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# Who is the real target? Media response to controversial investigative reporting on corporations

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*Abstract*

In the past decade, corporate targets of American investigative reporting have deployed new legal and public relations counter-attacks on journalists. Although corporations have largely directed their efforts at managing subsequent news coverage of these controversies, there has been no systematic study of how the rest of the media cover them. We examine elite print reaction to two investigative reports that were publicly challenged by their targets: ABC's 1992 *Primetime Live* report on Food Lion supermarkets and NBC's 1992 *Dateline NBC* story on General Motors' trucks. The case studies and content analyses of print coverage of these controversies suggest that greater attention should be paid to how media response to investigative reporting can influence its ability to act as a watchdog on corporate power. In both cases, corporate targets of investigative reporting used litigation and public relations to divert media attention from reporters' charges to questions of newsgathering ethics. Ironically, we find that the more that news organizations under attack defend their right to muckrake, the more they risk the rest of the news media burying the disputed story under discussion of First Amendment rights and media ethics. The study draws conclusions for theories of investigative reporting's contribution to public discourse and policy making.

*Keywords*

Investigative reporting, journalism, politics, corporations

In the past decade, corporate targets of American investigative reporting have responded with more intense and innovative counter-attacks on their journalistic critics. Corporations have supplemented traditional libel lawsuits with product disparagement litigation and a variety of novel tort suits alleging harms from the newsgathering process, including fraud, trespass, breach of duty, tortious interference with contractual relationships, intrusion, and intentional infliction of emotional distress (Kirtley 1996; Scheim 1998; Bunker et al 1999; Kirtley 2000). In addition, corporate targets ratcheted up public relations efforts to kill or alter hostile stories before publication and discredit them after publication (Borjesson 2002). Legal strategy and news management gave birth to the new field of litigation public relations, involving communication campaigns directed toward strategic audiences – such as potential jurors, opposing lawyers, and judges – that aim to influence legal negotiations or trial outcomes (Gibson and Padilla 1999).

Investigative targets' aggressive defenses of their reputations, combined with increased profit pressures from corporate parents on news organizations, have been criticized for contributing to several widely publicized capitulations by news organizations. Tobacco industry pressure pushed ABC to rescind a 1994 investigative story on manipulation of nicotine levels in cigarettes and CBS to shelve a 1995 story on tobacco company wrongdoing (Hilts 1996). Chiquita Brands' attack on a 1998 *Cincinnati Enquirer* series that used company voice mails to indict executives for lawbreaking wrung an apology and retraction from the paper (Shepard 1998). Two journalists sued a Florida Fox news affiliate, alleging that the station sanitized their criticisms of the health risks posed by a Monsanto growth hormone fed to cows, then fired them for refusing to accept the editing of their story (Rampton and Stauber 1998).

Despite the new intensity and sophistication of corporate targets' responses to investigative reporting, largely advanced through the news media themselves, there has been no systematic study of news coverage of these controversies. Yet the rest of the news media provide an important site for framing these disputes in ways that may influence the impact of investigative reporting on policy and public opinion. This study begins to fill this gap by examining elite print reaction to two investigative reports that were publicly challenged by their targets: ABC's 1992 *Primetime Live* report on Food Lion supermarkets and NBC's 1992 *Dateline NBC* story on General Motors' trucks. The study contributes to building theory about the factors that influence media coverage of investigative reporting controversies. It also sheds light on the ways that reaction to investigative reporting by its targets and by other news organizations affects the media's ability to fulfill its role in democratic theory as a watchdog on powerful institutions. In particular, we inquire into the extent to which corporate public relations campaigns and lawsuits can divert media attention from the original allegations made by investigative reports, potentially inhibiting the media's ability to contribute to reform and regulation. These questions are especially urgent in an era when increasing concerns are raised about the growth of corporate power over politics and speech (Boggs 2000; Soley 2002).

### **Investigative Reporting and Democratic Theory of News**

Investigative reporting is a genre of journalism in which reporters "dig out information about power abuses" (Waisbord 2000: xix). Although investigative journalists frequently rely on the investigative work of others, they engage in a longer and more painstaking newsgathering process than daily beat reporters. This process may involve observations based on concealing the journalist's presence or identity, the assembly and analysis of larger bodies of information

(such as computer-assisted studies of financial records), or arranging tests or “stings” to demonstrate harm that people or products may cause the public. Investigative journalism takes a more proactive, analytical and prosecutorial stance than the more descriptive and reactive work of beat reporting (de Burgh 2000: 21).

As such, investigative reporting is often hailed as the kind of news that makes the greatest contribution to the media’s role as a watchdog on government and corporate power (Jensen 2000; Serrin and Serrin 2000). Through their exposés, investigative reporters are seen as holding the mighty accountable to public opinion, thereby acting as a crucial if unofficial check and balance in the system of constitutional government. This kind of reporting may also be seen as a moral watchdog that marks and reinforces commonly-shared values by highlighting violations of them (Ettema and Glasser 1998).

