Professional analysis article

Can journalists help prevent injustices?

By Chris Hamby

Few subjects that journalists cover involve the exercise of greater state power than the criminal justice system. The potential consequences of criminal prosecutions are great, from incarceration or even loss of life for the accused to the necessity of spending large amounts of taxpayer money to imprison the convicted. News of wrongful convictions – often discovered because of advances in DNA technology – has shown that, despite the system’s built-in safeguards, errors can occur. The question, then, has become not whether the system might run afoul, but how often.

For journalists, a related question arises: What, if anything, can – or should – reporters do to prevent miscarriages of justice? Any answer to this question must take into account the constraints imposed on journalists by the very nature of the criminal justice system as well as the time and resource limitations placed on journalists by the economic realities of the news business.

In interviews with journalists ranging from young beat reporters at local newspapers to seasoned projects team members at major metro dailies, one word continued to crop up when journalists described the role they sought to play in the criminal justice system: “watchdog.” But the specifics of what it means to play this role varied in reporters’ minds. Almost all reporters expressed a desire to be an independent monitor, but daily reporting routines and time spent on enterprise stories and independent investigations into cases were far from uniform.

The realities of criminal justice reporting – such as the day-to-day flood of crimes and the challenges of gaining access to information – sometimes limit what even the best journalists can do. Still, reporters at papers large and small are making time to look into cases and trends that catch their eye.

Could greater reportorial diligence actually apply the brakes to a runaway case headed for a wrongful conviction? Absolutely, some reporters said. Others viewed this as an admirable, but probably unrealistic, goal. Still others thought that preventing individual miscarriages of justice might be wishful thinking, but that reporting on systemic flaws might have a similar effect by helping eliminate the general mechanisms that allow for specific injustices. In other words, the differences related less to the ultimate goal and more to the feasibility of reaching it.

Crime du Jour v. Enterprise

Rookie reporters often start on the cops and courts beat, spending long hours listening to the hum of the police scanner or logging mundane crimes. Crime beat reporters, especially those at smaller papers, described a daily routine of checking in with sources – usually official sources such as the county sheriff, city police and local court clerks – and reviewing law enforcement
call logs and court docket sheets. Some of the more interesting items uncovered through this process may warrant stories.

Different reporters described different approaches to the beat. Justin Fenton, who covers the Baltimore City police for The Baltimore Sun, said he tries to write more than one story each day, while also posting to a crime blog and a Twitter account. He spends much of his time cataloguing more serious crimes in spreadsheets and databases, and he enters much of this information into a form that allows online readers to view crime data in an interactive Google Map. All the while, he said, he tries to spot trends and write enterprise stories.

Jeremy Kohler, a reporter on the projects team at the St. Louis Post-Dispatch, said that, when he was the city police beat reporter for the newspaper, he “did not try to cover every single crime or even every single mini-scandal in the department. I tried to really focus on the big things.”

Some reporters swore by keeping a calendar with key court dates and other events on it. Others said they relied on a system of Post-it notes and Microsoft Word documents. Some said they try to go to lots of crime scenes; others didn’t.

Most reporters, however, expressed a desire to do enterprise and investigative stories. The main obstacle, almost every reporter said, is time.

This seems especially true for reporters at smaller papers. Courtney Hudson, the crime and courts reporter for the Sedalia Democrat (headquartered in a mid-Missouri town of about 20,000 people), said time for working on more involved stories was limited in part because the paper has just four reporters. “We have a lot of great ideas,” she said. “It’s just finding the time with the day-to-day stuff.” Jeff Haldiman, the crime and courts reporter for the Jefferson City News Tribune, described a similar situation, adding, “The minute you think you’ve got time, sure enough something else is going to come up.” The News Tribune has just six full-time reporters and one part-time reporter, he said.

Reporters at larger papers seemed to be less overburdened, but they still described a constant struggle to stay afloat in the sea of day-to-day crime and court proceedings. Brendan McCarthy, the city police reporter for the New Orleans Times-Picayune, said finding time for enterprise stories is “a combination of your own personal will and ability to juggle things in combination with editors and colleagues you work with and can look toward for leadership and advice.”

But some reporters at smaller papers are also making time for more ambitious projects. Belleville News-Democrat reporters George Pawlaczyk and Beth Hundsdorfer won multiple awards for their series “Trapped in Tamms,” which detailed the treatment of inmates – purportedly the “worst of the worst,” but in many cases merely mentally ill – at an Illinois supermax prison. Pawlaczyk said he has a great deal of freedom to report on what he chooses; Hundsdorfer is the paper’s courts reporter. Both said the Tamms project, like others they have written, required working many nights and weekends. Pawlaczyk’s advice to reporters at other small newspapers looking for time to do enterprise stories was simple: “Just do it.”
Sometimes weekly papers can pick up the slack, too. Jordan Smith, a reporter for the weekly paper *The Austin Chronicle* who primarily covers criminal justice, said she tries to find the stories the dailies aren’t covering or, if the dailies are covering the story, to find a different angle from which to view it. When a police officer shot and killed a man in 2007, the dailies focused on the officer, so Smith focused on the suspect’s gun. Her reporting eventually led to a story that examined the way police track guns and the emphasis they place on gun crimes.

