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DRAFT

***Wilson v. Layne* and the Rule of “The Home as a Castle”:
The Demise of the Observational Study of Police?**

John P. McIver
Department of Political Science
University of Colorado
Boulder, CO 80309-0333
(303) 492-8723
john.mciver@colorado.edu

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ABSTRACT

In 1999, the US Supreme Court decided *Wilson v Layne* (and a companion case) ruling that media representatives could not participate in the execution of a search warrant in a private dwelling. Unasked at the time of their decision was what implication this ruling might have for the academic study of policing. This paper first speculates on the impact of the case and considers its potential repercussions for observational research projects such as the Police Services Study conducted by the Workshop during the mid 1970's. It then reports on current police practices with respect to civilian ride-along programs based on a recently conducted mail survey of police agencies serving suburban and urban communities. Some will see the results as a glass half-empty, others will see it half-full. Observation of police behavior is restricted following *Wilson* but not curtailed completely.

***Wilson v. Layne* and the Rule of the Home as Castle¹: The Demise of the Observational Study of Police?**

Introduction

“Bad boys, bad boys, whatcha gonna do, whatcha gonna do when they come for you?” Ah, real cops. The televised mayhem of nightly “reality police TV”. Thankfully some of it has ended as America’s lust for reality TV has declined. But with the good news comes the bad. Accompanying the decline of police TV are the new limitations placed on the systematic study of the street level representatives of the police agency. In a violent world, it is often difficult to place observers in the potential danger for insurance reasons. Recently, the Supreme Court has placed another barrier to ride-along programs by private citizens and in specific by researchers and citizen watchdogs.

The U.S. Supreme Court’s decision, *Wilson v. Layne* (and its companion case, *Hanlon v. Berger*), while explicitly focused on media participation in police work threatens the academic study of police behavior. These cases, which now explicitly preclude news media from following police officials into the home to serve arrest warrants, implicitly include all other 3rd parties from entering the privacy of the home. Among such 3rd parties are the academic and government public policy researchers who study police behavior. And among those who have been most effective in delving into the police practices has been Elinor Ostrom who we honor this week.²

EO and the Study of Urban Policing

Beginning in the very late 1960’s Lin and her classes began a series of small empirical studies to address theoretical questions first raised by Vincent Ostrom about the organizational of government structures (Ostrom, Tiebout and Warren, 1956, Ostrom, 1969, Ostrom and Ostrom 1970, Ostrom, 1974). These early projects lead Lin and her students (Roger Parks, Gordon Whitkaer, Dennis Smith and others) to devise a series of most-similar-systems natural comparisons between police departments of various sizes and organizational structures. Chicago, St. Louis and Indianapolis metropolitan areas were the laboratories for her first investigations of police services.

The success of the research prompted her to take the Workshop perspective on the study of police services nationwide.³ Responding to an RFP from the NSF/Research Applied to National Needs

¹ The oft quoted remark that “a man’s home is his castle” dates to a 1604 decision by the English courts: “The house of every one is to him as his castle and fortress, as well for his defence against injury and violence as for his repose.” (*Semayne’s Case*, 77 Eng. Rep. 194). But as my wife would remind me “behind every good man is a good woman”, especially one who may be paying the mortgage.

² An incomplete list of Elinor Ostrom’s work on the police is presented as a separate section in the references at the end of this paper.

³ It is perhaps ironic that the most visible implication of this research, that consolidation of public service industries may not yield greater efficiencies and may have negative consequences, is being challenged by a local move to consolidate the police of Indianapolis and Marion County. (*Indianapolis Star*, November 13, 2005).

division, Lin and Vincent bid for the first phase of the Police Services Study (PSS), a national examination of the structure of the police industry as it served 80 metropolitan areas across the nation. Phase I begat Phase II, an in-depth look at the impact of police on the lives of the community. Faculty and 100 graduate and undergraduate students from IU and the University of North Carolina took to the field to conduct a massive investigation of the patrol function in 25 departments in 3 metropolitan areas. The summer of 1977 was spent riding with patrol officers, documenting almost 6000 police-citizen encounters. It was a study that produced dissertations and careers for many of us of that era.⁴ It is a study that has served as a model for later investigations of the patrol function. And it is a study whose replication is threatened by recent US Supreme Court decisions and the police response to those decisions.⁵

Wilson v Layne

What happened in *Wilson* (and *Hanlon*)?

The Court's decision in *Wilson v. Layne* actually encompasses two cases with two different fact situations involving media recordings of police engaged in warrant-endorsed searches. The different fact situations presented the possibility that a less general rule might be written. But the Court used the diversity of facts to affirm a general principle.

In the first case, *Wilson v. Layne*, a team of Deputy US Marshals and Montgomery County (MD) police officers were accompanied in their execution of an arrest warrant by a news reporter and photographer from the Washington Post. The warrant made no mention of the media participation. The police did not find the individual named in the warrant at his home address. They did, however, awaken the parents of the suspect. In objecting to the search of his home, Charles Wilson, the suspect's father, was wrestled to his living room floor and a gun held to his head. The reporter witnessed the encounter. Pictures were taken of the respondent clad only in his underwear as well as of his wife dressed in her nightgown. No photographs were ever used and no story was ever published about this encounter.⁶ Nonetheless, the Wilsons sued the police agency for bringing the media into their home.

In pre-trial activity, the police respondents motioned for summary judgment on the basis of their qualified immunity, that is, as government employees they argued that they were protected from lawsuits for reasonable actions performed in the line of duty. The District Court denied this request. The police officers then appealed to the 4th Circuit of the U.S. Court of Appeals which heard the case three times ultimately upholding *en banc* the police's qualified immunity defense.

⁴ A partial list of Elinor Ostrom's students and students of students who completed police related dissertations is included in Appendix 1.

⁵ Perversely, perhaps, the legal threats to observational research may enhance the historical value of the Police Services Study.

⁶ The general parameters of "Operation Gunsmoke" under which a search warrant was granted for the Wilson home is described in a series of news reports in the Washington Post (Valentine, 1992) and Washington Times (Rankin, 1992).