However, many factors can limit investigative reporting’s ability to hold powerful institutions accountable to the public (Curran 1991; Protess et al 1991). First, media owners may curb reporters’ independence, especially when investigative reporting poses risks to proprietors’ own business interests. Second, advertisers can mute journalists’ criticisms as well. In a recent survey, over 40 percent of broadcast investigative reporters admitted that advertisers had recently succeeded in influencing a news report (Soley 1997). Third, because investigative reporting costs more to produce than other kinds of news, it is scarce, especially at a time of increasing economic competition. For example, since the 1970s, the network newsmagazines, which have long been the main venue for investigative journalism on television, have decreased the proportion of their stories about politics and economics, turning to more celebrity features and lifestyle coverage (Committee of Concerned Journalists 1998; Kovach and Rosenstiel 2001). Fourth, news organizations’ commitment to novelty and fear of appearing to crusade on an issue

limit journalists' ability to sustain coverage of any one story, undercutting efforts to maintain the attention of the public and policymakers to the need for reform. Fifth, the news media's dependence on public relations as a source of information can limit the diversity of views in news and allow powerful institutions that are often the targets of watchdog journalism to dominate public debate. Greater competition and shrinking news budgets have left journalists more dependent on public relations than in the 1960s and 1970s (Walters and Walters 1992). Finally, investigative reporting often sparks libel and other tort suits against news organizations, exerting pressure to limit its amount and to avoid targets that can afford extensive legal challenges to reporting (Kirtley 2000).

New kinds of corporate counterattacks on investigative journalism raise concerns about its ability to play the watchdog role. These case studies can help inform research on the ways in which media coverage of investigative reporting controversies can act as a counter-force to corporate power or help raise barriers to doing so.

### **The Sociology of Investigative Reporting**

As Protesse and his coauthors have argued, investigative reporters often explain the impact of their work by drawing on what has been called the "mobilization model" (1991: 12) of investigative reporting (see Figure 1). According to this highly idealized view, investigative journalists work independently to uncover wrongdoing. Their stories then mobilize the public to demand reforms, spurring politicians to pass legislation or take other corrective actions. In this model, reporters can influence the political process positively yet remain detached from it, allowing investigative reporters to stay within the pale of professional norms of objectivity despite taking sides on a public issue.

## FIGURE 1 AROUND HERE

Much prior research on investigative reporting calls the mobilization model into question. Prosser and his colleagues found that reporters often do not uncover injustices independently, instead relying for story ideas and information on enterprising interest groups, bureaucrats and elected officials advancing their policy agendas through the media (see also Waisbord 2000). The resulting stories do not always spur changes in public opinion or move the public to act. Some of these stories may nevertheless contribute to political change by amplifying prior criticisms of interest groups and officials. When policy changes occur in the absence of public reaction, they may arise from negotiations between journalists and political actors before the reports are released, or because policy makers use the reports to justify enacting changes they previously supported. Thus, investigative reporting's contribution to reform may be to influence the thinking of political elites more than the public. Watergate reporting, for example, did not generate strong public opinion in favor of President Nixon's impeachment or resignation; instead, reporting increased and reflected pressure to oust Nixon that came from within the federal government itself (Lang and Lang 1983; Schudson 1992).

We examine the role played by other variables that may affect investigative reporting's impact, which are not included in the mobilization model and have not been studied systematically in the past. The principal factors are investigative targets' litigation public relations and media reaction to disputed reports. We hypothesize that the impact of investigative reporting on policy and public opinion depends in part on how the rest of the news media react to investigative journalism and any countercharges it provokes. After all, the news media provide the main public forum for subsequent discussion of issues raised by investigative reporters. The media can keep a story alive and build momentum for reform by treating investigative reports as

credible, repeating their charges, engaging in further investigation of them, and offering space for likeminded speakers to confirm their analysis of problems and offer policy solutions. In contrast, the news media can help kill stories and block change through inattention, refutation, and diversion from the issues raised by investigative journalists. Media coverage is also a policy resource. Critics and proponents may cite media commentary as a resource for attacking and defending reports, journalists' right to muckrake in general, and regulation of the media. Studying media response also turns attention to actors who attempt to shape it, including targets of investigative reports, alleged victims featured in the stories and their advocates, and government regulators of the targeted companies.

### **Case Studies**

#### *General Motors - NBC*

In the middle of 1992, General Motors (GM) was defending itself from numerous private lawsuits against its 1973-1987 C/K pickup trucks, which featured sidesaddle gas tanks mounted outside the trucks' frames that were accused of being vulnerable to fires and explosions in side-impact accidents. The litigation led two consumer advocacy groups – the Center for Auto Safety and Public Citizen – to convince the National Highway Traffic Safety Administration (NHTSA) to investigate the allegedly defective design of the tanks. The consumer groups urged a recall of the trucks.

On November 17, 1992, *Dateline NBC* aired a story that claimed the GM trucks with external gas tanks were prone to explode in accidents. The report relied on information from the Center for Auto Safety and plaintiff attorneys in the lawsuit *Moseley v. General Motors*, who alleged that faulty design of the GM gas tanks were responsible for a young man's death (Hearit



1996). NBC cited estimates that as many as 300 deaths had been attributed to the fuel tank design, and that about five million of the vehicles were still on the road. The report presented what it called an “unscientific” test crash in which a GM truck exploded into flames after being hit from the side.

GM launched an investigation of NBC’s reporting, finding that producers had rigged the truck that was shown exploding in the story with incendiary devices after NBC’s preliminary crash tests did not yield any footage of explosions. On February 8, 1993, GM filed a defamation lawsuit against NBC News and The Institute For Safety Analysis (TISA), consultants hired by NBC to administer the crash test. GM announced its suit against NBC in an innovative manner in a press conference beamed via satellite to media worldwide, making it one of the top stories on all the major U.S. networks’ evening newscasts. NBC settled the suit the following day, before the network was even served legal papers, offering GM an on-air apology and agreeing to pay \$2 million for the cost of GM’s investigation, press conference and legal fees. That same day, the National Highway Traffic Safety Administration’s Office of Defect Investigation (ODI) requested a voluntary recall of GM C/K pickup trucks. Soon after, NBC News President Michael Gartner stepped down and three *Dateline* producers involved in the story left NBC, purportedly because of management pressure to resign over the GM truck story.