Ted Gest, a longtime journalist and the president of the national organization Criminal Justice Journalists, said that the number of criminal justice reporters, although difficult to quantify, seems to have decreased in recent years, and, accordingly, “I see relatively fewer stories that are general stories taking a look at practices in police and the courts.” Ruben Rosario, a columnist for the St. Paul Pioneer Press who writes mainly about criminal justice issues and is also on the Criminal Justice Journalists board of directors, said that, when it comes to enterprise stories, “You have to be a lot more selective now than you ever were.”

**Sourcing and ‘the nature of the beast’**

Police and prosecutors often represent the dominant voices in criminal justice news. Researchers have noted that this seems especially true in shorter crime stories. In interviews, journalists generally agreed, but noted that the lack of source diversity is not always attributable to a lack of effort. In the early stages of a case, there may not be much information available. Suspects and their family members often do not talk to reporters, and they may not have a lawyer initially.

Most reporters – especially those at smaller papers – said they simply don’t have time to track down witnesses or other potential sources for most day-to-day crime stories. More serious and high-profile crimes, though, usually do get more attention, they said.

Some research suggests that focusing on police and prosecutors’ accounts of crimes can lead to public fear of crime and support for traditional law-and-order approaches. One recent study found that the framing of crime news often leads to more negative views of defendants and support for harsher punishments.

Reporters said they go out of their way to be fair to the accused but, despite their efforts, stories about arrests or the filing of charges often end up relying heavily on official sources. “That’s just the way the story develops,” Gest said. “It’s not that we like [police and prosecutors] more. … We typically get more of our news from them. That doesn’t mean we believe them all the time, but those are typically going to be the first sources of news.”

In some instances, police and prosecutors are happy to provide their version of a case, reporters said. But sometimes trying to pry information from police and prosecutors can be difficult. “I think it’s the nature of the beast,” Rosario said. “When you’re a prosecutor or a police officer … the last thing you want is a whole bunch of media … at your doorstep asking for things that you might feel may compromise the situation.”

Fenton said he thought the Baltimore city police had grown bolder in trying to withhold information. “They’re almost challenging us to sue them, and they don’t think we will,” he said.
“They see the reports of our company in bankruptcy; they see us shedding jobs. And they think, ‘What are they going to do about it?’ But if we don’t do it, I really don’t know who is.”

Many reporters said their papers are willing to sue, but the story has to be important enough to warrant it. An easier and faster end-run around these limitations on official access, most reporters said, is developing good sources. These might include defense lawyers, law professors, interest groups and people who used to work within the criminal justice system.

Mark Curriden, a lawyer at the firm Vinson & Elkins who covered courts and legal issues for *The Atlanta Constitution* and *The Dallas Morning News*, said that, as a reporter, he made a point of chatting up court clerks each day and cultivating a range of sources. “Almost three times a week, I’d have lunch with a lawyer or a judge,” he said, “and then I’d try to have drinks or go to a ballgame or something with a lawyer or judge.”

Mark Fazlollah, a longtime projects reporter for *The Philadelphia Inquirer* who has written multiple award-winning series about criminal justice issues, said he has had success talking to mid-level police commanders rather than top officials. “They know what’s going on in the department and are very open to discussing issues,” he said.

Smith said she takes a very direct tack with information brokers. “My approach is to be a complete pain in the ass,” she said. “They expect me to be a pain in the ass. They see me coming; they know I’m a pain in the ass. And they know that I’m going to ask for what I want and continue to ask for it and use open records to get what I can.” Most reporters expressed a similar familiarity with open records laws and said they routinely use them.

Taking on police and prosecutors and criticizing them in stories can sometimes make daily beat reporting more of a challenge. Kohler said he wrote many stories that were critical of the police, “and they would shut me out, so everything became an investigation. I would ask simple questions, and I wouldn’t get an answer. And then I would have to press and file information requests. There weren’t a lot of easy stories.” Still, he said, “I would never turn my back on a tough story because it would make it more difficult to write a day-to-day story.”

‘Preventive journalism’ and miscarriages of justice

Almost every reporter interviewed envisioned himself or herself as an independent monitor of the criminal justice system. But there was less unanimity when reporters contemplated the types of actions and the level of advocacy that might follow from accepting this role.

Joe Mahr, an investigative reporter at the *Chicago Tribune* who specializes in projects related to criminal justice issues, said a reporter’s goal should be “to get beyond the crime and look at the system itself. Where is it failing? Where are the challenges? Where are the cracks that people are slipping through?” A number of reporters said they believed the media could serve as an outlet for people who feel they can’t get justice through traditional avenues.

Some reporters were more comfortable envisioning themselves as potential agents of change than others. “I don’t view myself as a crusading journalist,” Fenton said. “I feel like I’m there to
write about this, point it out, and it’s up to the decision-makers to do the right thing. I’m not going to just stick with something and become an advocate for it. I hope that people will do the right thing once an issue has been pointed out.”

