in which the Supreme Court addressed such laws.

However, the actionable nature of group libel will turn upon the "of and concerning" defamation prong; that is, whether a conclusion can be made that the defamatory statement was directed toward a definable and identifiable number of individuals. On one hand, if a statement can be said to be directed at an individual group member, then the "of and concerning" requirement can be met. On the other hand, an attack on, say,

558. Like defamatory expressions, fraudulent, perjurious, or recklessly false speech is not categorically protected. In United States v. Alvarez, 132 S. Ct. 2537 (2012), the Supreme Court affirmed that pure false statements, in and of themselves, are protected speech. In Alvarez, the Court invalidated the Stolen Valor Act, which made it a crime to "falsely represent[ ] oneself to "have been awarded any decoration or medal authorized by Congress for the Armed Forces of the United States [."]" 18 U.S.C. § 704(b) (2006). The Alvarez plurality declined the government's invitation to rule that lying is categorically unprotected speech that may be subjected to content based regulation. Id. at 2546-47 (plurality opinion). Knowing or reckless falsehoods may still be subjected to content-based regulation without violating the Constitution. See id. at 2545.
563. See Carter et al., supra note 561, at 93.
564. See id.
566. 315 U.S. 568 (1942).
567. See Carter et al., supra note 561, at 93.
568. See id. at 92. The plaintiff in a defamation case must show that a "reasonable person" could perceive the defendant's statement to be "of and concerning" the plaintiff. See Restatement (Second) Torts § 564A (1976).
all lawyers, or "all Blacks" is such a general broadside that no individual
could sue.\footnote{569}

It is the case that a charge made against a small group may actionably
defame all members of that group. For example, a newspaper article may
make a false statement that "the blacks protesting on Florissant Avenue
are thugs." There were only ten Blacks protesting on Florissant Avenue
that day. Even if article had read that "one" of the Blacks protesting is a
thug, the group is sufficiently small so that all of the protesters may be
defamed.\footnote{570} That said, as individuals or members of a group become less
identifiable, the "of and concerning" defamatory reference becomes more
tenuous.

Racist and racialized narratives toward specific individuals or identifi-
able groups could constitute actionable defamation. However, whether
such statements could constitutionally be proscribed as hate speech, inci-
citement, or true threats is highly doubtful.

"Hate speech" refers to speech, expression, or symbols motivated by
animus toward the real or perceived class status of another or group, e.g.,
race, ethnicity, religion, gender, sexual orientation.\footnote{571} The Supreme Court
first addressed hate speech in \textit{Beauharnais v. Illinois}.\footnote{572} Illinois had
criminalized speech tending to expose "to contempt, derision, or oblo-
quy," a class of citizens based on race through depiction of "depravity,
criminality," or "lack of virtue."\footnote{573} The Court held that racist speech is
not protected speech.\footnote{574} In establishing that the Due Process guarantee of
liberty was not offended by state sanction of racist speech, the Court also
inferred that there is an individual dignity that extends from ones belong-
ing to a particular racial group.\footnote{575} \textit{Beauharnais} was effectively overruled
forty years later in \textit{R.A.V. v. City of St. Paul}.\footnote{576} What remained after \textit{R.A.V.}
were narrower classes of unprotected speech: incitement, "true threats,"
and defamation.\footnote{577}
"Incitement" may occur in two forms: one in which the actor directs its audience to "imminent lawless action," as established in *Brandenburg v. Ohio*.

The tone and content of the speech sufficient to give rise to the type of imminent lawless action contemplated in *Brandenburg* must (1) expressly advocate violence; (2) advocate immediate violence and (3) relate to violence likely to occur. Incitement can also be a form that is probable to elicit a hostile response toward the actor, i.e., the expression of "fighting words" which are likely to cause others to riot or otherwise "breach the peace."  

"True threats" are another type of expressive intimidation. A "true threat" is a statement in which a "speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." Opining upon the symbolic force of cross burning as a "true threat," Justice O'Connor explained that "[t]he intimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death."  

If terms such as "thug" or "crook" cause injury, one must ask under what circumstances would use of those terms constitute a type of hate speech, a provocation to lawless action, or defamation. When news media agents are the speakers, the short answer is not many. Words such as "thug" or "crook" might rise to an unlawful call to incitement if directed at an individual or uttered in the context that could cause a breach of the peace in the presence of a group. However, it is doubtful that such a charge could be successful when uttered or written as part of a news re-