The timing and conduct of GM’s litigation public relations effort suggest that it was intended to distract public and regulatory attention from accusations against the company’s trucks by focusing a spotlight on NBC’s newsgathering ethics. GM announced the lawsuit one day after the company lost a \$105.2 million verdict in the *Moseley* case. The morning before NBC’s report aired, internal GM documents were leaked that suggested company officials were concerned about the tank design as early as 1978, and that its engineers had warned in 1983 that

the vehicles would be safer if the tanks were moved inside the truck frame (Oppel, Jr. and Simnacher 1992). In a follow-up story, NBC reported that over 100 lawsuits had been filed against GM, most of them settled out of court. One lawyer estimated that the company had paid around \$20 million to settle seven such suits in Texas.

However, after NBC settled the lawsuit, an outside law firm hired by the network to investigate the test crash concluded that a broken headlamp, not the incendiary devices, ignited gasoline that spilled from the truck's tank after the collision punched a hole in the tank and dislodged its gas cap. The Institute for Safety Analysis, which acted as a consultant to the report's producers, claimed that "the fire was caused by one of the car's headlamps, not by the igniters," and the law firm agreed that "to our untrained eyes the videotape does appear to support the consultants' reports" (Goodale 1993b: 3). In 1994, the United States Department of Transportation found that the trucks were indeed prone to fires in side collisions and blamed GM for 150 deaths caused by them (Shepard 1996). The NHTSA found that the C/K trucks were 2.4 times more likely to explode than Ford pickups and 3.5 times more likely to explode than Dodge pickups (Adler 1993). GM entered into a settlement with the government, agreeing to spend \$51.36 million on safety and research programs (Nauss 1994). By the end of the year 2000, GM had paid at least \$495 million, an average of \$1.5 million per case, to settle lawsuits brought by victims of fiery C/K pickup truck crashes (*San Jose Mercury News* 7 May 2003, 4A).

#### *Food Lion - ABC*

Also in 1992, the United Food and Commercial Workers Union was engaged in a long-running campaign to organize employees of the Food Lion supermarket chain. As part of its effort, the union had filed a 1991 complaint with the U.S. Department of Labor, triggering an investigation of the company's labor practices as well as Congressional hearings in early 1992

(Manheim 2001: 74-75). On November 5, 1992, ABC's *PrimeTime Live* aired an investigative report based in part on the union's claims that Food Lion forced employees to work overtime without pay and engage in unsafe food handling practices to save money. Former Food Lion workers spoke of marinating rotten fish in baking soda, repackaging old chicken in barbecue sauce and removing "sell-by" dates on eggs and yogurt with fingernail polish. The report also featured footage obtained by cameras hidden in the wigs of two ABC producers who had lied on their job applications to go undercover as Food Lion employees.

Food Lion brought a barrage of legal claims against ABC and four of its journalists. The core complaints that survived pre-trial hearings accused ABC journalists of committing fraud on their job applications, trespassing on company property, and breach of loyalty to Food Lion as their employer (*Food Lion, Inc. v. Capital Cities/ABC, Inc.*, 887 F. Supp. 811, M.D.N.C. 1995). The supermarket chain claimed that two producers fraudulently obtained employment by falsifying documents, including lying on their résumés. In addition, Food Lion argued that the producers committed trespass when they entered company property under false pretenses. The supermarket chain also hoped to prove that the producers failed to act solely for Food Lion and not adversely to its interests. The common law principle of duty of loyalty states that employees cannot legally have a conflict of interest that has not been disclosed to and approved by both employers. Food Lion also claimed that ABC engaged in several deceptive trade practices including collaborating with a union hostile to Food Lion, selectively editing footage and actively lying and encouraging others to lie in the investigative report (Food Lion, Inc. 1998). Unlike a libel lawsuit, this kind of suit did not ask jurors to assess the content of the investigative report, only ABC's newsgathering practices.

Food Lion's litigation and public relations campaign against ABC was launched at a time when the company needed to divert attention from its own liability, as the Department of Labor conducted its investigation and the company's stock price plummeted after the ABC report. During the jury trial, which did not conclude until 1996, Food Lion issued daily press releases accessible by telephone and the Internet. Food Lion set up a hotel pressroom where journalists could retrieve background information on Food Lion and view footage featured in the courtroom, where journalists frequented daily. The supermarket chain also commissioned a journalism professor to write an ethics case study critical of ABC (Folkerts 1998). The company mailed this study, along with a companion booklet indicting ABC's journalistic practices, to journalism and law school professors across the United States for use in their classes (Richards and Calvert 2000: 566-568)

Nine months after the ABC report aired, Food Lion reached an agreement with the Department of Labor to pay \$13.2 million in back pay to tens of thousands of workers and approximately \$3 million in fines, comprising the largest settlement in the Department's history. The company also agreed to institute a self-monitoring plan to review its labor practices. Labor Department officials found the supermarket chain had committed widespread violations, including forced overtime, failing to pay employees for all hours worked, permitting minors to work excessive hours on school days and to operate dangerous equipment, and firing or showing bias toward employees who sought to protect their workplace rights (PR Newswire 1995).