David Krajicek, a journalist who co-founded Criminal Justice Journalists and has written a book critical of celebrity-obsessed crime coverage, said that, during the crack cocaine crisis of the 1980s and 1990s, “journalism’s great failing … was its lack of advocacy. Journalists en masse should have been holding police departments accountable, and we didn’t…. I think with the plethora of media today, including the Internet, there’s much more advocacy that goes on. I don’t think that’s necessarily a bad thing. When a case crops up that smells like crap, when a conviction happens that smells like crap, absolutely a journalist needs to point it out.”

This sentiment hews closely to what journalist Steve Weinberg has called “preventive journalism.” In a 2008 article for Miller-McCune magazine, Weinberg argued that wrongful convictions are often a failing not only of the criminal justice system but also of the journalists who should be monitoring it. He put forward a set of recommendations that he believes could help prevent miscarriages of justice. Reporters should track all felony arrests – or only more serious felony arrests if resources are limited – in a spreadsheet, checking in on the case at certain steps in the process, he wrote. Other recommendations included developing relationships with a variety of sources, evaluating police and prosecutor training procedures and reading appellate court decisions. All this would increase the odds that a reporter would notice a wrongful prosecution unfolding or be able to identify problems within the system, such as sloppy crime lab work, obfuscation by prosecutors or inadequate representation by defense lawyers.

In a 2007 article for Extra!, the magazine of the progressive media criticism organization Fairness & Accuracy In Reporting, Jon Whiten criticized the media for failing to acknowledge its own role in allowing wrongful convictions to occur. Greater skepticism by journalists would be a welcome antidote, he wrote.

Some reporters heartily agreed with this assessment. “In a number of stories that I’ve written, I’ve seen how there was a failure on the front end to prevent these things,” Smith said. In a recent story, which won a 2010 John Jay College Excellence in Criminal Justice Reporting award, she re-examined a case in which a husband and wife who ran a day care were convicted of sexually abusing children. The 1992 conviction came during a nationwide panic over allegations of “Satanic ritual abuse.” Smith uncovered potentially exculpatory evidence and called into question the state’s case against the couple, Fran and Danny Keller.

“The media at the time bought the storyline hook, line and sinker,” Smith said. “They were writing about these horrible abuses of little children by these Satanists…. They were just complicit in the storyline. They did nothing at all to question whether or not this was real and, beyond that, whether these people might have done something and, beyond that, whether there was any evidence to prove that they did. They did nothing, absolutely nothing. I think that’s terrible. That’s supposed to be our job.”

Krajicek said reporters who notice something amiss could also go to the paper’s editorial board or to a columnist and suggest that they write something. “The typical journalist’s assumption in
the past has always been, ‘He was arrested for something; they had some reason to arrest him,’ ” he said. “Well, maybe they thought they had a good reason to arrest him. I’m all for a degree of advocacy. It doesn’t necessarily mean that the guy or the woman covering the beat has to start carrying a flag around.”

Reporters generally agreed that, if a case started to look suspicious, they should investigate to the degree that time permits. But many noted that luck seems to play a large role in discovering these potentially troubling cases.

Gest said he didn’t think Weinberg’s suggestions for tracking cases were feasible. “I don’t think most journalists have the capacity to do that,” he said. “There’s just too many cases and too little time for me to assess every case.” Even assessing only the major cases would still be too time-consuming, he said.

There might be instances where a reporter notes a troubling pattern involving a certain prosecutor or a defense lawyer points out a particularly bad case, Gest said, and in these instances the reporter should raise questions. But, he said, “I’m not going to be able to be omniscient and cover every case, and there’s going to be some cases that are going to slip through the cracks.”

Richard Reuben, a law professor at the University of Missouri who covered the U.S. Supreme Court and has written about legal issues for newspapers and magazines, expressed a similar sentiment: “What the media would have to do, if it wanted to prevent an individual miscarriage of justice, is to start investigating on its own, doing the very work that the lawyers and the police and the prosecutor’s staff are going to do themselves. So you’re really looking at having to sort of re-create the wheel. Can you do that in every case? It’s absurd to think that that would be possible.”

But, Reuben said, it would be possible to do this in isolated high-profile cases that come to the media’s attention. Another way to prevent individual injustices would be to uncover the systemic problems that allow them to occur, he said. For example, more skeptical coverage of prosecutors “would help play an institutional role in keeping prosecutors more diligent, which I think would have the effect of reducing the number of individual miscarriages of justice,” he said.

In this sense, then, journalists can practice “preventive journalism” in countless ways. Exposing a police culture of corruption – as Fazlollah did after an indictment piqued his interest and led to a year of investigation – or noting that low pay for jurors in some jurisdictions leads to demographically unrepresentative panels – as Curriden did – can lead to improvements in the criminal justice system. Asking questions and maintaining a healthy skepticism can help keep individual actors within the system honest.

Although journalists’ capacity to do these things seems to vary, their desire to do them seems almost universal. To the extent that journalists have time – or, increasingly, make time – to practice this brand of reporting, they might be able to help those unjustly caught in the maw of the system, and that, everyone seems to agree, is a worthy goal.