The appellate court, however, did not rule on the appropriateness of the police actions in allowing the media into the Wilson's home.⁷

In the second case, *Hanlon v Berger*, federal agents representing the US Fish and Wildlife Service searched Paul and Erma Bergers' 75,000 acre Montana ranch and its structures - excluding the residence – for evidence that Paul Berger had poisoned eagles and other wildlife. In their search, federal agents were accompanied by a Cable News Network (CNN) crew who recorded the conduct of the search. One agent was allowed into the residence. TV crew was not allowed in. While inside the Bergers home, however, the agent wearing a CNN microphone recorded all of his conversations with the suspects. The Bergers were not told this microphone belonged to the media nor were they told the cameras that recorded the search of the property belonged to the media. Both the external video and the sound recording made in the house were later broadcast. The Bergers sued the government, CNN and TBS for violating their 4th Amendment rights. Specifically, they claimed that the federal agents violated their rights in permitting the commercial television crews to accompany the search and by assisting the media in their search for “dramatic material”. They further argued that the media acted in sufficient concert with the federal agents in the conduct of the search to be held accountable as government actors.

At trial, the District Court accepted the qualified immunity defense offered by Fish and Wildlife officers. The court similarly declined to penalize the media for its actions. On appeal, the Ninth Circuit Court of Appeals initially rendered judgment for the Bergers, reversing and remanding the District Court's decision for further proceeding. This decision, however, was overturned *en banc* by the Circuit several months later.

Both the Wilsons and Bergers chose to continue the fight and appealed their respective cases to the U.S. Supreme Court. The paths each case took to reach the US Supreme Court are displayed in Table 1.

[Table 1 about here]

The U.S. Supreme Court granted certiorari to both Wilson and Berger to settle the legal inconsistencies established by varied decisions of the different Courts of Appeal. In hearing this appeal they considered 2 questions:

- Does the 4th Amendment protect citizens against the intrusions of non-police officers in the search of private property?
- Does the *Bivens* decision⁸ and 42 U.S.C. §1983 create a liability for police officers who fail to protect citizens from and assist in the violation of citizen privacy rights of the serving of a warrant?

⁷ Five members of the 4th Circuit disagreed with the majority *en banc* decision. They insisted, in an opinion written by Judge Murnaghan, that the officers' actions did violate the “established protections” of 4th Amendment

⁸ *Bivens v. Six Unknown Federal Narcotics Agents* 403 US 388 (1971)

Briefs were submitted by all parties and oral arguments were heard by the Court during the early spring of 1999.

On paper, these lawsuits were one-sided affairs, a battle of the “haves” versus the “have nots” (Galanter, 1974), individuals against the police and the media. But the battle was even more one-sided. The public involvement in the *Wilson* and *Hanlon* cases is most obvious if we examine the 3rd party participants. Table 2 displays those parties who submitted briefs as *amicus curiae* (“friends of the court). The table is dramatic. No one stood up for the interests of the private citizens. More than 25 major organizations representing hundreds of newspapers and television stations participated in each case on behalf of the government and the media respondents. In *Hanlon*, a further set of legal organizations also participated for the respondents.⁹

[Table 2 about here]

And just as they tell us that even the most seemingly lopsided games have to be played out, this one was ...with unexpected results. The “haves” lost. The US Supreme Court rendered its decisions on *Wilson* and *Hanlon* on May 24, 1999.¹⁰

The Supreme Court agreed with the Wilsons and the Bergers that the officers in both cases had overstepped the boundaries of the 4th Amendment in allowing the media to “accompany” them (in person or electronically) into the home of a private citizen during the execution of a search warrant. Unless those accompanying the police are there to aid in the serving of the warrant, they have no place invading the home.

The Court, in an opinion written by Chief Justice Rehnquist, made it clear that its perspective on this case was hardly a new one citing established English traditions predating our own:

“the law of England has so particular and tender a regard to the immunity of a man’s house, that it stiles it his castle, and will never suffer it to be violated with impunity...” (William Blackstone, 4 Commentaries on the Laws of England 223, 1765-1769)

“The poorest man may, in his cottage, bid defiance to all the forces of the crown. It may be frail; its roof may shake; the wind may blow through it; the storm may

⁹ Equally dramatic by their absence from the amicus participants is the failure of government, social scientific associations and citizen watchdog groups to appear in defense of the general position that the service of search and arrest warrants requires an open process to ensure appropriate behavior by government actors. The coverage of Project Gunsmoke (see note 4) and the Wilson case, reported on in the Washington Post (Biskupic & Kurtz, 1999) and USA Today (Mauro, 1998), should have raised the attention levels of the many organizations headquartered in Washington DC and the surrounding suburbs.

¹⁰ The Court’s primary opinions are presented in *Wilson*. The Court’s “unanimous” opinion was written by Chief Justice Rehnquist. *Hanlon v. Berger* is decided *per curiam* consistent with the Wilson ruling. It’s instructive that the Court chose to comment in detail on the Wilson rather than the Berger case. Wilson appears to represent a less invasive intrusion by the media. With the broadcast of both audio and visuals from the search, Berger is clearly the more obvious violation of the privacy rights of the private citizen.

enter; the rain may enter; but the king of England may not enter; all his force dares not cross the threshold of the ruined tenement.” (William Pitt to Parliament, 1766)¹¹

The Constitution and the historical record made the Court’s decision simple and unanimous.

This victory for the Wilsons and Bergers, however, came at a price, or perhaps more accurately without a payoff. On the issue of the officers qualified immunity defense, the Court decided that the US Marshals, the Montgomery County Sheriff’s officers, the US Fish and Wildlife Service agents all enjoyed qualified immunity for their actions in allowing media participation.

But this qualified immunity defense was “qualified” by the Court. It ruled that at the time of the searches (1992 and 1993), no court had ruled that media participation was a violation of 4th Amendment rights and as a consequence no officer could reasonably know that he or she was behaving improperly. Officers’ actions were appropriately protected by the doctrine of qualified immunity. From this point forward, however, officers can be held accountable for such behavior now that the violation was “clearly established”. The Wilsons and Bergers won for others but not themselves.