The trial jury found ABC and all four producers guilty of fraud for falsifying employment documents. It also found ABC producers Lynne Dale and Susan Barnett guilty of trespass for gaining access to Food Lion property under false pretenses and breach of loyalty for collecting hidden camera footage for ABC while on the clock for Food Lion. The jury ordered the network

to pay \$1,402 in compensatory damages for training fees spent on the two undercover producers and their replacements. The jury awarded Food Lion an additional \$5.5 million in punitive damages for the deceptive trade practices used against it. Personal fines were assessed on former *PrimeTime Live* Executive Producer Richard Kaplan and senior producer and head of the show's investigative team, Ira Rosen. Post-trial interviews indicated that jurors assessed the large punitive award to deter ABC and others from using what the jurors saw as intrusive and deceptive investigative methods, as a form of regulation of media conduct rather than as an award to Food Lion for actual harm suffered. As one juror explained, "We were just really trying to just send a message across: if you're going to do it, just do it legally" (ABC News 1997b).

Appeals courts eventually threw out most of the damages and dismissed several of the charges. In 1997, a judge lowered the punitive damages to \$315,000 and reduced the fines assessed upon Kaplan and Rosen, arguing that the ratio of compensatory to punitive damages was extreme (*Food Lion, Inc. v. Capital Cities/ABC, Inc.*, 964 F. Supp. 956 M.D.N.C. 1997). The \$5.5 million fine was found extraordinary because Food Lion did not opt to sue for libel or legally challenge the truth of the investigative report. Two years later, the Fourth U.S. Circuit Court of Appeals further reduced damages to \$1 for trespass and \$1 for breach of loyalty. The court found that Food Lion had attempted to skirt the higher burden of proof required in a libel suit, attempting to circumvent First Amendment protections for the news media's ability to engage in robust and critical coverage of matters of public importance. Still, the appellate court's decision did not entirely exonerate ABC, upholding the charges of trespass and breach of loyalty (*Food Lion, Inc. v. Capital Cities/ABC, Inc.*, 194 F.3d 505, 511, 4th Cir. 1999).

### *Rationale for Case Studies*

Because we were interested in the impact of corporate litigation public relations on media coverage and reform, we chose cases that allowed us to minimize the impact of several other variables: the historical period, the medium, the reporters' dependence on others' ongoing investigations, the type of target, and the target response. Both cases involved television network investigative reports that aired in 1992. Both stories were based on prior interest group and regulatory probes of the targets. Both cases involved large corporate targets that fought back against reports about them through lawsuits and public relations campaigns. In both cases, the targets attempted to shift attention from the claims made against them by reporters to the journalists' newsgathering methods.

Our choice of cases permitted us to focus on the effects on media distraction of three key variables: the news organization's response to the counterattack, the scope of the target's counterclaims, and the length of the conflict. Whereas NBC settled with GM and apologized for its report, ABC rejected and fought Food Lion's charges. Whereas NBC apologized immediately after GM protested publicly, just four months after the initial report, the ABC-Food Lion struggle continued in the courts for seven years. Whereas GM alleged libel and faking a product test, Food Lion levied many more legal charges against ABC's newsgathering methods. We explored each factor's potential impact on the extent to which subsequent media coverage was distracted from reporters' initial allegations against corporate targets.

### *Research Questions*

The cases allowed us to address several research questions.

1. To what extent does corporate litigation public relations distract subsequent media coverage from investigative reporters' claims about their targets?

- a. Are targets' or their alleged victims' viewpoints cited more often?
  - b. Are targets' or their alleged victims' viewpoints cited more prominently?
  - c. Are targets' claims against reporters or reporters' claims against targets cited more often?
2. In what ways, if any, do targets' counter-attacks against investigative reports hinder the media's ability to play watchdog on corporations?
  3. What modifications do these case studies suggest for theories of investigative reporting's contribution to democracy?

### **Methods**

To understand the effects of corporate targets on media coverage, the study employed a content analysis of news coverage in three large-circulation, national newspapers: the *New York Times*, the *Washington Post* and the *Los Angeles Times*. These three newspapers were chosen because of their power to shape broader media coverage through their wide dissemination via wire services to local and smaller newspapers.

The sample consisted of all news stories found in the Lexis-Nexis database from January 1, 1992 to December 31, 1994 using the search term "General Motors and NBC," and all news stories from January 1, 1992 through December 31, 1999 using the search term "Food Lion and ABC." We restricted our search to articles that mentioned both the broadcast network and the corporate target, rather than all stories about the target, because our research questions focused on the impact on media coverage of the disputed network report and the target's response. The most reliable way to isolate the impact of these forces was to exclude articles that did not mention both. Thus, we did not measure whether *all* coverage of GM trucks or Food Lion

supermarkets was distracted from investigative reporters' claims, but only coverage that mentioned the investigative report and the target's reaction to it. Not surprisingly, there was some print coverage of the allegations against GM and Food Lion before each investigative report aired, as well as stories on regulatory decisions involving both companies after the investigative reports that did not mention the disputed reports.<sup>1</sup>

For each case, the specified time periods for the sample were chosen because they encompassed coverage from the broadcast of the investigative report to the final regulatory and judicial decisions related to each story. For the sake of comparing similar news items, opinion articles (including columns, op-eds and editorials) were eliminated. The resulting sample consisted of 69 articles – 41 GM-NBC articles and 28 Food Lion-ABC articles. For the GM-NBC articles, 36.6% were from the *New York Times*, 26.8% were from the *Washington Post*, and 36.6% were from the *Los Angeles Times*. For Food Lion-ABC articles, 35.7% were from the *New York Times*, 42.9% were from the *Washington Post*, and 21.4% were from the *Los Angeles Times*.