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579. *See id.* at 447. At issue in *Brandenburg* was an Ohio law that prohibited the teaching or advocacy of the doctrines of criminal syndicalism. *See id.* at 444-445. At a Ku Klux Klan rally, Brandenburg appeared in KKK hooded regalia along with five others, and gave a speech extolling the KKK's strength in Ohio and saying "Personally, I believe the nigger should be returned to Africa, the Jew returned to Israel." *Id.* at 447. Though some of the figures at the rally carried weapons, the speaker did not. *See id.* at 447. Brandenburg was convicted under Ohio's criminal syndicalism statute. *Id.* at 444. In a *per curiam* opinion overturning Brandenburg's conviction, the Court found the statute overbroad because in making advocacy and teaching illegal, it failed to provide sanctuary for speech that *did not* incite unlawful action. *See id.* at 449.
580. *See Chaplinsky v. New Hampshire,* 315 U.S. 568, 571-72 (1942); *see also Cohen v. California,* 403 U.S. 15, 20 (1971) ("This Court has also held that the States are free to ban ... so-called 'fighting words,' those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction.").
583. *Id.* at 360. Justice Sandra Day O'Connor, joined by four other Justices, wrote that a state, consistent with the First Amendment, may ban cross burning carried out with the intent to intimidate. *See id.* at 363. However, only three others agreed with her conclusion that the Virginia statute provision treating any cross burning as *prima facie* evidence of intent to intimidate renders the statute unconstitutional. *See id.* at 365.
porting or commentary. Alone, invoking words such as thug or crook is not the type of true threat akin to burning a cross, nor indicia of intent to commit an act of unlawful violence toward one or many Blacks.

B. Broadcast and Cable Regulations

Print media has traditionally had the benefit of the broadest First Amendment protections. Regulatory measures which might be considered unlawful when the press is the regulatory object would not necessarily be unconstitutional as applied to other media such as traditional television and radio, cable, or satellite programming. Broadcast doctrines such as the Fairness Doctrine and anti-distortion rules, which seek to bring balance and measure to news and public affairs discussion, due to their uncertain constitutional soundness, stand defunct or unenforced. The question becomes whether the racist and racialized distortions exemplified by the Ferguson news reporting can be addressed through other broadcast regulatory rules. The short answer: to a degree.

Congress, through the 1934 Telecommunications Act demands that over-the-air broadcasters have an obligation to operate as "public convey-

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586. Under the Fairness Doctrine, broadcasters were to 1) provide coverage of vitally important controversial issues of interest in the community served by the station, and 2) afford a reasonable opportunity for the presentation of contrasting viewpoints. See KATHLEEN ANN RUANE, CONG. RESEARCH SERV., FAIRNESS DOCTRINE: HISTORY AND CONSTITUTIONAL ISSUES 2 (2011), available at http://www.fas.org/sgp/crs/misc/R40009.pdf.

587. In In re Complaints Covering CBS Program “Hunger in America”, 20 F.C.C.2d 143 (1969), the FCC outlined the elements necessary for a finding of news distortion. First, the broadcasted news presented must be deliberately distorted or slanted. It is not enough for the distortion to occur accidentally. Id. at 150. Second, there must be extrinsic evidence of the distortion. Id. For example, indications that a manager told a news reporter to lie about a fact, or proof that manager received a bribe to slant the news would amount to competent evidence. See id. Third, the licensee must be involved, which must include “principals, top level management, or news management.” Id. Finally, the news distortion must be “significant,” not “incidental." Id.

588. In 1987, the FCC eliminated the Fairness Doctrine. See RUANE, supra note 586, at 7. It has since remained defunct despite congressional attempts to bring it back as recently as 2007. See generally Dennis Patrick & Thomas W. Hazlett, The Return of the Speech Police, WALL ST. J., July 30, 2007, at A13 (noting that although the FCC abolished the Fairness Doctrine in 1987, some congressional leaders pushed for its return in 2007). Similarly, anti-distortion rules lie dormant and effectively unenforced. See Clay Calvert, What is News?: The FCC and the New Battle Over the Regulation of Video News Releases, 16 COMMLAW CONSPECTUS 361, 379 (2008) (“Even in this area where it claims censorial authority over the news, the FCC treads lightly and cautiously, clearly cognizant of First Amendment concerns.”); see also Hunger in America, 20 F.C.C.2d at 150 (FCC stated that it would not defer action on license renewals because of the pendency of news distortion complaints “unless the extrinsic evidence of possible deliberate distortion or staging of the news which is brought to our attention, involves the licensee, including its principals, top management, or news management”).
nience, interest, or necessity requires." Congress left it to the Federal Communications Commission (FCC) to oversee the fulfillment of that obligation. The FCC does not to engage in censorship, or unduly impinge upon editorial judgments of over-the-air radio and television broadcasters. However, in exchange for licensed access to a scarce resource—the electro-magnetic spectrum—broadcasters cede substantial speech rights, and are even assigned speech obligations. Those obligations raise unique issues for broadcasters as it regards racial bias in newsgathering and presentation.