In announcing their decision the Supreme Court remanded the cases to the Circuits for final disposition of the cases. Certain issues relevant to the individual cases remain to be settled. But the basic principles that apply to future cases are now established:

- Only police officers serving a warrant may intrude in the home of a private citizen.
- The media are not permitted to encroach upon the privacy of citizens in their homes. (Generalizing this rule suggests that 3rd party observers are not allowed.)

In the future

- Police will be liable for allowing media participation in the execution of warrants in private homes.
- The media may be held liable for the invasion of privacy if they accompany the police into homes during the execution of a warrant.

While the ruling is essentially unanimous, Justice Stevens does dissent in part. But his dissent focuses on the issue of whether or not the police shown have known that they were acting improperly by allowing the media to participate. He argues that given the well-established rules governing 4th Amendment searches, the police should have known better and should be liable in this case.

An “Irrelevant” Issue

¹¹ William Cuddihy and B. Carmon Hardy (1980) “A Man’s House Was Not His Castle: Origins of the Fourth Amendment to the United States Constitution.” 37 William and Mary Quarterly 371, at 386.

While in the Berger case, the media used all of the material gathered during the search, the same situation was not true in *Wilson v. Layne*. Media photos were never used. The Court made it clear that the observers “presence” is the violation, not the use of material gathered at the scene. Hence lack of public reporting of findings is not a “defense” for observers requesting ride-along opportunities.¹²

What problem does *Wilson* pose for criminologists, sociologists and political scientists who study policing?

Much of what we know about the delivery of police services today comes from the observational study of policing. Observation of patrol officers developed as a research strategy to offset the weaknesses apparent in other approaches to assessing police work.

Our knowledge about the practices of policing originally began as a result of the recorded or remembered vignettes offered up by a police officer. Early books on policing were either the insider’s look at life on the street or based upon the recollections of officers who spoke to outsiders who passed on the stories.

Social scientists were slow to penetrate police departments. Early research relied on police crime reports. But these police-generated statistics tended to produce a one-sided picture of the nature of police work. In most instances, police statistics remain activity-focused, providing information on the number of arrests or traffic ticket but little detail about the processes that produce these activity count statistics or the effect they have of community safety and security.

Another common methodology for learning about police citizen encounters is the citizen survey. These surveys are quite effective in producing a picture of general citizen satisfaction or dissatisfaction with their local police force. But these surveys also produce limited pictures of the individual police-citizen encounter. They ask citizen to recollect patrol officer behavior that they observe. In this way they are limited in both the recall of the citizen and the scope of the police actions that are observed.¹³ Police do many things that individual citizens never see – or see only on TV. Alternatives were needed and researchers gravitated toward observational strategies to get a better handle on police services.

¹² This “irrelevant” issue suggests that *Wilson* clearly includes academic researchers as non-essential personnel in the execution of a warrant. The next section of the paper deals with this issue in greater depth.

¹³ Dunford, Huizinga and Elliot (1990) provide evidence that observed behaviors and recalled behaviors may be distinct. In their examination of the Omaha domestic assault data, these authors note that “victims sometimes made poorly informed assumptions about the content of the treatment given to suspects” (1990, 190). In other words, when interviewers asked police what the police did, the respondents often did not know and mistakenly assumed that the police did things they did not or did not do things that they did. The explanation is found in standard police operating procedure: separating victim and suspects is standard practice especially in domestic conflict where the officers often attempt to reconstruct the basis for the argument and its escalation. Depending on the situation, up to 25% of the victims misreported officer actions.

Systematic observation of ALL police actions.

One of the key components of the IU/UNC Police Services Study was the participation of students and faculty riding along with patrol officers observing the interactions between police and the citizens they encountered as victims, as suspects, as informants, and as requestors of information. This project was one of several conducted during the 1960s and 1970s that took the study of police beyond the insider tell-all “life on the street” description.¹⁴ Based on thousands of observed police-citizen encounters, the PSS provided a much richer view of the way in which police services were delivered to the citizens of a variety of municipalities in distinctive police services industries.

But that was the 1970’s. Systematic observation of police as a research strategy has progressed beyond the Police Services Study, although much of this recent work has built on and been motivated by the PSS. Roger Parks and Steve Mastrofski, in collaboration with a number of other scholars, have been responsible in recent years for much of the definitive work on patrol officer behavior. (e.g., Mastrofski & Parks, 1990; Mastrofski, Parks & Worden, 1997, 1998; Mastrofski, Parks, Reiss, Worden, DeJong, Snipes & Terrill, 1998; Parks, Mastrofski, & Reiss, 1997, 1998; Parks, Mastrofski & DeJong, 1999; Mastrofski, Snipes & Parks, 2000)

The basic principles underlying the research methods devoted to the systematic observation of police are laid out in a 1998 National Institute of Justice report by Mastrofski, Parks, Reiss, Worden, DeJong, Snipes & Terrill:

SSO [Systematic Social Observation] of police patrol work is accomplished by trained observers who accompany police officers at work in their cars, on foot, or even on bicycles. **The expectation is that an observer accompanies the assigned officer everywhere that officer goes.** Officers are told that they may direct their observer not to accompany them if they believe that safety is an issue. In our experience such instances occur rarely... (Mastrofski et al., 1998, 3)

The emphasis is mine and highlights the problem facing researchers: the *Wilson* decision to exclude the media from the search of private homes. Is the home a castle from which social scientists as well as media can be excluded? If so, the expectation that social scientists hold of unlimited access as laid out by Mastrofski et al. may not be sustainable in future observational research. *Wilson* expressly prohibits observation of certain types of police work. And it threatens to close off a great deal more police activity from the public’s eye.

¹⁴ The pioneering work of Albert Reiss, jr, Donald Black, Richard Sykes, John Clark, Richard Lundman and others, detailed in the References, provided a foundation for the development of the Police Services Study.

Good News - Bad News (Half-Empty or Half-Full):
Restricting the observational study of policing

The impact of restrictions placed on the observational study of policing depends in large part on what restrictions are instituted by police departments. Requiring observers to remain in patrol cars during police entry into private homes will have a different effect on our ability to understand police behavior than if police agencies determine that academic researchers simply present a liability and choose to end the practice of civilian ride-alongs.

