



'Perp Walks' Questioned

Judge said practice invades defendants' privacy

BY CRAIG BRANDON

It's a recurring scene for news reporters, photographers and camera crews; a handcuffed figure, often wearing a jail uniform, is escorted through a crowd of news media people by a group of law enforcement officers. Reporters shout questions as the cameras roll. There are only a few seconds of tape, but it's played over and over, usually in slow motion, so the audience can get its first good look at the suspect after his arrest for a notorious crime.

Police and reporters call it "the perp walk." Although it is intended to appear as an unrehearsed news event, the reality is the police usually tip off the media before the "walk" so they can have their cameras ready. There is seldom a legitimate reason to move the suspect through an area of public access where the media is located. It is simply done for the publicity provided by the news media.

Journalists and law enforcement officers don't agree about a lot of

things, but they both benefit from "perp walks." The media get the pictures they need for the evening news and the morning's paper. Officers get a chance to take a public bow for their work.

But this long-standing practice, which dates back at least to the turn of the century when Teddy Roosevelt was commissioner of police in New York City, may be a thing of the past. A Manhattan federal court judge has ruled that a "perp walk" violated a suspect's right to privacy.

Judge Allen G. Schwartz ruled in February that New York City Police violated the rights of a doorman in September 1995 after he had been charged with burglary. Police took him out of the station house in handcuffs, led him into a police cruiser, drove him around the block and then brought him back into the station as television cameras recorded the process. This seemingly unnecessary trip was a request from the local news station for pictures of the man.

The detective in the case, Michael

Charles, told the judge that "perp walks" were routine, and were usually arranged whenever the news media called and asked for them. When the charges against him were dropped the man filed a suit against the police. He said pictures of him in handcuffs in police custody invaded his privacy in a way that damaged his reputation.

In his ruling, Schwartz said that in the doorman's case the perp walk "was conducted in a manner designed to cause humiliation to plaintiff with

no legitimate law enforcement objective or justification."

The NYPD announced they would no longer routinely advise the news media about the opportunity for photographing suspects. But the city's attorney said they might consider an appeal to the judge's ruling, saying it went well beyond any previous decisions regarding a suspect's right to privacy.

Meanwhile, officers who arrange perp walks in other parts of the country would seem to be on shaky legal ground and might be risking a lawsuit. "I'm not a lawyer but I would tend to agree with the judge," said Patrick Murphy, former police commissioner in New York City. "I do feel there is a privacy issue. During my time with the department this issue never came up, but it was easy for photographers to get a picture if they had been tipped off about what time the prisoner would be coming out of the station house."

Because some of the station houses didn't have their own cells, he said, there was a legitimate reason for prisoners to be taken from one to the other for booking or interrogation. "The detectives and the reporters usually knew each other and as long as no one was being paid off, it was just a friendly exchange of information," he said. "It usually happened only in big cases."

Murphy said he saw nothing wrong with the detectives notifying the media about when the accused was to be taken from his cell for a court appearance, for example. But scheduling a perp walk for no other purpose than to create a media event was hard to justify.

"Under the principal that you are innocent until proven guilty," he said, "the defendant does have some rights here."

Joseph McNamara, former police chief in Kansas City and San Jose, CA and now a research fellow at the Hoover Institution at Stanford University, said the news media had a right to photograph suspects, but he also drew the line at scheduling events for publicity purposes. "When someone is in custody they should not be compelled to do things that

are not related to security or part of their trials," he said.

In some cases, he said, broadcasting and publishing photos of a suspect might help bring forward witnesses who recognized him and might otherwise not have shared the evidence or information with police. "But it is also true that the publicity can interfere with rights to a fair trial and presumptions of innocence. I suspect that the New York perp walks were primarily an attempt to win good public relations for the NYPD. If done for this reason it is wrong."

Over the years perp walks have provided some of the public's most memorable images of police work. In the days before television cameras, photographers were routinely invited into the police station and allowed to take pictures of suspects and ask them questions. That policy had to be amended in the late 1960s when four-person television crews became part of the news media, creating traffic jams in the station's hallways. At that point, the question of who has access to suspects came before the New York Fair Trial Free Press Conference, a non-binding advisory group that handles disputes between law enforcement and the news media.

The conference's recommendation, which was adopted by the NYPD, said police "should not prevent the photographing of defendants when they are in public places outside the courtroom...but they should not pose the accused." Ordering the suspect to "take a walk," however was not considered "posing."

David Gordon, professor of journalism at the University of Wisconsin — Eau Claire, and an expert on fair trial — free press issues, said that while the print media might be happy with a photo of the suspect taken by police, it was the television news media's need for action photos of the suspect for the evening news that required a perp walk or something like it.

Barbara Fought, who teaches broadcast journalism at Syracuse University, said that under the right circumstances perp walks don't

infringe on the suspects' rights. "The police and news media should agree on a standard procedure and route for defendants or suspects going to and fro. Then the police and courthouse officials should allow the media access to that route for pictures and video," she said.

Restricting the media's access to taking photos when the transfer is being made for a legitimate reason, she said, might violate basic First Amendment rights. "If anyone in the public can see this person go in or

out of the police station, jail or courthouse, there's no invasion of privacy. We have a history of openness to the legal system and trials in this country."

On the other hand, she said, the police had no right to parade a suspect around just for the cameras. "When they are taking the person in and out on the usual route, I think the media have a right to take pictures and video. It's important for the public to see the defendant or suspect. There are several useful pur-

poses. The public has a right to see persons who have been accused of crimes. Anyone can come into the courtroom to see them so why not see them on the street or in the courthouse corridor?

"Also, a person who sees the defendant may recognize him and have helpful information to give to either the prosecution or defense about that case. Or perhaps the person recognizes the defendant from another crime incident, for which the culprit hasn't been caught."

Jane Kirtley, executive director of the Reporters Committee for Freedom of the Press, said her organization is considering filing a friend of the court brief opposing Judge Schwartz' ruling. Perp walks, she said, allow the public to examine the condition of the suspect, to see if there is any evidence of abuse or mistreatment.

Philip J. Dinhofer, lawyer for the doorman who brought the original charges against the police, however, told the New York Times that his client did not want to infringe the news media's First Amendment rights. "This is not a free press issue," he said. "This is what the police did wrong."

John Miller, spokesman for former New York Police Commissioner William Bratton and now a reporter for ABC News, said that the perp walk was likely to survive in some form, no matter what happens with the appeal to Judge Schwatz's ruling. The public's interest is in seeing the face of someone who has been accused of a notorious crime, he said.

Mike Pearl, who recently retired from covering police for the New York Post, said he thought New York had not seen the last of the perp walk. "I'm sure the cameramen will find a way of getting their pictures," he said. L&O

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