1. Broadcast News and Public Interest Obligations

The "public interest" standard requires the FCC to take a licensee's programming content into consideration when deciding whether to grant an initial broadcast license, to renew an existing license, or endorse media cross-ownership proposals. Under the localism framework, broadcasters must commit to presenting "those views and voices which are representative of [their] community and which would otherwise, by necessity, be barred from the airwaves." Viewpoint diversity goals ensure that the proposed or existing licensee programs deliver "media content reflecting a variety of perspectives." Clearly, both localism and viewpoint diversity requirements act as proxies for what the FCC could not otherwise do. While the extraction of those commitments is inherently content-based, they have consistently been upheld by the courts.

The availability of additional media platforms has enabled the FCC to impel reconsideration of broadcasters' public interest obligations, and how those obligations might be fulfilled. The FCC enforces regulations upon broadcasters' online properties. For example, the FCC has estab-

591. See 47 U.S.C. §326 (2012) ("Nothing in this chapter shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication.").
593. See id. at 280-81.
596. See, e.g., Prometheus Radio Project v. FCC, 652 F.3d 431, 464 (2011) (holding, under the rational basis standard of review, that FCC media ownership rules do not violate the First Amendment "because they are rationally related to substantial government interests in promoting competition and protecting viewpoint diversity"); FCC v. National Citizens Comm. for Broadcasting, 436 U.S. 775, 780 (1978) ("In setting its [broadcast] licensing policies, the Commission has long acted on the theory that diversification of mass media ownership serves the public interest by promoting diversity of program and service viewpoints, as well as by preventing undue concentration of economic power.").
lished closed-captioning requirements for broadcasters’ online programs. The FCC, along with the Federal Trade Commission and the Children’s Advertising Review Unit, also attempts to carry over regulations for children-directed online content similar to those regulations of television broadcasts.

To further ensure public interest obligations are met, the FCC could require broadcasters, in their online platforms, to establish fora for local news and public affairs through embedded channels and streams. Unlike broadcast and cable network program scheduling, internet platforms provide near-infinite space and bandwidth to establish fora for different voices and viewpoints. Those channels and streams could be used by individuals or groups to air discourses on topical, pro-minority issues.

While broadcasters argued that requiring certain kinds of content-based speech unduly infringed upon programming and editorial discretion, when viewed as a logical extension of the FCC’s obligation to ensure broadcasters operate in public interest, First Amendment concerns are less legitimate. Yet, while an attractive and plausible method to air counter-narratives, online fora is an imperfect one. First, broadcasters would not legally be able to provide exclusive rights to a few groups or a particular ideology. Furthermore, broadcasters may under-subsidize the endeavor—resulting in low production values and under-promotion. As a corollary, even with a high quality service, broadcasters may be inclined to reduce commitments to airing diverse views on their primary and more popular broadcast vehicles.

Perhaps the most significant reason to doubt the efficacy of such a proposal is that history suggests that the FCC lacks the will to impose the ultimate sanction for any violation of its edicts through license forfeiture. Since 1934, the FCC has granted well over 100,000 license renewals. Between 1934 and 2010, the FCC denied a renewal application for the applicant’s failure to meet its public interest programming obligation only four times. Since 1980, not one license renewal has been denied on the grounds of a station failing to serve the community with its programming.

2. Cable Programming, Satellite Programming, and Set-Aside Channels

Although to a substantially lesser degree than traditional broadcast licensees, cable franchise and satellite operators also have public interest obligations as regards to media content. Cable television service providers, like other broadcast media providers, are regulated by the FCC. It is the responsibility of service providers to carry over-the-air broadcast

600. See WALDMAN, supra note 592, at 286.
601. Id.
602. See id. at 287.
networks upon request, satellite broadcast operators, governed by the FCC’s international regulations, have constraints and liberties similar to those of cable service providers.

Cable and satellite operators are obligated to set aside a certain number of channels for public, educational, and governmental ("PEG") purposes. Cable operators with thirty-six or more activated channels must set aside a number (contingent on the size of the system) of PEG channels as well as channels for commercial use by persons unaffiliated with the operator. Satellite operators must allot four to seven percent of their channel capacity for "noncommercial programming of an educational or informational nature."

While satellite obligations are established through the FCC, cable operator obligations are established through local municipalities and franchise agreements. Those local franchising authorities ("LFAs") may require PEG access channels and studios as prerequisites for franchise awards or renewals. What is more, the 1992 Cable Act grants LFAs prescriptive powers to require that franchisees not only provide "services, facilities, or equipment" for PEG uses, but to also provide "adequate financial support" to PEG broadcasters. As a result, LFAs may compel cable operators to support maintenance of PEG channels by requiring that PEG-channel funding be a mandatory term in franchise agreements.

There is attractiveness to exhorting LFAs to demand more of cable operators in terms of supporting PEG channels. Like the broadcast online platform for alternative speech, set-aside channels could be used to program news "counter-narratives." Those counter-narratives would be in

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606. For example, upon request, satellite operators must carry the signals of all television broadcast stations located within a market if the carrier already carries one or more local television stations in that market. See 47 U.S.C. § 338 (2012 & Supp. II 2014). See also Satellite Broad. and Commc’ns Ass’n v. FCC, 275 F.3d 337 (4th Cir. 2001) (rejecting First Amendment challenge to the "carry one, carry all" rule).