Assuming that observation of police behavior continues but is subject to limitations, researchers must recognize that very different problems can be seen in the home versus public places. In a series of reports, McIver and Parks (McIver and Parks, 1982, 1983; Parks, 1984; McIver 1985) have documented both the diversity of police actions in different setting as well as the distinctiveness of police-citizen encounters involving domestic assaults in the home.

The “good news” is that most police work is not focused on domestic violence or crimes occurring in the home. Much of what patrol officers do occurs out-of-doors. A majority of observed police-citizen interactions involve citizens in public places where researchers are able to observe encounters without restriction. Fewer than 5% (265 of 5688) of the police-citizen encounters observed by Police Services Study involved domestic arguments or assaults (McIver, 1985).¹⁵ The optimist may also fall back on findings that suggest that citizen reports of police behavior that are provided to survey researchers are fairly representative (Parks, 1984).

So what’s the bottom line? Going forward, I assume police agencies will continue to allow citizens and media to ride-along with patrol officers. But access to non-public venues will be much more difficult. There will be a strong presumption to protect the privacy rights of citizens in their homes. One might surmise that academic researchers will have to be explicit in their request to participate and willing to accept “no” to any request to enter a home with a police officer. It will not be as easy as it has been in the past for the researcher to be assumed to be a police supervisor and walk into the home unless he or she is explicitly invited.

But my expectations may be wrong. It is really an empirical question as to whether *Wilson* has had any effect at all on the way in which police operate or the ability of researchers to study them.

¹⁵ The policing of domestic conflict has been the subject of much debate over the past 30 years (Loving, 1980; Task Force, 1984; Buzawa and Buzawa, 1990). How the police respond to the special circumstances of intra-family conflict has changed dramatically. At one time law enforcement agencies avoided domestic violence cases as inappropriate intrusions into family matters. Order maintenance and withdrawal were common responses. Formal sanctioning (arrest of the suspect) has become a much more common contemporary police response. Nonetheless, each department and each officer handles domestics differently with different short term and long run consequences.

The Impact of *Wilson*: A Survey of Civilian Ride-along Programs.

To assess the impact of the *Wilson* decision on current ride-along practices and its potential to affect the examination of police patrol practices, a mail survey was sent to 229 police departments serving the nations suburban and urban communities. These communities range in size from 100,000 residents to more then 2,000,000. The survey was addressed to the Chief of Police (or appropriate alternative) with instructions requesting that the Chief have the answers prepared by a member of his staff most able to comment on the ride-along practices of the department.

More than 40% of the departments responded to a single mail survey in a two week time span. (More have followed. The response rates approach 50% as I write.) The early respondents predominantly represent small to mid-sized urban police departments. The response pattern was anticipated as the chain of command is much shorter in small, centralized departments. The survey undoubtedly got to the official answering it much quicker in Huntington Beach CA, Pueblo CO, or Springfield MA than in New York City. As the reader might also guess, the vast majority of departments represent smaller communities. The combination of these two factors means the set of respondents is weighted toward smaller departments. Response rates by community size are reported in the Appendix 2.

Police respondents were asked 3 sets of questions about their ride-along programs. The first generally probed for information about ride-along activities by the general public. The second set of questions focused on journalists as ride-along participants. The last series of questions repeated the second set but focused explicitly on academic and policy researchers as patrol observers. A copy of the survey is attached as Appendix 3.

The Basics

Most police departments have some form of civilian ride-along program. Many allow citizens to apply for single rides. Others have formalized the education of the public by establishing the Citizen Police Academy (CPA). Most of these programs run 8-12 weeks with citizens committing to appear for a 3-4 hour evening session each week in which they are introduced to all aspects of the police job. One component of these programs is riding with a patrol officer.

But not all departments allow civilians to ride along and a number of those that do not have eliminated their programs in recent years. Still others have restricted access to to these programs to certain types of civilian riders. The predominant reasons for these closures and restrictions involve security and liability. Several departments, perhaps sensitive to the “training” provided to the 911 terrorists by flight schools, have simply chosen to keep their own practices as closed as possible. Other departments have decided that their liability for observers’ safety does not offset the gains from providing access to the patrol car. Although nearly every department requires riders to sign a waiver, most may not be convinced as to the binding nature of that waiver. One police department has instituted an insurance requirement that riders hold \$1,000,000 in personal injury insurance before they may ride with patrol officers. This requirement has had the net effect of ending the practice of civilian ride-alongs in that city.

Journalists and Researchers

The focus of this paper is on the impact of the atypical patrol rider, the journalist and the researcher.¹⁶

One issue for these special types of patrol observers is the degree to which they wish to record the activities of police officers.¹⁷ Most members of the general public are not expected to record their observations. But for journalists and researchers, recording is a key component of the ride. Table 3 indicates that departments do allow these observers greater flexibility relative to the general public in putting pen to paper, sound to tape, or visuals to film. Only small differences in the treatment of these groups exist: police are slightly more willing to allow journalists to record their impressions and images.

[Table 3 about here]

But the central focus of *Wilson v Layne* was on the participation of journalists in the execution of searches of suspects' homes. The survey asked explicitly if indirectly whether journalists (and academic researchers) would be allowed to accompany police officers in several situations, into a victim's home, into a suspect's home, on a high speed chase, at a traffic stop. The distinction between these situations is displayed in Table 4

[Table 4 about here]

¹⁶ Clearly the vagaries of survey research come through in the respondents' answers to several questions. Comments written in the margins as extensions of answers suggest that the respondent thought of "journalists" as representatives specifically of the print media and distinguished the treatment of newspaper reporters from TV reporters. Similarly, "academic researchers" did not resonate as individuals engaged in professional public policy research. Some respondents seemed to suggest they might be thinking of students or participants in a Citizen Police Academy in responding to questions about special access for academic researcher. Follow-up emails with these respondents attempt to ascertain some common sense of understanding of the question referents.

¹⁷ Systematic observation of policing has for many years been based on some form of information recording. Sykes and Clark pioneered the electronic recording on police citizen interactions. The Police Services Study was based on general field notes and basic timeline records which were later supplemented by post-ride completion of extended incident reports. More recently, Parks and Mastrofski and others have used computer assisted recollections to document field observations.