Coders used two units of analysis to increase validity. Coding at the level of the sentence offered a fine-grained analysis of how often sources and claims were mentioned in coverage. However, this presents a danger that a handful of longer articles heavily weighted toward one perspective can skew the results. Therefore, coders also coded at the level of the article by summing the total sentences that mentioned competing sources and claims in each article, the larger sum determining which view the article mentioned most. If the sums were equal, the article was considered to have no primary viewpoint. Each of the two coders analyzed approximately half of the articles for each case from each newspaper. The coders initially



analyzed the same five randomly-chosen articles, or 7.25% of the sample, and measured intercoder reliability, which averaged 0.89 for all categories using Holsti's Test.

### *Target and Victim Perspectives*

To determine whether target or victim sources appeared more often, coders recorded the number of sentences that directly quoted or paraphrased targets and their advocates and victims and their advocates. Targets and their advocates included GM and Food Lion, as well as the companies' lawyers and public relations specialists. Victims and their advocates included the Victims Committee to Recall GM Pickups, lawyers representing families of GM victims, the Department of Transportation, the United Food and Commercial Workers Union, Consumers United with Employees, Food Lion employees and the Department of Labor. Coders recorded advocates' perspectives only when they spoke in support of the targets' or victims' views.

Coders also measured prominence of victims' and targets' viewpoints. Using the inverted pyramid method of news writing, journalists generally present what they consider to be the most important information in the article's "lead." Headlines also offer a summary of the article's central information. Thus, to measure prominence, coders recorded the number of sentences that presented each perspective in the headline and first three paragraphs combined.

### *Distraction*

To determine the extent that targets distracted media coverage from the original allegations made by investigative reports, the study coded the number of sentences that mentioned investigative reporters' claims and targets' counterclaims. Counterclaims included attacks on newsgathering methods, such as GM's claims that *Dateline* NBC staged and misrepresented the crash test and Food Lion's claims that ABC's *PrimeTime Live* producers committed fraud, trespass and breach of loyalty. They also included rebuttals of the truth of the

investigative report. Examples of rebuttals were GM's claims of producing safe vehicles and Food Lion's claims of maintaining safe food handling practices and not forcing its employees to work overtime.

Distraction and non-distraction variables were then created to provide a measure of the extent that corporate targets diverted media attention from reporters' criticisms. The distraction variable included claims pertaining to newsgathering methods, whether critical or supportive of these methods, because these kinds of claims shift attention away from allegations about targets in investigative reports. The non-distraction variable included claims made by the investigative report and rebuttals to these claims, as both direct attention to the substance of the investigative report.

To minimize variations within each case, we ran paired-samples t tests on each of the two cases separately because of potential difference within the cases. This type of test was chosen because it compares two means from coding categories that are not mutually exclusive. We used a chi-square test for goodness of fit to determine if there was a significant difference between articles that featured targets' or victims' views in our sample. The chi-square test was chosen because it is used to assess data that are divided into distinct categories. It assumes that the prevalence of all categories should be the same and tests to see if divergence from the ideal distribution is significant.

## **Findings**

### *Distraction*

Corporate targets were quoted or paraphrased more often than victims in both cases (see Table 1). In the GM-NBC case, GM's point of view appeared over twice as often as victims' in both sentences ( $t(40) = 3.457, p < 0.001$ ) and articles ( $\chi^2(1, n = 40) = 6.400, p < 0.05$ ). In the

Food Lion-ABC case, Food Lion's perspective appeared more than three times as often as victims' in both sentences ( $t(27) = 3.938, p < 0.001$ ) and articles ( $\chi^2(1, n = 27) = 10.704, p = 0.001$ ).

#### TABLE 1 AROUND HERE

In both cases, the number of sentences that presented targets' perspectives prominently in the articles' headlines and leads combined was about twice that of sentences presenting victims' points of view. However, these differences were not statistically significant because of the scarcity of data points. Of all 69 articles coded, only 47.8% quoted or paraphrased either perspective in the headline and lead. Of these articles, most quoted or paraphrased only one or two points of view at the start of the article.

Newspaper coverage was distracted from the original accusations made in the investigative reports less often in the GM-NBC case than in the Food Lion-ABC case (see Table 2). In the stories about GM-NBC, an almost equal number of sentences diverted focus to NBC's newsgathering methods as focused on the charges made against GM in the investigative report and rebuttals to them ( $t(40) = 0.26, p > 0.05$ ). However, because a large number of non-distracting sentences appeared in a few longer articles, more articles were coded as distracting than non-distracting, although this difference was not statistically significant ( $\chi^2(1, n = 40) = 3.60, p < 0.10$ ). Thus, GM managed to divert a substantial amount of subsequent media coverage from NBC's claims against them, despite jury verdicts and regulatory findings that the company's trucks posed a significant danger to their owners. Food Lion was even more successful at diverting coverage from ABC's allegations and focusing it on newsgathering methods. More than twice as many sentences distracted from the ABC story's claims as reported

them ( $t(27) = 2.958, p < 0.01$ ), and twice as many articles did so as well ( $\chi^2(1, n = 27) = 4.480, p < 0.05$ ).