608. See id. § 335(b).

609. See id. § 531(granting franchising authorities power to require cable operators to designate channels for PEG use).


611. 47 U.S.C. § 541(a)(4)(B) (granting franchising authorities power to require “adequate assurance that the cable operator will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support”).

the context of public affairs and news shows that explicitly examine current events from a minority perspective. However, in terms of production quality and audience reach, PEG channel content has none of the impact of cable or local broadcast news. Similar to the likely outcomes from any requirement that broadcast licensees establish online platforms for alternative voices, PEG channel programming does not serve as a panacea for the issues regarding Black representation and distortions.

C. Growing Minority Media Ownership

Scholars have consistently found a positive correlation between minority and female ownership and a station's diversity in news coverage and programming. Yet, many legal and political barriers exist to thoroughly diversifying media ownership. Minority share of the U.S. population reached thirty-nine percent in 2015 with Blacks comprising just over thirteen percent of Americans. However, there has been a persistent lack of minorities and women in general, and Blacks specifically, in the ownership, management, and employment ranks of broadcast and cable companies. Beyond rationales regarding fundamental fairness, media organization workforces should reflect its stakeholders, i.e., its audience.

Racial diversity of news media ownership, employment, and in key news functions does not even begin to approximate population numbers. In 2014, there were 1331 daily newspapers—none of which is owned by minority interests. Newspapers targeted toward Black audiences are primarily weeklies, of which there are about 200. In 2013, African Americans made up just 4.8% of the overall daily newspaper workforce, comprising 1754 of 36,722 employees.

The utter lack of minority broadcast ownership has been a problem since the U.S. government began formalized broadcast licensing. When license allocations began in the 1930s, they were distributed exclusively to White, male owners. Not much changed until the 1970s, when the FCC

615. Id.
616. See infra notes 618-644 and accompanying text.
619. Vogt, supra note 618, at 89.
implemented a "Minority Ownership Policy"\textsuperscript{621} in order to remedy the imbalance.\textsuperscript{622} The success of this policy can be seen in the short-term boom from just one to ten Black-owned television stations in two years as well as the long-term increase of minority-owned stations by nearly five-fold over the policy's seventeen-year existence.\textsuperscript{623}

However, several legal developments led to a dismantling of the FCC’s efforts to grow minority broadcast ownership. First, in 1995, the Supreme Court's decision in \textit{Adarand Constructors, Inc. v. Pena}\textsuperscript{624} overruled the FCC's power to engage in affirmative action measures the same court upheld five years earlier in \textit{Metro Broadcasting v. FCC}.\textsuperscript{625} Moreover, Congress repealed the Minority Tax Certificate Program that same year.\textsuperscript{626} The Telecommunications Act of 1996\textsuperscript{627} further exacerbated the decline in minority-controlled broadcasting. The Act relaxed local broadcast ownership rules leading to increased consolidation in broadcast media.\textsuperscript{628} This consolidation has resulted in higher prices for broadcast properties, making it harder for minorities to acquire enough capital to be able to compete.\textsuperscript{629} As a result of the deregulatory scheme and elimination of the tax incentive program, the already low level of minority ownership of commercial broadcast stations fell in the following years.\textsuperscript{630}

Later policies related to radio broadcast licensing yielded dubious results in growing minority ownership. In 2000, the FCC attempted to create a new class of community-based, non-commercial Low Power FM (LPFM) radio stations to serve very small geographic areas of less than 3.5 miles.\textsuperscript{631} Non-commercial government or private educational organizations, associations, or entities, and government or non-profit entities providing local public safety or transportation services would be able to receive the licenses.\textsuperscript{632} In specifically touting the ownership benefits to underserved groups, the new service represented the best opportunity in

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\textsuperscript{622}. See Zook, supra note 620.

\textsuperscript{623}. See id.

\textsuperscript{624}. 515 U.S. 200 (1995). In \textit{Adarand Construction}, the Court replaced the intermediate scrutiny standard with a strict scrutiny standard for any program that uses race as a foundation, even if the program is designed to benefit groups that have suffered discrimination in the past. See id. at 227.

\textsuperscript{625}. 497 U.S. 547, 552 (1990)

\textsuperscript{626}. See Krasnow & Fowlkes, supra note 621, at 671.


\textsuperscript{628}. Waldman, supra note 592, at 286.

\textsuperscript{629}. See Krasnow & Fowlkes, supra note 621, at 674–75.

\textsuperscript{630}. See id. at 675.


\textsuperscript{632}. See id.
years to further enhance diversity in radio broadcasting. So far, there are more than 860 LFPM stations but have been limited to rural areas.