Even police departments have gotten into the act of recording patrol officer behavior in the vicinity of the patrol car. Video-cameras mounted in patrol cars are particularly valuable in recording traffic stop encounters. Such cameras are quickly accepted. While officers may initially view such devices as intrusions, more often than not such devices provide easy evidence of proper police behavior in the face of claims of malfeasance. The case *Hiibel vs 6th Judicial District* is one recent US Supreme Court decision in which an videotaped encounter between officers and Mr Hiibel became the primary evidence in the modification of the *Brown v Texas* precedent and even a precursor of Patriot Act restrictions on personal privacy. (For those curious about the video, see <http://papersplease.org/hiibel/index2.html>.)

Police rarely distinguish the home of a victim from that of a suspect but when they do the policy is more restrictive with respect to the home of a suspect. Approximately 2/3's of the police agencies either preclude observers from entering the home of a victim or allow observers to enter only if the homeowner grants explicit permission to the observer. In the case of a suspect's home, about 15% more departments prohibit riders to enter the house.

Despite *Wilson*, however, about 1/3 of the police agencies responding to the survey relied on the patrol officer's discretion in determining whether or not the observer might enter the home of a victim or suspect. Clearly, the decision is not read by all departments as a blanket denial of access to private homes by civilian observers.

As a basis for comparison, the survey asked about department policies regarding observer participation in high speed chases and ability to accompany officers during traffic stops. Both of these actions were observed during the PSS. Almost 2/3s of all departments deny observer participation in dangerous activities such as high speed chases. Officers are either precluded from joining the chase or required to drop their observer as the nearest safe location prior to joining the chase. Department policies are clearly most permissive and give greatest discretion to officer's in traffic stops. While some require observers to remain in the car, almost 70% of the surveyed departments allow journalists and researchers to exit with the officer's permission.

A final empirical question remains: Does who answers the survey questions determine the answers? Some Chiefs of Police answered the survey themselves, explicitly offering their own interpretation of the rules and procedures of their department. But 90% of the Chiefs saw fit to pass the survey on to another member of the department. Sworn officers ranging from the Deputy Chief to lowliest cadet answered the survey. 15-20% percent of the surveys were answered by civilians holding a variety of positions from analyst to Chief's personal secretary. The distribution of respondents by rank is seen in Table 5.

[Table 5 about here]

To simplify this complex set of ranks, they are collapsed into 4 categories: Upper Management (Captain through Chief), Middle Management (Sergeant and Lieutenant), Officer (Cadet through Corporal), and Civilian. Their responses differed markedly (and significantly). Table 6 lays out these differences. Patrol officers were much more likely to see the decision to allow the journalist or academic observer to enter the home of a suspect as a personal one. More than half of the officer respondents believe that the observer may enter with the officer's permission. In sharp contrast, almost half of the Upper Management respondents believe that the homeowner must give permission and almost half believe that the civilian observer may never enter the home of a suspect. Almost none believe the officer has discretion in this situation.

[Table 6 about here]

There are two ways to interpret these data. It may be that less restrictive departments give greater authority to patrol officer's to determine whether or not to allow the observer to accompany them into a home. These same department may be ones in which the chief has delegated responsibility for answering the survey to a patrol officer. Alternatively, the position of the different respondents

may color their individual senses as to who is the appropriate authority to determine the parameters of patrol observer actions.

Summary of the Survey

The primary respondents to the survey are small to mid-sized urban and suburban police departments. Ninety percent of the surveys come from departments serving communities of 100,000 to 500,000 residents. (These are the departments who participated in the Police Services Study.) The majority of departments representing jurisdictions of greater than one million residents have not yet responded to the survey. Hence the results might be read optimistically. Large departments haven't said no.

But the pattern of responses from the few large police agencies who have replied suggests otherwise. Indeed the largest agencies appear most likely to recognize the implications of the *Wilson* decision and implement rules that preclude civilian riders from entering the homes of private citizens without explicit permission from those citizens. Unreported is the breakdown by department size. Few differences are observed for departments serving less than 500,000 residents. About 1/3 indicate the homeowner must grant permission before a civilian observer can enter their home. But the percentage requiring permission of the owner more than doubles among the respondents from departments serving 500,000 to 2,000,000 citizens.

The survey results indicate that *Wilson v Layne* has influenced police department rules, restricting access to civilian riders or at least access to certain locations and types of police work.¹⁸

Police Policies Reflecting *Wilson*

One might argue that other factors have been the motivating forces behind recent limitations on ride-along programs. Certainly large awards granted to plaintiffs in actions against police departments have made many city governments painfully aware of the liability issues. But many of the policy changes in ride-along programs are explicit and deal the issue of constitutionally-mandated privacy guarantees.

Examples can be found in the rules and procedures manuals of the police agencies surveyed. The Amarillo (TX) Police Department only this summer issued a revised general Order 3.41:

¹⁸ Certain respondents clearly answered the survey based on their understanding of current departmental policy without consideration of that policy's implications for new or different situations. Departments that had little or no prior experience with the media and/or academic researchers offered no indication as to whether such roles qualified riders for special treatment.

One must be cautious in interpreting the answers provided to this general solicitation of department policies. A more direct approach to department leadership on a specific field research project may well solicit cooperation where none might be anticipated given the general department ride-along policy.

The ride-along policy excludes observers from entering a home or other privately owned place when a search warrant or arrest warrant is being served. Members of the news media and non-law enforcement personnel not essential for the execution of a search or arrest warrant will not accompany officers on search warrants. (Amarillo TX Police Department, General Order 3.41, section III, as revised June 1, 2005)

This rule clearly precludes observation of essential elements of the police function. Yet these are precisely the moments of police-citizen contact that observers must focus on if we are to understand the use and extent of government authority.

This rule is also clearly conforms with the Supreme Court's view in *Wilson* on the limitations on the invasion of private dwellings. But has that rule be widely implemented or is the Amarillo policy an aberration in its conformity with the *Wilson* ruling?