#### TABLE 2 AROUND HERE

Three major factors influenced the extent to which targets turned media attention away from investigative reporters' charges toward their newsgathering methods. First, the scope of the target's counter-claims shaped the level of media distraction. Food Lion was more successful at diverting attention in part because the company made many more kinds of legal charges against ABC's newsgathering methods than GM did against NBC's. Therefore, news coverage devoted greater space to explaining Food Lion's claims. Second, the length of the conflict appeared to influence media distraction. In the Food Lion-ABC case, there were four different court rulings, from pre-trial through appeals, over the seven year life of the lawsuit, each providing additional news pegs for the rest of the media. By the end of the case, ABC's charges against the grocery chain were all but forgotten by the press amidst the First Amendment issues raised by the lawsuit. By contrast, the GM case was settled in a matter of months after the report aired, before legal papers were even served on NBC. There was less media distraction here even though NBC called its own newsgathering methods unethical and apologized for the report's claims against GM. This suggests that the longer the controversy, the greater is the likelihood of media diversion from the substance of the original story, regardless of whether investigative reporters' own news organizations admit mistakes or stick by their story. Third, the nature of the news organization's response obviously had an impact, but a counter-intuitive one. Although NBC quickly retracted its story, media coverage of the dispute was less distracted from the claims against GM's trucks than it was from ABC's charges against Food Lion, which ABC defended. This implies a paradox: the more that a news organization fights back against targets' attacks on

newsgathering methods, the more likely it is to distract media attention from its own investigative reporters' findings.

Another set of factors may external to the reporter-target relationship, which we did not initially consider, appeared to have some impact as well. The response by victims and their advocates exerted some influence on subsequent coverage as well. One reason that reporting on the GM-NBC affair maintained greater focus on the problems with GM's trucks is that consumer safety groups continued to petition government to recall the vehicles, helping to keep the story alive. Although the United Food and Commercial Workers Union brought a successful complaint to the Department of Labor about Food Lion's overtime practices, no comparable interest group engaged government food safety inspectors to penalize the supermarket chain. Regulatory response offers another external factor that can shape media coverage. National Highway Traffic Safety Administration officials spent 18 months reviewing the safety of the GM trucks during the period of media coverage studied here, helping to prolong coverage of their dangers. Although the Department of Labor found Food Lion violated fair labor practices, it did so with less fanfare and more quickly after the ABC report aired, minimizing regulators' contribution to keeping the story in the public eye.

#### *Impact of Litigation Public Relations on Watchdog Role*

These cases and the coverage of the controversies they sparked suggest several conclusions about how corporate counterspeech can shape media coverage in ways that limit investigative reporters' ability to act as watchdogs on powerful companies. Both NBC and ABC revealed significant threats to public wellbeing posed by large corporations. Yet media response helped weaken the networks' ability to fulfill their watchdog role by turning journalists' attention

overwhelmingly toward issues of journalism ethics, privileging corporate target sources, and ironically, by focusing on the First Amendment rights of investigative reporters.

Most journalists and scholars probably recall NBC's efforts as less successful watchdogging because its reporters left themselves open to charges of staging the crash test shown in their report. Yet this impression may well have been a public relations triumph for GM. It was not entirely clear that NBC's use of incendiary devices caused a "rigged" explosion shown in the report. Nor did GM's libel suit offer a strong chance of victory in court, although it could have punished NBC by forcing the network to ring up large legal fees to defend its journalists. To prevail in court, GM would have to have proved not only that NBC reporters knew their report was staged, but that it conveyed a falsehood about trucks that a jury had previously found to be dangerous (later confirmed by the Transportation Department), and that the report damaged GM's reputation independent of other publicity inspired by the many lawsuits against the company (Goodale 1993a). Instead, GM prevailed through the news media itself, diverting journalistic attention from the question of its trucks' safety to questions about NBC's news ethics. The case indicates that corporate targets' responses can curb investigative reporters' and the rest of the media's ability to hold targets publicly accountable when they exploit vulnerable media practices and owners' concerns about the potential costs of lawsuits.

By contrast, the Food Lion-ABC case suggests different limits to the watchdog role. ABC refused to disavow its journalists' claims against Food Lion and fought a lawsuit that many journalists felt cast a chill over investigative reporting on corporations in general. For example, the Fox News Director who tamed a critical 1997 report on Monsanto's bovine growth hormone explained that "A lot of people now are more fearful of doing investigative journalism since Food Lion . . . which is why we have so many lawyers involved" (Stauber and Rampton 1998).

But ABC's extended First Amendment defense ironically helped shift media attention from its original report. ABC's own follow-up coverage did so as well. Subsequent reports on *Primetime Live* and ABC's *Nightline* both followed the jury verdict in Food Lion's case against the network, rather than advancing the story by reporting on the Department of Labor's findings against the company, attempts to unionize its workers, or the lack of scrutiny by food safety inspectors (ABC News 1997a; ABC News 1997b).

It may be argued that the elite newspapers sampled here performed a public service by playing watchdog on NBC's and ABC's newsgathering practices. But this came at the cost of holding GM and Food Lion accountable to public scrutiny, by helping both companies turn the spotlight on their accusers rather than the charges against them. Thus, the more the media act as watchdogs on each other's newsgathering methods, the less they may be able to act as protectors of the public against other corporate abuses of power.

The print media studied here also offered an uneven marketplace of ideas that marginalized voices critical of Food Lion and GM from subsequent coverage. In both cases, print reporting cited targets' views far more frequently than victims' views. In the GM-NBC case, coverage balanced discussion of the claims against GM's trucks with charges against NBC's newsgathering methods. GM sources, however, still had the opportunity to speak twice as often as victims. The Food Lion case especially raises concerns about corporate public relations allowing companies to monopolize the marketplace of ideas. Food Lion and its advocates, cited approximately three times as often as victims, clearly dominated the media agenda subsequent to the investigative report. More than twice as much of this coverage focused on newsgathering issues than on charges about the supermarket chain's food handling and treatment of labor.