In redoubling its commitment to media ownership diversity, the FCC sought to establish a class-based system of economic incentives. The linchpin of its 2008 Diversity Order defined the term “eligible entity” broadly in the hopes to capture minority and female broadcast station ownership interests. Industry organizations such as Minority Media and Telecommunications Council, and FCC Commissioners themselves acknowledged that the FCC definition of “eligible entry” was so broad as to likely have, at best, a negligible impact on minority and female ownership. In any event, the definition was struck down by the U.S. Court of Appeals for the Third Circuit, and the entire Report & Order was scuttled.

The effects of the scuttling of diversity incentives are evident today. As of the end of 2015, only twelve television stations in the United States are Black-owned—and seven of the twelve are owned by one man. A 2007 study showed that Blacks own just 3.4% of the nation’s full power commercial broadcast stations. Even taking into account all minority groups, minority ownership represents just 4.6% of the ownership of all television stations and 7.24% of all radio stations, although Latinos, Blacks, Asian Americans and Native Americans make up more than a third of the American population.

633. The FCC created the LFPM service to “create opportunities for new voices on the airwaves and to allow local groups, including schools, churches, and other community-based organizations, to provide programming responsive to local community needs and interests. See WALDMAN, supra note 592, at 325.

634. See id. at 184–85.


636. See id. at 5925, ¶6 (defining eligible entities as “any entity that would qualify as a small business consistent with Small Business Administration (‘SBA’) standards for its industry grouping, based on revenue”).

637. See id. at 5987 (Adelstein, Jonathan, Commissioner, concurring in part and dissenting in part) (“The definition of the entities eligible is so broad . . . that minority - and women-owned businesses are likely to be incidental beneficiaries at best.”); id. at 5983 (Copps, Michael J., Commissioner, concurring in part and dissenting in part) (Today’s item ignores the pleas of the minority community to adopt a definition of “Eligible Entity” that could actually help their plight. Instead, the majority directs their policies at general “small businesses”—a decision that groups like Rainbow/Push and the National Association of Black Owned Broadcasters assert will do little or nothing for minority owners.”).

638. See Prometheus Radio Project v. FCC, 652 F.3d 431, 471 (3d Cir. 2011) (holding that the FCC’s revenue-based eligible entity definition was arbitrary and capricious).


D. Enhancing Minority Presence in News and Public Affairs Programming and Journalism

Likely a result of dismal minority ownership rates, a telling disconnect between the Ferguson narratives and televised news presentation of those narratives was the utter lack of racial diversity of those discussing the emerging events. The pundits, news-readers, and "experts" appearing especially on televised discussions about Ferguson took on key roles in framing the issues for television audiences. However, the lack of racial diversity was staggering.

The utter absence of diversity was on display in television’s leading news affairs programs: NBC’s Meet the Press with Chuck Todd, ABC’s This Week with George Stephanopoulos, CBS’s Face the Nation with Bob Schieffer, and Fox Broadcasting Co.’s Fox News Sunday with Chris Wallace. From a diversity perspective, the fact that each of those shows is anchored by a White man was blindingly apparent.

This fact mirrors findings on who reports the news and resulting socio-racial implications. In a study of local television newscasts aired from 1987 to 1998 in twelve large U.S. markets, researchers found that, in the news stories analyzed that were delivered by reporters, White reporters made up seventy-three percent of reporters, while only sixteen percent of reporters were Black. In the markets analyzed, news anchors voiced over most news stories. The study found that White anchors by and large led the conversation on these stories as White anchors spoke first in discussing a story seventy-nine percent of the time, while Blacks spoke first in just eleven percent of news items. Sources for the news stories were also predominantly White, whether they be civilians, political sources, or experts. Eighty-four percent of the first sources for stories were White, compared to just twelve percent of news stories with Black first sources.

To a greater extent than news hosts, television audiences tend to attach the highest credibility to those giving expert oral advice. On that score, the race, gender and ideology of those offering commentary and framing the Ferguson events on television were predictably homogeneous. On November 30, 2014, the Sunday after the grand jury verdict was announced and after the rioting, White men did not just dominate those news programs as hosts; they also made up the majority of those giving guest appearances as pundits or experts. On Meet the Press sixty-seven percent of guests discussing Ferguson were people of color and ABC’s


643. Poindexter et al., supra note 518, at 530. Three percent of reporters were Latino and there were no Asian American or Native American reporters. Id.

644. See id.

645. See id.

646. Id. at 532.

This Week hosted three White guests and three guests of color. However, CBS’ Face the Nation hosted slightly more White guests—four out of a total of seven persons offering viewpoints and Fox News Sunday hosted six White people to discuss Ferguson, and only two people of color. Fox News Sunday also convened a panel to discuss how to best to combat racial discrimination—an all-White panel.