An even more general and inclusive rule has been promulgated by the Kansas City (MO) PD. It precludes any civilian from entering a private residence regardless of the reason the officer entered. That is, it is not merely those instances in which a warrant is being enforced that ride-alongs are prevented from observing the officer's actions.

Officers will not allow citizen participants to enter a private residence for any reason. Participants will be instructed to stay in the police vehicle when officers are conducting any activity within a private residence. (Kansas City Police Department, Procedural Instruction 05-8, section 3.7)

This policy goes beyond the *Wilson* guidelines but it is not precluded by *Wilson*. This policy change is well defined and limiting. Patrol observation of private residences has been curtailed.

A third variation is the Anaheim policy. It is perhaps a little less restrictive and more sensitive to the nuances of *Wilson*.

(e) Officers will not allow any ride-alongs to be present in any residences or situations that would jeopardize their safety or cause undue distress or embarrassment to a victim of any other citizen

(f) Under no circumstances shall a civilian ride-along be permitted to accompany an officer when entering a private residence or private property not normally accessible to the public without the expressed consent of the resident or other authorized person.

(Anaheim Police Department, Procedures Manual, Section 410.4)

Rather than strictly prohibit observer participation, this rule permits observation of the police-citizen encounter so long as it does not endanger the rider or cause undue distress to the citizen and so long as the property owner approves of his or her presence. Variants on the Anaheim rule are the types of policies that researchers make have to work with going forward.

***Wilson* as Precedent**

While the *Wilson* decision seems quite restrictive, it may not be. Certainly it has been subject of continuing legal action. Table 7 highlights a number of recent decisions by lower federal and state courts that have distinguished the USSC decision, limiting its scope and offering the possibility that not all police-citizen contact will take place behind closed doors.

[Table 7 about here]

Among the most important of these decisions for mitigating the limitations placed on the observational study of policing are rules laid out earlier this year in *Wise v Peterson* and *Thompson v Indiana*. *Wise* limits the extension of 4th Amendment protections of the home to private businesses. In other words, private business locations do not afford the owner with the same privacy protections as do private homes. The *Thompson* court ruled explicitly that a hotel room cannot be construed to be a home and hence is not protected by search and seizure law in the same way. Finally, an intriguing ruling in *Bellville v Northboro* opens up the possibility for participation by some civilians. In *Bellville*, the 1st Circuit ruled that civilians may aid in the execution of a warrant. The boundaries of that participation are unsettled.

In these ways, by distinguishing the US Supreme Court's ruling in *Wilson*, federal and state trial and appellate courts have narrowed the conditions under which observation is not appropriate and must be restricted.

Conclusions

In response to the US Supreme Court's decision in *Wilson v. Layne*, some police departments have ended civilian ride-alongs and others have restricted observer actions. Clearly, *Wilson* sets a precedent with the potential to restrict academic research into police behavior. Observational research may be limited to "public" interactions between police and citizens. Certainly, observation of public policing is not trivial. A majority of police-citizen encounters take place in public space.

But policing the home under *Wilson* takes the police-suspect interaction into private places with no "witnesses". Policing of the home may again become a private matter. It is impossible to say at this point if this is to the homeowner's advantage or to his or her disadvantage. At the same time, the position that the Wilsons (and the Bergers) adopt in taking their case to the Supreme Court is quite understandable. Why do the media or the researcher need to intrude on their privacy? It will be up to the media and the research community to find a justification to override the basic rights homeowners have in shielding themselves from the prying public eye. The typical, amorphous, and overblown claims about the "public's right to know" are probably not sufficient.¹⁹

¹⁹ In his concurring and dissenting opinion, Justice Stevens also suggests the possibility that media observation does serve a justifiable purpose:

To reprise the introduction, “Bad boys, bad boys, watcha gonna do, watcha gonna do when they come for you?” Under *Wilson*, we may never know. On the other hand, Knoth (1999) reports that “Cops” remained on the air after *Wilson* because the show’s producers got permission from everyone before any episode is aired: “Even the bad guys consent.” Perhaps then the answer to the research dilemma posed by *Wilson* is quite simple. Researchers need only ask the question: “I am observing Officer Smith’s actions. May I enter your home?”²⁰

The U.S. Marshals Service, like all federal agencies, ultimately serves the needs and interests of the American public when it accomplishes its designated duties. Keeping the public adequately informed of what the Service does can be viewed as a duty in its own right, and we depend on the news media to accomplish that.

Media 'ride-alongs' are one effective method to promote an accurate picture of Deputy Marshals at work. (526 US 603, at 625)

But Stevens’ opinion about the viability of observation is only the opinion of one justice, not the law. The basic rule is well-established by the majority opinion. The home is a castle and the police better have a good reason for entering it. All others have no right to invade its boundaries.

²⁰ We can hope that academic researchers will be invited into the home to observe police-citizen interactions. But, despite Knoth’s assessment of the public’s agreement to participate in “Cops”, residents do not necessarily invite anyone into the home in these situations: the serving of warrants is more often than not an adversarial meeting of private citizen and government authority figures. “Self-selection” biases will not solve the access problem for researchers. If observers are only be allowed to enter certain types of situations, those entry decisions will skew the picture we have of the police-citizen encounter in the home. Researcher will need to be aware of just who they observe and of the implications of limited access for the generalizability of their observations.