Nonetheless, neither corporate target's counter-attack succeeded in staving off regulatory and judicial action against it. On the contrary, Food Lion and GM entered into multimillion dollar settlements with federal agencies, and GM ended up paying hundreds of millions of dollars to plaintiffs in truck lawsuits. Thus, while target-driven media coverage may undermine investigative reporting's credibility and vigor in the eyes of other journalists, it does not necessarily sap regulators' willingness to sanction corporate offenders. In both cases, ongoing government investigations supported by organized interest groups came to fruition regardless of the challenges to the reports and the ensuing media distraction. Although these investigative reports emerged from the work of others in the policy process, the corporate attacks on them and subsequent media coverage seemed to have no impact on what was happening in federal agencies.

### *The Mobilization Model Revisited*

These findings suggest a number of revisions of the mobilization model (see Figure 2). The cases bolster prior research that reveals that investigative reporters rarely work independently to create reports or spark reforms. Prior action by interest groups and government agencies informed both reports and was largely responsible for enacting what reforms occurred as NBC and ABC struggled with their targets' counter-attacks. This is a two-way relationship in which interest groups and government may draw on investigative reports to advance their agendas as well. Public opinion was a factor in the Food Lion case, as the ABC report drove down its stock considerably, increasing pressure on the company to settle labor violations charges.

FIGURE 2 AROUND HERE



Regardless of the outcomes in these cases, attempts to understand what shapes investigative reporting's impact on policy should devote greater attention to media response and the factors that influence it, especially target responses such as corporate litigation and public relations counter-offensives. Proress and his colleagues found that media investigations do not always lead to changes in public opinion or public policy in part because of the lack of follow up stories by investigative reporters (1991: 19-20). Our findings of widespread media distraction suggest that corporate counter-attacks can shift media attention from following up on claims against targets, reframing investigative stories into journalism ethics and First Amendment stories. Targets can seize on these opportunities to divert media attention from victims' claims, potentially limiting the reports' influence on public opinion and policy makers. This is most likely to occur when targets issue a greater number of counterclaims, when the conflict is prolonged, and, curiously enough, when the news organization fights back by asserting its First Amendment rights rather than issuing a retraction or apology for the disputed story.

Of course, victims' advocates are not powerless to respond, as the Center for Auto Safety and United Food and Commercial Workers Union showed by maintaining pressure for change despite corporate attempts to discredit reports. Regulators such as the Department of Transportation and Department of Labor can influence follow-up coverage through issuing new findings and rulings, although they did so only minimally in these cases as media focus had turned to issues of newsgathering ethics and journalistic free speech.

### **Conclusion**

This study has suggested additional factors that influence the policy impact of watchdog journalism, many of them focused on managing subsequent media response. We found that

corporate targets that issue a hail of counterclaims are more likely to distract the media than targets who raise fewer criticisms. It appeared that the more news organizations under attack defend their right to muckrake in general, the more they risk burying the disputed story under discussions of First Amendment rights and media ethics, sacrificing their ability to hold specific corporate targets accountable. The elite print media can assist targets in turning the tables and playing watchdog on investigative journalists by providing targets with a forum for criticizing journalists and diverting public attention. Print attention to investigative reporters' shortcomings comes at the expense of additional scrutiny of corporate targets. The print response studied here did not offer much diversity of viewpoint on these controversies, slighting the views of victims and their representatives.

The limits to our ability to generalize from these case studies suggest avenues for future research. While we chose to focus on reaction to television reports, responses to controversial investigative journalism in newspapers and online journalism might differ. Studies could compare reactions to local and national investigative reports. Local media's greater economic dependence on local corporations as advertisers may make these news organizations more likely to feature their criticisms of investigative reports. However, the presence of less competition in many local news markets may make these organizations less accountable to outside forces in some instances.

Likewise, whereas we sampled national newspapers, studies of media reception of investigative reports could explore response in the local press. Local papers in areas that depend heavily on the corporate target as a source of employment may be more solicitous of the corporation's views, while media in other regions might feature victims' views more in an effort to provide a local angle. In addition, future studies might test whether media competition

influences coverage. Television news response, which we did not study, may have been more sympathetic to NBC and ABC in these cases because journalists were more likely to use similar newsgathering techniques (especially hidden cameras) and therefore feel more threatened by GM and Food Lion's lawsuits. Or television journalists may have been harder on NBC and ABC as their chief competitors.

Future research on the effects of litigation public relations could study the impacts of a broader variety of targets on media coverage. Smaller businesses with fewer resources are not likely to be as successful in diverting coverage from investigative reporters' claims or posing costly legal threats. Public opinion and dependence on the news media to communicate with the public (as well as libel law in the U.S.) place greater constraints on government targets' ability to bring lawsuits and sustained public relations campaigns against the press. At the same time, government sources enjoy powerful access as preferred news sources. Their ability to distract media coverage is likely affected by a wider range of policy actors, especially opposing parties and candidates.

Finally, comparative national and historical analysis would be desirable. Complaints about newsgathering methods came to the fore in the U.S. in the 1990s in part as a way for critics of news to avoid the formidable task of proving libel under American law, and in the absence of the Federal Communications Commission as a venue for dispute resolution (through adjudication of complaints brought under the now-defunct fairness doctrine, for example.) Examining cases across a broader historical period would help shed light on whether media response is more or less influential on investigative reporting's impact on policy in the contemporary regulatory environment than in the past, and whether it is easier or harder for corporate targets to distract the media today. Similarly, comparative analysis across different legal and political regimes

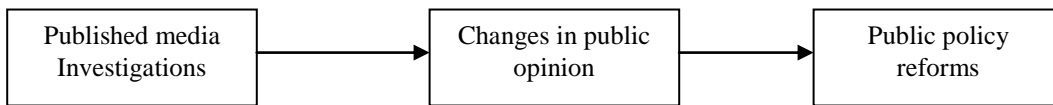
would illuminate how they structure the kinds of responses chosen by the targets of investigative reporting and how successful they are at diverting attention to issues of journalism ethics.