Outside of the Ferguson context, a Media Matters report analyzed the ethnicity, gender and ideology of guests on those same shows and CNN’s State of the Union with Candy Crowley throughout all of 2014. Its analysis found that White men made up the largest proportion of guests on each of those shows. White guests represented a “significantly higher proportion than all other guests combined.” By guest measure, Face the Nation was the least diverse, with eight-eight percent of guests being White. Fox News Sunday followed closely with eighty-seven percent White male guests. Meet the Press, This Week, and State of the Union had seventy-eight, seventy-seven, and seventy-four percent, respectively. Ideologically, Fox News Sunday guests evinced a significant ideological imbalance to the right, with forty-five percent of its guests avowedly Republicans or conservatives while only twenty-two percent of guests were Democrats or progressives. This Week, Face the Nation, and Meet the Press all hosted a plurality or majority of “neutral guests.”

As such, major television outlets ceded the most privileged roles in discussing Ferguson in particular, and news in general, to White men with viewpoints that fortified the legitimacy of the status quo, and squandered the possible interjection of broader perspectives into the subject. The critical rationale for enhanced representation of minorities in host or expert roles is as important as their disproportionate prominence in news as criminals: the cultivation theory. As discussed, our perceptions of reality may be cultivated by what we see on television. The media influences public attitudes, and some regular television viewers believe that the real world is based on the “television world.” A diverse newsroom better reflects the population, which enables fairer and more accurate or incisive reporting.

Media diversity advocates must bring attention to the lack of diverse voices in newsrooms and on air. It is vital that news media present Black

649. Id.
650. Id.
652. See id.
653. Id.
654. Id.
655. Id.
656. Id.
657. Id.
voices and voices of other historically marginalized groups, and especially when reporting on racially charged events such as Ferguson. While not a guarantor of viewpoint diversity, actual diversity would most likely improve representation of more perspectives. Who presents, and what is presented on news touching upon Black issues, matters.

E. Extra-Institutional Activism

Marginalization by mainstream media in hiring and representation appears to have fed the growth and popularity of a new type of activism. In the wave of news accounts of law enforcement or extra-institutional acts of violence against Blacks, there has been seething discontent in the ways in which majoritarian media institutions have framed Blacks.658 As the digital divide has narrowed,659 Black social media venues have served trenchant responses to the explicit and implicit biases in media coverage.660 Remarkably, Twitter is the site on which Blacks are forging a new social identity, responding to mainstream media’s racist and racialized narratives, and holding them to account for those representations.661

Twitter has become a platform for dissent, discussion, breaking news and critically, news trends.662 “Black Twitter,” specifically, provides an online culture of Black intellectuals, trendsetters, and talking heads, giving Black users an arena to perform their racial identities.663 Popular Twitter hashtags “have transformed into media-friendly monikers,” capturing


662. News trends are banners on news or social media websites identifying subjects receiving high degree of search efforts and social media attention.

"the zeitgeist of the online world." In doing so, Black twitter users shone a much-needed light on the media’s tendency—with an astounding consistency—to perpetuate negative racial stereotypes when covering stories involving African Americans.

Black Twitter and its subgenres of racialized hashtags (i.e., “Blacktags” such as #BlackLivesMatter and #IfTheyGunnedMeDown) are sites of powerful Black socio-political activism. Critically, those sites also serve to hold to account media representations of Blacks. #IfTheyGunnedMeDown tweets were a particularly profound site of media behavior in covering Brown’s killing and other Black victims of law enforcement excess. For some, the photograph of Brown in the red jersey, flashing a “gang sign,” run by news outlets, called to mind the shooting death of Trayvon Martin and the photographs used to portray both the teenager and his killer, George Zimmerman. Users began posting “dueling” photographs of themselves—one where the subject looks wholesome, and another where the same person might look like a troublemaker—with the hashtag #IfTheyGunnedMeDown. Behind the trend was the question of which photograph the media would seize upon if the posters had a run-in with police.

The Philadelphia Daily News retraction was another example of Black Twitter effectiveness at changing narratives. On August 13, 2014, the Daily News had planned to publish a photograph showing a Black protestor in Ferguson about to hurl what looked like a firebomb. In response to readers’ comments on Twitter, Daily News editors changed course and, instead, used a photograph of a Black woman standing in front of police officers, holding a sign urging for answers regarding Brown’s death.

It cannot be said that Black Twitter is any match for Fox News or any other traditional broadcast station. Fox News—to be sure, every major media conglomerate—is likely to always possess the loudest megaphones and most reverberant echo chambers in the marketplace of speech. However, Black Twitter forces those institutions to respond to instances of conscious and unconscious racial debasement in media news narratives. As a result, Black Twitter has at least impelled journalists, editors and other media actors to police themselves. Ultimately however, the most effective reforms will be through media institutions changing, in fundamental ways, how they construct, produce, and disseminate news.