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(citations to the work of Elinor Ostrom appear in a separate listing)

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Appendix 1.
Police Services Dissertations

Indiana University

Whitaker, Gordon P. – “Urban police forces: The effect of scale on neighborhood services.” (1972)

Smith, Dennis C. – “Police professionalization and performance: An analysis of public policy from the perspective of police as producers and citizens as consumers of a public service.” (1976)

Parks, Roger B. – “Assessing the influence of organization on performance : A study of police services in residential neighborhoods.” (1979)

Allen, David N. – “Street level police supervision: The effects of supervision on police officer activities, agency outputs and neighborhood outcomes.” (1980)

Percy, Stephen L. – “Citizen coproduction of community safety and security” (1981)

McIver, John P. – “The control of bureaucrats in representative democracies: A study of urban policing” (1985)

University of North Carolina

Sharp, Elaine B. – “Citizen organizations and participation in law enforcement advocacy and coproduction: The role of incentives” (1978)

Mastrofski, Stephen D. – “Reforming police: The impact of patrol assignment patterns on officer behavior in urban residential neighborhoods” (1982)

Worden, Robert E. – “Equity and the delivery of urban public services: Bureaucratic decision-rules, street-level bureaucrats, and the distribution of police services (1980)

Table 1. Citations to Court Decisions in *Wilson* and *Hanlon*

	<i>Wilson v. Layne</i>	<i>Hanlon v Berger</i>
U.S. District Courts	<i>Wilson et al. v. Layne, Deputy United States Marshall</i> (decided w/o opinion)	<i>Berger v. Hanlon (US Fish & Wildlife Service and TBS)</i> 24 Media L. Rep. 1748 (D. Mont. 1996) <i>Berger v. CNN</i> 24 Media L. Rep. 1757 (D. Mont. 1996)
U.S. Courts of Appeals	<i>Wilson et al. v. Layne, Deputy United States Marshall</i> 141 F.3d. 111 (CA4 1998)	<i>Berger v. Hanlon (US Fish & Wildlife Service, TBS & CNN)</i> 129 F.3d 505 (CA9 1997)
U.S. Supreme Court	<i>Wilson et al. v. Layne, Deputy United States Marshall</i> 526 U.S 808, 143 L. Ed. 2d 978, 119 S. Ct. 1706 (1999)	<i>Hanlon (US Fish & Wildlife Service, TBS & CNN) v. Berger</i> 526 U.S 808, 143 L. Ed. 2d 978, 119 S. Ct. 1706 (1999)

Table 2. 3rd Party Interest in the *Wilson* and *Hanlon* Cases

Wilson v Layne Amicus Curiae Briefs

For the Petitioners (The Wilsons)

For the Respondents (Layne at al.)

American Broadcasting Company (ABC)
A.H. Belo Corp.
Allied Daily Newspapers of Washington, Inc.
American Society of Newspaper Editors
The Associated Press
California Newspaper Publishers Association
Columbia Broadcasting System (CBS)
The Copley Press
Dow Jones and Company
Fox Television Stations, Inc.
Gannett Company
Hearst Corporation
King World Productions
Los Angeles Times
Magazine Publishers of America
McClatchy Company
National Association of Broadcasters
National Broadcasting Company (NBC)
Newspaper Association of America
New York Times Company
Orange County Register (Freedom Communications)
Reporters Committee for Freedom of the Press
Tribune Company
Univision Communications
Washington Post
Washington State Association of Broadcasters

Hanlon v Berger Amicus Curiae Briefs

For the Petitioners (The Hanlons)

For the Respondents (Berger at al.)

National Association of Criminal Defense Lawyers
National Association of Securities and Commercial Law
Attorneys
Pacific Legal Foundation

plus all media companies supporting the respondents in
Wilson v. Layne

Table 3. Restrictions on Recordkeeping

May Not Use:	<i>Journalists</i>	<i>Researchers</i>
Note Pads	5%	5%
PDA or Computer	26%	29%
Cellphone*	19%	23%
Still Camera	25%	36%
Tape Recorder	28%	38%
Video Recorder	28%	39%

* with or without camera

Table 5. The Respondents

Chief of Police*	11%
Deputy Chief**	6%
Major***	4%
Captain	12%
Lieutenant****	26%
Sergeant	10%
Corporal	1%
Officer	11%
Cadet	1%
Civilian	17%

* includes Police Commissioner & Police Superintendent

** includes Assistant Chief & Deputy Superintendent

*** includes Commander

**** includes Detective

Table 4. Restrictions on Ride-along Access

	With officer's permission		With homeowner's permission*		Not permitted to enter	
	<i>Journalists</i>	<i>Researchers</i>	<i>Journalists</i>	<i>Researchers</i>	<i>Journalists</i>	<i>Researchers</i>
	Enter the home of a victim	35%	36%	42%	40%	24%
Enter the home of a suspect	28%	29%	34%	34%	38%	37%

* and the officer's permission

	With officer's permission		With supervisor's permission*		Not permitted	
	<i>Journalists</i>	<i>Researchers</i>	<i>Journalists</i>	<i>Researchers</i>	<i>Journalists</i>	<i>Researchers</i>
	Participate in high speed chases	25%	28%	10%	11%	65%
Exit the patrol car during traffic stops	67%	66%	3%	4%	29%	30%

* and the officer's permission

Table 6. The Wilson Policy - The Respondent Effect

		<i>Survey Respondent</i>			
		Civilian	Patrol Officer	Middle Management	Upper Management
<i>The patrol observer may enter the home of a suspect...</i>	With Patrol Officer's Permission	23%	55%	41%	7%
	With Homeowner's Permission	31%	18%	29%	45%
	May Never Enter	46%	27%	29%	48%

Chi-Sq = 13.45, Prob .036

Table 7. Distinguishing *Wilson v Layne*: Recent Court decisions interpreting & “modifying” the *Wilson* rule.

<i>Case</i>	<i>Citation</i>	<i>Rule Modification</i>
Caldarola v County of Westchester <i>(2003)</i>	343 F.3d 570 (2d Cir. NY)	Distribution of county video and an “unstaged” perp walk are permissible.
US v Workcuff <i>(2003)</i>	259 F. Supp 2d 1160 & 203 US Dist Lexis 9246 (W.D. Mo.)	Wilson was a civil action. Wilson “violations” do not threaten evidence or require its exclusion in criminal matters.
Bellville v Northboro <i>(2004)</i>	375 F.3d 25 (1 st Cir. MA)	Civilians may aid police in executing a warrant.
Wise v Peterson <i>(2005)</i>	2005 US Dist. Lexis 2267 (D. Minn)	Business is not a home and not protected by the 4 th Amendment
Thompson v State <i>[Indiana] (2005)</i>	824 N. E. 2d 1265 (Ind. Ct. App.)	A hotel room is not a home.
Gibbons v Lambert <i>(2005)</i>	358 F. Supp 2d 1048 (D. Utah)	A “staged” perp walk may still have legitimate purposes

Appendix 2. Survey Response Rate by City Size

<i>City Size</i>	<i>N</i>	<i># of Responses</i>	<i>Response Rate</i>
<i>100,000 – 199,000</i>	140	74	53%
<i>200,000 – 299,000</i>	38	15	39%
<i>300,000 – 499,000</i>	25	16	64%
<i>500,000 – 749,000</i>	16	8	50%
<i>750,000 – 2,000,000</i>	10	3	30%
	(229)	(116)	51%

-+

A Survey of Civilian Ride-Along Programs

University of Colorado, Boulder

Fall 2005

Department: _____

Respondent: _____

Respondent Rank: _____

Contact Information: _____ (phone)
_____ (email address)

Introduction: In this 1st section, the questions refer to members of the general public participating in a ride-along program. Special questions about journalists and academic researchers are included later in this survey.