*Word Count: 7500 in the text; 8415 counting tables, figures and references*

*Date: July 17, 2003*

**FIGURE 1**

*The Mobilization Model of Investigative Reporting*



**TABLE 1**

*Target and Victim Perspectives in Coverage*

	Sentences		Articles		Headlines and Leads	
	Target	Victim	Target	Victim	Target	Victim
GM - NBC	188	89	28	12	42	22
Food Lion - ABC	131	43	22	5	17	8

Note: 2 articles in which target and victim perspectives were equally represented, one from each case study, are omitted above from the article count.

**TABLE 2**

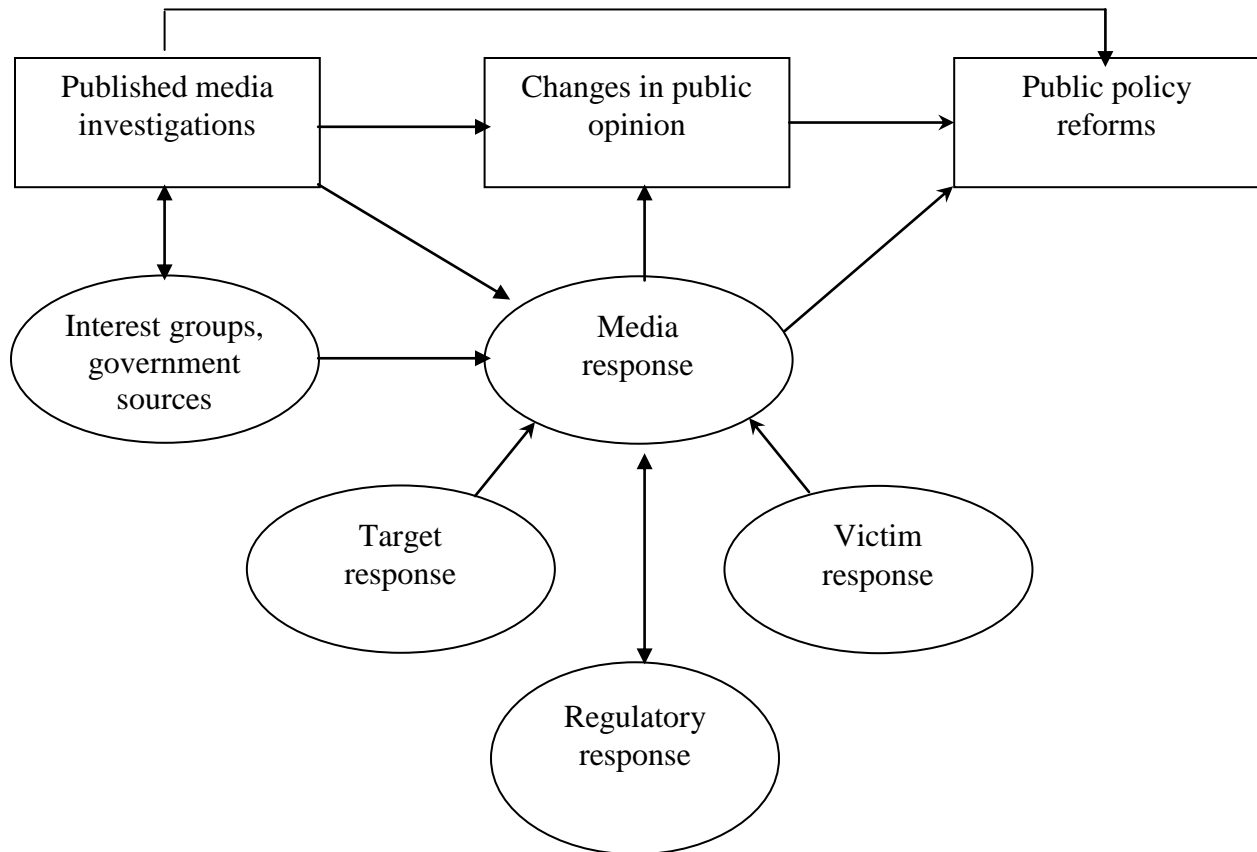
*Distraction and Nondistraction in Coverage*

	Sentences		Articles	
	Distraction	Nondistraction	Distraction	Nondistraction
GM - NBC	368	370	26	14
Food Lion - ABC	359	158	19	8

Note: 2 articles in which distraction and nondistraction sentences were equally represented, one from each case study, are omitted above from the article count.

*Figure 2*

The Revised Mobilization Model of Investigative Reporting



## Notes

<sup>1</sup> To determine how much our sample accounted for all coverage of the allegations against the two targets, whether made by the investigative reporters or by others, we conducted broader searches on “Food Lion and employees” and “General Motors and suit\* or transportation” (for truck safety lawsuits or the Department of Transportation probe). We then focused the searches by adding the terms ABC and NBC respectively. The differences in hits between the two searches indicated that our sample ranged from about thirty-five to seventy percent of all coverage of these allegations, depending on the newspaper.

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