666. See Vega, supra note 175.
F. Doing Their Job

Through selective and descriptive bias, Ferguson news accounts sublimated racial grievances in favor of narratives that reinforced majoritarian power structures, racial threat, and racial privilege. It is critical that media coverage on race bring an explicit racial lens to breaking news, investigative reporting, and multimedia storytelling. However, it must do so responsibly.

News outlets in every media should engage in a systemic effort to discontinue the racially disproportionate presentation of minorities as criminals, and the overrepresentation of Whites as crime victims and benign helpers. Data from the Department of Justice and the Bureau of Labor Statistics provide credible, scalable benchmarks from which to perform inter-reality analyses. That is, those sources have credible, scalable and objective indicators of actual crime perpetrators and victims, as well as law enforcement and criminal justice system employment. With credible, scalable benchmarks, media outlets can self-diagnose and self-correct any non-conformity with real-life statistics. This Part lays out two broad areas of newsgathering reform.

1. Avoid the Race-Crime and Race-Protest Scripts

In addition to institutionalizing internal audits of racial representations in crime stories, below are other measures news outlets, producers, journalists and performers can implement.

1) Avoid slurs, coded language, or terms that subtly yet profoundly evoke and reinforce racial stereotypes;
2) Refer to race fairly (across all racial categories) and only when pertinent to the story;
3) Avoid sensational headlines that exploit racial stereotypes;
4) In newsgathering, speak with relevant stakeholders aside from law enforcement and institutional actors, and do not take police reports at face value; and
5) Explore racial disparities and attitudes without divorcing them from their historical context.

Demonstrations such as those in Ferguson explicitly sought to surface contextual disparities as it regarded race and criminal justice, yet the me-

669. See Dixon et al., supra note 24, at 513.
670. The details of such an internal audit structure and the viability of a regulatory scheme to guide media self-assessments, is the subject of the author’s future research.
672. Typically, the race of the perpetrator is explicitly mentioned only in narrow circumstances: 1) in biographical stories and announcements that involve significant historical events (e.g., “Barack Obama is the first African-American President); 2) for suspects sought by police or missing persons using credible descriptions; or 3) when reporting on demonstrations involving race, such as civil rights. See ASSOCIATED PRESS, THE ASSOCIATED PRESS STYLEBOOK AND BRIEFING ON MEDIA LAW 225 (2015); see also Race Reporting Guide, supra note 671, at 13–14.
dia failed in its coverage of those disparities. News media must resist and avoid the protest paradigm by downplaying police-protestor clashes, and instead accurately address the protestors' grievances and gather relevant responses. In doing so, they should:

1) Identify the key issues being raised by protesters for public debate, not just the confrontations between the protesters and police;
2) Explain the positions and rationales of the protestors, treating them as legitimate political actors, and not “deviants”;
3) Get responses from representatives of the institutions being challenged;
4) Use a debate frame instead of “crime” and “riot” frame, exploring the pros and cons of the issues brought to bear through the protests; and
5) Explain underlying policy implications and details of the issues that protests are targeted to combat.

An incessant spotlight on police-protestor conflicts diverts attention from real issues and delegitimize protestors. Protestors should be treated as legitimate political actors and the media has an overriding responsibility to investigate their grievances and seek responses. Responsible media institutions and reporters must do better in being mindful of the fact that most protest organizations operate with limited resources, and have a hard time securing public visibility, disseminating information, and exerting influence. This is especially true in a media ecology that not only prefers crime and conflict scripts, but narratives that seek to preserve extant social hierarchies. Taking the prescribed measures may improve the quality of protest coverage, and “ultimately the dynamics of social conflicts.”

2. Expand the Number and Role of News Ombudspersons

Ombudspersons are employed by news agencies to respond to consumer complaints or concerns about the production and product of news. Alternatively called “public editors,” “readers’ advocates,” or “readers’ representatives,” the role made its formal debut in newspapers in 1913. An ombudsperson is charged to address complaints ranging from the mundane (e.g., discontinuation of a comic strip), to larger issues of bias, racial or otherwise.

There are several benefits to the ombudsperson model. Ombudspersons can effectively funnel and manage consumer complaints, have a reductive effect on libel claims, enhance relationships between the newspaper and its readers, and boosts a media outlet’s credibility to the extent the ombudsman is perceived as an outsider liaison. Arguably,
ombudspersons induce reporters to do their work more conscientiously.678

Opponents to the expansion of ombudspersons claim that ombudspersons are too expensive, are mere "window dressing" to establish public credibility, and create a layer of bureaucracy between reporters and the public.679 The bottom line is that some feel the ombudsperson cannot effectively do what needs to be done: act as a teacher and alter journalistic practices in a way that truly matters. This can serve as a very useful role, but can only be effective if certain conditions are present. I will present these conditions in turn.