1. Does your department have an organized program to allow civilians to ride with the patrol officers?

Yes No

2. Has it changed significantly during the past 5 years?

Yes No

If "YES", in what ways has the programs changed?

3. Approximately how many civilians ride with officers of your department during the course of a year?

4. Is the ride-along program limited in any of the following ways?

a. Rider age. How old must the civilian be in order to ride? _____

b. Number of rides per time period. How many rides may a civilian participate in over the course of a year (or is the number "unlimited")?

c. Length of the ride. Is the ride for an entire shift or for a period of shorter duration (hours)?

5. What explicit requirements do you place on civilian riders? Must they...

a. Have valid identification?	Yes	No
b. Sign a legal waiver?	Yes	No
c. Be subject to a background check?	Yes	No
d. Apply in advance? (If yes, how long?)	Yes	No
e. Be a resident of the Department's jurisdiction?	Yes	No
f. Be dressed "appropriately" in professional attire)?	Yes	No
g. Sign a confidentiality agreement promising to not reveal information about investigations or persons?	Yes	No
h. Promise to follow all officer instructions?	Yes	No
i. Promise not to interact with prisoners, suspects, victims, or witnesses without approval?	Yes	No
j. Carry no weapons?	Yes	No
k. Use no tape recorders and/or cameras?	Yes	No

6. Instructions for Civilian Riders:

a. Are civilian riders provided with special identification (e.g., name tags, lapel pins) indicating their status as civilian observers?

Yes	No
-----	----

b. Are riders told to distinguish or identify themselves to citizens as civilian observers?

Yes	No
-----	----

c. Are riders required to stay in the patrol car during all law enforcement or investigatory stops?

Yes	No
-----	----

7. Instructions for Patrol Officers:

a. Prior to a ride, do patrol officers receive a specific set of instructions as to what civilian riders can and can not do?

Yes	No
-----	----

b. Are officers prohibited from taking riders to specific locations or to specific types of incidents?

Yes	No
-----	----

If "YES", please describe those restrictions.

c. Are patrol officers told to identify and/or introduce riders as non-official observers to all civilians who patrol officers encounter during their shift?

Yes	No
-----	----

JOURNALISTS AS RIDERS

8. Has the department allowed journalists to ride with police officers in the past?

Yes	No
-----	----

9. Does the department allow journalists to ride with police officers currently?

Yes	No
-----	----

10. If the policy has changed (for example, journalists were once allowed to ride with officers or ride on a regular basis -- and do not do so now), could you explain why and what has changed?

11. Are these professionals allowed to ride (or would they be if they asked) on a more frequent basis than the typical civilian rider?

Yes	No
-----	----

12. Are these professionals allowed to carry and use any sort of recording equipment during their rides? Specifically, may they use...

a. Note pads?	Yes	No
b. PDA or computer?	Yes	No
c. Cell phone w/ or w/o camera?	Yes	No
d. Tape recorder?	Yes	No
e. Still camera?	Yes	No
f. Video recording device?	Yes	No

13. Are other restrictions placed on journalists who ride with patrol officers? For example, ...

a. Are they allowed to enter homes of complainants?	Yes, w/ officer's permission	Yes, w/ owner's permission	No
b. Are they allowed to enter homes of victims?	Yes, w/ officer's permission	Yes, w/ owner's permission	No
c. Are they allowed to enter homes of suspects?	Yes, w/ officer's permission	Yes, w/ owner's permission	No
d. Are they allowed to participate in high speed chases?	Yes, w/ officer's permission	Yes, w/ supervisor's permission	No
e. Are they allowed to exit the patrol car during traffic stops?	Yes, w/ officer's permission	Yes, w/ supervisor's permission	No

ACADEMIC RESEARCHERS (including government and police policy research)

14. Has the department allowed academic researchers to ride with police officers in the past?

Yes	No
-----	----

15. Does the department allow academic researchers to ride with police officers currently?

Yes	No
-----	----

16. If the policy has changed (for example, academic researchers were once allowed to ride with officers or ride on a regular basis -- and do not do so now), could you explain why and what has changed?

17. Are these professionals allowed to ride (or would they be if they asked) on a more frequent basis than the typical civilian rider?

Yes	No
-----	----

18. Are these professionals allowed to carry and use any sort of recording equipment during their rides? Specifically, may they use...

a. Note pads?	Yes	No
b. PDA or computer?	Yes	No
c. Cell phone w/ or w/o camera?	Yes	No
d. Tape recorder?	Yes	No
e. Still camera?	Yes	No
f. Video recording device?	Yes	No

19. Are other restrictions placed on academic researchers who ride with patrol officers? For example, ...

a. Are they allowed to enter homes of complainants?	Yes, w/ officer's permission	Yes, w/ owner's permission	No
b. Are they allowed to enter homes of victims?	Yes, w/ officer's permission	Yes, w/ owner's permission	No
c. Are they allowed to enter homes of suspects?	Yes, w/ officer's permission	Yes, w/ owner's permission	No
d. Are they allowed to participate in high speed chases?	Yes, w/ officer's permission	Yes, w/ supervisor's permission	No
e. Are they allowed to exit the patrol car during traffic stops?	Yes, w/ officer's permission	Yes, w/ supervisor's permission	No

THANK YOU FOR YOUR HELP!
PLEASE RETURN THIS SURVEY IN THE ENCLOSED ENVELOPE.