First, the ombudsperson must be allowed to speak. Not all news ombudspersons are granted editorial space or airtime to critique their papers' accuracy, fairness, or bias in reporting. However, if ombudspersons are charged with responding to audience concerns—whether the issue be narrow or broad—they must be given the time and space to speak publicly and critically. The ombudsman role does not raise constitutional concerns about compelling speech or infringing upon editorial and programming judgments—concerns addressed by the Supreme Court in Miami Herald v. Tornillo,680 and Turner Broadcasting System, Inc. v. Federal Communications Commission.681 Unlike in those cases addressing the chilling effects of government-compelled speech, an ombudsperson would alter the speech of news organizations from within, not through government or third party pressures.

Second, the ombudsperson must be an insider.682 The ombudsperson’s work entails the type of scrutiny that some editors and reporters might find objectionable. Its role should serve as a type of Internal Affairs division. In order to maintain credibility in the public eye, the ombudsperson should be transparently independent of those other roles. This would go to discourage private internal relationships, which can compromise investigations.

Third, the ombudsperson must have authority to reward or discipline. The ombudsperson must have the authority to sanction reporters.683 This would entail having the power to add findings or critiques to reporter’s personnel files, and with weight that could impact evaluations, promotions, or even compensation.

Such a structure doubtlessly alters power relationships in newsroom hierarchies. Editors would most certainly resist such alterations. But as more and more news organizations hire ombudspersons, others may be left to defend their rationale for not adopting such a self-examining role player. The introduction of ombudspersons is an imperative akin to news providers’ migration to online content delivery—one of survival. What is

678. See id.
679. Id.
682. See Meyers, supra note 677, at 249.
683. See id.
saved, however, is reporting legitimacy, credibility, and fairness—abiding hallmarks of news journalism.

Legal remedies to eliminate racist narratives and metanarratives are not found in our current First Amendment jurisprudence. Nor can much solace be had through revival of the Fairness Doctrine or media distortion rules. Instead, regulatory agents, allied institutional actors, and change agents themselves must create new media spaces. Those spaces can exist within existing news organizations, in minority-owned media properties, or on alternative media disseminating platforms. In those spaces, Blacks can hold majoritarian, illegitimate narratives to account and reify true narratives. The first step, however, is for media institutions to engage in self-analysis and improvement.

CONCLUSION

News media possesses two formidable powers: the power to determine what matters, and the power to establish the meaning of what matters. News institutions, through the mere process of electing what to present or ignore, tell us what is normatively salient. Utilizing text in every semantic form—words, sounds, images—and meta-texts such as framing, news creators construct narratives that ascribe meaning to the issues, events, people and institutions they present. Media treatment of Brown and scores like him make evident that those narratives have been demonstrably biased and socially destructive.

In 1903, W.E.B. DuBois famously asked of Black men, “How does it feel to be a problem?”684 Black men are persistently placed into the context of criminality, irresponsibility, and fearsomeness. Those accounts evolve into exegeses on what ails Black families and the Black community—the perpetuation of a racial ideology one never witnesses with White communities, whose bad actors are invariably given the benefit of individuality. Brown himself was constructed as a demon who deserved the fate Wilson meted. But whether talking about how the media framed Brown or how they frame scores of Blacks killed by law enforcement, the media never fails to rationalize and restructure Blacks as “problems.”

Through priming and cultivation, news exerts “appreciable influence on [audience] perceptions of the issue and, ultimately, the opinions they express.”685 News stories about Brown, violence, looting, riots, and images of law enforcement militarization made race and crime significantly more cognitively and affectively salient. Similar to the news stories subject to so much research, narratives could prime audiences to ascribe looters’ behaviors to all Blacks, or worse, conclude that those being depicted were predisposed toward violence and crime. In addition, media images and narratives—perhaps in tandem with other cultural or interpersonal forces—cultivate fear and animosity, which could influence policy debates surrounding institutional racism and reform.

Like other institutions legitimized into the fabric of our society, news media advances an orthodoxy in which White majoritarian interests in social control inform the media’s approach to its work. The media’s construction of Brown, Wilson, and the Ferguson protesters advanced a distressing and complex racial narrative with Black criminality, rebellion and social chaos at is core. In its interdependent relationship with legal institutions and law enforcement systems, the media advances a dominant racial ideology that wrongfully demands its own perpetuation.

Yet, behind every news story advancing a dominant racial ideology lie discarded counter-narratives, ignored cultural meanings, and omitted counter-stereotypical information. It is clear that we cannot insist upon the impossible and undesirable edict that news stories present only positive depictions of Blacks. Nor should any prescription lead us to believe that if we could only control those depictions we would somehow be free of racism and oppression. What we must understand, however, is the fact that the adverse media depictions such as those we witnessed out of Ferguson have both short- and long-term consequences. They stifle our ability to move, as a polity, toward progressive solutions to the chronic problems plaguing the current policing of our bodies and our communities.